



Human Rights and Business Country Guide

Mexico

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Human Rights and Business Country Guide **Mexico**

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

How to Use this Guide

This Human Rights and Business Country Guide contains information regarding the potential and actual human rights impacts of businesses. The information in this Guide is gathered from publicly available sources, and is intended to help business and other stakeholders develop and implement policies and procedures related to Business and Human Rights aimed at ensuring the corporate responsibility to respect human right.

About the Human Rights and Business Country Guide

The Human Rights and Business Country Guide provides country-specific information and guidance to encourage business respect for human rights according to the United Nations Guiding Principles on Business and Human Rights (UNGPs), as the foundation for sustainable development, in particular for the realization of the Sustainable Development Goals (SDG) of the 2030 Development Agenda¹.

For businesses to manage their potential risks related to human rights, they must have comprehensive information about the local context where they operate. On the other hand, for states to identify measures and actions that aim to ensure business respect for human rights, they must have a baseline on the impacts of business in practice. In this sense, the Country Guide provides a systematic overview of the human rights issues on which companies and states may focus. For each issue, it identifies impacts and it provides tools and recommendations on how companies and states could ensure respect for human rights in their country.

Also, the Country Guide is a platform for local stakeholders to identify priority issues and actions on the corporate responsibility to respect human rights.

The Country Guide is a compilation of publicly available information from international institutions, local NGOs, governmental agencies, businesses, media and universities, among others. International and domestic sources are identified on the basis of their expertise and relevance to the Mexican context, as well as their timeliness and impartiality.

How the Human Rights and Business Country Guide can be used by companies:

- Develop company policies and procedures related to human rights issues in the local environment.
- Raise awareness among staff, suppliers and other business partners.
- Engage with workers, potentially affected communities, consumers and other stakeholders whose human rights might be affected by their operations.
- Engage with human rights civil society organizations, government agencies or international organizations.

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- Provide background information for external auditors.

How the Human Rights and Business Country Guide can be used by governments

- Together with the results of the National Baseline Assessment on the implementation of the UNGPs², to identify priority issues, sectors and regions for consideration in the NAPs on Business and Human Rights and other relevant public policies.
- Develop specific measures for NAPs and public policies on business and human rights on the corporate responsibility to respect human rights.
- Review and reform issue-specific public policies and legislation relevant to the human rights impacts of business, including in the areas of labour, environment, land, equal treatment, anti-corruption, taxation, consumer protection or corporate reporting.
- Ensure respect for human rights in the state's own business affairs such as state-owned companies, sovereign wealth funds and other investments, public procurement, development assistance, export credit agencies and other activities.
- Build awareness and capacity on human rights and business issues within relevant areas of public administration.
- Provide targeted advice to companies.
- Improve effective access to judicial and non-judicial remedies for victims of business-related human rights abuses.

While intended to support government efforts to develop national public policies on Business and Human Rights, the Human Rights and Business Country Guide also provides a tool for companies and other stakeholders.

How the Human Rights and Business Country Guide can be used by civil society organisations

- Inform human rights research and monitoring related to business operations.
- Work with affected workers and communities to define human rights and development priorities related to the role of business.
- Work with local stakeholders to provide recommendations to companies and government.
- Facilitate dialogue and engagement, including multi-stakeholder forums.

Country Guide Process

The Mexico Country Guide was adapted and produced by the Danish Institute for Human Rights (DIHR) with the aim of supporting SEGOB (Secretaría de Gobernación) as part of a collaborative partnership in the process of developing Mexico's National Programme on Business and Human Rights.

The survey of publicly available, international sources was carried out by the Danish Institute for Human Rights from June to October 2016.

This Guide seeks to provide practical and complementary information to the National Baseline Assessment on Business and Human Rights prepared by the Civil Society Focal Group on Business and Human Rights. It provides an overview, on the basis of the information available, of the ways in which companies do or may impact human rights in Mexico. This current Country Guide is not meant as an end product, or a final determination of country conditions. It is intended to facilitate a national dialogue on the main human rights and business opportunities and challenges to support the development and implementation of the National Programme on Business and Human Rights. It is also the first analysis of business practice in Mexico, and serves as a tool to assess progress on the corporate responsibility to respect human rights at the country level.

Country Guide Content

The Country Guide contains the following information:

Focus Areas

Each section of the Country Guide identifies areas in need of particular attention by businesses. The Country Guide identifies these areas through an analysis of the country's legal framework for human rights protection; enjoyment of human rights in practice; and the proximity of third-party human rights violations to company operations.

The headlines and risk descriptions detail the relevance of each issue for businesses. The text that follows the risk descriptions presents quantitative and qualitative information upon which this determination was based.

- **Background & Context** gives a country overview of economic, political and demographic characteristics.
- **Rights Holders at Risk** identifies groups that may be vulnerable to workplace discrimination or community impacts.
- **Labour Standards** identifies areas for attention related to employees and working conditions. This section includes child labour, forced labour, trade unions, occupational health & safety and working conditions.
- **Community Impacts** identifies focus areas related to communities whose human rights may be affected by company operations. This section includes impacts related to environment, land & property, revenue transparency & management and security & conflict.
- **Access to Remedy** identifies different remedy mechanisms available to address violations of human rights. Whenever possible, information is also included on the effectiveness of these mechanisms, as well as the number of cases that have already been addressed.
- **Sector Profiles** identifies human rights and business impacts related to a particular industry sectors, such as extractive operations, manufacturing and agriculture.

- **Region Profiles** identifies regions of the country where the risk of adverse human rights impacts differs markedly from the national profile. This may include underdeveloped regions, export processing zones or conflict areas.

Cases

Each rights issue includes cases from jurisprudence and media where the rights issue in question has been allegedly violated. These cases are drawn from the Business and Human Rights Resource Centre, international and local NGOs and stakeholder consultations. The cases presented here should not be considered comprehensive.

Human Rights Guidance for Businesses

This section includes guidance for businesses to prevent and mitigate their adverse human rights impacts. This guidance is drawn from the Danish Institute for Human Rights' (DIHR) existing library of human rights due diligence recommendations, as well as international frameworks, principles and guidelines. Where available, this section includes recommendations issued by local NGOs and directed specifically at companies operating in the country.

This section also includes examples of initiatives carried out by companies to mitigate their human rights impacts. These are organized into Due Diligence Initiatives—activities that aim to meet the company's responsibility not to violate human rights.

Access to Remedy

Victims of corporate human rights abuses have the right, under international law, to mechanisms that provide for remedy. The UN Guiding Principles on Business and Human Rights explicitly obligate governments and businesses to provide and/or participate in such mechanisms.

The Country Guide includes information about the remedy mechanisms available to redress violations of human rights. Where possible, this also includes practice information about the effectiveness of such bodies, and the number of cases they have heard and redressed.

About DIHR

The Danish Institute for Human Rights is a National Human Rights Institution accredited under the UN Paris Principles³, and carries out human rights and development programmes in Denmark and around the world. Since 1999, the Danish Institute has worked closely with business and human rights issues to develop tools and standards for better business practice.

For more information, see humanrights.dk.

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Background & Context

Overview of political and socio-economic conditions in which businesses operate. This information is designed to inform businesses of the broader political and development trends in the country.

Demography and Economy	
Population ⁴	127,017,000 (2016)
Ethnic Groups ⁵	Mestizo (Amerindian-Spanish) 62%, Predominantly Amerindian 21%, Amerindian 7%, Other 10% (mostly European) Note: Mexico does not collect census data on ethnicity (2012 est.)
Religious Groups ⁶	Roman Catholic 82.7%, Pentecostal 1.6%, Jehovah's Witnesses 1.4%, Other Evangelical Churches 5%, Other 1.9%, None 4.7%, Unspecified 2.7% (2010 est.)
Languages ⁷	Spanish 92.7%, Spanish and indigenous languages 5.7%, Indigenous 0.8%, Unspecified 0.8% Note: indigenous languages include various Mayan, Nahuatl, and other regional languages (2005)

Political, Economic & Development Statistics

Quantitative indicators and country rankings

Country Rankings & Ratings			
	2008	2011	2014
Reporters Without Borders: <i>Press Freedom Index</i> ⁸ (where 1 indicates the highest degree of freedom)	140	153 (2012)	149
Freedom House: Map of Freedom - Political Rights ⁹ (on a scale of 1 through 7, where 1 indicates the highest level of freedom)	2	3	3
Freedom House: Map of Freedom - Civil Liberties ¹⁰ (on a scale of 1 through 7, where 1 indicates the highest level of freedom)	3	3	3
Form of government ¹¹	Federal Presidential Republic		
Most recent general election ¹²	President directly elected by simple majority popular vote for a single 6-year term; Election last held on 1 July 2012.		
Current head of state ¹³	President Enrique Peña Nieto (since 1 December 2012); Note: President is both Head of State and of Government.		
Ruling party ¹⁴	Institutional Revolutionary Party (PRI).		
Other major parties ¹⁵	<ul style="list-style-type: none"> • Citizen's Movement (MC) • Institutional Revolutionary Party (PRI). • Labour Party (PT) • Mexican Green Ecological Party (PVEM) • Movement for National Regeneration (MORENA) 		

	<ul style="list-style-type: none"> • National Action Party (PAN) • New Alliance Party (PNA/PANAL) • Party of the Democratic Revolution (PRD) • Social Encounter Party (PES)
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Development Indicators and Trends			
	2010	2011	2013
GDP growth	5.2% ¹⁶	3.9% ¹⁷	1.4% ¹⁸
GDP growth in region / neighbouring countries	6.1% ¹⁹	4.3% ²⁰	2.8% ²¹
GDP per capita (PPP)	14,603 ²²	15,754 ²³	16,248 ²⁴
Human Development Index rank	56 ²⁵	57 ²⁶	71 ²⁷
Human Development Index score	0.748 ²⁸	0.752 ²⁹	0.756 ³⁰
Human Development Index score – Regional Average	0.734 ³¹	0.737 ³²	0.740 ³³
HDI discounted for inequality	0.593 ³⁴	0.589 ³⁵	0.583 ³⁶
Gini coefficient	48.1 ³⁷	48.1 (2012) ³⁸	47.2 ³⁹
Percentage of population below national poverty rate	52.0% ⁴⁰	N/A	52.3% (2012) ⁴¹
Percentage of population below absolute poverty rate (\$1.25 per day) ⁴²	3.8% ⁴³	1% (2012) ⁴⁴	N/A

Political Context

Governance structures and political developments

Mexico's political structure is a democratic representative federal presidential republic. The government has three levels: federal, state and municipal. The president is elected by plurality vote for a six-year term and, unlike other Latin America systems, there is no second round. Enrique Peña Nieto from the Institutional Revolutionary Party (PRI) was elected president on July 1, 2012, winning 39% of the vote.

Mexico is a federation integrated by 31 States and a Federal District. Each state elects its own governor and legislature; municipal authorities are chosen at the local level. The Chamber of Deputies has 500 members, elected for a three-year term; 300 elected by simple majority in single-member districts, and 200 elected by proportional representation in five 40-member regional districts. The Senate has 128 members, elected for a six-year term. Each state elects three senators, and in addition 32 are elected by proportional representation on a single nation list. Re-election for consecutive terms is prohibited for all federal deputies and senators. Legislators can be elected to the other chamber when their term expires, and they can be re-elected to the same chamber after sitting out a term.⁴⁵

The political system of Mexico is based on the Constitution of 1917, drafted during the Revolution. The constitution has been subject to many modifications, such as that of 2005, which prohibited the use of capital punishment. The last modification was made in 2011, regarding human rights and *amparo* trial.⁴⁶

Socio-Economic Context

Human development indicators and trends

Mexico is among the 20 largest economies in the world. The Mexican economy continued to grow at an annual rate of 2.5% during most of 2015 and early 2016, although it is expected to slow down to about 2% in 2016, following a modest contraction of economic activity in the second trimester. According to the World Bank country analysis, the expansion of economic activity now depends entirely on private consumption, because due to weak investments and exports, these sectors no longer contribute to growth.⁴⁷

In addition, there is a persistent trend of higher debt-to-GDP ratio (from 29% in 2007 to an estimated 50.5% by the end of 2016), together with lower oil revenues, a fragile financial situation of the national oil company Pemex, as well as a disappointing economic growth rate.⁴⁸

In 2014, Mexico's Human Development Index (HDI) value was 0.75. This value places the country in the high-level human development category, ranking it 74th out of 188 countries and territories. Between 1980 and 2014, Mexico's HDI value increased from 0.601 to 0.756, an increase of 25.8% or an average annual increase of about 0.68%. At present, the country is in the 61st position in the index managed by the United Nations Development Program (UNDP), among 187 countries and territories.⁴⁹

Economic and social inequality is a persistent problem in the country. According to a 2016 report by Oxfam Mexico, the country is among the top 25% of countries with the highest levels of inequality in the world and is one of the two most unequal countries in the OECD. The conditions of inequality in the country are such that 1% of the population owns 43% of all wealth in Mexico.⁵⁰ The UNDP reports that according to an official estimate of 2012, 46% of the Mexican population lived in poverty that year.⁵¹ On the other hand, 12% of the population lived in extreme or multidimensional poverty, meaning that they lacked access to at least one of the underlying rights of social development, or had insufficient income to acquire the goods and services they required to satisfy their needs. While the GDP per capita is growing at less than 1% a year, the fortunes of the 16 richest Mexicans are multiplied by five.⁵²

Oxfam Mexico's analysis⁵³ of extreme inequality in the country also shows that it has effects in at least three areas of society: 1) the indigenous population, whose poverty rate is four times greater than that of the general population; (2) a disparity between disadvantaged public school students vis-à-vis their peers in private schools,⁵⁴ contributing to significant and lasting consequences throughout life, and (3) violence due to inequality, marginalization and poverty.⁵⁵

Inequality in Mexico also has a gender bias. The situation of women is characterized by inequality in all areas: income, employment, education, health, family and political activity.⁵⁶ According to the 2014 Global Gender Gap, Mexico ranked 80 out of 142 countries in this area. Within the Global Gender Gap analysis, the sector in which Mexico performs the worst is precisely in terms of participation and economic opportunities, where it is ranked 120th. Within this area of analysis, the worst results were obtained in labour force participation (ranked 118th), equal pay for similar work (survey data, ranked 116th) and estimated income (ranked 114th).⁵⁷

Development Frameworks

Plans and strategies to assist companies in designing community programmes

National Development Strategy

The National Development Plan⁵⁸ (NDP) 2013-2018 of the Government is being developed under the leadership of President Enrique Peña Nieto, following article 26 of the Constitution, which establishes that there will be a National Development Plan to which the Federal Public Administration (FPA) Programs will abide.

The NDP is a working document that governs the programming and budgeting of the entire FPA. It is also an exercise for reflection that invites citizens to think about the challenges and opportunities the country faces. It stipulates that the task of development and growth corresponds is borne by all actors, sectors and people in the country, emphasizing that growth and development arise when each person, company and actor of a society is able to make its greatest contribution. It establishes as national goals peace, inclusion, prosperity and global

responsibility. It also presents crosscutting strategies to democratize productivity, modernize government, and adopt a gender perspective in all FPA programs.⁵⁹

Finally, Mexico's National Plan for Human Rights (2014-18)⁶⁰ emphasizes the duty of private companies and institutions to respect human rights.⁶¹ It defines as strategy 4.4 "Promoting the human rights and gender approach in the private sector, as well as in business policies and activities", with five lines of action regarding the relationship between the State and companies in terms of protecting and respecting human rights and a commitment to develop a National Program on Business and Human Rights.

UN Development Action Framework

In September 2015, the United Nations General Assembly adopted the Agenda 2030 for Sustainable Development.⁶² The Agenda, which includes 17 Sustainable Development Objectives (SDGs), 169 goals and 230 indicators to monitor progress, is an action plan for people, the planet and prosperity, aimed at strengthening universal peace within a broader concept of freedom.⁶³ In the Agenda, States recognize that the eradication of poverty in all its forms and dimensions, including extreme poverty, is the greatest challenge facing the world and is an indispensable prerequisite for sustainable development in its three areas: social, economic and environmental. With the main objective of leaving no one behind, the Agenda recognizes that the dignity of the human person is fundamental, so that respect, protection and fulfilment of human rights transcends the Agenda as a whole.⁶⁴

The Agenda underscores that the SDGs should be implemented by all countries and stakeholders through a collaborative alliance.⁶⁵ It emphasizes the role of companies in achieving sustainable development of societies, and mentions business activity, investment and innovation as important drivers of productivity, inclusive economic growth and job generation. In this context, it refers to the UN Guiding Principles on Business and Human Rights and labour standards of the International Labour Organization, calling on companies to apply their creativity and innovation to solve sustainable development challenges. In addition, Goal 17 on Strategic Alliances focuses on fostering and promoting public, public-private, and civil society partnerships.⁶⁶

The first stage of evaluating the implementation of the Agenda 2030 for Sustainable Development was held in New York in July 2016, in the format of a voluntary review under the United Nations High-Level Policy Forum (HLPF) on Sustainable Development.⁶⁷ Together with 21 other countries at the global level, Mexico participated in this first voluntary review by presenting a country report on how the Agenda 2030, its objectives and targets have been implemented.

Mexico's national report to the HLPF⁶⁸ emphasizes the fact that the Agenda 2030 arises in an unstable global economic environment and on the threshold of an unprecedented environmental crisis, the adverse effects of which have reached Mexico. In this sense, it identifies major challenges that the country faces, in particular, to accelerate economic growth, reduce social inequalities and secure resources for the implementation of the Agenda in an austerity environment, to strengthen the human rights framework, and to achieve greater cooperation, innovation and efficiencies in the work of public policy. Thus, it recognizes the need

to make major structural changes in the government to respond to the integrated nature of the Agenda. As such, it has been necessary to establish commitments at all levels, identify national priorities, analyse what global public goods Mexico can provide, build new implementation mechanisms and identify new partners, such as in the business sector.⁶⁹

World Bank Country Partnership Strategy

The World Bank's Mexico Partnership Strategy for Mexico (CPS) from 2014 to 2019 is aligned with the objectives of Mexico's National Development Plan (NDP) for 2013-2018. The strategy categorizes the main challenges to reduce extreme poverty and promote shared prosperity in four areas: (a) to increase productivity and ensure their profits are widespread, (b) to ensure that the poorest segments of society benefit from basic social services and contribute to economic growth, (c) to strengthen public finances and improve government efficiency, and (d) to combine the economic and environmental aspects of sustainable development.⁷⁰

Rights-Holders at Risk

Societal groups particularly vulnerable to employment-related discrimination or poor development outcomes

Operating Environment		
	Country	Region
HIV/AIDS prevalence (ages 15-49)	0.2 (2014) ⁷¹	0.5 [0.4-0.6] (2016) ⁷²
Female labour participation rate	45,1% (2013) ⁷³	53.7% (2013) ⁷⁴
Percentage urban population	79.2% (2015) ⁷⁵	N/A
Percentage rural population	21% (2015) ⁷⁶	N/A
Human Development Index score	0,756 (2014) ⁷⁷	0,748 (2014) ⁷⁸
HDI adjusted for inequality	0,587 (2014) ⁷⁹	0,570 (2014) ⁸⁰
HDI Gender Equality Gap Index score	0.373 (2014) 74 (rank) ⁸¹	0.415 ⁸²
Population below PPP US\$1.25 per day (%) ⁸³	2.7 (2012) ⁸⁴	N/A
Literacy rate, 15-24 years old (%)	95.1% ⁸⁵	97,8 (2013) ⁸⁶
Maternal mortality ratio (per 100,000 births)	38 deaths (2015 est.) ⁸⁷	85 deaths ⁸⁸
Seats held by women in national parliament (%)	42% (2015) ⁸⁹	27,0 (2014) ⁹⁰
OECD Social Institutions and Gender Rank	<ul style="list-style-type: none"> The Gender Inequality Index score is 0.382 (2014)⁹¹ Mexico's World Economic Forum Global Gender Gap Index score for 2013 is 	

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	0.692, putting it in 68th place (out of a total of 136 countries). ⁹²
Labour force	55,561,477 (2014 est.) ⁹³
Percentage of population who are 15-24 years old	17.9% (male 11,027,564/female 10,759,446) ⁹⁴
Law prohibits discrimination on the grounds of:	<ul style="list-style-type: none"> • The Mexican Constitution prohibits discrimination against workers. • The Mexican Federal Labour Law (MFLL) prohibits any kind of discrimination. All individuals involved in an employment relationship are protected against discrimination on the grounds of: race; nationality; sexual preferences; immigration condition; religion; civil status; social condition; age; gender; and/or disability.
Major ethnic groups ⁹⁵	<ul style="list-style-type: none"> • Mestizo (Amerindian-Spanish) 62%, • Predominantly Amerindian 21%, • Amerindian 7%, • Other 10% (mostly European) <p>Note: Mexico does not collect census data on ethnicity (2012 est.)</p>
Recognition of indigenous groups in law	<ul style="list-style-type: none"> • It was only with the 1992 reform of the Constitution that the nation was deemed multi-cultural. Under the Constitution, indigenous peoples in Mexico have the rights to self-determination, which includes, among others, the right to autonomy, education, infrastructure and no-discrimination. However, each Mexican state has its own constitution and can establish new legislation. In some cases, as regards indigenous peoples, the local legislation has limited the provisions recognized in the national constitution.⁹⁶

	<ul style="list-style-type: none"> • The government's National Indigenous Institute has offices throughout the country to facilitate consultation with indigenous communities, and government statements emphasize the officially recognized principle of cultural diversity. • The government has also ratified International Labour Organization (ILO) Convention No. 169 of 1989 on the rights of Indigenous and tribal Peoples, although it is argued that constitutional reforms have undermined land rights guaranteed under the Convention.⁹⁷
Major indigenous groups	<ul style="list-style-type: none"> • The ten largest indigenous groups are Náhuatl (24%), Maya (13.7%), Zapoteco (6.8%), Mixteco (6.8%), Tzeltal (5.7%), Otomí (5.5%), Tzotzil (5.1%), Totonaca (3.6%), Mazateco (3%), Mazahua (3%) and Chol (2.7%).⁹⁸
Major religious groups	<ul style="list-style-type: none"> • Roman Catholic 82.7% • Pentecostal 1.6% • Jehovah's Witnesses 1.4% • Other Evangelical Churches 5% • Other 1.9% • None 4.7% • Unspecified 2.7% (2010 est.)⁹⁹
Major migrant groups	<p>Approximately 150,000 migrants, mainly from the State of Chiapas, travel annually to the southern border of Mexico, with the intention of reaching the United States. Most of these migrants are Central Americans, South Americans and, to a lesser extent, extra regional migrants from countries in Asia and Africa.¹⁰⁰</p>
Persons with disabilities	<p>According to estimates presented by Mexican authorities to the UN Committee on the Rights of Persons with Disabilities in 2014, some 6.6% of Mexico's population have some form of disability: 51% of them are elderly people, 34% are between the ages of 30-59,</p>

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	7% are between the ages 15-29, and 7% are children. Most of them live in poverty. ¹⁰¹
Relevant legislation ¹⁰²	<ul style="list-style-type: none"> • Constitution of 1917 (2016 reform) • Social Assistance Law 2004 (2014) • Law of Religious Associations and Public Worship 1992 (2015 reform) • Food Aid for Workers Law 2011 • Law of the National Commission of Human Rights 1992 (2014 reform) • Law of the National Commission for the Development of Indigenous Peoples 2003 (2016 reform) • Migration Law 2011 (2016 reform) • Law of the Institute of Social Security and Services of state Workers 2007 (2016 reform) • Law of the National Institute of Women 2001 (2015) • Federal Law to Prevent and Eliminate Discrimination 2003 (2014 reform) • General Law for Equality between Women and Men 2006 (2016 reform) • General Law for the Inclusion of People with Disabilities 2011 (2015 reform)
Responsible agencies	<ul style="list-style-type: none"> • Mexican Commission for the Defence and Promotion of Human Rights • National Commission for the Development of Indigenous Peoples • National Council for Preventing Discrimination (Conapred) • National Indian Institute • National Institute of Women (INMUJERES).
Local NGOs addressing this issue ¹⁰³	<ul style="list-style-type: none"> • Amnesty International • Association México Negro • Human Rights Centre 'Fray Francisco de Vitoria OP' • Frente Independiente de Pueblos Indios • Hojarasca (journal of indigenous affairs)

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Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The Political Constitution of the United States of Mexico enshrines the mandate of non-discrimination in Article 1, prohibiting in paragraph 5 "any discrimination based on ethnic or national origin, gender, age, disability, social conditions, health conditions, religion, opinions, sexual preferences, marital status or any other that violates human dignity and is intended to nullify or impair the rights and freedoms of individuals."¹⁰⁴

On the other hand, the general legal regulatory framework in Mexico for the promotion of equality of opportunity and treatment is the Federal Law to Prevent and Eliminate Discrimination against any person under the terms of Article 1 of the Constitution, which prohibits discrimination based on ethnic or national origin, gender, age, disability, social status, health conditions, religion, opinions, sexual preferences, marital status or any other. This Law promotes equality of opportunity and treatment. It created the National Council for the Prevention of Discrimination (CONAPRED), which has the competence to investigate acts of discrimination committed by public officials.¹⁰⁵

The Labour Chapter of the Trans-Pacific Economic Cooperation Agreement (TPP) signed by Mexico includes a section on eliminating discrimination in employment and occupation. According to data from CONAPRED, from 2010 to 2015, complaints of discrimination increased to 51%, with an increase of 72% in individuals and 23% in public servants.¹⁰⁶

Afro-Descendants

According to data reported in 2016 by Minority Rights Group International, the majority of Mexico's population of African descent lives in the State of Veracruz or along the Pacific coastal region of the southern states of Oaxaca and Guerrero, otherwise known as the Costa Chica, where extreme poverty affects 50% of the population.¹⁰⁷ An inter-census survey undertaken in 2015 recognizes for the first-time Mexico's population of African descent, estimating it at 1.4 million people.¹⁰⁸

While the Anti-Discrimination Law approved in 2005 does not explicitly acknowledge Afro-Mexicans, it was nevertheless designed to address discrimination against this group. Since then, the State of Oaxaca reportedly became the only government entity to officially recognize Afro-Mexicans as an ethnic group.¹⁰⁹

According to data from the Intercensus Survey of 2015 conducted by the Institute of Statistics and Geography (INEGI), according to its culture, history and traditions, 1.2% of the population is considered Afro-Mexican or Afro-Descendant. For this group, the overall fertility rate is 2.4 children per woman; 8 out of 10 are affiliated with health services, have an average schooling of 8.9 years and the percentage of illiteracy is 6.9%.¹¹⁰

Minority Rights Group International also reported in 2016 that most Afro-Mexicans live in the poorest regions of Mexico, often in isolated rural communities with a lack of sanitation, health or education services. Also, the lack of infrastructure has reportedly made it difficult for Afro-Mexicans to sustain themselves economically. Today, their primary sources of income are fishing, agriculture (mostly for their own consumption) and domestic work.¹¹¹

Religious Minorities

The religious minorities in Mexico are Pentecostal 1.6%, Jehovah's Witnesses 1.4%, other Evangelical Churches 5%, other 1.9%, none 4.7%, unspecified 2.7% (2010 est.)¹¹²

According to the 2012 Report on International Religious Freedom, there are large Protestant communities in the southern states of Chiapas and Tabasco. In Chiapas, Protestant evangelical leaders state that nearly half of the State's 2.4 million inhabitants are members of evangelical groups, but less than 5% of the 2010 census respondents in Chiapas self-identified as evangelical. According to the 2010 census, the Jewish community amounts to approximately 67,500 people, some 42,000 of whom live in Mexico City and the State of Mexico. There are also small numbers of Jews in Morelos, Oaxaca, Puebla, and Veracruz. Nearly half of the country's approximately 4,000 Muslims are concentrated in Mexico City and the State of Mexico. A community of approximately 50,000 Mennonites is concentrated mostly in Chihuahua. Some indigenous persons in the states of Chiapas, Oaxaca, and Yucatan adhere to a syncretic religion combining Catholic and pre-Hispanic Mayan beliefs.¹¹³

According to article 40 of the Mexican Constitution, as amended in the constitutional reform of March 2013, Mexico is a secular state. The constitution prohibits any form of discrimination, including on the basis of religion. The Law on Religious Associations and Public Worship of 1992, available also in eleven indigenous languages, defines administrative remedies, which protect the right to religious freedom and people who may be subject to discrimination because of their religious beliefs. Likewise, the Federal Law to Prevent and Eliminate Discrimination (2003) condemns religious discrimination and promotes equality of opportunity and treatment.¹¹⁴

In 2010, the National Survey on Discrimination in Mexico reported that in urban environments such as factories, companies, schools or private universities, questions of professed faith have been asked before granting or denying access to a job or educational institution. In addition, 1 out of 4 people belonging to a religion other than Catholic has felt that their rights have not been respected due to their religious beliefs. Thus, while 78% of the country's population claims to have never been discriminated against on religious grounds, the percentage drops to 68% among those who profess a religion other than Catholic.¹¹⁵

According to information collected in 2013 from CONAPRED, of those who had a religion other than Catholicism, at least 43% considered that their rights were not respected, including att work; 31.4% thought they had fewer options to find employment compared to the rest of the population; 40% said they received lower salaries than the rest, and in general, religious minorities question the official calendar, which does not include holiday days related to non-Catholic holidays.¹¹⁶ In 2015, CONAPRED recorded that complaints of religious discrimination in the workplace doubled compared to the previous year, from 5 to 13 cases against individuals.

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Migrant Workers

In addition to Mexico's Constitution, which establishes in article 11 the right of every person to enter, exit and travel within the territory of Mexico, the most relevant legislation concerning migration in Mexico includes the General Population Act and its regulations, the Citizenship Act, the regulations governing the Ministry of the Interior and the decree establishing the National Migration Service (NMS). These legal and policy instruments govern migration procedures, establish migrants' duties and the limits to their rights, but do not explicitly and exhaustively list the obligations of the Mexican State with regard to the protection of the human rights of migrants. Rather, these rights are regulated by secondary laws.¹¹⁸

Since Mexico is simultaneously a country of origin, a receiving country and a transit country of migrant workers, the situation for migrant workers and their families is complex. Some of the largest migratory flows in the world - many of them illegal - take place in Mexico. More than 90% of the identified migrant workers are Central Americans, mostly from El Salvador, Guatemala, Honduras or Nicaragua. According to the International Organization for Migration (IOM), in 2015, 0.9% of the total population of Mexico consisted of immigrants. According to Amnesty International and other rights groups, during their passage through Mexico by the so-called "train of death" or simply "La Bestia (The Beast)", many of these migrants are kidnapped, raped and murdered by organised criminal gangs, sometimes reportedly in collusion with authorities.¹¹⁹

According to Unicef data, between one-third and half of migrant workers are members of indigenous groups, often without knowledge or with limited knowledge of Spanish.¹²⁰

On the other hand, Unicef reported in 2016 that there were 11,667 repatriations of children from the US to Mexico, 84% of which were traveling without an adult. As for immigration to Mexico, 35,704 foreign children were registered by migration stations, mainly coming from Guatemala (48%), Honduras (28.3%) and El Salvador (21.3%).¹²¹

Persons with Disabilities

Since 2011, the Mexican Constitution specifically prohibits any type of discrimination, including on the basis of disability and in the context of employment.¹²² The Government has aimed to ensure a favourable environment and continued employment for persons with disabilities, and to provide them with access to scientific and technical knowledge. Strategies have also been

developed to employ people from marginalized groups of society, and to apply good labour practices and equality of opportunities for persons with disabilities in particular, for instance through setting up a quota system which aims to ensure that three per cent of positions in public service be set aside for persons for disabilities.¹²³

The General Law for the Inclusion of Persons with Disabilities guarantees rights in the areas of health, labour, education, accessibility, public transport, communications, social development, data collection, sports, recreation, culture, tourism, freedom of expression, access to information and access to justice. In addition, the National Council for the Development and Inclusion of Persons with Disabilities (CONADIS) was established as the Government body responsible for state policy regarding disability.

In 2013, the National Programme for Labour and Employment of Persons with Disabilities was launched, aiming to provide persons with disabilities with decent work and training services. In 2015, only 25% of persons with disabilities were employed.¹²⁴

In 2014, Mexican authorities reported to the UN Committee on the Rights of Persons with Disabilities that some 6.6 % of Mexico's population had some form of disability and most of them lived in poverty.¹²⁵ In its subsequent concluding observations on Mexico, the Committee expressed concern regarding the lack of up-to-date statistics on persons with disabilities in Mexico.¹²⁶ According to data from Global Disabilities Rights Now, in 2015 the major groups with disabilities were the following: mobility 45.33%, visual 26.01%, other 23.6%, auditory 15.7%, cognitive 16.13% and speech 4.87%.¹²⁷

In this regard, in 2014, the United Nations Committee on the Rights of Persons with Disabilities was concerned about the low employment rate of people with disabilities, especially intellectual and psychosocial disabilities, and the lack of coverage of development strategies and programs. The Committee was also concerned about the lack of information on the working conditions of persons with disabilities who have access to employment; by the situation of greater discrimination faced by women and indigenous people with disabilities to access the labour market; by the absence of mechanisms to enforce the 3% labour market quota in the public sector in favour of persons with disabilities; and by the lack of regulation on the application of reasonable adjustments for people with disabilities in the labour sphere, both public and private.

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People Living with HIV/AIDS

Although article 1 of the Constitution and the Federal Law to Prevent and Eliminate Discrimination prohibit discrimination grounded on health conditions, in Mexico there is no specific law prohibiting discrimination against people affected by HIV. According to UNAIDS, the number of people living with HIV was estimated at 200,000 in 2015 (latest available data), which translates to 0.2% of the population between 15 and 49 years.¹²⁹

Based on 2010 People Living with HIV (PLHIV) Stigma Index data, which measures the level of stigma and discrimination experienced by people living with HIV/AIDS, 80% of the population affected lives in towns or big cities. It also indicated that 13.2 % of the respondents had lost their

job or source of income during the preceding 12 months, 24.3% of which cases were a direct result of HIV status, while HIV was a contributing factor in 20.8% of the cases.¹³⁰

The same index further indicated that during the previous 12 months, 5.4% of respondents would have been denied an employment or a job opportunity due to their HIV condition and 6.7% of respondents had had their job description or nature of work changed, or had been refused job promotions as a result of having HIV.¹³¹ In this sense, 1.4% of the respondents reported having their HIV-positive status disclosed to employers or co-workers without their consent.¹³²

Indigenous Peoples

In 1992, Mexico was recognized as a multicultural nation when article 6 of the Constitution was modified.¹³³ The government's National Indigenous Institute has offices throughout the country to facilitate consultation with indigenous communities.

The government has also ratified International Labour Organization (ILO) Convention No. 169 on the rights of Indigenous and Tribal Peoples. In addition, in 2007, Mexico voted in favour of the UN Declaration on the Rights of Indigenous Peoples.¹³⁴

Although the law recognizes indigenous rights, indigenous groups continuously report that the country's legal framework does not respect the property rights of indigenous communities nor prevent violations of human rights.¹³⁵

In 2016, the International Work Group for Indigenous Affairs (IWGIA) reported that Mexico is the country with the largest indigenous population in the Americas, with 68 languages and 364 dialect variants registered. The National Institute of Statistics and Geography (INEGI), the National Population Council (CONAPO) and the Economic Commission for Latin America (ECLAC) registered 16,933,283 indigenous people in Mexico in 2016 (distributed among 62 indigenous groups according to Minority Group¹³⁶), representing 15.1% of the total number of Mexicans (112,236,538). In terms of population size, the National Council for the Evaluation of Social Development Policy (CONEVAL) recorded data indicating that slightly more than 8.7 million indigenous people lived in poverty or extreme poverty in 2016.¹³⁷

In 2015, the U.S. Department of State reported that the majority of the indigenous population is concentrated in the southern and south-central region of Mexico. Almost 80% of those who speak an indigenous language live in 8 of Mexico's 31 states; in order of rank, these are Oaxaca (where 56% of the total population considers itself indigenous, divided in around 16 ethnic and linguistic groups, in addition to a small population of people of African descent.¹³⁸), Chiapas, Veracruz, Puebla, Yucatan, Guerrero, Hidalgo and Mexico City. The five predominant languages spoken by indigenous people are Náhuatl, followed by Maya, Zapotec, Mixtec and Otomí (Mexican Statistics Bureau).¹³⁹

UNESCO reported in 2011 that Indigenous Mexicans had an average of 4.6 schooling years compared to an average of 7.9 years among the non-indigenous population. The 2010 national census established that the illiteracy rate for indigenous people was about 27.2% while the

national average was 5.4%. Illiteracy rates are substantially higher among indigenous women (about 40%). Overall, 1/3 of the indigenous population was considered to be functionally illiterate.¹⁴⁰

According to the latest Census of 2000, 53% of the indigenous-speaking population was employed in low-skilled activities, either as employees, service sector workers - construction workers - or as day labourers.¹⁴¹

On the other hand, according to the National Survey of Agricultural Labourers (ENJO) of 2009¹⁴², there are currently 2,040,414 agricultural labourers, of which 40% are indigenous, or 816,166 individuals. While the agro industrial zones are located in several regions of the country, there is a greater indigenous population in Sonora, Baja California, Baja California Sur, Sinaloa, Chihuahua, Tamaulipas, Durango, and Nayarit who works as agricultural labourers. Among the registered migrants are mixtecos, mixes, huastecos, zapotecos, tlapanecos, Nahuas, purépechas, triquis, totonacos, popolocas, tarahumaras, yaquis, mayos, coras and other groups. Among the population registered by the ENJO, 60% are children and adolescents, who work in agricultural areas; 10% have a trade and 30% are dedicated to domestic service. In addition, the same source notes that 90% of day labourers lack formal contracts, 48.3% earn three times the minimum wage, 37% earn two minimum wages, and 54% are exposed to agrochemical products on a daily basis.¹⁴³

The Committee on the Elimination of Discrimination Against Women (CEDAW) noted in 2012 the lack of access for indigenous women in rural areas to land, property and justice.¹⁴⁴

Sexual Minorities

The Mexican Constitution does not specifically prohibit discrimination based on sexual orientation or gender identity. However, the general ban on discrimination based on preferences of any kind may encompass discrimination based on sexual orientation.¹⁴⁵

The Federal Law to Prevent and Eliminate Discrimination (2013) includes "sexual preferences" as a protected category. This law prohibits any "distinction, exclusion or restriction" based, inter alia, on sexual orientation that "has the effect of impeding or annulling the recognition or exercise of the rights and equality of all persons."¹⁴⁶

Mexico became the second country in Latin America, after Ecuador, to provide anti-discrimination protection for lesbian, gay, bisexual and transgender people (LGBT)¹⁴⁷. On 13 March 2004, amendments to the Mexico City Civil Code allowed transgender people to change the sex and name recorded in their birth certificates¹⁴⁸, although there is no countrywide law allowing amendments to birth certificates and other identification documents.¹⁴⁹

Despite these advances, LGBT persons continue to face discrimination and human rights violations based on their gender identity and sexual orientation.¹⁵⁰ LGBT persons face widespread employment discrimination in both the public and the private sector. The situation is especially troublesome for transgender persons, as gender identity is not a protected category in the anti-discrimination law.¹⁵¹

Legislation that outlaw's sexual orientation continues to exist. For example, the Penal Code of Tamaulipas, in its last reform of 2013, established that "(t)he offense of corruption of minors

and disabled is committed when seeking or facilitating a person under the age of eighteen years or who do not have capacity to understand the meaning of the act, to perform acts of corporal, lascivious or sexual exposition, or induce him by any means to begging, drunkenness, drug use, prostitution, *homosexuality*, to be part of a criminal association, or to commit any offense. "¹⁵²

According to the Human Rights Commission of the Federal District (CDHDF), the workplace is where discrimination against members of the lesbian, gay, transsexual, transgender, transvestite and intersexual communities is exercised. This population is the second group to resort to complaints in the Council to Prevent and Eradicate Discrimination (CONAPRED), of which 15% are in the workplace, according to data from 2014. ¹⁵³ In addition, CONAPRED, in its last survey (ENADIS 2010) revealed that a very large percentage of this community continues to be excluded from access to social security when they live in stable relationships with no legal relationship. ¹⁵⁴

Women

The Mexican Constitution establishes under Article 4 that women and men are equal under the law. The 2007 General Law of Women's Access to a Life Free of Violence marked the creation of the Women National Institute (INMUJERES) aimed to address all issues regarding women's social, political and civil rights. ¹⁵⁵

The Mexican Standard for Work Equality between Men and Women of 2015 is a non-binding instrument that certifies public, social and private organizations that include a gender perspective in their employment practices. ¹⁵⁶ According 2016 data from the Secretary of Labour and Social Security, 14 companies are certified to date, totalling 22,148 people, of which 10,090 are women and 12,058 are men. ¹⁵⁷

The United Nations Development Programme (UNDP) reported in 2013 that there is a 99% female literacy rate between ages 15-24 years ¹⁵⁸. On the other hand, according to the Committee on the Elimination of Discrimination against Women (CEDAW), in 2012 there were disparities in the literacy rate among women of all ages in urban areas (5.3%) and women in rural areas (18.2%), as well as the appreciable feminization of certain areas of education, such as teaching, and the low participation of girls in technical education, which in the long run entails gender segregation in the labour market and the low remuneration of women's employment.

¹⁵⁹

Mexico ranked 71 out of 145 states and score 0.699 (where 0 inequality, 1 equality), when it comes to economic participation and opportunities of women, according to the 2015 Global Gender Gap Index¹⁶⁰.

According to the UNDP (2016), female labour participation is 30 percentage points lower than that of men, as a result of the inequality associated with traditional gender roles.¹⁶¹ According to data from the National Institute of Statistics and Geography (INEGI) in 2014, unpaid and care work was carried out mostly by women, contributing more than 75% of the hours allocated to these tasks at home. ¹⁶² The CEDAW reported in 2012 on the inequalities in the working conditions of domestic workers, 99% of whom were women, as they suffered from discrimination in wages, working hours and benefits.¹⁶³

The Economic Commission for Latin America (ECLAC) and the Food and Agriculture Organization of the United Nations (FAO) indicated in 2013 that the average monthly labour income of women in Mexico, relative to men's income, fluctuated up to 84.4% for people between 15 and 24 years old and 67.2% for people over 55 years old.¹⁶⁴ In addition, a study from INEGI (2014) revealed that the degree of wage discrimination for women in Mexico fluctuated significantly according to the type of work. Thus, for example, the salary for women in industrial activities or as transport operators is 30% and 24% lower than that of men, respectively. While in activities such as traders, professionals, officials or clerks, the gap ranged between 17% and 10%. Finally, in agricultural, protection or surveillance activities or as educational workers, there does not appear to be any gap between the salaries of men and women. In the case of personal services, the gap favours women around 9%.¹⁶⁵

The 2015 Global Gender Gap Index Report found that women spent an average of 373 minutes per day in unpaid work, compared to the 113 average of men. There is 28,5% of female part-time employments, versus 13,5% of male one.¹⁶⁶ Domestic work is also disproportionately biased against women. According to the National Survey on the Use of Time (ENUT) in 2014, women occupied, on average, 29.8 hours a week in tasks related to unpaid domestic work, while men spent an average of 9.7 hours to this end.¹⁶⁷

In the first quarter of 2016, 14.81% of subordinate and paid female workers received income of up to a single general minimum wage or less, while in the case of men, the figure was 8.94%, which shows persistent inequalities.¹⁶⁸

Effectively, according to the 2016 Human Development Report, an important feature of the labour market is the low rate of female participation. While the participation rate of men from 2005 to 2015 was over 80%, that of women did not exceed 50%, according to figures from the National Institute of Statistics and Geography (INEGI).¹⁶⁹ According to the United Nations, two elements contribute to the low female participation in the labour market: low schooling of women in working age - less than men in Mexico - and the cost of child care.¹⁷⁰

In 2014, Oxfam Mexico informed that 26% of the female active population reported labour discrimination. Also, more than the 50% of the food consumed in Mexico was produced by women but only 10% of women had access to the property of the land.¹⁷¹

According to the World Bank, in 2013 there was a 40% share of women in wage employment in non-agricultural sectors (industry and services).¹⁷² Discrimination against women is also reflected in a low number of women in decision-making positions in both the public and private sectors. In 2016, the UN Working Group on Human Rights and Business noted that less than 5% of companies registered on the Mexican Stock Exchange had a female CEO.¹⁷³

In 2012, the CEDAW reported discriminatory practices against women in the field of employment, such as subjecting pregnant women to difficult or dangerous working conditions to force them to give up employment. It also reported significant wage differentials between men and women and that 56.6% of the female working population worked in the informal sector and therefore had no access to social security benefits.¹⁷⁴

Between 2011 and 2016, CONAPRED received 1,726 complaints filed by women, of which 73% referred to acts of labour discrimination or discrimination in the workplace. According to a *Human Rights and Business Country Guide Mexico*

recent report, 20% of women reported having been subjected to sexual harassment in the workplace, while 15% had been required by their employers to submit pregnancy tests.¹⁷⁵

According to the CEDAW data in 2012, 3 out of 10 women had been victims of workplace violence, including sexual abuse and harassment. Also, the CEDAW also reported in 2014 that 45% of women working in the maquila industry suffered some type of abuse, most commonly due to a hostile work environment, sexual harassment, long work hours, low wages, and dismissal for pregnancy.¹⁷⁶

With respect to maternity leave, the Federal Labour Law¹⁷⁷ establishes that paid maternity leave will have 12 weeks of duration, which is below the international standard of 14 weeks. It also establishes the right to a paid paternity leave for a duration of 5 working days.¹⁷⁸ In the Federal District, the Law of Substantive Equality between Men and Women establishes a paternity leave with a 15-day salary. While women can extend their leave for up to six months without salary, men cannot. This represents a potential workplace absence for maternity/paternity of about 12 times higher for women than for men. According to the UNDP, this situation encourages employers to give preference to hiring men.¹⁷⁹

Human Rights Defenders

According to a Civilian Observation Mission in 2014, there were concerning facts about attacks, threats and obstruction of the work of human rights defenders, both by government authorities (from the federal level to the municipal level), and by companies that were implementing megaprojects or opposing the labour demands of their workers, as well as armed actors outside the law or linked to organized crime.¹⁸⁰

In 2016, the UN Working Group on Business and Human Rights stated in their visit to Mexico that, between 2010 and 2012, 615 cases of attacks against human rights defenders were reported, including 36 murders.¹⁸¹ In this regard, the Office of the United Nations High Commissioner for Human Rights in Mexico (OHCHR) indicated that aggressions included threats, arbitrary interference, harassment, arbitrary detention, murders, attacks, and forced disappearances. While the perpetrators remain unknown in most cases, preliminary evidence suggests that non-state actors are responsible for most attacks. Nonetheless, the participation, by act or omission, of public officials was identified in 23% of the recorded cases between 2010 and 2012.¹⁸²

The Inter-American Commission on Human Rights (IACHR) reported in 2012 that some groups of human rights defenders faced particularly high levels of risk. These included female human rights defenders, as well as the defenders of labour rights, the rights of indigenous and rural communities and the rights of migrant workers, among others.¹⁸³

According to a 2014 report of the National Network of Human Rights Civil Organizations "All Rights for All", private companies (national and transnational) were identified as directly or indirectly responsible for 104 attacks between 2011 and 2013. Among them are threats, harassment, surveillance, attacks on reputation and honour, and physical aggression in cases

related to mining, wind and labour rights.¹⁸⁴ Global Witness reported in 2014 the murder of three defenders of environmental and indigenous land rights.¹⁸⁵

In addition, in 2014 an official of Services and Advices for Peace (SERAPAZ) stated that on some occasions, companies would have established agreements with organized crime groups, usually taking place with the implicit consent of the municipal authorities, which creates an oppressive and dangerous environment for all human rights defenders and activists.¹⁸⁶

For the National Network of Human Rights Civil Organizations "All Rights for All", the defense of the rights of indigenous peoples occurs mainly in the states of Oaxaca, Guerrero, Chiapas, Chihuahua, Puebla and Michoacán. It is mostly related to land and territory issues, agrarian conflicts, natural resources (especially the right to water and the environment), labour rights, as well as privatization, economic projects and abuses committed by companies, whether they are local, national and parastatal, or transnational.¹⁸⁷

The IACHR learned in 2015 of the arrests of indigenous leaders in Guerrero, Oaxaca, Chiapas, Quintana Roo, Sonora, Chihuahua and Puebla, among others, in connection with their activities in opposition to various megaprojects.¹⁸⁸

In 2016, according to data from the Observatory for the Protection of Human Rights Defenders on the State of Mexico, there was an increasing number of repressive situations by municipal authorities against natural resource defenders, particularly in relation to projects such as the international airport of Mexico City, the Toluca-Naucalpan highway, various real estate developments and the municipalisation of public water administration in various places.¹⁸⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **May 2016, Sin Embargo:** organizations and citizens that make up the Mission to observe the consultation of the Maya People on the planting of genetically modified soy, reported that during the first day there were confusions and irregularities such as lack of clear and precise information, lack of impartiality on the part of the authorities, pressure to force them to adhere to previously planned procedures, as well as conflicts of interest and poor translation work of their mother tongue.¹⁹⁰
- **March 2015, La Jornada:** 200 farm workers from the Tarahumara mountains were rescued. They were victims of exploitation and were recruited to work for the company El Cerezo Sociedad Agricola Corporation. These people, including children and women, were taken to rural areas of Comondú municipality in Baja California Sur to work in inhumane conditions and were exposed to illness and illegally detained.¹⁹¹
- **September 2014, Global Witness:** two leaders of the indigenous Yaqui community in Sonora State were arrested, accused of 'illegal deprivation of liberty' and 'theft of a motor vehicle'. Both led a campaign to stop the construction of the Independence Aqueduct, which was

approved without the affected community's consent and directly threatened its water source, traditional culture and livelihoods linked to the Yaqui river. Amnesty International has claimed that their prosecution is based on a biased investigation to criminalize sections of the Yaqui community.¹⁹²

- **May 2014, Red TDTD:** in Unión Hidalgo, Oaxaca, the population, mainly indigenous Zapotec, have suffered from threats, intimidation, surveillance and physical aggression due to their demands for dialogue directed at wind company Demex, a subsidiary of Spain's Renovalia Energy, to address environmental damage and human rights violations suffered as a result of their lease agreements with the company. The defenders have identified that these aggressions have been carried out by personnel hired by the company.¹⁹³
- **May 2014, Red TDTD:** In "La Sierrita" Ejido where "La Platosa" mining project of Excellon Resources Inc. is located, defenders of ProDESC organization were harassed and defamed for their work of the defense of labour rights as well as of the mineral resources owned by ejidatarios.¹⁹⁴
- **March 2014, ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association):** The Secretary of Education decided to fine the private school, The Hills Institute of Monterrey, in the amount of 161 thousand pesos, considering a claim of discrimination when a 3-years-old child was expelled because of the mere fact of having two male parents.

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Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development in the local context

Company Due Diligence Initiatives

- **PepsiCo (2014):** PepsiCo introduced a specific land policy in order to help protect the rights of indigenous peoples in their supply chain. To support its implementation, they committed to implementing a third-party audit program, based on available and accepted social, environmental and human rights standards. They committed to implementing audit programmes for their palm oil supply chain in Mexico by the end of 2016, or sooner if deemed possible. The assessments will include impacts related to land rights and will be conducted with the participation of affected communities.¹⁹⁶
- **Nestle (2012):** Nestle has been recognised for an innovative scheme that has helped it recruit more disabled employees while increasing productivity at its call centre in Mexico. The programme, implemented between 2010 and 2011, saw Nestlé work with ParaLife Foundation to become the largest single employer of people with disabilities in Mexico over a one-year period. Today, one fifth of the company's employees at its call centre have some form of disability. The majority have been hired through the programme.¹⁹⁷

- **Hershey:** Hershey's Manufacturing Apprenticeship Program was launched to provide opportunities for individuals with intellectual and physical disabilities. Participants perform the same work for the same pay—each subject to the same expectations as fellow employees. Started in 2012, the program has been implemented in 2014 in one plant in Mexico.¹⁹⁸

Stakeholders Recommendations

Project on Organizing, Development, Education, and Research (PODER)¹⁹⁹:

- The users of protection mechanisms for human rights defenders and people at risk must participate in their improvement. For that to happen, it is crucial that civil society be involved in the process and its monitoring.

“Workshop on Business and Human Rights for the Business and Human Rights Working Group of Mexico”²⁰⁰:

- To incorporate inclusion clauses in business policies.
- To provide job training for vulnerable groups to contribute to their job inclusion.
- To ensure accessibility for people with disabilities.

Letter of priority recommendations from civil society to the UN Working Group on Business and Human Rights in the context of its official visit to the country in August/September 2016.

²⁰¹

- Businesses are obliged to respect the collective rights of indigenous, tribal, Afro-descendant and comparable peoples in all activities, particularly as documented cases, in relation to extractive, large-scale projects, infrastructure, agro-industries and tourism, emphasizing the need to respect the right to prior consultation, free, prior and informed consent, and the right to autonomy of indigenous and similar peoples.
- Companies have an obligation to carry out due diligence in the field of human rights.
- Adopt effective specific measures of protection for human rights defenders, journalists and whistle-blowers inside and outside companies that may be at risk for participating in investigative processes for the delivery of justice.
- Any certification or corporate identity, such as that of a socially responsible company, must include the obligation of companies to respect human rights and rely on independent information generated by communities and peoples with respect to the company to be certified. In case of a violation of human rights, the removal of certification from the company should be considered.

Services and Advices for Peace²⁰²:

- Ensure that companies carry out evaluations not only of social and environmental impact but also of human rights, based on the highest international standards.
- No economic interest should be above human rights.
- Avoid undue influence by private sector actors whose primary interest in these processes is different from the objective of promoting and protecting human rights.

- Participate in the negotiations of the eventual human rights treaty to regulate transnational corporations and other businesses.
- Clarify the type of corporate conduct that will give rise to legal (civil, criminal and administrative) responsibilities, and in particular, develop the modalities in which transnational corporations and other companies can be held accountable, including in the case of complicity and in the case of parent companies for the offenses committed by their subsidiaries. The corporate legal responsibility should not exclude the legal responsibility of the management of the companies.
- To allow affected persons' access to legal remedies not only in their states of origin but also in all states that have jurisdiction over the companies involved.

Business & Human Rights Resource Centre²⁰³:

- Companies should recognize, by adopting a public stance, the importance of human rights defenders in democratic and inclusive development, and go as far as having a specific policy on human rights defenders that establishes clear guidelines for action in case of abuse.

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Discrimination

Does the company ensure that employment-related decisions are based on relevant and objective criteria?

- The company identifies different types of discrimination, including those rooted in formal structures and cultural traditions.
- It is company policy to ensure that decisions concerning hiring, wages, promotion, training, discipline, retirement and termination are based only on unbiased criteria, and are not linked to any of the discriminatory characteristics listed in the description for this question.
- Each job category in the company has a written description stating the salary level and the qualifications required for that job category.

- The company ensures that employment advertisements do not reference discriminatory criteria, such as race, gender or age (unless listed as part of a legal equal opportunities promotion).
- The company ensures that job applicants are not asked to give information about their marital status, pregnancy, intent to have children, number of dependents, or similar information that may lead to discriminatory hiring decisions. In addition, the company will not perform any tests to verify the health of the candidates, whether of blood or of another type.
- All hiring managers receive training regarding the company's non-discrimination policies.
- The company has established a procedure, accessible and known to all workers, where workers can safely report incidents of workplace discrimination.
- The company takes reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheel chair access, flexible working hours, longer breaks etc.

Fair Treatment

Does the company protect workers from workplace harassment including physical, verbal, sexual or psychological harassment, abuse, or threats?

- The company has a commitment to prevent workplace harassment.
- The company actively informs workers of their obligations to refrain from violent, threatening or abusive conduct.
- Managers receive training on how to identify and deal with instances of harassment in the workplace.
- The company investigates all complaints of workplace harassment and takes appropriate preventative and disciplinary action including reporting of criminal actions to the appropriate authorities.

Does the company respect the privacy of its employees whenever it gathers private information or monitors the workplace?

- The company has a procedure stating which kinds of workplace monitoring are allowed; what kind of personal worker information is retained; where it is stored; who has access; and why the information is necessary.
- Workers are made aware of all workplace monitoring, including cameras and Internet or e-mail monitoring, and the specific purpose of the monitoring.
- The company obtains the worker's prior written consent before gaining information from an individual with whom the worker has a privileged relationship, including a former employer, doctor or lawyer.
- Workers have access to all personal data collected about them, including data concerning disciplinary decisions and data obtained through monitoring, but excluding

Background & Context

confidential management specific information related to performance evaluations, salary negotiations, promotions, rotation and similar employment decisions.

- The company respects the working hours guaranteeing the right to the family of all the workers.

Community Engagement

Does the company engage with local communities on the actual or potential human rights impacts of its operations?

- The company has a commitment to engage openly with communities in and around its area of operations, prior to, during and after commencing activities that may negatively impact their access to resources (e.g. water, food, land) or livelihoods (e.g. fishing or hunting grounds).
- The company communicates and consults with local communities prior to, during and after commencing activities to prevent, reduce and mitigate impacts.
- The company takes steps to remedy the legitimate concerns of local communities regarding any negative impacts of the company's operations on the access to resources or livelihoods.

Country Risk

The company actively seeks information on human rights in the area where it operates.

- If operating in a country or region with systematic human rights abuses, the company seeks to become aware of and avoid the risk of contributing to, endorsing or benefiting from such abuses.
- Where the company risks involvement in systematic human rights abuses owing to government or societal practices, the company seeks to identify solutions through dialogue with other businesses, civil society organisations, experts and other relevant stakeholders, including where possible with the authorities.
- The company ensures that it does not endorse any state imposed discriminatory limitations on the right to vote, and does not pass along information concerning religious, racial, political affiliations or other characteristics of employees which could be used by the government as a reason to restrict the right to vote.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- International Labour Organization - ILO Declaration on Fundamental Principles and Rights at Work (1998): It comprises four categories that states must respect, regardless of whether or not they ratify Conventions. These four categories are: (1) freedom of association, freedom of unionisation and effective recognition of the right to collective bargaining; 2) the elimination of forced or compulsory labour; (3) the abolition of child

labour; and (4) the elimination of discrimination regarding employment and occupation.²⁰⁴

- UN Women and the UN Global Compact - Women's Empowerment Principles (2010): It is a guide for businesses providing seven principles and is a set of principles for businesses offering guidance on how to empower women in the workplace, marketplace and community.²⁰⁵
- Oxfam Australia: Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (2009): This Guide is intended to inform mining company staff of potential gender impacts of mining projects and introduces some tools and approaches that can be used to conduct a gender impact assessment.²⁰⁶
- International Labour Organization: Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. This declaration includes principles to promote employment, equal opportunities and treatment, professional training, work conditions and labour relations, among others.²⁰⁷
- United Nations Sub-Commission Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises in the Field of Human Rights (2003). It urges respect for and promotion of human rights by transnational corporations and other commercial enterprises. It also advocates respect for the right to equality and non-discrimination and respect for the rights of workers.²⁰⁸
- OECD Guidelines for Multinational Enterprises (2011): The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Among the general principles are those in human rights, employment and industrial relations.²⁰⁹
- IFC Performance Standard 7: Indigenous Peoples: The IFC PS7 and its accompanying guidance offer directions on how private sector projects can respect the human rights of Indigenous Peoples through following the stated requirements.
- International Council on Mining and Metals Good Practice Guide: Indigenous Peoples and Mining (2010): The Guidance provides advice to companies on how they can build effective relationships with Indigenous Peoples, as well outlining ways in which companies can effectively engage throughout the lifecycle of a project.
- The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples (2009): The Declaration is a statement on behalf of Indigenous Peoples and support organisations from 35 countries that calls on different stakeholder groups, such as extractive companies, communities and civil society organisations, to respect and uphold the recognised rights of Indigenous Peoples.

Child Labour

Work that interferes with the health, development, education or family life of persons under 18.

Operating Environment		
	Country	Region
Net Enrolment Ratio in Primary Education (% both sexes)	Legatum Prosperity Index 2015: 96% of net Enrolment Ratio in Primary Education ²¹⁰ .	70.5% (global average)
Percentage of pupils starting grade 1 and reaching last grade of primary	94% (2008) ²¹¹	N/A
One-year-old children immunised against measles (%)	11% (2013) ²¹²	8% ²¹³
Mortality rate of children under 5 years old (per 1,000 live births)	14.5% (2013) ²¹⁴	17.9% ²¹⁵
Poverty, social security and food access	21.4 million children and adults live in poverty, 4.6 million of them in extreme poverty. 62.6% suffer from lack of social security, and 27.6% lack access to food. ²¹⁶	
Percentage of population below the age of 14	28% ²¹⁷ (country)	
Legatum Prosperity Index: Education	87 ²¹⁸	

Work restrictions for children under the age of 18	<ul style="list-style-type: none">• Persons above 15 and less than 16 shall have a maximum workday of six hours.• The Federal Labour Law provides that children under sixteen may not engage in unhealthy or hazardous work or in industrial night work.• Children between the ages of 15 and 16 must obtain a medical certificate indicating their fitness to work.
Minimum age of employment	<ul style="list-style-type: none">• Article 123 of the Constitution prohibits the work of children and adolescents under 15 years of age.
End of compulsory education	<ul style="list-style-type: none">• Article 3 of the Constitution establishes the compulsory nature of basic and higher education.

Relevant Legislation ²¹⁹	<ul style="list-style-type: none"> • Constitution • Federal Civil Code • Federal Code of Civil Procedures • Federal Criminal Code • Federal Labour Law (LFT) • Federal Law to Eliminate and Prevent Discrimination • General Law on the Rights of Children and Adolescents (LGDNA) and its Regulations • General Law for the Provision of Services for Attention, City and Integral Child Development • General Health Law • General Education Law • General Law to Prevent, Punish, and Eradicate Crimes in the Area of Trafficking in Persons and to Protect and Assist Victims of these Crimes • Law for the Treatment of Young Offenders, for the Federal District in Common Matters and for the whole Republic in Federal Matters • Law on Refugees, Complementary Protection and Political Asylum • United Nations Declaration on the Rights of Indigenous Peoples • Worst Forms of Child Labour Convention, 1999, ratified in 2000 • ILO Convention on the Minimum Age (1973), ratified in 2015²²⁰
Responsible ministries	<ul style="list-style-type: none"> • National Institute for the Evaluation of Education • National Population Council • Secretary of Labour and Social Prevision
Local NGOs addressing this issue	<ul style="list-style-type: none"> • National Integral Family Development) • UNICEF • IPEC (International Program for the Eradication of Child Labour)

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The maximum legislation on child labour is found in article 123 of the Constitution, which was reformed following the ratification of ILO Convention No. 138 (1973) on the minimum age for admission to employment, rising the minimum age for admission to employment from 14 to 15 years. Those over this age and under 16 will have six-hour work days as maximum. It applies to all types of employment contracts, without distinction of age or sex, and therefore applies to the work of children and adolescents with qualifications relating to:²²¹

- a. Age: It prohibits the work of children and adolescents under 15 years of age.
- b. Special conditions of employment for minors: Established for adolescents 15-16 years of age.
- c. Work Day: It reduces the ordinary day to 6 hours in general and prohibits the extraordinary workday, night industrial work and all activities after 10 pm.
- d. Health: It prohibits adolescents between the ages of 15 and 16 from engaging in unhealthy and dangerous activities. Some prohibitions are up to 17 years of age.

Children between the ages of 15 and 16 can work under certain circumstances. They must have completed their compulsory education, except in cases authorized by the Conciliation and Arbitration Board.²²² The Federal Labour Law allows the work of children over 15 years of age provided that certain requirements that protect the rights of the child are met. This work is subject to the special surveillance and protection of federal and local labour authorities. Those over 15 and under 18 years of age must obtain a medical certificate attesting their fitness for work and undergoing medical examinations that are periodically ordered by the corresponding labour authorities. Without these requirements, no employer can use their services.²²³

According to national statistics (data from 2015), some 2.48 million boys and girls in Mexico participated in an economic activity, of which more than 1 million (41.1%) were under 15 years old and 900 000 (36%) did not attend school. The National Development Plan (2013-2018) includes the elimination of child labour as an objective of its policy.

Regarding the 2.48 million children mentioned above, Unicef reported in 2016 that 25% did so to help their families financially. Of these, 981,353 (70% women, 30% men) did not attend school and were exclusively engaged in household tasks.²²⁴

In 2013, an Intersecretarial Commission for the Prevention and Eradication of Child Labour and the Protection of Permitted-Age Adolescent Workers in Mexico was established. Its purpose is the coordination of Federal Public Administration bodies in the design, implementation and evaluation of policies, programs and actions in the prevention and eradication of child labour and for the protection of working adolescents with the legal age to work, based on the applicable regulations.²²⁵

However, according to the International Labour Organization (ILO), in 2014 there was not a comprehensive policy in the country to prevent and eradicate child labour at the federal or state level. Only in the case of the State of Michoacan was there a broad policy framework called the State Program for the Elimination of Child Labour (PEETI) (Michoacan State Government, 2007), which, however, has not yet been implemented.²²⁶

On the other hand, companies do not have the obligation to carry out due diligence analyses to confirm that the rights of children and adolescents are effectively protected and respected. Companies report on an optional basis the actions they take to prevent any violation of children's rights.²²⁷

In 2015, the US Department of State reported that with regard to inspections at the federal level, the Secretariat for Social Development, the Attorney General of the Republic, and the National System for Integral Family Development had the responsibility of enforcing of some aspects of child labour laws or to intervene in cases where such laws were violated. The Secretary of Labour and Social Security (STPS) is responsible for carrying out child labour inspections. Penalties for violations range from 16,780 pesos (\$1,000) to 335,850 pesos (\$20,000) but were not sufficiently enforced to deter violations.²²⁸

According to Save The Children, although at the federal level Mexico is recognized as being quite progressive in ratifying and integrating the International Human Rights Framework to its own legal framework, there are significant gaps in implementation, reportedly due to a lack of clarity in the coordination between government agencies, leaving marginalized groups exposed to violations. Amongst these groups, children are particularly at risk of being subject to adverse human rights impacts by business.²²⁹

In addition, the Autonomous University of Mexico reported in 2016 that there were 1,150 million children working without salary.²³⁰ In this sense, the Social Committee against the exploitation of Children and Adolescents denounced in 2015 that about 400 000 girls, boys and adolescents work for pay or no pay in Mexico, and about 300,000 work in conditions that risk their health and physical, mental and emotional integrity, as well as their development.²³¹

According to the World Bank, there are almost twice as many children in the countryside that work than in the city. Also, more of them work in states like Guerrero, in the South, (where 12% of 6 to 13 years-old children work), than in Chihuahua, in the North (where only 1.4% of children work). The older the child becomes, the more likely he or she is to drop out of school and start working.²³²

Worst Forms of Child Labour

The Law on the Protection of the Rights of Children and Adolescents (2000) recognizes the right of children and young persons to be protected against any acts or omissions affecting their physical or mental health, their normal development, or their right to education, including neglect; negligent treatment; abandonment; emotional, physical, or sexual abuse; exploitation; the use of drugs and narcotics; abduction; and trafficking. This law also provides that mothers, fathers, and anyone having custody of children must protect them against any form of ill treatment, prejudice, harm, aggression, abuse, trafficking, and exploitation.²³³

The US Department of State 2015 Mexico Country Report declared that Government labour law enforcement on child labour was reasonably effective at large and medium-sized companies, especially in the maquila and other industries under federal jurisdiction. Enforcement was inadequate at many small companies and in the agriculture and construction sectors, and it was nearly absent in the informal sector in which most children worked. During 2015, the Secretary of Labour and Social Security (STPS), the Secretary of Social Development, and the National System for Integral Family Development (DIF) carried out programs to prevent child labour abuses and promote child labour rights, including specific efforts to combat the commercial sexual exploitation of children.²³⁴

Mexico's National Institute of Statistics and Geography (INEGI) reported in 2013 that nearly half of all child labourers in Mexico, or 45.9%, received no pay for their work: 5 out of 10 girls, boys

and adolescents working receive no income, which amounts to 1.165 million children earning no type of salary for their work. Another 719,000 child labourers received the minimum wage of 2,200 pesos a month (some 120 U.S. dollars) or less. In total, more than 2.5 million children in Mexico between the ages of five and 17 worked either to contribute to the household income, or to pay for their schooling or their own expenses. A total of 30.5% of child labourers worked in the agricultural sector, followed by the trade and services industry.²³⁵ In 2012, UNICEF reported that 44% of farmer families had at least one child working.²³⁶

According to the ILO, in 2014 the majority of the employed child population worked in the services and trade sector (52%), then in agriculture, in the manufacturing industry, and in construction. Girls' participation was especially relevant in trade and services, while boys were more involved in the agricultural and construction sectors.²³⁷ The ILO also reported that in urban areas, child labour includes work in trade and services, and in construction.²³⁸

Moreover, the study also mentioned that working as agricultural labourers in rural areas is considered a dangerous form of work that exposes children to heavy work, in extreme climate conditions, with strenuous work days, using dangerous tools, exposing them to biological and chemical risks, as well as situations of violence and mistreatment, among others. It is estimated that 711,688 children and adolescents from 5 to 17 years from agricultural labour families work. Of these, 443,516 do so as agricultural labourers; 59,970 work as rural farmers, cattle ranchers, merchants, workers, artisans, masons or in some trade; and 30.7% carries out unpaid activities, mainly at home.²³⁹

Education

The Constitution establishes the obligation of basic education - consisting of pre-school, primary and secondary education - and upper secondary school.²⁴⁰ Article 4 of the General Education Law states that all the inhabitants of the country must attend pre-school, primary and secondary education.²⁴¹

Mexico has ratified the ILO Convention n.138, which establishes 15 years as the minimum age to work.²⁴² In this sense, the Federal Labour Law stipulates that the work of persons over 15 years of age who have not completed their compulsory basic education may not be used, except in cases approved by the corresponding labour authority, assessed on the basis of whether the studies and the job are compatible.

According to the 2013 Child Labour Module of the National Survey of Occupation and Employment (ENOE), in total, 2.1 million children in Mexico do not attend school, a figure that represents 7.2% of the population aged 5 to 17 years.²⁴³

Unicef revealed in 2015 that 1 out of 5 children in Mexico works to pay for school.²⁴⁴ The UNDP observed in 2016 that an immediate central cause of school dropout was the need to work. Three million children between 12 and 17 years of age work more than 20 hours. The subsequent cause is poverty, since each year of schooling increases the labour remuneration between 8.2% and 8.4% and to conclude higher education represents a 82.5% increase in income than just having attended secondary education. Another reason for abandonment is the lack of relevance for working life in what is learned in school.²⁴⁵

According to ILO data from 2011, regarding agricultural workers in particular, 39.5% of child labourers were illiterate, and a similar proportion (37.5%) had never attended school. 60% had a lower than basic education: one third had been between 1 and 5 years of primary education, 9% finished primary and 15.8% finished secondary school. ²⁴⁶

In this line, Unicef reported in 2016 that although 96.2% of children between the ages of 6 and 14 attended school, 11.82% of children in rural areas did not know how to read and write. ²⁴⁷

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **April 2016, Revolución Tres Punto Cero:** A 10-year-old boy working for a self-service store called Super Willys, in the municipality of Bacalar, was gagged by a *diablito de carga* "for not doing things right", by the shop manager. The Human Rights Commission of the State of Quintana Roo ordered the initiation of a circumstantial act because only the ex officio complaint is processed when the accused are authorities, not companies. ²⁴⁸
- **August 2015, International Business Times:** Over 60 children found working at a vegetable packing factory in the northern State of Coahuila. Mexican authorities have found 63 children between the ages of 8 and 17 working long hours in oppressive conditions. Officials reportedly said that the minors alleged they only received half a day off in a week and were paid 100 pesos (about \$6) a day, a little above the minimum wage of about 70 pesos. The minors also said that they were only given two meals a day and were forced to sleep on thin mats in the property near Ramos Arizpe, southwest of the city of Monterrey. The minors reportedly worked alongside several dozen adults. ²⁴⁹
- **August 2015, US Department of State:** The Coahuila state government rescued 78 child labourers, some as young as 8, from a farm near Ramos Arizpe. The state indicted 4 defendants under labour trafficking charges in the case, which also involved 228 adult victims. The victims reportedly worked at least nine hours daily, received insufficient food, and were forced to live in unhygienic conditions. ²⁵⁰
- **June 2014, El Milenio:** Four people were sentenced to four years and six months in prison for forcing ten children aged between 7 and 17 years to work and beg in the town of Texcoco. ²⁵¹

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

- **Oxfam (2015):** "Behind the Brands" initiative, designed to expose and inform on cases of working women, mothers and children and the impacts this has on this group.²⁵² Oxfam's campaign focuses on 10 of the world's most powerful food and beverage companies: Associated British Foods (ABF), Coca-Cola, Danone, General Mills, Kellogg, Mars, Mondelez International (previously Kraft Foods), Nestlé, PepsiCo and Unilever.²⁵³
- **Levi Strauss & Company (Appleseed Foundation):** Program to Improve Worker Wellbeing, a short and long term initiative that the company has implemented at a global level, which consists of improving worker conditions both in the company and at home, its main objective always being to improve the conditions and opportunities of the workers and their families. This is achieved through internal policies that seek to promote a work environment of communication and integration, as well as responsibilities that the company imposes its members and distributors of their products with respect to their duty to protect the rights of its workers. Internal surveys are also implemented to know and monitor the conditions of their workers.²⁵⁴
- **Fundación Telefónica:** ProNiño is a program that offers opportunities to improve the life project of the most vulnerable children in Latin America through programs for education that seek to achieve the withdrawal of child labour through school retention and others, so that retreat is possible in view of the conditions of the minor's environment and the satisfaction of his or her basic needs. The program offers a variety of activities for children, parents and schools to help children from 9 to 16 years of age who attend school and work or who are at social risk and vulnerable to economic exploitation.²⁵⁵
- **Mexican business sector:** in 2014, the State Business Network against Child Labour was integrated by companies that form part of the Council of Chambers and Business Associations of the state. The network would seek to carry out actions to raise awareness, train its workers, in addition to granting scholarships to students of scarce resources and to recover from work centres children who have left their studies to work. Companies would also undertake not to hire other companies or service providers who had minors in their ranks.²⁵⁶
- **The National Chamber of the Bakery and Related Industry of Mexico (CANAINPA) and the National Chamber of the Sugar and Alcohol Industry (CNIAA):** signed an agreement to promote and develop actions in the prevention and eradication of child labour in both industries; the goal of the agreement is that all joint ventures in both chambers incorporate measures to prevent and eradicate child labour, based on principles of co-responsibility in the value chain, i.e. from the field to the factory.²⁵⁷
- **Sugarcane Agrobusiness:** in 2013 it launched a National Action Plan to Prevent and Eradicate Child Labour of children under the age of 14, to prevent and combat hazardous work for people under the age of 18, and to protect the well being and rights of working adolescents between the ages of 14 and 17. To this end, the sector will implement actions to strengthen its normative framework, sensitize its members on the issue and its effects, generate and share information for decision-making on prevention and eradication of child labour, and strengthen the management capacities of agroindustry actors and its value chain against these problems and to improve the living and working conditions for adult cane cutters that will allow them to increase their productivity and improve their income.²⁵⁸

Stakeholder Recommendations

Unicef México²⁵⁹: Recommends that companies located in Mexico be governed by the Guiding Principles on Business and Human Rights, which include the protection of the rights of the child.

Save the Children²⁶⁰:

Recommends that the Mexican Government develop a Mexican Child Protection System while simultaneously strengthening its Social Protection system in order to permit the conditions whereby the under-15-age limit to employment can be implemented without persecuting marginalized children and their families, whose living conditions require them to work in order to improve the dignity with which they live. Otherwise, the prohibition of under-14 working conditions will force children to hide their labour activities and expose them to greater risks of exploitation, instead of improving their living conditions.

Unicef, Guide for Business ²⁶¹:

- It is recommended that companies commit themselves to the Rights of the Child in their policies, based on the recommendations of the Business Principles and Rights of the Child Framework.
- It is recommended that all state-owned enterprises exercise due diligence with regard to the rights of the child and publicly communicate their reports on the impact of their operations on the rights of the child, including periodic reporting. States should condition public support and services, such as those offered by export credit institutions, development finance and investment insurance, to enable enterprises to exercise due diligence with regard to the rights of the child. ²⁶²
- It is recommended that large companies publicize their efforts to address the effects of their operations on children's rights. Such information should be available, be efficient and comparable between enterprises and include measures taken by companies to mitigate the potential and actual negative effects of their operations on children.
- Companies should publish measures taken to ensure that the goods and services they produce or market do not lead to serious violations of children's rights, such as slavery or forced labour. Where reporting is mandatory, States should put in place monitoring and verification mechanisms to ensure compliance. States can support reporting by creating tools to set benchmarks and recognize good performance with regard to the rights of the child. ²⁶³
- It is recommended to use the Business Principles and Rights of the Child methodology for the impact assessments on the rights of the child. ²⁶⁴
- It is recommended that companies report their impacts on the Rights of Children with the tool developed within the framework of the Business Principles and Rights of the Child. ²⁶⁵

UNICEF, Recommendations for the National Business and Human Rights Program, Mexico 2016²⁶⁶:

- Government and Business must work together:
 - In the development and implementation of clear strategies to eradicate child labour.
 - To push for the work of young people from 15 to 18 years always to be complementary to their studies.
- Businesses should advocate, including with industry peers, local NGOs, and municipal governments on the importance of investing in child protection systems and education to ensure the sustainability of the local tourism sector.
- Businesses should support initiatives related to the state and municipal child protection system to eliminate child labour.
- Businesses should consider partnering with secondary schools and technical colleges to offer students, including adolescents from disadvantaged communities, vocational training courses in a career in their industry.
- Instead of excluding children aged 15-17 from hiring, companies should collaborate with local schools and technical colleges to expand vocational training for young people – especially disadvantaged communities – enabling them to acquire skills and knowledge needed to compete in the job market while completing their formal education. It is also recommended to encourage the use of internships for young people attending the upper secondary level.
- Industry must actively support government efforts to eliminate poverty and other root causes of forced and child labour.
- Businesses are encouraged to interact with local actors to develop an understanding of the hazards related to child labour and forced labour in the local context, including which children are working, why and in which jobs.
- Businesses should develop a responsible supply chain management approach that includes:
 - Building internal capacity to identify and manage supply chain and trade-related risks, including training in labour and children's rights for development and procurement specialists at central and local levels. This could include a checklist and an escalation process.
 - The development of a Code of Conduct for Suppliers that requires suppliers to comply with international human rights standards, including the rights of the child.
 - The promotion of procurement practices to support suppliers in meeting the expectations of the Code of Conduct; this includes minimizing urgent orders that can lead to labour violations including excessive overtime and the development of policies to mitigate risk in cases where urgent orders are required.
 - Through risk assessment, identification of suppliers with a high risk of potential or actual impacts on human rights, including risks related to child labour and forced labour.
- Companies can support and strengthen the capacity of providers to respect international labour standards through:

- Carrying out or supporting training and awareness raising on the risks of child and forced labour. Provide business incentives to suppliers for improvements in social performance, such as price, volume, duration and preferred supplier status.

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Child Labour

Does the company comply with minimum age labour standards?

- The company does not employ workers under 15 years of age for full-time work, 13 years of age for light work and 18 years of age for hazardous work (please see the question description for exceptions).
- If the company employs minors below the age of 18, the company has a list of job functions that can safely be performed by minors.
- The company is aware of local age-levels for completion of compulsory education and does not employ workers under that age for work that may interfere with such education.
- The company has a reliable procedure to check the age of young job candidates by birth certificate, other official forms of identification, or by alternative means such as physical appearance or knowledge of historic events.
- Company apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), and do not interfere with the child's compulsory education.
- If the company becomes aware that it is employing young workers below minimum age, it ensures that they are enrolled in an education programme, and that their dependents are compensated for the resulting loss of income.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre.

- Children's Rights and Business Principles (2012): Developed by UNICEF, UN Global Compact and Save the Children, these Principles are the first comprehensive set of

principles to guide companies on the full range of actions that they can take in the workplace, marketplace and community to respect and support children's rights.²⁶⁷

- UN Committee on the Rights of the Child General Comment No.16 on state obligations regarding the impact of the business sector on children's rights (2013): The Committee is the body of independent experts that monitors the implementation of the Convention on the Rights of the Child and the Optional Protocols. In April 2013, the Committee issued a general comment on business and children's rights. The objective of General Comment No.16 is to provide states parties with a framework for implementing the CRC, particularly with regard to the business sector.²⁶⁸
- ILO - Convention No. 182 on the worst forms of child labour (1999)²⁶⁹: This calls for priority action for the elimination of child labour. On the other hand, Convention No. 183 on the minimum age for admission to work also establishes guidelines to prevent children from becoming involved in the labour market at an early age.²⁷⁰
- Danish Institute of Human Rights and UNICEF - Children's Rights an Impact Study - a tool for companies (2013): It is a practical tool that aims to help companies to identify and manage their impacts on rights of children. The checklist contains a set of questions and indicators that cover the 10 Business Principles and Rights of the Child, in order to address the different aspects of business policies, their operations and the impact they have on children's rights.²⁷¹

Forced Labour

Debt bondage, human trafficking or other coercion that makes workers unable to freely leave employment

Operating Environment	
U.S. Department of Labour Trafficking in Persons: Tier Placement	Tier 2 (2016) ²⁷²
Relevant legislation	<ul style="list-style-type: none">• Constitution• Federal Labour Law 1970, amended in 2012• Law to prevent, punish and eradicate crimes related to trafficking in persons and to protect and assist the victims of these crimes, 2012
Responsible agencies	<ul style="list-style-type: none">• Ministry of Labour• The Executive Commission for the Attention to Victims (CEAV)• The Special Prosecutor's Office for Violence Against Women and Trafficking in Persons (FEVIMTRA)• National Institute for Migration (INM)• The Interagency Anti-Trafficking Commission• The National Human Rights Commission
Local NGOs addressing this issue	<ul style="list-style-type: none">• UNICEF

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Human Rights and Business Country Guide **Mexico**

Forced labour and slavery are prohibited by the Constitution²⁷³ and, by law, no worker (national or foreign) can be subjected to inhuman treatment. Forced labour can be punished with imprisonment ranging from 10 to 20 years, along with 5,000 to 50,000 days of wages.²⁷⁴

According to the US Department of State's Report on Human Rights Practices, women and migrants (including men, women and children) were the most vulnerable to forced labour in 2015, particularly in the agricultural, industrial and informal sectors.²⁷⁵

The legislative framework regulates that the maximum working day is 8 hours per day and 48 per week for day workers; 7 hours a day and 42 a week for night workers; while 7.5 hours a day and 45 hours a week for the mixed shift (day and night). The working day can extend beyond normal in daytime and weekly, however, this extension should not be more than 3 hours a day and three times a week, which means 9 hours a week.²⁷⁶

According to the US Department of State Report on Trafficking in Persons 2016, victims of forced labour are typically lured by fraudulent labour recruiters, deceptive offers of romantic relationships, or extortion, including through the retention of identity documents, threats to notify immigration officials of victims' immigration status, or threats to harm family members.

²⁷⁷

The US Department of State reported in 2014 that Mexican men, women, and children were exploited in forced labour in agriculture, domestic service, manufacturing, food processing, construction, forced begging, the informal economy, and street vending in Mexico and the United States.²⁷⁸

The 2015 Global Slavery Index stated that low, semi and unskilled, domestic and foreign labourers were at risk of forced labour in Mexico within the agricultural sector, particularly in maize harvesting, tomato fields, tomato processing plants and other plantations such as chilli pepper, cucumber and eggplant in 18 states.²⁷⁹

On the other hand, the 2016 Global Slavery Index stated that forced labour was also prevalent in the mining sector, with the coal and silver industries accounting for the poor labour conditions of men, women and children in Mexico. The vast majority of foreign victims of forced labour are from Central and South America. Victims from the Caribbean, Eastern Europe, Asia, and Africa have also been identified in Mexico, some en route to the United States.²⁸⁰ There are also reports of modern slavery in the garment sector.²⁸¹

The abovementioned Index estimated that 376,800 people or 0.30% of the total population live in conditions of modern slavery in Mexico.²⁸² Victims of modern slavery in Mexico are primarily Mexicans themselves or citizens of Central and South American countries. There have been some isolated cases of victims from Eastern European countries, Asia and Africa. By some estimates, 70% of modern slavery cases in Mexico are related to organised crime groups. The various cartels commit kidnappings for forced prostitution and forced labour across all age groups. Groups with increased vulnerability include women and children, indigenous people, the disabled, migrants and LGBTQ.²⁸³

In this sense, in 2013 Insight Crime informed that interviews with Proceso, victims' relatives, human rights ombudsmen, religious leaders, and NGOs described prisoners across Mexico

being forced to work in a vast variety of ways in horrendous conditions under threat of death. According to civil society organizations, "jobs" include forced killings, preparing marijuana, constructing tunnels, cleaning safe houses, preparing food, installing communications equipment, and acting as lookouts or sex slaves.²⁸⁴

The Global Slavery Index also reported in 2014 that migrants that reach the border of Mexico and the USA remain vulnerable to *coyotes* and *polleros* or border 'guides' who may elect to sell them into slavery or hold them in debt bondage once they have entered the United States.²⁸⁵

Trafficking

The general anti-trafficking Law of 2012 prohibits all forms of human trafficking, prescribing penalties ranging from 5 to 30 years' imprisonment. These penalties are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. However, in contrast to the international definition, the law establishes the use of force, fraud, and coercion as aggravating factors rather than essential elements of the crime.²⁸⁶

The US Department of State's 2016 Report on Trafficking in Persons reported that 24 out of 31 states had state-level anti-trafficking committees, of which 12 were launched or reconfigured in 2014, and which varied in effectiveness. Also, in 2016 authorities initiated 250 federal and 415 state investigations and detained 674 individuals.²⁸⁷

According to the 2015 Global Slavery Index, the government did not report the number of trafficking prosecutions or convictions in 2014. According to the press, sentences ranged from 15 years to 58 years of imprisonment. However, it was unclear how many of these convictions were for trafficking crimes as defined by international law, and officials did not report the lengths of sentences. Approximately 2% of trafficking cases resulted in conviction, a rate consistent with conviction rates for other crimes in Mexico.²⁸⁸

International standards obligate states to have a dedicated human trafficking prosecutor, but the 2016 US Department of State Report on Trafficking in Persons reported that many states lack funding to employ one. Some officials' lack of understanding of trafficking led to their trial of cases as more minor offenses or to the acquittal of traffickers.²⁸⁹

In 2015, the government reported identifying 1,814 trafficking victims; 784 for commercial sex, 470 for forced labour, 382 for forced begging, and 17 for forced criminality, and 161 were unspecified.²⁹⁰ Groups considered most vulnerable to human trafficking in Mexico include women, children, indigenous persons, persons with mental and physical disabilities, migrants, and LGBTI individuals.²⁹¹

According to the US 2016 Trafficking in Persons Report, while immigration agents reportedly used a lengthy human rights questionnaire to identify potential trafficking victims, and some government institutions had informal victim referral procedures, most officials lacked clear guidelines for identifying and referring victims to services. NGOs questioned the government's ability to accurately identify trafficking victims among vulnerable populations, such as migrant workers and persons in prostitution.²⁹²

The Mexican government reported convicting 86 traffickers in 2015, including some for forced labour.²⁹³

Mexico's National Programme for the Prevention, Punishment and Eradication of Crimes on Trafficking in Persons and the Protection and Assistance to Victims 2014-2018 could reduce trafficking, but no funds were allocated to execute the plan. In 2016, the Global Slavery Index reported that national activists informed that only half of Mexico's states are performing prevention and prosecution, leaving significant gaps in victim protection.²⁹⁴

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **August 2015, El Siglo Coahuila:** employees of the Prokarne company face human trafficking charges in the form of labour exploitation, of more than 300 labourers and at least 50 minors.²⁹⁵
- **July 2015, Americas Program:** exploited agricultural workers from San Quintin Valley staged mass protests against their abusive treatment and conditions.²⁹⁶
- **March 2015, Mexico News Daily:** 49 victims, including children, were found working under conditions of forced labour in a cucumber field in the Mexican region of Colima.²⁹⁷
- **February 2015, ABC News:** 129 workers (121 women and eight men, including two adolescents under the age of 18) were rescued from forced labour conditions in a garment factory in Zapopan, Jalisco state.²⁹⁸
- **January 2015, The Times:** in mega farms such as Bioparques and Rene Produce workers were reportedly trapped at farms surrounded by barbed wire, and in most cases had wages held illegally until the end of harvest to prevent workers from leaving once they realized how the camp operated. Workers faced miserable living and working conditions, including meagre, low caloric meals and lack of running water and working toilets. Few camp quarters had beds, most were infested with rats and bedbugs, workers slept on cardboard, were forced to use buckets for bathrooms and washed in irrigation canals.²⁹⁹

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Stakeholder Recommendations

US Department of State, Office to Monitor and Combat Trafficking in Persons:³⁰⁰

Human Rights and Business Country Guide **Mexico**

- Recommends to strengthen the national anti-trafficking law, invigorating the Interinstitutional Commission against Trafficking, providing comprehensive assistance to victims, and strengthening civil society participation in anti-trafficking efforts.

UNICEF, Recommendations for the National Business and Human Rights Program, Mexico 2016³⁰¹:

- It is recommended that companies ensure proper background investigations of their local partners, such as taxi operators and organize field trips to ensure that they are not facilitating sex trafficking in the industry.
- The development and implementation of targeted training for hotel employees on trafficking, traffic and exploitation risks and their responsibility to alert relevant managers is encouraged.
- Businesses could also develop or participate in awareness campaigns, similar to *La Muralla Soy Yo*, to address the risks of human trafficking and sexual exploitation in tourist destinations. They should also consider offering preferential status to companies and self-employed workers, for instance taxi drivers, who participate in such initiatives.
- It is recommended to be alert to the application of prohibitions against the company's misuse of property or technology for sexually exploitative conduct. To introduce measures such as Internet blockers to prohibit downloading child abuse images, accessing online child chat rooms and requesting commercial sex.

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Forced Labour

Does the company take all necessary measures to ensure non-participation in any form of forced labour?

- Workers can give notice and leave employment within a reasonable length of time. This is clearly communicated to workers prior to starting employment.
- The company (or its recruitment agencies) ensures that it does not withhold wages or bonuses and that it pays them in a timely and regular manner.
- The company ensures it does not make deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Within normal working hours workers are able to earn a living wage sufficient to meet the basic needs of themselves and their closest dependents.

- Overtime work is paid, voluntary and not compelled through threat of pay deductions, termination or other sanctions.
- The company (or its recruitment agencies) ensures that it does not retain identity cards, passports, travel documents or other personal items without which workers cannot leave employment. If letters of release or other documents are needed for the worker to leave employment, such letters are issued without delay.
- All workers are allowed to leave company premises during breaks and at the end of their shifts, and workers in company housing may freely enter and exit their accommodation at any time.
- The company (or its recruiting agencies) ensures that it does not require workers to pay recruitment fees or lodge money deposits.
- Loans or salary advancements to workers are based on fair terms that are clearly explained to the worker, are not granted to cover basic living expenses, are limited in size, and do not require the worker to remain with the company until repayment is completed.
- If the company uses prison labour it ensures that all prison workers have been convicted by a court of law, and that the work is voluntary and supervised by a public authority.
- The company ensures that it does not use labour from agencies or firms involved in human trafficking or other forms of forced labour.

Occupational Health & Safety

Unsafe or unhealthy working conditions that expose workers to the risk of accidents or occupational illnesses

Operating Environment	
Relevant legislation	<ul style="list-style-type: none">• Constitution (Article 123)• Official Mexican Standard NOM_019-STPS-2011, constitution, integration, organization and operation of the health and safety commissions• Internal regulations of the Secretariat of Labour and Social Security• General Regulations for the inspection and application of sanctions for violations of labour legislation• Federal Regulations on Safety, Hygiene and Work Environment• Official Mexican Standard No. NOM-125-SSA1-1994, which establishes sanitary requirements for the process and use of asbestos• General Law on Health• Federal Labour Law
Responsible Agencies	<ul style="list-style-type: none">• Secretary of Labour and Social Security• Sub-Secretary of Labour• General Directorate of Safety and Health at Work
Local NGOs addressing this issue	<ul style="list-style-type: none">• Maquila Solidarity Network• IndustriALL Global Union

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Safety and health at work is governed by various precepts contained in the Political Constitution (article 123), the Organic Law of the Federal Public Administration, the Federal Labour Law, the Federal Law on Metrology and Standardization, Federal Regulations on Occupational Safety and Health, as well as the official Mexican standards of the subject, among other regulations.³⁰²

The Federal Labour Law (LFT) prescribes that employers must inform employees of the risk factors to which they are exposed, the damages they may cause and the preventive measures they can apply.³⁰³

Also, the law requires employers to observe occupational safety and health regulations, issued jointly by STPS (Secretary of Labour and Social Security) and the IMSS (Mexican Institute of Social Security). Legally mandated joint management and labour committees set standards and are responsible for workplace enforcement in plants and offices. Individual employees or unions may complain directly to inspectors or safety and health officials. Workers may remove themselves from hazardous situations without jeopardizing their employment. According to official IMSS data, in the middle of 2016 there were 18,348,131 policyholders.³⁰⁴

On the other hand, a new regulation, effective throughout Mexico in 2015, established provisions relative to workplace health and safety, to prevent hazards and to guarantee workers, within the framework of the Federal Labour Law, the right to perform their activities in environments that assure their life and health. Its application and enforcement oversight is the responsibility of STPS (Secretary of Labour and Social Prevision), assisted for activities under state jurisdiction by the labour authorities of Mexico's states and the Federal District.³⁰⁵

However, the 2013 Report on Labour Human Rights of CEREAL (Centre for Reflection and Labour Action) indicated that, following the reform of the Federal Labour Law in 2012, the Table of Illnesses and Work Risks disappeared, granting powers to the Secretary of Labour, with the opinion of the labour and business sector, its issuance and modification in separate regulations (articles 514 and 515). In addition, it evades negligent employer behaviour that affects the health and life of workers at work and in its place, imposes financial penalties (Article 992).

According to the IMSS data, the number of work accidents shows that between 2013 and 2014 the annual trend of more than 400,000 employees involved in accidents at work was maintained. In 2014, 404,566 people suffered some mishap in their work centre and 1,314 people died due to accidents at work. A senior official from the Ministry of Labour stated in 2015 that some cases had been detected when, once the employer had taken the worker to the medical service, he stated that the accident had not been at the workplace but at the employee's home and on non-working day.³⁰⁶

On the other hand, some researchers question the quality of national information that exists in the matter of work accidents or diseases, or their existence. What is currently available is fragmented and incomplete, in addition to being based on the casuistry issued by the Mexican

Social Security Institute (IMSS), which includes only part of the country's working population - about 40%.³⁰⁷

According to data obtained in 2016 by specialists, the black figure of accidents at work is found mainly in the millions of workers who are in the informal sector or lack social security.³⁰⁸

The IMSS said in 2014 that in response to the increase in workplace accidents, the employers' response has been to provide protection to only 6%. The low protection was mainly due to the fact that the table of diseases and accidents subject to care was not updated; it dates 45 years back, which resulted in that "a large number of occupational diseases are not included in the table and circumstances".³⁰⁹

According to data collected by the Ministry of Labour, 183 occupational diseases are recognized in Mexico, among them gastritis, hypertension, heart attacks, aggression, depression, sexual disorders and family dysfunction. The Ministry of Labour reported that the places where work accidents occurred most was in supermarkets. Diseases were derived from prolonged exposure to risk factors such as toxic gases, dust, smoke, noise, radiation, viruses, bacteria, and fungi. Workers suffering from more diseases were in the mineral extraction industry. Other workers who were most sick in their work were those of the textile industry, whose main ailment was caused by muscular and skeletal diseases.³¹⁰

The 2012 Department of US Human Rights Report noted serious health and safety problems in the mining and petroleum industries. Failure to conduct inspections; low pay, poor training and corruption of inspectors; lack of effective civil and criminal penalties, and inadequate compensation for victims were reported.³¹¹

In this sense, while STPS and IMSS officials reported in 2008 that compliance was reasonably good at most large companies, there were not enough federal inspectors to enforce health and safety standards at smaller firms, where there were not enough federal inspectors to enforce effectively health and safety standards.³¹² The ILO reported in 2011 that poor standards of occupational health and safety were not confined to the more hidden groups of workers, and some well-publicized major incidents have taken place in large enterprises.³¹³

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **April 2016, Revolución Tres Punto Cero:** Workers of the Comercializadora Petrolera del Golfo assured that in the development of their work they were forced to work without protection equipment. In a recent inspection by the Ministry of Labour, the company was found to be in breach of 219 hygiene and safety points.³¹⁴
- **November 2015, Revolución Tres Punto Cero:** Lexmark company would not have safety conditions for its workers, who dismantle components of toners that are presumed to be harmful to health due to the poisons they carry inside, and which they inhale constantly. It

was reported that workers would not have been provided with a special suit, nor with masks, gloves, or safety shoes.³¹⁵

- **November 2015, Revolución Tres Punto Cero:** It was reported that a group of 50 workers rose against the treatment received by the Eaton company, in the maquiladoras of Ciudad Juárez. It was reported that, in order to save electricity, the company would have allegedly determined to shut down the air conditioners that were in the work area of hundreds of people, during high light hours. These workers would have suffered dehydration and contamination to the interior, absorbing smoke by great periods of time and supposedly without any protection in face, body and feet ".³¹⁶

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

- **Nestle:** the CARE tool (Compliance Assurance of Human Resources, Safety, Health & Environment and Business Integrity), which evaluates the safety and health aspects in different workspaces such as human resources, business integrity and environment. Based on the findings identified, an action plan is generated to meet those needs.³¹⁷

Guidance for Businesses suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company ensure that its workers are provided safe, suitable and sanitary work facilities?

- Responsibilities for health and safety tasks are clearly defined.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- Workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction.
- The workplace is maintained to ensure clean and comfortable conditions including a suitable temperature, ventilation and lighting; suitable washing and sanitation areas appropriate for both genders.

- Residential or overnight facilities are safe and sanitary and meet the basic needs of workers including with regard to safety, space, temperature, lighting, ventilation, food, water, sanitary facilities, privacy and affordability.
- The company provides safe drinking water for workers and facilities for clean and sanitary food storage and eating.
- Where relevant the company has put in place special health and safety precautions for pregnant women, employees with disabilities, night workers, young workers and other vulnerable groups.

Does the company ensure that workers are provided with the protective equipment and training necessary to perform their tasks safely?

- The company has a procedure to ensure that all workers are provided, free of charge or deposits, with the protective equipment necessary to safely perform their job functions.
- The company is committed to ensuring that workers use the protective equipment provided and understand why it is necessary to use the equipment.
- The company ensures that all workers have the necessary training to safely perform their job functions and keeps workers fully informed, in a language and form understandable to them, of the health and safety procedures.
- An accurate record is kept of who has been trained and for what tasks.
- On a regular basis and when assigned to new tasks, workers receive training in the safe use of equipment and processes.
- A company function or member of staff is responsible for keeping informed of scientific and technological developments regarding health and safety risks and protective equipment.

Does the company actively involve workers in health and safety work?

- The company consults employees on health and safety issues either directly or through a freely elected safety representative(s) for relevant groups of employees.
- A health and safety committee has been established including employee safety representatives and representatives from management.
- Health and safety accidents are reported and investigated including involving the relevant worker(s), and actions are taken to prevent recurrences.
- Health and safety near-misses (accidents not resulting in injury) are reported and investigated to help improve safety.
- Health and safety accidents are monitored including hours lost as a result of injury or illness and e.g. compared to total hours worked (lost time injury frequency).

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- IFC Performance Standard 2: Labour and Working Conditions (2012): FC PS2 is guided by the international labour standards as outlined by the ILO and covers health and safety.³¹⁸
- Portal for Responsible Supply Chain Management: The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.³¹⁹
- ICMM - Sustainable Development Framework Principle 5: Seek continuous improvement of health and safety: Encourages companies to continuously improve those aspects that may have an impact on the health and safety of workers; and to implement the necessary measures to prevent accidents, and implement mechanisms of monitoring and surveillance based on risk analysis.³²⁰

Trade Unions

Restrictions on the right of workers to collectively represent their interests.

Operating Environment	
Largest trade unions and union confederations	<ul style="list-style-type: none"> • Confederation of Mexican Workers (CTM). • Revolutionary Confederation of Workers and Peasants (CROC) • National Council of Workers (CNT) • National Union of Workers (UNT) • National Federation of Banking Unions • National Union of Education Workers • Union of Telephone Operators of the Mexican Republic (more than 30 thousand active members, but more than 50 thousand including retirees) • Union of Oil Workers of the Republic (more than 156,000 workers) • National Union of Mining, Metallurgical, Steel and Related Workers • Union of Railroad Workers (approximately 30,000 employees) • Union of Construction Workers
Relevant legislation	<ul style="list-style-type: none"> • Constitution • Federal Labour Law • Federal Law on Workers Serving the State
Responsible Agencies	<ul style="list-style-type: none"> • Secretary of Labour and Social Security • Local conciliation and arbitration boards

Local NGOs addressing this issue

- Maquila Solidarity Network
- IndustriALL Global Union
- CEREAL

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Barriers to Unionisation

The Constitution and labour legislation provide for freedom of association and allow workers and employers to join trade unions and professional associations. Workers can join trade unions without prior authorization. Similarly, no one can be forced to join a union. In Mexico, a minimum of 20 workers is required to form a union. Under the Federal Labour Law, the state administration should not subject unions to dissolution, suspension or cancellation of registration for administrative purposes. The law also prohibits the employer from intervening in trade union matters or interfering with union activities, including prohibiting explicit or implicit reprisals against workers.³²¹

On the other hand, in order for the union to perform its legally determined functions, its officers must be registered with the corresponding conciliation and arbitration boards or with the Secretary of Labour and Social Security (STPS). The conciliation and arbitration boards operate within the framework of a tripartite system involving representatives of government, workers and employers.³²²

According to OECD data, union density was 13.5% in 2014.³²³ In practice, according to the 2013 Report on Labour Human Rights of the Centre for Reflection and Labour Action (CEREAL), following the reform of the Federal Labour Law, it maintained the legal mechanisms that hindered the democratic election of trade union representatives as well as union corporatism, which in fact constituted a serious limitation on freedom of association, on the right to collective bargaining and on the right to strike.³²⁴

Moreover, according to the 2013 Annual Survey of Violations of Trade Union Rights in Mexico, governmental agencies such as the Federal Electoral Institute and other public bodies allegedly refused to recognise unions systematically.³²⁵ According to the US Embassy's 2015 Human Rights Report in Mexico, external observers expressed concerns that conciliation and arbitration boards would not have adequately guaranteed the inclusive representation of workers and often perpetuated a bias against independent unions due to conflicts of interest in the structure of the boards, exacerbated by the prevalence of representatives of "protection" (non-representative and corporatist) unions.³²⁶

In this sense, in 2016, the AFL-CIO reported that the union certification process was designed to limit worker representation. A requirement known as *toma de nota* has been used by labour

authorities as a tool to deny union office to leaders who are politically disfavoured under the guise of an elections certification process. There is evidence that labour authorities would also have denied legal registration to independent unions on seemingly arbitrary or technical grounds. They would continue to assert that unions may represent only workers in specific industries, and that the state may restrict a union to a specific “radius of action” (*radio de acción*).³²⁷ Foreigners may not become members of trade union executive bodies.³²⁸

On the other hand, “protection contracts” – the practice of official unions or corrupt lawyers negotiating a union contract without the knowledge of workers, which deny workers all decision-making power concerning their working conditions or participation in their union – is reportedly a common practice endorsed by some companies operating in Mexico in order to limit workers’ rights to freedom of association and collective bargaining. According to 2012 country data from the Fair Labour Association, these contracts reportedly tended to exist only on paper, and workers were typically not informed of the agreement and were unaware of their collective bargaining rights.³²⁹

AFL-CIO reported in 2016 that there were estimated to be tens of thousands of protection contracts and tens of thousands of workplaces in Mexico covering millions of workers. In these workplaces, workers are governed by contracts they never ratified or were consulted on, and in many cases have never seen.³³⁰ The five sectors where these types of contracts are most common are the auto industry, supermarket chains, cleaning services, low cost airlines and the maquilas.³³¹ In turn, the Survey of Violations of Trade Unions Rights reported that, during 2014 and 2015, protection contracts were widespread in mining, metal and steel, and automobile and auto parts manufacturing.³³²

When workers attempt to bring complaints about protection contracts, these complaints are heard by Mexico’s Conciliation and Arbitration Boards (CABs), which according to a report from Friedrich Ebert Stiftung Mexico Foundation (2013), were politically biased and corrupt.³³³

Likewise, the ILO declared in 2015 that the new Federal Labour Law made positive reforms however, there was not any measure to limit the use of protection contracts.³³⁴ In this regard, the International Trade Union Confederation (ITUC) reported in 2015 that Mexico was the only country in Latin America that had not yet ratified ILO Convention 98, which would allow the proliferation of protection contracts to be addressed.³³⁵

Collective Bargaining

The Mexican Constitution makes no explicit mention of the right to collective bargaining of workers. However, the introductory clause of Article 123 (A), which promotes “social organization for work” and empowers the federal Congress to “issue laws on labour [which] shall govern [...] any contract of employment”, has been interpreted as a constitutional basis for the law and regulation of collective bargaining.

In line with international labour standards and Mexico’s Constitution, the Labour Ministry has issued the Collective Bargaining Freedom Protocol measure, which, among other things, establishes the procedures and rules that inspectors of the administration must follow when

conducting labour-related inspections at the worksites of employers operating in Mexico to verify the existence or absence of collective bargaining agreements (CBAs).³³⁶

According to official data of the Secretary of Labour, there would be 2,534 collective agreements registered in mid-2016.³³⁷

The Centre for Reflection and Labour Action (CEREAL) indicated in 2016 that many unions are under employer protection collective agreements, as most are white unions, also known as ghost unions (that is, a union closely aligned with the interests of the employer) where so-called pseudo directors charge companies monthly to pretend representation and to avoid strikes. An analysis of the organization Friedrich Ebert, drawn up in 2011, specifies that these contracts were operated as 'long-term business' by entire families of false leaders, who had a register of various phantom unions, unknown to workers, that "arranged" directly with the bosses.³³⁸

According to the 2013 Annual Survey of Violations of Trade Union Rights in Mexico, 90% of collective agreements were signed by protection-contract unions established by employers and corrupt organisations with the aim of preventing bargaining in good faith.³³⁹ In 2015, several NGOs and unions also reported that some employers attempted to influence bargaining-rights elections through the illegal hiring of pseudo employees immediately prior to the election to vote for the company-controlled union.³⁴⁰

In this sense, several NGOs and unions declared that in 2015 many workers continued to face procedural obstacles and various forms of intimidation (including physical violence) from protection union leaders, or employers supporting a protection union, in the lead-up to, during, and after bargaining-rights elections from other workers, union leaders, violent individuals hired by a company, or employers favouring a particular union.³⁴¹

Strikes

A union established in accordance with its own statutes may call for a strike and collective bargaining. However, for a strike to be considered legal, the union must file a "strike notice" to the relevant conciliation and arbitration board, which may consider the strike to be "non-existent", or in other words legally unfounded.³⁴²

In the civil service, two-thirds of the workers in the public body concerned must be in favour to call a strike.³⁴³ In 2014, ITUC noted that this could be a barrier to lawful strike actions because there is an obligation to observe an excessive quorum or to obtain an excessive majority in a ballot to call a strike.³⁴⁴ Also, state employees only have the right to strike in cases where their rights are violated generally and systematically. Various laws on public services³⁴⁵ make provision for the requisitioning of staff where the national economy could be affected, which is a forcible requisitioning of work strikers (apart from cases in public essential services).³⁴⁶

Official data from the Secretary of Labour and Social Security declared that there were 2,877 strike locations registered in mid-2016.³⁴⁷

According to the US State Department's Mexico 2014 Human Rights Report, the Mexican Labour Boards routinely declared strikes "non-existent", often on narrow technical grounds. While independent unions had frequently succeeded in persuading the courts to overturn the

decisions of the Labour Boards, this imposed significant costs and delays on the workers. There have been cases where courts have significantly narrowed the right to strike by allowing employers to nullify collective bargaining agreements under a theory of force majeure.³⁴⁸

Anti-Union Discrimination

According to the 2012 Annual Survey of Violations of Trade Union Rights in Mexico, the International Trade Union Confederation (ITUC) reported that anti-union practices by governments and employers have resulted in the detention of union leaders, imprisonment, various kinds of pressure, the non-recognition of independent unions and the promotion of yellow unions, the closure of workplaces, and even the death of workers.³⁴⁹

That year, the ITUC reported that trade unions representing electricians, oil workers and telephone workers amongst others had reportedly been the victims of violent attacks, intimidation and repression. Employers, allegedly backed by government, devised mechanisms to suppress trade union rights. The aim of these violations was to stop workers from organising or weaken their unions, resulting in repression, threats, and the hiring of thugs to attack organised workers.³⁵⁰

In 2012, according to Fair Labour Association, those organizing to improve their pay and working conditions often found themselves faced with intimidation and repression at the hands of the same unions who were supposed to be protecting them.³⁵¹

Human Rights Watch reported in 2015 that the dominance of pro-management unions obstructed legitimate labour-organizing activity. Independent unions were often blocked from entering negotiations with management, while workers who sought to form independent unions risked losing their jobs.³⁵²

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **March 2016, IndustriALL Global Union:** Workers at the Lexmark factory in Ciudad Juárez, in the State of Chihuahua, face harsh working conditions including low wages and unsafe workplaces. In attempting to claim their rights, and trying to organize an independent union, they were unfairly dismissed.³⁵³
- **November 2015, CEREAL:** about 70 employees of Lexmark International S.A., protested against the dismissals of two of their colleagues, noting that when they tried to organize themselves into a union, the company suspended salaries, holidays and payment of overtime to the participants.³⁵⁴
- **October 2015, ITUC:** on 23 October 2015, a group of workers from the maquila company CommScope, in Ciudad Juárez, set up a camp in protest at unfair dismissals. According to

the workers, the company threatened to fire a group of 195 employees unless they signed a document stating that they renounced the union's formation. The 170 women who refused to sign the document were dismissed on 19 October.³⁵⁵

- **May 2015, Al Jazeera:** The 2015 mobilizations in Baja California for better wages in the agricultural sector and the right to form independent unions were met with police repression.³⁵⁶
- **December 2014, IndustriALL Global Union:** for the second time, Honda Mexico unjustifiably dismissed a worker, four days after being reinstated by justice, after being fired in 2010.³⁵⁷
- **April 2014, ITUC:** unfair dismissals over strike action and union recognition. Teksid Hierro, part of the Fiat Chrysler group, in Monclova, Coahuila, dismissed three workers following a strike in protest of low wages and benefits. The company later signed an agreement in which it promised to reinstate the three dismissed workers, make profit sharing payments to workers and respect workers' right to join a union of their choice. However, in November, 17 workers were dismissed for calling on the company to comply with the agreement, reportedly before paying them their benefits and wages and tried to force them to accept their redundancy cheques.³⁵⁸
- **December 2013, Solidarity Centre:** the Finnish-owned PKC fired more than 100 union supporters at Arneses y Accesorios, including the entire union committee, for campaigning for the election of an independent trade union, the National Union of Mine and Metalworkers (known as "Los Mineros"), at their plants in Ciudad Acuña, Mexico.³⁵⁹

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

- **Joint Letter supporting ILO recommendations to reform the Federal Labour Law:** On 22 September, 2015, eight of the main clothing brands issued a joint letter urging the Government of Mexico to comply with a request from the ILO for reforms to the Federal Labour Law of the country to ensure greater respect for the right of workers to freedom of association and collective bargaining. The letter points to the problem of protection contracts that "allows the registration of collective bargaining agreements of unions that cannot demonstrate the support most workers intend to represent, through a democratic electoral process." Signatories to the letter include: Adidas Group, American Eagle Outfitters, New Balance, Nike, Patagonia, Puma, PVH, and The Walt Disney Company. The letter is an initiative of the multi-stakeholder Mexico Committee.³⁶⁰

Stakeholder Recommendations

UNICEF, Recommendations for the National Program on Business and Human Rights, Mexico 2016³⁶¹:

- It is recommended that in order to prevent the use of abusive collective agreements, companies may:
 - Give all workers a copy of the collective contracts that affect them.
 - Make a public commitment by supporting workers to join a trade union freely or to create a union to carry out collective bargaining negotiations.
 - To ensure collective agreements are drawn up in line with ILO recommendations.
- It is recommended that companies sensitize their personnel to international standards regarding freedom of association:
 - That workers are free to decide whether or not to join a union
 - That trade unions and their representatives should be elected during democratic elections by their members
 - That workers must: a) be informed prior to the publication of the collective contracts, b) receive a physical copy of these contracts, and c) have the opportunity to approve or revise them.
- Companies can make voluntary commitments with the recommendations of ILO Conventions 87 and 98.

Companies can take position and promote within their industry the freedom of association and the right to collective bargaining.

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company recognise the rights of its workers to freedom of association and to bargain collectively?

- The company has a commitment to recognise the rights of its workers to freedom of association and collective bargaining, including the right to freely form and/or join independent trade unions, and this commitment is clearly communicated to all employees.

- The company recognises workers' organisations for collective bargaining purposes and has procedures in place to ensure regular collective bargaining with authorised worker representatives concerning all workplace related issues.
- The company allows worker representatives access to collective bargaining agreements, company premises, employees and other relevant documentation needed to fulfil their duties.
- The company prohibits discrimination or adverse actions against worker representatives or employees for participating or refraining to participate in lawful trade union activities.
- The company has agreed with workers' representatives about the requirements of a fair hearing to be followed in relation to all disciplinary cases and employee grievances.
- The company has a committee, with participation of employee-elected representatives, which is responsible for hearing, processing, and settling disciplinary cases and employee grievances.

If independent trade unions are either discouraged or restricted, does the company enable workers to gather independently to discuss work-related problems?

- The company allows employees to engage in regular employee-only meetings within normal working hours, where employees can discuss concerns regarding working conditions.
- Where allowed by local legislation, and if independent trade unions are not present, the company informs employees of their right to form independent collective representation at the workplace.
- Where allowed by local legislation, the company informs workers of their right to engage in regular collective bargaining concerning all workplace issues.
- Company management meets regularly with worker representatives to discuss work-related problems and any concerns/complaints employees may wish to raise.

Working Conditions

Employment status, wages, working hours and social security.

Operating Environment	
Minimum wage ³⁶²	<p>The Mexican Constitution establishes a minimum wage for different occupations or branches of economic activity. Consequently, there is no single minimum wage in Mexico and minimum wages of about 70 occupations are announced each year.</p> <p>In Mexico, the Minimum Wage is established per day. The General Minimum Wage applicable as of January 1, 2016, is \$73.04 pesos per day (approximately US \$4). The National Minimum Wage Commission, an institution represented by workers, employers and the government, determines the minimum wage rates for each year.</p>
Relevant laws	<ul style="list-style-type: none"> • Constitution • Federal Labour Law
Responsible agencies	<ul style="list-style-type: none"> • The National Council for Evaluation of Social Development Policy (Coneval) • National Minimum Wage Commission
Local NGOs addressing this issue	<ul style="list-style-type: none"> • PODER • CEREAL

Working conditions: National Law		
	Country	International Standard

Standard workweek	48h	48h
Overtime pay rate	The hours of extraordinary work will be paid with one hundred percent more of the salary that corresponds to the hours of the day. ³⁶³	1.25x
Holidays with pay, per year	<p>Federal Labour Law guarantees annual leave depending on the seniority of the worker or length of service. In this way:</p> <ul style="list-style-type: none"> i. Six working days when seniority is one year of service ii. For the next 3 years, the vacation period increases by 2 days for each year of service, so that when a worker completes the 4 years of service, the duration of the annual leave is 12 calendar days. iii. At the end of every 5 years of service, the worker has right to an additional 2 days of annual leave. <p>Workers are paid a special 25% bonus for the holiday period in addition to their payment.³⁶⁴</p>	3 weeks
Maximum daily working hours	<p>8 hours – workday</p> <p>7 hours –night shift</p> <p>7 hours and a half – mixed workday.³⁶⁵</p>	10h
Maximum weekly working hours	The Federal Labour Law (LFT) establishes a maximum of 48 hours per week. ³⁶⁶	48h
Uninterrupted weekly rest period	24h	24h

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

According to the United Nations Development Program (UNDP), in 2016 there were inequalities in the Mexican labour market associated with the falling labour income, the duality of the security and social protection scheme with a high rate of informality, and low participation of women in the labour market.³⁶⁷

Wages

The Mexican Constitution establishes a minimum wage for different occupations or branches of economic activity. Consequently, there is no single minimum wage in Mexico and minimum wages of about 70 occupations are announced each year.³⁶⁸

In Mexico, the minimum wage is established per day. The general minimum wage applicable as of January 1, 2016 was \$73.04 pesos per day (approximately US \$4).³⁶⁹ There is a wider salary that includes benefits that by law is referred to as "integrated minimum wage", equivalent to \$2,650.63 pesos per month (about US \$140). Both incomes fall below the average monthly expenditure per household that, according to INEGI was estimated at \$8,822 pesos (approximately US \$464) per month in 2015. In this sense, consuming the estimated food basket with a minimum price of \$4,081 pesos (approximately US \$215) would require earning 1.92 times the minimum wage.³⁷⁰

In 2014, the INEGI observed that, since the average Mexican inhabitant had at least one economic dependent, the minimum wage approved each year by the government did not allow them even to eat. The State established the minimum welfare line (food basket plus housing, transportation, dress and footwear, health and education expenses) at \$2,628 pesos per person in the urban area (about US \$138) and \$1,169.32 pesos in rural areas (around US \$89), according to data collected by INEGI in 2014. In this sense, more than half of Mexican workers and their households would not qualify for it; they are poor despite having a job.³⁷¹

In 2015, an Oxfam report informed that 19.7% of the Mexican population is unable to eat, 8.3% do not earn enough for covering the necessary health and education expenses, and 24.3% can not purchase basic clothing, shelter and transportation. In addition, 52.3% of the population does not have a sufficient income to purchase basic goods and services.³⁷²

In the first quarter of 2016, there were 32,730,599 salaried workers in the country, representing almost 27% of the total population, according to the strategic indicators of the National Survey of Occupation and Employment of INEGI (ENOE).³⁷³

For the same period, there were 3,875,098 subordinate and paid workers whose income was up to a single general minimum wage or less. This sector of the population faces difficulties to assume the costs inherent to food, education, housing and health care, among other goods or services necessary for their well-being.³⁷⁴

According to a report of 2016, Mexico is the country with the worst quality of income among workers in the 32 countries of the Organization for Economic Cooperation and Development (OECD), this understood not only as the level of income, but also how it is distributed among workers.³⁷⁵ In this sense, a 2013 Hay Group study among companies around the world placed Mexico among the countries with the highest inequality salary payment, as senior staff (executives) earned 11.3 times more than new workers joining an organization.³⁷⁶

Working Hours

Articles 58 to 68 of the Federal Labour Law stipulate six days of 8 hours and 48 hours per week as the legal work week. All work beyond eight hours per day is considered overtime, by which the worker receives double the hourly wage. The law prohibits overtime work. It also includes eight paid holidays and, after the first year of work, one paid week of holiday per year. It obliges the employers to comply with the occupational safety and health regulations issued jointly by the Secretary of Labour and Social Security and the Social Security Institute.³⁷⁷

The 2015 Human Rights Report from the US Embassy in Mexico indicates that according to different NGOs on labour rights, employers in all sectors have sometimes used the illegal method of "hour bank" (requiring overtime when the workload is heavy, reducing hours when it is light) to avoid compensating workers for overtime work.³⁷⁸

CEREAL stated in 2013 that the Labour Law, following its 2013 reform, entailed the dispossession of certain human rights at work, for example, by removing sanctions against employers in the event of a failure to give notice of dismissal (Article 47). In practice, this translates into the disuse of the notice of dismissal. In addition, the dismissal on the basis of the employer's clients' or suppliers' complaints against workers is allowed (article 47, section II).³⁷⁹

Social Security

There are two affiliation regimes in Social Security: the mandatory regime and the voluntary regime. Under the mandatory regime, there are workers, the members of cooperative societies of production and the people determined by the Federal Executive through the respective decree. Under the Voluntary Regime, there exists coverage for self-employed workers, workers in family industries, employers and workers serving for the Federation's public administrations, and federative entities and municipalities that do not have other social security coverage.³⁸⁰

In 2013, the Federal Executive Branch presented the proposal for the Reform of Finance and Social Security. The Social Security Reform consisted of creating the Universal Pension Act, the Unemployment Insurance Act, and implementing reforms in the Retirement Savings System Act. The creation of these laws and reforms entailed changes in the Laws of Social Security and the Institute of Social Security and Services of State Workers. However, according to a 2016 document from the Federal Audit Office, most of the proposals have not been approved and, therefore, have not been implemented. The Social Security Law was approved by the Chamber of Deputies, but is still waiting for its turn in the Senate.³⁸¹

In 2014, the Mexican Social Security Institute (IMSS) announced that it would start affiliating same-sex couples throughout the country, following the interpretation by the Supreme Court of

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Justice of the Nation (SCJN) of the Social Security Act. As such, even when the law made gender differences, it would be understood that it also protected such marriages, in line with the pro-person principle established in the Political Constitution of the United Mexican states.³⁸²

In addition, concrete initiatives at the beginning of President Peña Nieto's administration, such as the Pension Program for Older Adults and Life Insurance for Women Heads of Families, extended the benefits and coverage of social protection but maintain segmentation between the formal sector (IMSS mainly) and informal (Seguro Popular).³⁸³

Since 1995, health services had been decentralized to the state level. In 2005, the government launched the "Seguro Popular" to formally incorporate all of the population not covered by the formal health services sector. It does not cover all illnesses, but rather a list of some of the most important ones. According to official data, more than 40 million people are at present in the program. Health expenditure in Mexico is very low compared to other countries at similar or lower level of development – 3.2% of the GDP.³⁸⁴ In the first quarter of 2016, according to the ENOE, 45.7% of the subordinate and paid workers had no access to health institutions, and 36.44% of this sector did not receive labour benefits either.³⁸⁵

On the other hand, the Pension Program for Older Adults (PAM) is the largest non-contributory pension scheme in Mexico, which in 2013 benefited 4.85 million people aged 65 and over, according to the Ministry of Social Development (SEDESOL 2015). According to 2014 population figures of the National Population Council CONAPO, the abovementioned represented a coverage of 62.6%. In 2015, this support amounted to \$580 pesos per month, which were insufficient to cover the basic needs of the beneficiaries (DOF 2014).³⁸⁶

The limited coverage of contributory pensions and the low levels of old age income impede the exercise of social rights and contribute to the accelerated deterioration of health, economic and functional dependence of family members, and low self-esteem. (Secretary of Social Development, 2013).³⁸⁷

In 2016, Business Transparency International (BTI) reported that Mexico's pension system had never covered more than 30% of the population, as it includes only workers in the formal sector of the economy, and the public health care insurance system had never covered more than 50% of the population.³⁸⁸

Regarding unemployment, there is practically no effective unemployment insurance and the existing programs cover a very minor percentage of the unemployed. In addition, the government of Mexico City allocates about \$50 a month to people over 70 years of age. All this means that the family is still a fundamental, if informal, source of social security.³⁸⁹

The most important social, anti-poverty program is the "Progresa" (renamed in the Peña Nieto administration) conditional cash transfer program. Today, around 6 million families benefit from it, although the budget is equivalent to 1.3% of the GDP. Business Transparency International observed in 2016 that this program has been accused of being used politically for clientelistic purposes in some states.³⁹⁰

Informal Sector

In June 2016, the rate of labour informality, of workers who do not have benefits or social security (they can only access public health services through voluntary schemes, such as Seguro Popular or Seguro de Salud para la Familia³⁹¹), was almost 60% of the economically active population, according to figures from INEGI (National Institute of Statistics and Geography).³⁹²

In addition, between 2004 and 2014, outsourcing increased by 155%, from 1.4 to 3.6 million. Of the total employed people in the country, 16.6% would be subcontracted, that is, 1 out of 6; ten years ago, the ratio was 8.6%.³⁹³ In this scheme there exist bad practices based on figures created to evade the payment of social security. According to data from 2015, large companies were the ones that would make the most use of this scheme (43.5%), while only 9.9% of the staff not dependent on the company name would belong to microenterprises.³⁹⁴

According to CEREAL, in 2015 a high percentage of young professionals (14-24 years old) worked in the informal sector, being the most affected by unemployment, with a rate of 69.4%.³⁹⁵ According to Unicef data from 2012, about 90% of day labourers had no employment contract.

³⁹⁶

Consultores Internacionales (CI) reported in 2016 that in states like Guerrero, Oaxaca, and Chiapas, informality reaches critical levels, that is, 8 out of 10 establishments or activities have no registration, do not pay taxes and do not generate jobs including benefits or social security. One reason for these high informality levels was the entry of large companies to the market, which affected medium and small enterprises, leading to closures and shifts towards informality.

³⁹⁷

The OECD reported in 2015 that most small businesses operated in the informal sector, employing millions of people who lacked access to stable income, good education, comprehensive health care and affordable financial services. The resistance of workers and companies to operate in a formal manner is the result of excessive regulation and the perception of corruption and weakness in the defense and enforcement of basic legal rights.³⁹⁸

According to UNDP, there exist two reasons for the persistence of labour market informality in Mexico: the lack of financing to the private sector, since it causes small and medium-sized enterprises not to grow and inhibits their incorporation into the formal sector; and the rigidity of the formal sector's legal framework, particularly regarding the number of hours to work and the conditions of hiring and dismissal, which create barriers to formalization.³⁹⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **May 2016, US Department of State:** use of the illegal hour bank method in the maquila sector, where employers forced workers to take leave at times during the cycle when production was low and forced them to work, for example, during the Christmas holidays, without the corresponding triple payment as dictated by the law when workers opt for overtime during national holidays. In addition, many companies evaded tax and social security payments by giving workers informal employment or by submitting falsified payroll records to the Mexican Social Security Institute (IMSS).⁴⁰⁰

- **April 2016, Revolución Tres Punto Cero:** Fifty workers denounced before the delegation of the Secretary of Labour of Campeche the dismissal of 150 workers and the victims of various abuses while working in the Comercializadora Petrolera del Golfo company. The company issued a notice listing 105 dismissals, who were also owed wages retained for two months. The workers were forced to sign blank contracts and they were never given a copy of them. Without a real salary, they were discharged at the Mexican Institute of Social Security (IMSS) with the minimum wage and lacked benefits like Infonavit and Fonacot.⁴⁰¹
- **November 2015, CEREAL y Revolución Tres Punto Cero:** Employees of the Eaton maquiladora went on strike for better salaries, benefits, freedom of association and to curb harassment. Workers accused managers of forging signatures and cutting back on vacation periods for employees. For every day that a worker missed work due to illness or another impediment, the maquila counted it as a vacation day.⁴⁰²
- **January 2013, CEREAL:** At least 500 workers who worked as security agents at Flextronics company, subcontracted by the private security agency CSIS, said they had been unjustifiably dismissed, in addition to suffering violations of their labour rights. In reviewing their current work situation, they noticed that some of them did not respect their contributions to enjoy benefits and some others were discharged or omitted their payments (which they did reduce from their payroll) to the Mexican Social Security Institute (IMSS) as well as with the Retirement Funds Administrator (Afore).⁴⁰³

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

- **Nestlé:** The "Nestlé and I" labour climate survey applies globally. Mexico achieved a 94% participation rate. The work environment and the integration of life / work were found within the best-evaluated 5 aspects in the survey. Their results showed that 93% of employees felt committed to their life project at Nestlé.⁴⁰⁴

Stakeholder Recommendations

UNICEF, Recommendations for the National Program on Business and Human Rights, Mexico 2016⁴⁰⁵:

- Establish a transparent process for requesting and agreeing on flexible working for parents. This should include having regular schedules, care in case of illness, and time off to address child needs as well as providing the option to parents both employed at the same place, the same day off.

- Companies should ensure that HR managers and employees receive continuous training on the latest Federal Labour Law adjustments. This information must also be communicated to all the collaborators in a way that they could understand it.
- In consultation with employees, the Mexican Institute of Social Security, SEDESOL, and DIF support working parents to find appropriate childcare solutions for before and after school as well as school holidays. This could include onsite childcare, discounted rates with local providers, partnering to provide a collective offering or engaging with the Council for the National Program of Service Delivery for Care and Early Childhood Development to increase the expansion and quality of government day-care centers.
- Consider piloting a five-day-work week to determine the feasibility of providing employees with two days of rest.
- Ensure that staffing schedules allow for weekly rest including no less than 36 hours uninterrupted rest as recommended by the ILO.
- Promote flexible hours so that workers have more options to work from home when the work agenda allows.
- Promote childcare centers with extended hours to respond adequately to the needs of families.
- Companies must eradicate the practice of accumulating overtime to pay later with time or money. As indicated by the LFT, each hour of overtime must be paid double for the first 9 extra hours and triple from then. Companies must measure these overtime hours clearly and transparently.
- Companies should study their levels of absenteeism, use of extra time, and adjust their staff accordingly.
- Companies should identify additional benefit offerings for employees which help alleviate other workplace stresses typically attached to income such as providing: transportation to and from work, access to meals while at work, and opportunities for training for career advancement.
- Companies should develop a policy and training for employees on how to deal with harassment from visitors/tourists. Ensure a zero-tolerance policy is communicated explicitly to visitors and staff. They could also provide safe transport for workers during evening hours.
- Companies should develop a strategy to address discriminatory practices that includes:
 - Anti-discrimination training for all staff.
 - A focus on hiring indigenous workers for a diverse range of positions.
 - Removing age qualifications above the minimum age when recruiting, and replace them with representations regarding the ability to perform the essential functions of the role, some of which may be physical.
- Companies should eliminate the practice of operating with a lower TFF than required to improve hotel outcomes, as it significantly impacts the family life of employees.

- Companies should establish transparent mechanisms to allow flexible shifts for parents and caregivers (including the possibility of having fixed schedules for family care).
- Companies should work with employee representatives, government and relevant stakeholders to identify current wage gaps and consider what steps can be taken to raise wages to meet CONEVAL's Well-Being Guidelines
- Companies should ensure equal opportunity for female staff by:
 - Conducting an assessment of current wage levels by position and remediating any discrepancies to ensure equal pay for equal work.
 - Ensuring there is no pregnancy testing for female applicants and adopting a policy on the prohibition of pregnancy testing for applicants and employees.
 - Ensuring applicants are not asked about their family circumstances beyond what is required by law to protect worker safety.
 - Supporting employees' rights with respect to breastfeeding in the workplace and providing private breastfeeding/pumping facilities and breaks in accordance with legal requirements.
 - Complying with the provisions of ILO Convention No. 183 and ILO Recommendation 191 on maternity protection, including the international minimum of 14 weeks paid maternity leave, with a compulsory 6-week period after birth, and considering providing the recommended 18 weeks.
- Temporary contracts should only be used for seasonal workers. Companies should avoid exploiting a loophole in the Labour Law (Article 39-F) that allows for the long-term employment of temporary workers as long as there is a termination of the contract every 6 months, followed by a subsequent rehiring of the same individual.
- Companies could also conduct an assessment of the costs and benefits of temporary contracts. This could include a) reviewing guest satisfaction scores for majority-permanent employees vs majority-temporary employees; b) reviewing retention and absentee rates based on contract type; and c) evaluating the cost of hiring, training and firing seasonal workers versus the cost of maintaining employment during low season.
- The industry as a whole could use leverage with government to push for additional social security and housing benefits for temporary workers.
- Conducting human rights due diligence on high risk business partners in advance of awarding a contract and on suppliers deemed high risk from a human rights perspective.
- Monitoring and auditing suppliers' compliance with the Code of Conduct through on-site audits of their facilities that include worker interviews; ensure Corrective Action Plans are in place if a violation is found, and additional follow up audits are performed as appropriate.
- Identifying ways in which first tier suppliers can encourage compliance with relevant human rights standards among second tier suppliers.

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies.

Working hours

Does the company ensure that the work week is limited to 48 hours; that overtime is infrequent and limited; and that workers are given reasonable breaks and rest periods?

- Normal company working hours are limited to 48 per week by both company policy and practice, or fewer if provided by national law, collective agreement or industry standards.
- Overtime is infrequent, remunerated at premium rate, and does not exceed 12 hours in any one week, or 36 hours per month.
- The company has a system to plan, record and monitor hours worked by each employee, and regularly evaluates whether the number of workers is sufficient to meet production targets without resorting to overtime.
- Where overtime per worker systematically exceeds 12 hours per week, the company increases its workforce to correspond to production targets, or puts in place measures to increase worker productivity and reduce overtime.
- Workers are allowed at least 24 consecutive hours of rest (or more if provided by national law or industry standards) in every seven-day period.
- The company ensures that workers have no less than a 30-minute break for every 4 hours of work (or more if provided by national law or industry standards) and that workers are allowed to use toilet facilities whenever necessary and not just during designated breaks.

Wages

Does the company provide a living wage that enables workers to meet the basic needs of themselves and their dependents?

- It is company policy to provide workers with a living wage sufficient to meet basic food, clothing and housing needs and provide some discretionary income for themselves and their dependents.
- The company is aware of whether the legal minimum wage in the country of operation meets the requirement for a living wage.

- If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of workers and their dependents, the company calculates a living wage based on the cost of living in its area of operation.
- Part-time workers receive wages and benefits that are proportionate to those of full-time workers, and receive overtime compensation at a minimum of 1.25 times their hourly salary.
- The company pays wages at regular intervals and does not take deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Bonus and piece-rate payment systems are monitored to ensure that the total salary paid meets living wage requirements without resort to overtime.

Employment status

Does the company ensure that all workers have an official employment status?

- The company ensures that all employees receive employment contracts prior to starting work for the company, and that contracts are understood by each employee.
- Contracts detail each employee's rights and obligations of employment, including clear job description, bonus and salary systems, and reasonable notice periods.
- Reference to company handbooks or other relevant documents on employment terms are integrated into the contract.
- The company ensures that contractors provide workers operating within company premises with an official employment status in line with company standards.

Leave

Does the company ensure that workers are paid holiday leave, sick leave, and parental leave in accordance with international minimum standards?

- Workers are granted at least three weeks of paid holiday leave per year or more if required by national law or collective agreements. Part-time and short-term workers are provided with paid holiday leave proportionate to the number of hours worked, at a rate equal to that of permanent full time employees.
- Workers are entitled to paid sick leave in accordance with the applicable national law. If sick leave is not provided for in national law, the company consults with union or worker representatives to establish alternative means of protection in case of illness or injury.
- The company ensures that sick leave is not deducted from workers' vacation time.
- Female workers are entitled to no less than fourteen weeks of paid maternity leave per child.
- The company grants compassionate or parental leave to workers who have recently adopted a child or children, or have taken on the responsibility to care for foster children or other dependent children.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009): The Ethical Trading Initiative is an alliance of different business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours. ⁴⁰⁶
- Institute for Human Rights and Business and Global Business Initiative on Human Rights, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012): The Report examines how the UN Guiding Principles can contribute and guide the complex network of business relationships that now exist in a global economy. It explores how companies of all sizes are now beginning to implement human rights considerations and the UN Guiding Principles into both traditional and contemporary business relationships. ⁴⁰⁷
- IFC Performance Standard 2: Labour and Working Conditions (2012): IFC PS2 is guided by the international labour standards as outlined by the ILO and covers a range of aspects, including: terms and conditions of employment, non-discrimination, health and safety, and forced labour. The Standard addresses employees, contracted workers and supply chain workers. ⁴⁰⁸
- Portal for Responsible Supply Chain Management (est. 2008): The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation. ⁴⁰⁹
- OECD Guidelines for Multinational Enterprises (2011): The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Chapter 5 is on employment and industrial relations, aligning with the international labour standards of the ILO. ⁴¹⁰
- International Labour Organization – ILO Declaration on Fundamental Principles and Rights at Work (1998): It comprises four categories that states must respect, regardless of whether or not they ratify Conventions. These four categories are: (1) freedom of association, freedom of unionisation and effective recognition of the right to collective bargaining; 2) the elimination of forced or compulsory labour; (3) the abolition of child

labour; and (4) the elimination of discrimination regarding employment and occupation.⁴¹¹

- United Nations Sub-Commission Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises in the Field of Human Rights (2003). It urges respect for and promotion of human rights by transnational corporations and other commercial enterprises. It also advocates respect for the right to equality and non-discrimination and respect for the rights of workers.⁴¹²

Environment

Company impacts on the environment that affect the health or livelihoods of local communities

Operating Environment	
Percentage of population with access to improved water sources	96% ⁴¹³
Environmental Performance Index rank	65/178 ⁴¹⁴
Food Security Index rank	39/133 (2016) ⁴¹⁵
Relevant laws ⁴¹⁶	<ul style="list-style-type: none"> • General Law on Ecological Equilibrium and Environmental Protection (1988). • General Wildlife Law • General Law for the Prevention and Integral Management of Waste • General Law on Sustainable Forest Development • Maritime Navigation and Trade Law • National Water Law • Climate Change Law • General Law of National Property
Responsible agencies	<ul style="list-style-type: none"> • Transparency Unit • National Water Commission (Conagua) • Secretary of Environment and Natural Resources (Semarnat)
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Mexican Center of Environmental Law, A.C. (CEMDA) • Communication and Environmental Education, S.C. • Ecological Culture, A.C.

- Miguel Agustín Pro Juárez Human Rights Center
- Center for Analysis and Research, Fundar
- Greenpeace Mexico.
- Oxfam Mexico
- Serapaz, Services and Advices for Peace

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Mexico's Constitution guarantees all persons the right to health and to an environment adequate for their development and wellbeing.⁴¹⁷ It clearly establishes the role of the State and society in the area of natural resources.⁴¹⁸ Its principles include the preservation of natural resources susceptible of appropriation, prevention and control of pollution affecting human health, care of the environment against its productive use by government sector and social and private sectors.⁴¹⁹

According to 2014 data from the United Nations Environment Program (UNEP), in the territory of Mexico, which has an area of 194 million hectares, there is some type of plant formation,⁴²⁰ housing between 10% and 12% of the planet's biodiversity. Data from the OECD (2013) indicate that forests provided shelter for 11 million people living in extreme poverty.⁴²¹ According to UNEP, in 2013 Mexico would occupy the fourth place in the world in terms of natural capital and biodiversity.⁴²²

In 2016, Business Transparency International (BTI) reported that so far, the government would not have taken any significant environmental action, because the major state programs were focused on achieving economic growth.⁴²³

According to several civil society organizations in Mexico, there prevail negative impacts of the mining sector on the environment, access to land and property, to food and to a decent life.⁴²⁴

Water

The Congress of the Union added in 2012 a sixth paragraph to article 4 to raise the human right to water and sanitation to the constitutional rank, which obliges the State to promulgate new legislation in this matter. In addition, the State assumes the responsibility to respect, protect and ensure its compliance in an accessible, sufficient, healthy, acceptable and affordable manner with the participation of citizens.⁴²⁵

However, according to a Greenpeace report of 2012, Mexico did not require the government or industry to inform the public of wastewater discharges.⁴²⁶ Although there is an Emissions and Pollutants Transfer Record (EPTR)⁴²⁷ in which industries report releases of certain hazardous substances, this system is not mandatory, covers only a limited number of substances and has a number of inconsistencies, as new substances are reported without informing about previously reported substances. In addition, some data relating to the location of emissions are inaccurate, without a designated authority to monitor their compliance.⁴²⁸

The report also observed that more than 70% of surface water bodies in Mexico were affected as a result of pollution from all sources, where 31% of this surface was described as contaminated or extremely contaminated, reducing the amount available to provide clean water. Per capita water availability has dramatically decreased from 11,500 cubic meters (m³) in 1955 to 4,263 cubic meters in 2010, for a number of reasons including water pollution.⁴²⁹

Main pressures on marine ecosystems include overexploitation of agriculture, fisheries, pollution, including nitrogen deposits and eutrophication of runoff and domestic wastewater and industrial wastewater, habitat modification, such as the loss of wetlands and climate change.⁴³⁰

According to Conservation International, Chiapas, the southernmost state in Mexico, provides 30% of the country's fresh water. But poor production practices and deforestation contaminate water and make Chiapas' communities more vulnerable to extreme weather.⁴³¹

Regarding company practices, in 2016 the BTI Transformation Index reported that water was rarely treated or recycled by companies. In this sense, companies that pollute are rarely sanctioned and those that are sanctioned because the negative impact caused by their activity reportedly pay only a small fine.⁴³²

Also, the abovementioned Greenpeace report said that one of the industries that posed serious problems is the textile industry, responsible for having discharged dangerous pollutants to Mexican rivers. Substances that can be found in Mexican rivers include highly toxic heavy metals such as mercury, lead and cadmium, which are regulated, and other harmful compounds such as toluene and benzene, which are not included in any regulation related to discharges in water.⁴³³

In addition, the OECD reported that, with respect to the management of water resources by agriculture, in 2013 the sector accounted for more than three-quarters of the water extraction in Mexico. In addition, about 15% of the total extraction was carried out from unsustainable sources, while the efficiency in the use of the water remained very low.⁴³⁴ In this sense, the Special Rapporteur on the Right to Food stated in 2011 the overexploitation of key aquifers in the country is fuelled by Tarifa 9, an important subsidy on electricity use for agriculture (as groundwater is mainly pumped from wells) that leads to farmers paying only 23% of the cost of pumping and utilizing.⁴³⁵

On the other hand, the reform in the energy sector allows the fracking procedure, which is considered highly polluting. A study of Cartocritica revealed that at least 924 wells⁴³⁶ have been drilled since 2003 using the fracking technique under no specific regulation and no information on the environmental impact studies performed. In the study of fracturing fluids analyzed, 750 different types of chemicals were identified (finding among them substances of great toxicity like methanol, benzene, toluene, ethylbenzene and xylene). In addition, wastewater for which

there is no treatment to this day contains not only the chemicals and sand that were originally introduced, but also heavy metals, hydrocarbons and even radioactive materials such as radon, which are found in the subsoil.⁴³⁷

The impact of this technique on the territory has repercussions on the availability and quality of water, on the emission of gases and the proliferation of earthquakes, thus affecting the quality of life, health and tranquility of the surrounding inhabitants.⁴³⁸

Food and Livelihoods

Mexico took a major step by raising the right to food to constitutional status by reforming the Constitution in 2011 (Articles 4 and 27).

In practice, in 2012 the National Health and Nutrition Survey (ENSANUT) reported that more than a quarter of Mexicans had poor access to food, consumed a diet that was insufficient in quality and quantity and, in extreme cases, experienced hunger due to lack of financial means or other resources. In the indigenous population, the prevalence is more than double: 33.1%. About 20% of indigenous households had hunger experiences. Additionally, overweight and obesity in children, adolescents and adults has become a public health problem.⁴³⁹

According to a report issued in 2012 by the National Council for the Evaluation of Social Development Policy (CONEVAL), food price increases and the lack of long-term economic growth have reduced household purchasing power and contributed to poverty in Mexico.⁴⁴⁰

In 2011, the Special Rapporteur on the Right to Food declared that agricultural policies encouraged the production of grains, rich in carbohydrates but relatively poor in micronutrients, at the expense of the production of fruit and vegetables; the result is that, for many Mexicans, particularly in urban areas or in the states of the northern part of the country, switching to more healthy diets is becoming increasingly difficult.⁴⁴¹

En 2014, Oxfam informed that more than 50% of the food consumed in Mexico was produced by women, but only 10 % of women had access to the property of the land.⁴⁴²

Regarding Genetically Modified Organisms (GMOs), the Law on Biosecurity of Genetically Modified Organisms provides rules on research, release, commercialization, exportation, and importation of GMOs. It is aimed at preventing, avoiding, or reducing the risks that these activities may cause to human health, the environment, biological diversity, or the health of plants and animals.⁴⁴³

The Special Rapporteur on the Right to Food noted in 2011 that the cultivation of transgenic maize in Mexico posed acute risks to the diversity of native maize landraces, given the unknown effects of genetically modified maize coexisting with non-genetically modified maize. The expansion of transgenic maize crops on a commercial scale and the potential resulting gradual disappearance of landraces could increase the dependency of farmers on a technology that would transfer resources to the seed companies holding the patents on these varieties, and thus increase the risks of small-scale farmers falling into debt. Furthermore, farmers cultivating native landraces of maize may find that their crops contain genes from transgenic plants, which could result in liability for infringing property rights of patent holders.⁴⁴⁴ Civil society organizations reported in 2016 that communities in the Yucatan peninsula and their economies have been

affected by sowing of GMOs and the use of highly toxic pesticides by transnational corporations.⁴⁴⁵

Climate Change

The legal context in Mexico regarding the use of energy resources is comprised of two major areas, that of hydrocarbons and their derivatives and that concerning the electricity sector. Within these two areas, climate change is indirectly associated, even though government actions in this sector directly affect the mitigation of the effects of climate change.⁴⁴⁶ According to the latest data from the Government's National Inventory of Greenhouse Gas Emissions (GHG), in 2013 the main sources of GHG emissions at national level were: mobile sources of motor transport and non-roads (26.2% of total emissions); the electricity generation sector (19%); the industry sector (17.3%) and the oil and gas sector (12.1%).⁴⁴⁷

According to the Special Climate Change Program (PECC) 2014-2018, the category of agriculture, forest and other land uses is the second most important source of GHG emissions into the atmosphere in Mexico, representing about 19% of total emissions.⁴⁴⁸

In this sense, Mexico's efforts to protect human health are particularly vulnerable to the impacts of climate change. In 2016, 15% of the country's territory, 68.2% of its population and 71% of the GDP are exposed to the adverse impacts of climate change. In Mexico, roughly 18 million persons live in areas at high risk of flooding and climate variation also affects the availability of food and water and the transmission of diseases.⁴⁴⁹

Mexico's General Law on Climate Change (LGCC) directly addresses climate change, emphasizes the prevention of diseases related to climate change as well as the development of strong health services infrastructure, and establishes a special fund for climate action. The National System on Climate Change (SINACC), created by the General Law, is responsible for priority action on mitigation and adaptation.⁴⁵⁰

The National Commission on Human Rights (CNDH) in Mexico informed that Mexican national institutions and organizations have found a likely increase in several types of diseases, an increase in heat waves, and an increased burden on medical care providers. They have also noted potential decreases in agricultural production and access to water.⁴⁵¹

Deforestation

In practice, deforestation is a serious problem in Mexico.⁴⁵² Greenpeace Mexico reported in 2016 that the rate of deforestation in Mexico is one of the most intense on the planet. According to the Institute of Geography of the National Autonomous University of Mexico (UNAM), 500,000 hectares of forests and jungles are lost each year, constituting the fifth largest deforestation place in the world.⁴⁵³ On the other hand, the OECD reported in 2013 that although the rate of deforestation declined considerably during the last decade, Mexico recorded an annual net loss of 155,000 hectares of forests on average over the 2005-2010 period.⁴⁵⁴

The main cause of deforestation is the conversion of natural ecosystems to agricultural and livestock production. Another factor that threatens forests is illegal logging, with an estimated 70% of the national timber market being illegal.⁴⁵⁵

Participation and Access to Information

Article 6 of the Constitution establishes that the right to access to information is guaranteed by the State.

In 2016, the Environmental Democracy Index (EDI) reported that Mexico had a very good score for the Transparency pillar, a good score for the Justice pillar, and received a fair score for the Participation pillar.⁴⁵⁶ Regarding transparency, the public must be granted a right to access environmental information on request, and the laws mandate the collection of a wide range of environmental information and the proactive disclosure of information to the public.⁴⁵⁷

The General Law on Transparency and Access to Public Information (LGTAIP) establishes that the authorities must publicly disseminate information on authorizations, permits and concessions on their websites, indicating who the permit holders are.⁴⁵⁸ The information that can be requested is not only the one that is produced directly by the authority but also the one delivered by individuals: studies, Environmental Impact Statement (EIS), records on pollutants emitted or on hazardous wastes, reports on compliance with conditions or other circumstances that were imposed by the authorities in the exercise of their powers, etc.⁴⁵⁹

In this sense, mining concessions, environmental impact authorizations, water concessions, wastewater discharge permits and most environmental permits are considered public information.

In 2015, the National Index of the Right to Access to Information Guarantee Agencies (INOGDAI) indicated that only 15 state transparency agencies scored higher than the general average, and 17 were below average. The national average performance of these transparency agencies was 49.74%.⁴⁶⁰

The General Law on Ecological Equilibrium and Environmental Protection (LGEEPA) defines environmental impact assessments as the procedures through which the Secretary of Environment and Natural Resources (SEMARNAT) establishes the conditions to be met for the performance of work and activities that may cause ecological imbalance or exceed the limits and conditions laid down in the applicable provisions for protecting the environment and preserving and restoring ecosystems in order to avoid or minimize their negative effects on the environment. In addition, there is a right to environmental information recognized in the LGEEPA. According to it, every person has the right to request environmental information from SEMARNAT, the States, the Federal District and the Municipalities.⁴⁶¹

The Environmental Democracy Index reported in 2014 that regarding the Participation pillar, the public is only granted a limited opportunity to participate in decisions relating to the environment, and most laws do not require government agencies to incorporate public comments in environmental decision making.⁴⁶²

There are two main mechanisms of participation: the public consultation, which operates as a space for interested parties to send their observations on the environmental impacts of a work project and/or activity that has been submitted to the Environmental Impact Assessment

Procedure. The second is the Public Information Meeting, as long as the public consultation has been opened, where the promoter of the work or activity must expose the environmental technical aspects of the works or activity in question, the possible impacts that will be caused by its implementation and the prevention and mitigation measures that would be implemented. Likewise, he will answer any questions that may arise.⁴⁶³

The law provides a procedure by which the public can challenge government decisions to deny information requests. It also provides broad standing for members of the public to challenge a wide range of decisions that harm the environment or violate their environmental rights. However, Access Initiative informed in 2016 that the law does not provide assistance mechanisms to reduce societal and financial barriers to justice.⁴⁶⁴

Since September 2014, PODER and a handful of local organizations have accompanied farming communities in the Sierra Norte region of the State of Puebla in implementing Mexico's first community-led HRIA (Human Rights Impact Assessment) in the extractive sector.⁴⁶⁵

Air Pollution

According to the Mexican Center for Environmental Law (CEMDA), air is one of the fundamental conditions that make life possible for human beings and other living beings, which, in its pure and clean state, allows the proper development of more vital functions and an adequate standard of living.⁴⁶⁶

In practice, the National Health Information System indicated in 2014 that respiratory disease mortality was the third leading cause of death in children from 0 to 4 years of age. In this sector of the population, 90% of the deaths due to acute respiratory infection and 60% due to asthma occur.⁴⁶⁷

Figures from the Mexican Institute for Competitiveness (IMCO) also stated that, from January 2010 to 2013, poor air quality caused 19,242 premature deaths, 53,191 hospitalizations and more than 3 million medical consultations. Apart from the high costs in the health system, these results also give rise to labour absenteeism, which causes economic losses for families and for the country, as it limits the competitiveness of cities, discourages talent and may even limit the potential for new investments.⁴⁶⁸

According to a complaint in 2013 from several civil society organizations before the Mexico's National Human Rights Commission about Mexico's poor air quality, the lag in updating Mexico's air quality standards was alarming: Ozone Standards were last updated in 2002; Particulate Material Standard in 2005; and Emission Standards for light and heavy vehicles in 2006.⁴⁶⁹

Transportation accounts for almost half of Mexico City's air pollution, which according to government data, kills as many as 2,700 people every year. While low-polluting fuel is already sold in Mexico City, it has yet to be made available nationwide by Pemex, the state-owned oil company.⁴⁷⁰

Bloomberg reported in 2016 that millions of people in Mexico City were suffering from the worst air quality in 14 years, as cars and trucks add to the pollution with their outdated emissions controls and Mexico's weaker pollution controls.⁴⁷¹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **September 2016, *ContraLínea*:** In the State of Sinaloa, the Bimbo Group operates under a model of industrial agriculture that puts health at risk with the use of 30 highly toxic pesticides banned in other countries, which are applied indiscriminately and do not remain in the production zone but rather filter into surrounding water bodies affecting essential natural resources and surrounding communities.⁴⁷²
- **April 2016, *Expreso Campeche*:** Members of the group of Semillas Much'Kanan I'inaj, integrated by indigenous people, peasants, beekeepers and *ejidatarios* of the Mayan people of the west of Bacalar, filed an *amparo* against the permission granted by SAGARPA (Secretary of Agriculture, Livestock, Rural Development, Fisheries and Food) to the company Monsanto to plant commercial GM soy, claiming that the said permit was issued without respecting the binding nature that, according to law, must have the biosafety approval of Conabio and Conap, who recommended not to authorize such planting due to the risks it poses to human health and the environment.⁴⁷³
- **February 2016, *BTI Project*:** A mine in Sonora, run by the country's largest mining company Minera Mexico, contaminated a very large extension of a river and tried to conceal the damage. As a result, people in the area suffered physical damage and a number of cattle died. Yet, the company was let off with a \$3 million fine, even though the damage will take years to be remedied, the costs of which are much higher (possibly incalculable).⁴⁷⁴
- **September 2015, *PODER*:** The Federal Environmental Protection Agency (PROFEPA) claims that the Buenavista del Cobre mine has incurred 55 irregularities, has been negligent and has obtained economic benefits derived from lowering its costs for evading compliance with environmental standards in the management of leachate, hazardous waste and polluting emissions into the atmosphere in the management of the Cananea mine.⁴⁷⁵

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiative

- **Unilever Mexico, 2016:** as of January 1, 2016, 90% of the energy consumed by the company comes from wind energy, which has allowed in the first months of 2016 savings of over 11,000 tonnes of CO₂. In addition, they started a major replacement program for ice-cream distribution vehicles in Holland, with expected annual reductions of more than 26 tonnes of CO₂.⁴⁷⁶
- **Nestle, 2016:** they have committed to lowering the GHG emissions associated with the production and distribution of their food and beverages, by improving energy efficiency,

using cleaner fuels and investing in renewable sources. In this sense, in Mexico they are obtaining 85% of their electrical energy needs from wind power.⁴⁷⁷

- **Wal-Mart, 2016:** continued investment in sustainable facility design has resulted in more than half of their stores in Mexico being powered by wind and other clean energy sources.⁴⁷⁸
- **Greenpeace, 2012:** a number of fashion brands and sportswear have joined the Greenpeace Detox challenge (106) and have made individual commitments for the zero spill of hazardous chemicals by 2020 (108). Six of the brands that joined the Greenpeace Detox challenge, including Puma, Nike, Adidas and Li-Ning sportswear brands, as well as the fashion brands H&M and C&A are currently collaborating on further development and implementation both of their individual plans and of a collective plan to achieve zero dumping of hazardous chemicals (111), which sets out the steps they intend to take to meet their commitments. With their "joint roadmap", they invite others to participate in this effort.⁴⁷⁹

Stakeholder Recommendations

Letter of "Priority recommendations of civil society organizations to the United Nations Working Group on Business and Human Rights".⁴⁸⁰

- Companies should provide information about the toxic wastes they generate, the mitigation measures they develop and the possible consequences of such wastes, specifically in industrial corridors where accumulated pollution can generate severe negative impacts.
- Businesses should dialogue with NGOs on alternatives to reduce their impact on the environment in their value chains.

"Workshop on Business and Human Rights for the Working Group on Business and Human Rights in Mexico"⁴⁸¹

- Companies must conduct due diligence processes
- Companies must disclose information and count reports of due diligence
- Companies need to improve accountability mechanisms
- State enterprises (Pemex and CFE) should lead by example with due diligence policies

UNICEF, Recommendations for the National Program on Business and Human Rights, Mexico 2016⁴⁸²:

- Recommends that companies take action to address the drivers of climate change, which, if not halted, can have a significant human rights impact, such as:
 - Set carbon emissions based on science and adopt energy reduction goals
 - Compensating carbon emissions through internationally accredited projects
 - Work to obtain 100% of the energy from renewable sources
 - Elimination of deforestation originating from basic supply chains to produce basic products

- Reducing short-lived climate pollutants
- When possible, choose from the different energy sources, the cleanest
- Recommends that companies develop a corporate water strategy based on:
 - The corporate assessment of the water risk and opportunity of the facilities/ real estate portfolio
 - The application of an internationally approved analytical instrument, such as the Aqueduct tool of the World Resources Institute,⁴⁸³ included within a solid protocol of water risk assessment
 - The inclusion of water risk assessments in high-risk, watershed-focused areas, including analysis of global demand, supply and basin quality, as well as human rights impacts related to the local water situation.
 - Ensuring that 100% of the wastewater is properly treated, either on-site or if untreated, reporting all wastewater spills (discharges) to the local government.
 - Ensuring that the company follows the UN Resolutions on the human right to water.
- Recommends that companies ensure that the entry or use of beaches adjacent to commercial establishments is not restricted in any way

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Precautionary Approach

Does the company support a precautionary approach to environmental issues?

- In relevant cases, the company supports scientific research on environmental matters related to its products or operations.
- The company provides information to stakeholders about uncertainties and potential risks to workers, consumers, the public and the environment of the company's products and processes.
- The company identifies any soil and water contamination at its site or sites, assesses the environmental impacts and remedies any significant contamination.
- The company tries to avoid environmental damage by regular maintenance of production processes and environmental protection systems (air pollution control, waste water treatment systems etc.).
- The company conducts systematic risk assessments of materials used, products and processes to apply the precautionary approach.

- The company ensures transparency and engages in regular stakeholder dialogue with neighbours, civil society organisations and others with an interest in the company on critical environmental issues.
- If relevant, the company supports scientific research on environmental issues relating to the company's products and processes.

Emergency Response

Does the company have emergency procedures in place to prevent and address accidents affecting the environment and human health?

- The company has identified the hazardous operations and the potential consequences on human health and the environment if an accident occurs.
- The company has detailed procedures, plans, equipment and training programmes to prevent accidents and emergencies.
- The company has detailed procedures, plans and equipment to effectively respond to accidents and emergencies if they occur.
- The company trains workers to respond to accidents and emergencies, including carrying out emergency drills at least once a year involving all workers.
- Where there is significant risk of impacts on local communities, the company has a procedure that enables it to immediately notify affected local communities about industrial emergencies, and informs about emergency response, evacuation plans and medical response.

Energy Consumption and Climate Change

Does the company take measures to reduce energy consumption and emissions of greenhouse gases?

- The company complies with regulation regarding use of energy resources and emissions of greenhouse gases.
- The company has a climate strategy that identifies opportunities to reduce the company's energy consumption and/or emissions of greenhouse gases.
- The company has initiated practical activities to reduce energy consumption and/or greenhouse gas emissions.
- The company provides information and trains employees to implement energy reduction measures.
- The company monitors its energy consumption and/or emissions of greenhouse gases.
- The company has defined a baseline for its greenhouse gas emissions, which includes a definition of the business operations and activities, and the greenhouse gases that are accounted for e.g. as described in the Greenhouse Gas Protocol.
- The company has targets for reducing its energy consumption and/or emissions of greenhouse gases.
- The company engages with the government and civil society organisations to develop policies and measures that provide a framework for the business sector to contribute to building a low carbon economy.

Water and Waste Water

Does the company take measures to reduce water consumption and treat waste water?

- The company has the necessary permits to extract water or obtain water from the public water supply and for any waste water discharges.
- The company treats waste water before discharge to reduce adverse environmental impacts. If waste water treatment takes place outside the company's premises, the company is aware of the effectiveness of the treatment.
- The company monitors waste water discharges, including types, limit values and quantities of pollutants in the waste water.
- The company has targets for reducing water consumption and/or increasing the amount of water reused or recycled in different business operations and activities.
- The company provides information and trains workers to implement measures to reduce water consumption and reduce the need for waste water treatment.
- The company's use of water and its waste water discharges do not negatively affect the sustainability of water resources, the natural environment or the availability of water for drinking and sanitation purposes.
- The company engages with national, regional and local public authorities, and civil society organisations to address water sustainability issues related to affected water resources.

Waste Management

Does the company take measures to prevent and reduce the production of waste and ensure responsible waste management?

- The company has the necessary permits for the handling, storage, recycling and disposal of waste, and, if relevant, complies with requirements for transporting hazardous waste across borders.
- The company has a strategy to manage waste responsibly and continuously attempts to prevent and reduce the production of waste.
- The company ensures that waste relevant for recycling is sorted and handed over to a recycling company.
- The company monitors the types and quantities of waste produced, including where and how waste is recycled, treated or disposed of.
- The company has targets for reducing waste production and/or increasing waste reused/recycled and measures its progress against these targets.
- The company provides information and trains workers on the safe handling, storage, transport and disposal of hazardous and special waste types.
- The company marks areas used for storage of waste, and properly labels all containers for storing waste, including a relevant symbol of danger for hazardous waste.
- The company requests recycling/treatment/disposal receipts from transport contractors.
- The company uses licensed contractors for the transport, recycling, treatment and disposal of hazardous waste.

Air Emissions

Does the company prevent, reduce and treat air emissions?

- The company has the necessary permits for emissions to air, and complies with legal requirements (e.g. air pollution standards and limit values).
- The company provides information and trains workers on how to manage air emissions.
- The company monitors the types and quantities of relevant emissions to air.
- The company treats relevant pollutants before they are emitted to the atmosphere (e.g. by using filters).
- The company continuously attempts to prevent and reduce air emissions.

Noise, Odour, Light and Vibrations

Does the company prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations?

- The company has the necessary permits for levels of noise, odour, light and vibrations, and complies with legal requirements (e.g. standards or procedures).
- The company provides information and trains workers to manage noise, odour, light and vibrations.
- The company monitors levels of noise, odour, light and vibrations on the surrounding environment.
- The company treats/minimises impacts to ensure that there are no significant levels of noise, odour, light and vibrations.
- The company continuously attempts to prevent and minimise the levels of noise, odour and light (e.g. enclosed production, shielding, etc.).

Chemicals and Other Dangerous Substances

Does the company minimise the use and ensure safe handling and storage of chemicals and other dangerous substances?

- The company has the necessary permits and complies with legal requirements for the handling, use and storage of chemicals and other dangerous substances.
- The company does not manufacture, trade and/or use chemicals and other dangerous substances subject to national or international bans or phase-outs.
- The company provides information and trains workers on the safe handling and use of chemicals and other dangerous substances.
- The company monitors the quantities of all chemicals and other dangerous substances used in production and maintenance.
- The company marks areas used for storage of chemical substances and products.
- The company properly labels all chemical substances and products including name of the chemical and a relevant symbol of danger.
- The company considers substitution important and continuously tries to use less harmful chemicals and substances.

Biodiversity

Does the company prevent, minimise and remedy significant impacts on biodiversity?

- The company has the necessary permits to operate in or alter the natural environment, and complies with legal requirements.
- The company is committed to operating within the framework of international conventions addressing biodiversity (e.g. the Convention on Biological Diversity, Cartagena Protocol on Bio- safety and the CITES Convention).
- The company has assessed important positive and negative impacts of its operations and activities on the natural environment and biodiversity (e.g. IUCN's Red List of Threatened Species and no alien invasive species).
- The company has previously and/or is currently taking measures to prevent and reduce the impacts of its operations and activities on biodiversity.
- The company clearly labels products containing GMOs and indicates if GMOs have been used in the production process.
- The company ensures that it has not had any unintended releases of GMOs.
- The company documents that workers have been adequately trained to handle GMOs.

Natural Resources

Does the company ensure that natural resources are used in a sustainable manner?

- The company has the necessary permits and complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc).
- The company complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc.).
- The company ensures that workers are trained in the sustainable cultivation, harvesting, extraction and/or use of natural resources.
- The company continuously attempts to prevent, minimise and remedy significant impacts on natural resources through environmentally friendly methods and alternative resource use.
- The company ensures that its use of renewable resources does not negatively affect the sustainability of the resource (i.e. the resource's ability to regenerate).
- The company demonstrates efforts to substitute non-renewable resources used in production with renewable resources.
- The company works with local and national public authorities as well as with international institutions to address sustainability issues related to natural resources (e.g. wood, water, fish, metals, oil etc.).

Environmentally Friendly Technologies

Does the company encourage the development and use of environmentally friendly technologies?

- The company uses environmentally friendly technology.
- The company regularly evaluates its processes and technologies to see if there are more environmentally friendly alternatives.

- When developing new technologies and products, the company focuses on developing environmentally friendly technology e.g. by using life cycle assessments (LCA), design for sustainability or a cradle-to-cradle approach.
- When planning new investments in technology, the company considers the best available technology and stipulates minimum environmental criteria.
- When investing in new buildings, the company implements environmentally responsible and resource-efficient materials and/or technologies.
- The company makes information describing the environmental performance and benefits of using environmentally friendly technologies available to stakeholders.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre.

- Certification EO100: It is a certification that seeks to highlight oil companies that are socially and environmentally responsible. By 2015 it announced its first certification for Quifa and Pacific Rubiales, companies that meet the industry's highest standards of environmental, social and health practices. This standard is built by a consultation process and it is the only voluntary standard that exists in the oil and gas industry.⁴⁸⁴
- ISO 14001: It is a standard that seeks to support the implementation of an environmental management plan that helps companies identify and manage the environmental risks derived from their operation. The standard establishes that the Plan must contemplate environmental objectives and goals, policies and procedures to achieve those goals, defined responsibilities, as well as a system to monitor progress.⁴⁸⁵
- Final report of the United Nations Environment Program (2015): there is an opportunity to create a financial system that could support more effectively the development of an inclusive green economy.⁴⁸⁶
- Report of the United Nations Special Rapporteur on the human rights implications of environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak (2015): Includes the responsibility of companies to communicate information on risks and previous damages caused by the supply or use of hazardous substances. It also states that companies must ensure that these hazardous substances do not cause or contribute to human rights violations.⁴⁸⁷
- United Nations Framework Convention on Climate Change (1992): Its overall objective is to raise global awareness of the problem of climate change. It seeks through different mechanisms that member states implement measures to curb climate change, reduce the effects of emissions and concentrations of greenhouse gases on ecosystems and the environment, and mechanisms for adaptation to new climatic conditions.⁴⁸⁸
- Convention on the access to information, public participation in decision-making and access to justice in environmental matters (1999): seeks to guarantee citizens' rights to participate in environmental issues, around three pillars. 1. Access to information, 2. Public participation in environmental decision-making and 3. Access to justice.⁴⁸⁹

- Forest Stewardship Council Certification: It is a voluntary certification that guarantees the products come from well-managed forests and that generate some kind of environmental, social or economic benefit.⁴⁹⁰

Land & Property

Human rights impacts related to company acquisition, use and management of land

Operating Environment	
International Property Rights Index rank (IPRI)	<p>10/22 (region)</p> <p>78/128 (world)</p> <p>Mexico's IPRI increased in 2016 by 0.1 to 4.8 placing it 10th in the Latin American and the Caribbean and 78th in the world.⁴⁹¹</p>
Heritage Foundation: Economic Freedom Index Property Rights score	<p>2016 Economic Freedom Score: 65.2 (down 1.2 points)⁴⁹²</p>
Relevant law	<ul style="list-style-type: none"> Internal Regulations of the Commission for the Regularization of Land Tenure, 1995.
Responsible ministries	<ul style="list-style-type: none"> Secretary of Agrarian Reform - SRA Agricultural Attorney National Agricultural Registry - RAN
Local NGOs addressing this issue	<ul style="list-style-type: none"> AGAJI PRODESC CEDAM PBI Mexican Center of Environmental Law, A.C. (CEMDA) Communication and Environmental Education, S.C. Ecological Culture, A.C. Miguel Agustín Pro Juárez Human Rights Center

- Center for Analysis and Research, Fundar
- Greenpeace Mexico.
- Oxfam Mexico
- Serapaz, Services and Consulting for Peace
- Tlachinollan

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Article 27 of the Constitution recognizes three types of land ownership: public, private and social. The first is subject to the provisions and uses dictated by the State; the second is transmitted by the right of the Nation to individuals; and the third is limited to communal property.⁴⁹³

According to several civil society organizations in Mexico, mining legislation opens the door for companies to invest in Mexican territory without considering environmental impacts, violations of labour rights, collective rights of indigenous peoples and, in general, human rights.⁴⁹⁴

Land Administration

In 2016, the International Work Group for Indigenous Affairs (IWGIA) reported that the Mexican State approved the "Surface occupation guide" issued by the Ministry of Economy, which according to organizations fighting against mining companies' harmful soiling of land, promotes the dispossession of the land under the argument of promoting the development of the mining sector.⁴⁹⁵

In 2016, the Business Anti-Corruption Portal reported that land administration in Mexico lacked transparency and was susceptible to corruption. Property rights were reportedly not sufficiently protected due to weak law enforcement, and were threatened by the solicitation of bribes and extortion by officials and bureaucrats. Unlawful seizure and deprivation of property also allegedly occurred, and forced land sales and transfers have been reported, as have illegal activities related to land administration in exchange for bribes.⁴⁹⁶

A report from Mexican Transparency, based on a nation-wide survey of more than 15,000 households, uncovered in 2011 that illegal payments to land authorities ranked among the top 10 services plagued by bribery in the country.⁴⁹⁷

On the other hand, Minority Rights Group reported in 2016 that indigenous farmers were allegedly harassed or attacked by paramilitary groups as they worked their land. Police brutality and mistreatment by the justice system were commonly reported.⁴⁹⁸

Land Acquisition

The reform to Article 27 of the Mexican Constitution states that all minerals in the Mexican territory belong to the public domain, allowing certification, transfer, and privatization of communal land. The Regulatory Law for Mining in 1992 allowed the acquisition and use of land for private interests. Together with the North American Free Trade Agreement, these legislative changes paved the way for the transformation of the industry.⁴⁹⁹

According to the federal Mining Law, private parties must obtain a concession from the federal government in order to gain access to these resources. Land use by the mining industry, including exploration, extraction and processing of minerals, is given priority over any other use of the land (article 6 of Mining Law). Even after a mining concession has been granted, it may not be executed until the Secretary of Environment and Natural Resources (SEMARNAT) authorizes an environmental impact study and an official change in the way the land may be used.⁵⁰⁰

According to the Mexican Center of Environmental Law, legal provisions that grant preferential use of land for mining activities violate both the Mexican Constitution and international treaties on human rights ratified by Mexico.⁵⁰¹

According to the Civil Society Focus Group on Business and Human Rights, until 2014, the Mexican government had granted 29,000 mining concessions, many of them in areas dedicated to environmental conservation and inhabited by indigenous communities. In the case of the Wixarika indigenous people, the Mexican State has refused to revoke the mining concessions granted, even though they directly affect the right to land.⁵⁰²

The NGO PODER documented in 2015 the existence of 440 mining concessions, in addition to 15 private hydroelectric projects, as well as the exploration and exploitation of hydrocarbons in oil fields operated by Halliburton and Diavaz in the State of Puebla. Sixty-percent of the mining concessions are allegedly in the hands of Almaden Minerals company.⁵⁰³

At a public hearing in 2014 at the Inter-American Commission of Human Rights (ICHR), petitioners stated that 35% of the national territory had been concessioned through more than 29,000 projects relating to mining, hydroelectric, and wind power. Of these, 17% are within indigenous territories. According to the petitioners, some concessions were very significant because they encompass almost the totality of small towns.⁵⁰⁴

During his visit in 2011, the UN Special Rapporteur on the Right to Food heard testimony from people in different regions of the country who were at risk of land expropriation or resettlement because of major development projects such as construction (for example, La Parota and El Paso de la Reyna), large-scale infrastructure projects (for instance roads, such as the Carretero de Huejuquilla El Alto Project) and mining, (for example the Cerro de San Pedro in San Luis Potosí).

⁵⁰⁵

Land disputes in urban areas are also common. USAID informed in 2011 that almost 5% of Mexico's communal lands (*ejidos*) were located in the country's 110 main cities, and 15% of all communal lands were affected by problems caused by land invasions and informal settlements.

This has given rise to widespread conflicts between new (informal) occupants and shareholders of communal land, undermining the broader framework of governance in rural areas.⁵⁰⁶

With regards to women's access to land, information from the Environment and Natural Resources Service (SEMARNAT) indicated in 2014 that in particular many women *ejidatarias*, who do not own the land are deprived of access to programs of equipment, infrastructure, loans, leasing, economic support for payment of environmental services, and are not adequately represented in decision-making pertaining to the organization of the agricultural activities of the lands on which they work.⁵⁰⁷

Business Transparency International reported in 2016 that none of the main infrastructure projects of the current administration, such as the high-speed rail to Querétaro or the new airport in Mexico City, have been subjected to an environmental impact assessment.⁵⁰⁸

Free, Prior & Informed Consent

In the recent Constitutional Reform on Human Rights, Mexico included the right to free, prior and informed consent. With regards to indigenous peoples, that standard was specified in the International Labour Organization's Convention 169, which was ratified by Mexico in 1990, as well as the United Nations Declaration on Indigenous Peoples.

In practice, according to the Interamerican Commission on Human Rights, serious human rights violations against indigenous peoples and communities in Mexico occur in two main areas: violence in the context of mega-projects on ancestral lands and territories authorized without the due process of free, prior and informed consultation and consent; and in the context of title claims affecting their land, and the lack of due process in criminal matters. As a result of the struggle for their lands, information had also surfaced about the criminalization of human rights defenders of indigenous peoples.⁵⁰⁹

Fundar, Cemda and ProDesc stated in 2014 that in many cases, consultation was ordered to obtain prior, free and informed consent, but its fulfillment represented great challenges for the affected organizations and communities given that they were at a disadvantage with the state and companies that have all the information and resources needed to negotiate with certain groups that did not represent the will of the entire community.⁵¹⁰

On the other hand, according to the NGO PODER, in 2015 the Mexican State has allegedly granted 331,729 hectares to private companies without previously informing or respecting the right of prior, free and informed consent of the communities. In complicity with the companies, the communities that organize to defend their territory have reportedly been repressed.⁵¹¹ In 2016, Minority Rights Group International stated that Communities and NGOs representing indigenous groups continued to report that the government often failed to consult indigenous communities adequately when making decisions about the development of projects intended to exploit energy, minerals, timber, and other natural resources on indigenous lands.⁵¹²

As an example, during the Human Rights High Commissioner's visit to Mexico in 2015, NGOs reported that in relation to the companies involved in megaprojects, they would not be adequately consulting the indigenous peoples whose lands and resources they planned to exploit.⁵¹³ As for agriculture, the Mexican Business and Human Rights Focus Group reported in 2014 that the Mexican government had granted permits without adequate scientific evidence,

thus facilitating the planting and cultivation of genetically modified organisms. In the case of the population of Bacalar, in the State of Quintana Roo, in rural areas the genetically modified maize of the company Monsanto would have allegedly been distributed without having previously consulted the Mayan people who live there.⁵¹⁴

In terms of fracking, according to PODER data, in 2013 there were 233 wells that were used in the Sierra Norte without the population being informed about whether they were unconventional hydrocarbon deposits or not and, therefore, about the risks and negative impacts it implied for their territories, their environment and their lives.⁵¹⁵ In relation to the main states where fracking projects were carried out⁵¹⁶, Cartocritica indicated in 2015 that the population close to these projects had not been informed, consulted or had been given the chance to exercise their right to prior, free and informed consent. In this sense, the populations are unaware of what chemicals are being injected into the subsoil and where the waste water that is produced by each fracture is located. It is considered likely that the population of these zones is consuming highly toxic water that affects their health.⁵¹⁷

International Peace Brigades indicated in 2014 that in the State of Oaxaca, the Zapotec and Huave peoples were not consulted in the development of wind farms in the area.⁵¹⁸

Regarding mining, the same source pointed out in 2011 that the Mining Law of Mexico did not establish consultation mechanisms for affected communities and that this violated international treaties. Rural communities living in territories with high mineral content said that they were not adequately consulted on these projects and that they received no economic compensation proportional to the profits obtained by the company or the impact that extraction had on their quality of life. In addition, the community faced episodes of violence as a result of being opposed to the mining projects.⁵¹⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **June 2016, ProDesc:** Excellon Resources Canadian mining company violated a contract with *ejidatarios* of La Sierrita de Galeana, in Durango, when exploring more hectares of the leased property. The community filed a lawsuit to nullify the agreement and reclaim their land. However, in view of the difficulty of negotiating with the company, in 2012 they established a camp that affected the operations and profits of the company, which, according to a study of two organizations and the President of the Sierrita Ejidal Commissariat, resulted in Excellon pressing to the state government to evict them. Throughout the conflict, the community has been victim of intimidation and threats. So far, the Agrarian Unitary Court has not determined the annulment of the contract.⁵²⁰
- **October 2015, ProDesc:** Human rights defender of Zapotec indigenous ethnicity denounced during the hearing before the Inter-American Commission on Human Rights (IACHR) the violations that occurred during the first indigenous consultation process that the Mexican government implemented for the construction of the energetic megaproject of the Energía Eólica del Sur company.⁵²¹

- **August 2015, ProDesc:** Members of the Zapotec indigenous community of Juchitán, Oaxaca, filed a petition for *amparo* for serious violations of the right to consultation before the Seventh District Court of the State of Oaxaca. The presentation was made at the announcement by the Energy Secretary (SENER) of the beginning of the construction of the wind farm of Eólica del Sur company in the communities of Juchitán and El Espinal, located in the Isthmus of Tehuantepec, Oaxaca.⁵²²
- **February 2015, PODER:** The Observation Mission of the consultation on the project of Eólica del Sur company in Juchitán, Oaxaca, highlights the persistence of violation of the guiding principles of the right to consultation and prior, free and informed consent. At least twenty security incidents that endanger the integrity of those involved in this process are documented.⁵²³
- **February 2014, BHRRC:** The First District Judge of the State of Guerrero issued an unpublished judgment in favour of the indigenous community Júba Wajiín, in which he considered that their rights had been violated by allocating mining concessions without their consultation, invoking international treaties that Mexico has signed and ratified, such as Convention 169 of the ILO, as well as the jurisprudence of the Inter-American Court of Human Rights.⁵²⁴
- **If more cases are required, see** (case of the Yaqui tribe, Wirikuta case, San Miguel del Progreso case, Mayan communities against transgenics case, among others)⁵²⁵ on "forced" prior consent and unequal conditions.

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

- **PepsiCo, 2014:** introduced a specific land policy in order to help protect the rights of indigenous peoples in their supply chain. To support its implementation, they committed to implementing a third-party audit program, based on available and accepted standards, of the social, environmental and human rights aspects. They are committed to implementing audit programs for their palm oil supply chain in Mexico by the end of 2016 or sooner if deemed possible. The assessments will include impacts related to land rights and will be conducted with the participation of affected communities.⁵²⁶

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Land & Property

- Before buying, renting, acquiring or otherwise accessing land or property, does the company ensure that all affected owners and users of the land or property, have been adequately consulted and compensated?
- Prior to buying, renting, acquiring or otherwise accessing land or property, whether directly or through a third party, the company identifies all existing owners and users of the land or property, including information on land users and customary owners.
- The company investigates the past usage and ownership of the land or property to ensure that past users and owners have not been wrongfully removed, and that any expropriations by the authorities have been conducted in accordance with international law.
- The company consults with affected users and owners of the land or property (including women, tenants, settlers, minorities and other vulnerable groups including indigenous peoples) and seeks their free, prior and informed consent before continuing to acquire or access the land or property.
- The company ensures that its lease or purchase of residential property and sourcing of food commodities does not considerably make housing and food scarce or too expensive for the local people.
- The company ensures that affected owners and users of the land or property are adequately compensated to help them restore their standards of living or livelihoods to the same standard or higher than before, and that the compensation standards are transparent and applied consistently to all communities and persons affected.

Standards and Recommendations

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **FAO Voluntary Guidelines on the Responsible Governance of Tenure (2012):** Developed by the Food and Agriculture Organisation of the UN (FAO), the Guidelines promote responsible governance of tenure of land, fisheries and forests by outlining the principles and internationally accepted standards for the responsible governance of tenure. The Guidelines inform states and non- government actors on relevant policies, strategies and activities.
- **IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement, and IFC Handbook for Preparing a Resettlement Action Plan (2002):** The IFC Performance Standards are contractually binding on certain projects receiving IFC finance. PS5 is accompanied by a Guidance Note and a Resettlement Handbook that gives detailed guidance on managing resettlement and associated impacts.
- **Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (2012):** A joint initiative of UNCTAD, FAO, IFAD and the World Bank, these seven principles cover all types of investment in agriculture, including between principal

investors and contract farmers. The Principles provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives, and individual investor contracts.

Revenue Transparency & Management

Human rights impacts related to transparency of government revenues received from business and the distribution of such revenues

Operating Environment	
World Economic Forum Global Competitiveness Ranking	57/140 (2015) ⁵²⁷
Legatum Prosperity Index rank: Governance	67/142 ⁵²⁸
Ease of Doing Business Index (where 1 indicates greatest ease for doing business)	-2 ⁵²⁹
Transparency International: Corruption Perceptions Index rank (where 1 indicates the lowest level of corruption)	95/168 ⁵³⁰
World Bank Good Governance Indicators	
Voice and Accountability	-0,05 in 2014 (-2.5 weak; 2.5 strong)
Political Stability	- 0,76 in 2014 (-2.5 weak; 2.5 strong)
Government Effectiveness	0,19 in 2014 (-2.5 weak; 2.5 strong)
Regulatory Quality	N/A
Rule of Law	-0,45 in 2014 (-2.5 weak; 2.5 strong)
Control of Corruption	44% (2010)
Government revenue	4,746,945.7 million pesos (estimation for 2016) ⁵³¹
Government expenditure ⁵³²	Social Development: \$2,199,538.2 Economic Development: \$1,032,305.8 Government: \$330,204.2

EITI Country (Extractive Industries Transparency Initiative)	In 2015, Mexico created a working group to join the Extractive Industries Transparency Initiative. ⁵³³
Relevant law	<ul style="list-style-type: none"> • Federal Law on Responsibilities of Public Servants • Law Against Money Laundering • Hydrocarbons Law • Federation Income Law • Revenue Act on Hydrocarbons • Law on Acquisitions, Leases and Services of the Public Sector • Public Works and Related Services Law • Law of the Mexican Petroleum Fund for Stabilization and Development
Responsible ministries	<ul style="list-style-type: none"> • National Institute of Transparency, Access to Information and Protection of Personal Data (INAI) • Public Function Secretary • Public Government Information Electronic System (CompraNet)
Local NGOs addressing this issue	<ul style="list-style-type: none"> • PODER • Mexican Transparency • Mexican Institute for Competitiveness (IMCO) • Fundar • Network for Accountability

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Corruption

In 2015, the National Anti-Corruption System (ANS) was created, which seeks to group institutions responsible for combating corruption within a single committee, with the aim of coordinating and aligning them for the first time under a National Anti-Corruption Policy. Its ultimate goal will be to end the growing impunity that rules in Mexico.⁵³⁴

The Federal Penal Code criminalizes corruption, active and passive bribery, extortion, abuse of office, money laundering, bribery of foreign public officials and facilitation payments. Criminal penalties for corruption range from five to ten years of imprisonment. The Federal Public Servants' Responsibilities Law prohibits public officials from requesting or accepting goods or services, either free or at a price less than market value, from individuals or corporations whose professional interests conflict with the official duties of the public servant. The law requires public officials to declare any gift valued at ten times the minimum wage in Mexico (USD 48) within 15 business days or deliver it to the administrative authority. The Anti-Money Laundering Law restricts operations for a variety of vulnerable activities and provides criminal sanctions and administrative fines for failure to comply.⁵³⁵

Despite this, Business Transparency International (BTI) reported in 2014 that, although there is a strong legal framework, Mexico's anticorruption legislation is not applied effectively. Protection in case of leakage or uncovering of information is quite weak, and no legal protection is established for those who report cases of corruption.⁵³⁶

In this regard, Mexican Transparency (MT) identified in its last National Index of Corruption and Good Governance of 2010, 200 million corruption acts using public services provided by federal, state and municipal authorities, as well as concessions and services administered by individuals. To access or facilitate the 35 processes and public services measured by MT, more than 32 billion pesos were allocated in "mordidas" (bribes).⁵³⁷

The 2013 Resource Governance Index indicated that corruption posed a high risk for Mexico's extractive sector. The oil and mining industries experience low transparency, ineffective audit processes, and weak legal frameworks in their contracting and reporting procedures.⁵³⁸

National audit organizations have the power to review all government accounts, including those of Pemex. In practice, however, auditors lack the capacity to effectively oversee the oil sector and review only a small fraction of public funds.⁵³⁹ In this sense, in 2016 the Business Anti-Corruption Portal reported that Pemex had recently experienced a number of corruption allegations.⁵⁴⁰

Public Procurement

Article 134 of the Constitution stipulates that the procurement and leasing of all types of goods and services and the contracting of public works must be carried out through public tenders to guarantee the best possible conditions in terms of price, quality, punctuality and other relevant factors. The Law on Procurement, Leasing and Public Sector Services (LAASSP) and the Law on Public Works and Related Services (LOPSRM), along with "laws on procurement", were approved in 2000 with subsequent reforms and implemented article 134 at the federal level.⁵⁴¹

Public procurement is regulated by the Law on Acquisitions, Leases and Public Sector Services and by the Law on Public Work and Related Services. These laws address conflicts of interest

among federal procurement officials, competitive bidding, asset declaration and monitoring, reviews of procurement decisions, and blacklisting measures.⁵⁴²

Mexico's public procurement sector reportedly carries a high corruption risk. According to the Business Anti-Corruption Portal, a recent study found that businesses believe that public funds are often diverted to companies and individuals as a result of corruption and they perceive favoritism to be widespread among procurement officials. In 2015, almost half of businesses surveyed reportedly failed to win contracts because competitors had bribed procurement officials.⁵⁴³

Freedom House's 2015 Report informed that compliance with procurement regulations by state bodies was erratic, and corruption was extensive despite laws covering conflicts of interest, competitive bidding and company blacklisting procedures.⁵⁴⁴

In legal terms, Pemex can award contracts through a direct non-competitive allocation process, thus contributing to non-transparent practices in the industry.⁵⁴⁵ The Revenue Watch Institute reported in 2013 that prior to contracts being awarded by Pemex, there was only partial information on its subcontracting policies. Information about selection processes was not always available and service contracts were not published.⁵⁴⁶

Revenue Transparency

Article 134 of the Constitution establishes that the management and use of federal resources by states, municipalities, the Federal District and territorial administration bodies must be regulated under the principles of efficiency, effectiveness, economic solidity, transparency and integrity.⁵⁴⁷

The Law of the Mexican Petroleum Fund for Stabilization and Development of 2014 is the instrument that seeks to achieve transparency in the generation and use of the economic resources produced by the energy sector. The Mexican Oil Fund (FMP), a public trust that acts as a mechanism for receiving and executing payments on exploration and exploitation (E&E) assignments and contracts, has the objective of ensuring that Mexican society can provide timely and objective follow-up of the results of these activities.⁵⁴⁸

Mexico's online federal procurement website, Compranet, is intended to increase transparency in the government and to decrease the frequency of bribery.⁵⁴⁹ Moreover, Mexico adopted in 2004 the Transparency Standards on Government Procurement by the Asia-Pacific Economic Cooperation (APEC).⁵⁵⁰

In the Action Plan of the Alliance for Open Government in Mexico 2013-2015, commitment 26 establishes Mexico's adherence to the Extractive Industries Transparency Initiative (EITI). The first steps in this process have already been made through the Mexican government's public statement of its intention to join EITI and through the appointment of the Hydrocarbons Subsecretary.⁵⁵¹

In practice, Business Transparency International stated in 2016 that transparency laws are less stringent at the state than the federal level. There is no transparency in the use of public

resources and in many cases, it is a corrupt and inefficient use. Most of the resources are spent on current expenditure rather than on future infrastructure projects.⁵⁵²

On the other hand, in relation to projects related to climate change, Transparency International reported in 2014 that parastatal agencies such as public trusts or national credit institutions (including national development banks) executed a large part of these projects, presumably granting them significant administrative independence and tending to operate with high levels of secrecy, even when they make use of public resources.⁵⁵³

Regarding state reportability practices, Mexico received a "satisfactory" score of 82 out of 100 in the 2013 Resource Governance Index, reflecting comprehensive disclosure on many revenue indicators but poor contract transparency, according to the Revenue Wacht Institute.⁵⁵⁴

Although the Federal Institute for Access to Public Information (IFAI) has increased transparency and permitted access to information on how some federal resources are used, the BTI Transformation Index 2016 reported that in most cases of abuse, offenders were not punished. Also, many institutions and private companies are not subject to the oversight of the IFAI.⁵⁵⁵

Regarding business transparency, in 2015 a study by the NGO PODER revealed that it was not always possible to analyze the transparency policies of some companies, despite their public nature, since much of the available information exists because companies must inform their investors, rather than the states in which they have operations or the population affected by their activities. For example, in order to access information about Sierra Oil & Gas and Talos Energy companies, it is necessary to have a username and password. In this way companies make sure to only inform their investors and that other interested people, including possibly affected people by the activities of the company, do not have access to the information.⁵⁵⁶

Revenue Sharing

The federal Constitution explicitly mentions revenue sharing in two instances. The first mention is in Article 73, which assigns excises (IEPS) exclusively to the federal government and then specifies that a secondary law will determine the proportion that states will receive from those revenues. And in the case of electricity revenues, the Constitution affirms that the state congresses will establish a share for municipalities. The second mention of transfers gives states exclusive authority over the land tax and provides that states should receive federal revenue shares according to conditions approved by the local congresses.⁵⁵⁷

On the other hand, all economic units of production and distribution of goods or services, whether natural or legal persons, who have workers at their service, whether or not they are taxpayers of the Income Tax, must pay the Participation of the Workers in the Profits (PWP) as long as they have had profits. Since 2009, the Income Tax Law established, with a term of ten years, the calculation of the PWP, which must be a 10% applicable tax on taxable income.⁵⁵⁸

According to the NGO PODER, in 2014, 40% of the GDP was presumably controlled by the 37 members of the Mexican Business Council through their companies. In addition, Mexico's largest companies were organized as family-owned conglomerates or consisted of holding companies that invested in other companies characterized by vertical integration.⁵⁵⁹ Credit Suisse's 2014

Global Wealth Report noted that Mexico's richest 10% of the population owned 64.4% of the country's total wealth,⁵⁶⁰ while the National Household Income and Expenditure Survey reported the same year that 30% of households with higher incomes (deciles VIII, IX, X) was responsible for 62.5% of total current income, and the remaining 70% of households (from decile I to VII) obtained only 37.5% of total income.⁵⁶¹

In relation to the hydrocarbons sector, the Hydrocarbons Revenue Law establishes the tax regime, which applies to each contract or assigned allocation of exploration and exploitation of petroleum resources, has the ultimate objective of efficiently collecting income from the extraction of oil resources of Mexico. The State has the Mexican Petroleum Fund for Stabilization and Development (FMP), which receives, administers and distributes revenues derived from exploration and extraction of hydrocarbons, with the exception of taxes, which are collected and administered by the Secretary of Finance and Public Credit (SHCP) through the Tax Administration Service (SAT), as well as managing the financial aspects of the contracts related to the calculation and payment of compensation to contribute to the stabilization and development of the nation.⁵⁶²

According to data from the Baker Institute, in 2011 the Mexican government obtained 35% of the total public revenues of the oil industry, including taxes and direct payments from Pemex, the state oil company.⁵⁶³ Experts indicated in 2016 that it is increasingly far from making the FMP a source of long-term savings for the country, since the resources it obtains are mostly intended to finance the government.⁵⁶⁴ In 2016, Business Transparency International (BTI) reported that the majority of the government's revenue obtained from oil over the past 10 to 12 years was allocated to current expenditures rather than investment projects.⁵⁶⁵ At the end of December 2015, the FMP recorded an amount equivalent to 2.1% of GDP, far from the 4.7% established by law.⁵⁶⁶

In the mining sector, the Mining Law governs the creation of a Fund for Sustainable Regional Development, which establishes that 80% of the companies' contributions will go to infrastructure works in the states and municipalities where they operate.⁵⁶⁷ The state government gets 37.5% of these resources, while 62.5% goes to municipalities where mining activities are carried out.⁵⁶⁸

According to Oxfam data, up to 2013, Mexico was one of the very few mining countries where no tax or royalty was levied on production at the entrance of the mine, which encouraged accelerated extraction and also favoured Mexican concessionaire miners disproportionately at the expense of the depletion of the country's mineral wealth.⁵⁶⁹

In terms of taxes, according to OECD data from 2015, 50% of Mexico's tax revenues came from taxes on goods and services, 30% from taxes on income, profits and capital gains and 16% of taxes on social security contributions. This implies that the fiscal structure in Mexico is much more oriented to taxing consumption than personal or business income.⁵⁷⁰ Oxfam Mexico reported in 2015 that the capital gains tax regime in the stock market was subject to multiple exemptions.⁵⁷¹

Taking into account 2011 data from the Food and Agriculture Organization of the United Nations (FAO), from the perspective of the classification of expenditure according to its orientation in private and public goods, and according to its purpose for social welfare and direct and indirect productive development, public expenditure for public goods for productive development

represented a very small part (18%) compared to 33% for private goods contributing social benefits (opportunities, for example); 26% of public goods for social benefits (such as health and education); 15% for private goods of productive development (as supports in assets or incentives according to certain conditions); and 8% for current expenditure, as an indirect incentive.⁵⁷²

The 2016 Human Development Report reveals that the pattern line of expenditure allocation does not reflect an allocation proportional to the development deficiencies that are faced in the federative entities. Two of the great instruments to promote balanced regional development, public expenditure on human development (HDE) and decentralized federal spending, have distributional biases that favor the most developed states. On balance, the distribution of municipal expenditure for Mexico as a whole is pro-rich.⁵⁷³

In 2012, the highest percentage of total HDE (1,959,550,056,857 pesos) went to education (40.4%), followed by transfers to income (35.1%) and finally by health spending (24.5%), which was concentrated on the bracket of people who are covered through access to the Mexican Social Security Institute (IMSS) or to similar institutions linked to formal employment.⁵⁷⁴

Regarding tax matters, the NGO PODER reported in 2015 that there were favorable conditions for the payment of taxes by the hydrocarbons and mining industry. In the case of mining, it is assumed that entrepreneurs have a decision-making capacity over the destination of 80% of their tax payments. In contrast, small-scale farmers do not have the ability to track the use of the taxes that these companies pay.⁵⁷⁵ This situation has been aggravated since the end of 2015 and due to the energy reform because after one hundred years of being exempt from income tax, ejidatarios, comuneros, farmers and agricultural producers whose lands have been expropriated, "temporarily occupied" or rented to oil or electric companies must pay the income tax, while the income they receive for it is higher than 200 minimum wages.⁵⁷⁶

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **September 2016, Animal Político:** Between 2015 and 2016, the Tax Administration Service (SAT) exempted 15 companies from paying taxes in the amount of at least 15 billion pesos. According to the Fiscal Privileges report, which was presented by the organization Fundar among the companies benefiting from these exemptions were: Geo Corporation; Simec International; Industries CH; GEO; GEO Jalisco, GEO Northeast; Volkswagen; the National Polytechnic Institute; and Arnecom.⁵⁷⁷
- **July 2016, Sin Embargo:** Six Mexican companies failed in transparency and favoured corruption. With a maximum score of 10, Femsa and Mexichem had 4.6 points each, followed by Group Bimbo and Gruma with 3.7 and 3.6 points, respectively, while Grupo Alfa scored 2.8 points and Mabe 2.6 points.⁵⁷⁸
- **2016, Business Anti-Corruption Portal:** in 2011, fourteen company executives received a fine of US \$427 million for irregularities in the process of awarding contracts to companies that did not meet the established bidding requirements.⁵⁷⁹

- **May 2015, Sin Embargo:** A series of audio recordings were discovered in which OHL Mexico executives agreed to inflate the prices of a section of the Viaducto Bicentenario highway in the State of Mexico. The recordings directly involved a government official requesting in-kind payment and vacation for himself and his family.⁵⁸⁰
- **December 2012, New York Times:** Wal-Mart built a Sam club in one of the most densely populated areas of Mexico City, paying bribes totaling \$341,000 pesos, without a construction license, environmental permit, urban impact assessment, or traffic permit. In addition, through bribes totaling \$765,000, Wal-Mart built a large refrigerated distribution center in a basin susceptible to flooding due to its environmental fragility, in the north of Mexico City.⁵⁸¹

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

N/A

Stakeholder Recommendations

Civil society organizations letter of priority recommendations to the United Nations Working Group on Business and Human Rights:⁵⁸²

- The lack of independence of all branches of the State with the business sector results in the capture of the State by companies and an impediment on the authorities to control their activities. To that extent, the business sector must refrain from influencing the actions of the State for its own benefit.

Workshop on Business and Human Rights for the Working Group on Business and Human Rights in Mexico:⁵⁸³

- Companies must be transparent in regards to the complaints they receive and their corresponding sanctions
- Companies should report on good practices

UNICEF, Recommendations for the National Program on Business and Human Rights, Mexico 2016⁵⁸⁴

- Businesses should assess the opportunities of all-inclusive resorts to increase the economic benefits to local communities: this could include partnerships with tour operators, and community-led and sustainable enterprises.
- Support the development of inclusive economic growth by actively promoting local products on menus and in hotel stores and encouraging guests to shop on-site.
- Partner with national, regional and local government authorities to strengthen existing services, e.g. health, education and child protection.

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Assessing a Non-Corrupt Environment

Does the company take a clear stand against corruption?

- The company's CEO, director or president has declared that the company will not engage in corruption at any time or in any form.
- The company evaluates the potential areas of corruption including factors such as types of transaction, countries of operation, industries, and customers or business partners involved.
- The company evaluates the risk of corruption when workers, agents, intermediaries or consultants deal with public officials (including workers of state owned companies).
- The company evaluates the risk of internal and external conflicts of interest in relation to business partners.
- The company has developed an action plan to address the risk of corruption, and has defined responsibilities for each task, as a minimum for high-risk areas.
- The company has identified internal functions with the highest risk of corruption within the company and seeks to address these weaknesses.

Awareness Raising

Does the company ensure that relevant workers are properly trained?

- The company informs all workers about its anti-corruption commitment.
- The company provides regular anti-corruption training for all relevant workers within the organisation e.g. procurement and sales staff.
- Information on disciplinary procedures for violations of company anti-corruption policies is available to workers.
- The company actively seeks worker feedback and dialogue on its anti-corruption initiatives.
- The company has and promotes a function by which workers can safely report suspicions of corruption (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.

Anti-Corruption Procedures

Do the company's internal procedures support its anti-corruption commitment?

- The company has assigned different individuals or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.
- The company mentions 'anti-corruption' and/or 'ethical behaviour' in its contracts with business partners.
- The company prohibits informal employment and any 'off the books' record-keeping.
- The company performs internal audits and has checks in place in connection with all anti-corruption commitments.
- The company's procurement, financial and internal audit personnel have clear instructions on how to look for and identify alarms, report them to management, and follow-up with counter measures.
- The company requests external auditors to maintain a critical eye and follow all alarms and irregularities.
- Any alarm or irregularity reported by external auditors is systematically addressed by management.
- The company monitors compliance and continuously identifies strengths and weaknesses in the anti-corruption initiatives to remain effective and up-to-date in addressing changing risks.

Agents and Other Associates

Does the company's anti-corruption initiative cover agents, intermediaries and consultants?

- The company conducts an inquiry and/or evaluation (e.g. financial, legal, occupational, fiscal, environmental, and market/commercial) on all agents, intermediaries and consultants.
- All agreements with agents, intermediaries and consultants are fully documented in written and signed contracts.
- The selection and terms of reference of agents, intermediaries or consultants are approved at the senior management level or at a level above that of the management involved in the operations for which the intermediary is hired.
- Contracts with agents, intermediaries and consultants include a section on anti-corruption and one that states that the contract-holder must comply with all applicable laws and regulations.
- Agents, intermediaries and consultants are provided with information on the company's anti-corruption commitment, anti-corruption policies, training material on anti-corrupt behaviour and information on disciplinary procedures for violations of company anti-corruption policies.
- The company ensures that payment to agents, intermediaries and consultants are in line with standard payments for other service providers of similar ranking.

- The company only makes payments by bank transfer or check – never in cash – in the country of the agent, intermediary and consultant and never to a third party without prior examination.

Joint Actions

Does the company take joint actions with others to engage in and promote anti-corruption initiatives?

- The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks, etc.
- The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.
- The company stimulates multi-stakeholder dialogue on challenges of corruption.
- The company encourages the local business community and business partners to initiate cooperation to fight corruption.

Standards and Recommendations

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- Transparency International Business Principles for Countering Bribery: Tool that helps companies develop effective approaches, policies and corporate programs to identify, prevent and combat bribery and corruption in all their activities.⁵⁸⁵ This publication also features an edition for small and medium businesses, which includes guidelines and practical advice to support organisations with fewer resources to develop a strategy against bribery that suits their size.⁵⁸⁶
- The OECD Guidelines for Multinational Enterprises: recommendations to multinational enterprises operating in or from adhering countries. It includes guidelines for combating corruption, bribery and extortion. The OECD Guidelines include competition, fiscal systems, and anti-corruption.⁵⁸⁷
- Extractive Industry Transparency Initiative (EITI): a voluntary initiative supported by companies, governments, civil society organizations and investors, which seeks to improve transparency and accountability in relation to payments made by companies to governments and the incomes they receive from the extractive sector.⁵⁸⁸

Security & Conflict

Human rights impacts related to company interaction with public and private security providers and related to the impact of business on societal conflict.

Operating Environment	
Failed States Index	107/178 ⁵⁸⁹
Legatum Prosperity Index: Safety & Security	103 ⁵⁹⁰
Freedom House: Map of Freedom - Political Rights <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	3 ⁵⁹¹
Freedom House: Map of Freedom - Civil Liberties <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	3 ⁵⁹²
Relevant law	<ul style="list-style-type: none"> • General Law on the Coordination of the National Public Security System • Federal Law of Administrative Procedure • Federal Firearms and Explosives Act • Federal Private Security Law / 2006 • Federal Private Security Act Regulation
Responsible agencies	<ul style="list-style-type: none"> • General Directorate of Registry and Supervision to Companies and Private Security Services • Federal Secretary of Public Security • National Private Security Council • Public Ministry

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Public Security Forces

Article 21 of the Constitution of Mexico provides that the investigation and prosecution of crimes are the responsibility of the Public Ministry and the Police. It expresses that public security is a function of the Federation, the Federal District, the states and the municipalities, in the respective competences that the Constitution indicates. It also establishes the principles of interjurisdictional coordination to establish a national system of public security.⁵⁹³

In 2015, the National Human Rights Commission (CNDH) reported that the states of Nuevo León, Hidalgo, Morelos, Oaxaca, Puebla, San Luis Potosí and the Federal District would have specific legislation (laws and regulations) regulating the use of force, while 15 federal states would only have general provisions on the use of force in their public safety laws.⁵⁹⁴

According to Business Transparency International (BTI), there is a lack of coordination and trust between federal, state and municipal police forces⁵⁹⁵. It was observed that municipal and state police have been infiltrated by the drug cartels and are therefore rarely informed of operations led by federal police or the army.⁵⁹⁶ On the other hand, the Inter-American Commission on Human Rights (IAHR) observed in 2015 the involvement of military forces in professional duties that would correspond exclusively to police forces.⁵⁹⁷

According to data from the Business Anti-Corruption Portal of 2016, citizens consider Mexico's police to be the most corrupt public institution in the country. Moreover, the reliability of Mexican police to protect businesses from crime is one of the lowest in the world, and the costs of crime and theft to businesses are high.⁵⁹⁸

In 2014, the CNDH stated that "[i]f it is true that in Mexico there are institutions that use isolated principles and criteria on the use of force, there is an absence in the country of a protocol on the use of public force bound by international human rights standards that is enforced by all security forces; the lack of effectiveness in the training of public security forces in human rights and the impunity that has prevailed in some events have allowed the continued presence of cases of disproportionate use of force in order to suppress acts of social protest."⁵⁹⁹

In this sense, a 2014 report from the National Network of Human Rights Organizations "All Rights for All" (TDT Network) revealed that public security in Chihuahua was militarized, which led to serious abuses and violations of human rights against the population by the military and security forces. Some violent deaths and assaults were related to the struggle for water.⁶⁰⁰

In addition, several women's human rights defender organizations declared in 2012 that the territory and the preservation of natural and cultural assets, mainly of indigenous peoples, were being irreversibly affected by particular interests with the consent of the State, which even put at the service of these interests the public security and justice procurement bodies, with which it violates those who demand respect for their rights and their property.⁶⁰¹

On the other hand, the Government of Mexico is not yet an integral part of the initiative on the Voluntary Principles on Security and Human Rights⁶⁰² related to security and human rights in the resource extraction sector, which are classified under three categories: risk assessment, relationships with public security and relationships with private security.

Private Security Forces

The Federal Private Security Law of Mexico establishes as an obligation of the operative personnel to collaborate with the authorities and public security institutions in situations of emergency, disaster or in any other case, upon request of the competent authority of the Federation, states, federal district and the municipalities.⁶⁰³ It also establishes the obligation of providers of private security services to refrain from performing functions that are reserved to public security bodies and institutions or the Armed Forces.⁶⁰⁴

This law also regulates companies that request authorization to operate in two or more states. In this sense, it establishes that private security services that are provided only within the territory of a federative entity, will be regulated as established by the corresponding local laws. The rules on the use and management of weapons and ammunition are minimal and the law does not contain express provisions on the labour rights of operators and/or agents of these companies.⁶⁰⁵

In 2015, the IACHR noted that there was a proliferation of private security forces in Mexico in response to the incompetence of state security forces and a lack of a legislative framework to properly regulate them. Some large national and international companies have their own private security forces. However, the scarcity of available information makes it difficult to properly analyze the impact of privatization, since information is not publicized on contracts with private security companies.⁶⁰⁶

In its 2015 Annual Report, the IACHR informed that the Private Security Personnel Registry of the Public Security Secretary of the Federal District (SSPDF) had at that time a registry of 15,272 persons and 714 private security companies in the Federal District.⁶⁰⁷ A study by the National Private Security Council (CNSP) found almost 10,000 private security companies in the country, of which only 2,000 were registered, either in the states or at the federal level. About 80% of private security companies and 40% of surveillance personnel were operating outside any regulation in Mexico, according to 2008 data reported by the National Private Security Council (CNSP).⁶⁰⁸

In 2016, members of the Collective of Defenders of Migrants and Refugees (CODEMIRE) and civil society organizations denounced that several private security companies, in collusion with local and federal authorities, would torture and kill migrants and harass their defenders in various states of the country. In addition, these were companies that allegedly obtained permission to carry high-caliber weapons, which are exclusive to military use. These agencies are reported to be present in the states of Querétaro, Jalisco, Guanajuato, Tlaxcala, Veracruz and in the Federal District.⁶⁰⁹

Social Conflict

The International Peace Brigades reported in 2013 that development projects were a source of conflict between affected communities, private, foreign or parastatal companies, and public authorities, creating divisions that lead to conflicts among the population.⁶¹⁰

In this sense, the IACHR informed in 2015 that violence used to take place in connection with a variety of natural resource extraction projects, highway construction, and other so-called "megaprojects." The confrontation with those who proposed or supported the project then escalated to violence. Some social leaders who opposed mining projects, timber extraction plans, and the construction of dams or highways had reportedly been subject to threats, harassment, attacks, torture, and even assassination.⁶¹¹ According to Global Witness, in 2015, four environmental and land rights defenders were killed in Mexico due to their work, including in relation to their opposition to hydroelectric projects.⁶¹²

According to an official of Services and Advices for Peace (SERAPAZ), companies have a great amount of power and pressure to blackmail the government, which in many cases culminates in repression of local communities to calm companies.⁶¹³

Revolution 3.0 reported in 2015 that more than 40% of the national territory had been concessioned and 418 points of conflict had been registered between entrepreneurs and inhabitants of the localities related to the ownership of the concessioned lands, where at least 210 of them were destined to mining projects. They pointed to the discrepancy between these figures and the official state data, which only recognized the existence of 8 disputes, all related to the environmental impacts, excluding those involving displacement, violations of property rights or cultural transgressions by companies.⁶¹⁴

In Chiapas, according to the Commission for the Dialogue of the Indigenous Peoples of Mexico, in 2015 a disturbing conflict occurred where the inhabitants of the municipality of San Cristóbal de las Casas created their own community police with which they tried to stop the attempts of the installation of two Frisco Group mining sites.⁶¹⁵

Armed Conflict

According to data from the UN High Commissioner for Human Rights, there were 151,233 people killed between December 2006 and August 2015, including thousands of migrants in transit.⁶¹⁶

BTI declared in 2016 that Mexico's present crisis of violence is unrelated to political cleavages; however, the intensity of conflicts in Mexico came from the activity of criminal gangs. Since mid-2014, communities in some of the regions more affected by this violence have organized popular defense groups to fight against criminal gangs. The government intended to legalize and control these defense groups, but some of them have been infiltrated by criminal gangs and others have started to fight among them to take control. Clashes between different organized gangs and between these gangs and the police or army occur almost every day.⁶¹⁷

The Inter-American Commission of Human Rights (IACHR) reported in 2015 a case involving some of these groups in Michoacán, which supposedly started as community self-defense groups but then turned into drug cartels, contributing to the increase in violence in the region. Violence in the context of mega-projects has resulted in murders, executions, harassment and threats against indigenous people in many states of the country.⁶¹⁸

Another source of conflict is the link with the oil industry. For example, according to Vice News media, Petróleos Mexicanos (Pemex) has daily losses of ten thousand barrels of oil due to organized crime, especially at the hands of Los Zetas, who carry out clandestine takings which often cause fatal accidents. In practice, this and other groups are significantly financing their activities through to the Mexican oil sector. Meanwhile, as the police and army fight against drug traffickers and cartels fight among them, the number of victims of kidnappings, explosions or clashes to protect the pipelines increases.⁶¹⁹

On the other hand, a report of the American Chamber of Commerce of Mexico (AmCham/Mexico), entitled 'Business Security of Mexico: Challenges and Trends 2015-2016', identified that for companies surveyed - 1400 companies, which represent the 70% of direct foreign investment in Mexico - the states of Tamaulipas, Mexico, Michoacan, Mexico City, Nuevo Leon, Guerrero, Jalisco, Veracruz, Sinaloa, and Coahuila faced the most challenges for their security operations. The report notes that 83% of those interviewed who stated an improvement in their company's security conditions attributed it to measures implemented by their company, while 12% to federal authorities.⁶²⁰ According to the media, in 2015, 4,800 companies had to close for extortion and kidnappings in Guerrero alone, one of the most unsafe states regularly attacked by organized crime.⁶²¹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **August 2016, Observatory for the Protection of Human Rights Defenders:** The municipal president of the Coyotepec indigenous people tried to take control of the village water administration in a general assembly through an improvised vote, after a decision of the citizens of the town to protest peacefully, but suffered a violent repression by police forces, leaving at least 50 people injured. In addition, according to reports, the municipal authorities attempted to take control of water by force and put pressure on the Autonomous Drinking Water Administration (AAPCOY) of the indigenous people of Coyotepec through the Federal Electricity Commission (CFE), which cut electricity that fed water wells, leaving the population without drinking water. A subsequently court ordered the restoration of electricity to ensure the human right to water was fully guaranteed.⁶²²
- **August 2015, Revolución Tres Punto Cero:** A case not recognized by the Federal Government is the outbreak of insurgency in the Michoacan community of Cherán, which declared its independence two years ago (2013), halting the presence of renewable energy projects presented by the Federal Electricity Commission (CFE) in the Purépecha Plateau.⁶²³
- **August 2015, Revolución Tres Punto Cero:** Indigenous populations stood up to the subsidiaries of the Frisco, Peñoles, Grupo México and Minera Autlán groups to stop extractive projects. In Nayarit, the Wixarika people announced the creation of a political party to halt the construction of a tourist project on its sacred land, and in Michoacán, an independence movement was born to stop the expansion of the Temium group.⁶²⁴
- **April 2015, El Economista:** at least 16 unarmed young people, who would have been demonstrating in front of the municipal presidency of Apatzingán, protesting their unjust

dismissals without compensation ordered by the former federal commissioner of security in Michoacán, would have been extrajudicially executed by federal agents.⁶²⁵

- **2014, Peace Brigades International:** In the State of Oaxaca, the Zapotec and Huave peoples were not consulted in the development of wind farms in the area, which generated a high level of social unrest and violence against community defenders.⁶²⁶

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Total México: as part of the Voluntary Principles on Security and Human Rights Initiative (VPSHR) since 2012, there have been trainings organized for the group's business unit and joint venture entity in Mexico to ensure the security of their people, that facilities are managed in a responsible way, and that the rights of neighboring communities are respected.⁶²⁷

Stakeholder Recommendations

“Workshop on Business and Human Rights for the Working Group on Business and Human Rights in Mexico”⁶²⁸

- Businesses should adopt international codes of conduct, including, for example, the Private Security Services Code of Conduct (ICoCA)

Human Rights Guidance for Businesses

Guidance suggested by the Danish Institute of Human Rights and other institutions to help companies ensure their respect for human rights and address common challenges.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company take steps to ensure that company security arrangements are in accordance with international principles for law enforcement and the use of force?

- The company regularly conducts security risk assessments, and ensures that company security arrangements, including the deployment of private guards or public security personnel, are proportionate to the security risk.
- Company security risk assessments include the risk of human rights abuses by private and public security personnel.

- The company selects private security firms based on information about professional ability, level of staff training, quality of equipment, past involvement in human rights abuses, links with political factions or organisations and other relevant criteria.
- Contracts with private security firms include: requirements related to international human rights standards for law enforcement and use of force; require the investigation and discipline of any unlawful or abusive conduct by security guards; and allow for termination of the contract in case such conduct.
- There is a manual defining the duties of security personnel, and all security personnel receive training on rules of conduct based on international human rights standards for law enforcement and the use of force.
- Where public security personnel are assigned to company facilities, the company seeks to ensure transparency concerning its interactions with public security agencies, and the company communicates to the relevant public security agencies its desire that security functions be conducted in accordance with international human rights standards for law enforcement and the use of force.
- The company has a procedure for recording security-related incidents, including a mechanism for handling complaints from staff or local communities related to the conduct of security personnel, and forwards credible allegations of human rights abuses to the relevant authorities.
- The company has a procedure for monitoring and evaluating its security arrangements, including the proportionality of the security arrangement; impact on local communities; impact on existing local tensions or conflicts; security incidents recorded; and credible allegations of human rights abuses by company security personnel. Representatives from the local community are consulted as part of the monitoring.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- International Alert – Conflict Sensitive Business Practices: Guidance for Extractive Industries (2005) ⁶²⁹: This Guidance is intended for companies in the extractive industries sector, providing advice on conflict-sensitive business practices and the ways in which they can contribute to peace-building.
- International Alert and Fafo Institute- Red Flags: Liability Risks for Companies Operating in High-Risk Zones (2008) ⁶³⁰: The initiative's objective is to clearly define what types of activities, when committed or aided by businesses, represent breaches of international humanitarian law and international criminal law.
- International Commission of Jurists - Report of the Expert Legal Panel on Corporate Complicity in International Crimes (2008) ⁶³¹: This three volume report outlines the ICJ

Expert Legal Panel's findings and recommendations with regard to corporate legal responsibility for complicity in international crimes, under both civil and criminal law.

- Ideas para la Paz Foundation - Operations in conflict zones and fragile governance: practical guides for companies in non-extractive sectors (2006): The document presents guidelines for companies on how to operate in complex environments. The guide contains and is based on the following variables and categories: risk and impact analysis, security, non-payment of extortion commitment, human rights and transparency, promotion of trade union security and specific commitments for governments involved in the process.⁶³²
- CDA - Manual for Explorers and Mining Entrepreneurs (2012): The manual is a tool that provides mining companies with key measures to avoid and mitigate conflicts in their relationships with communities.⁶³³
- International Committee of the Red Cross – Business and International Humanitarian Law (2006): The Guidance explains the obligations of businesses under international humanitarian law, including noting relevant distinctions between international human rights law and international humanitarian law.⁶³⁴
- United Nations Global Compact - Doing business while progressing in peace and development (2010): The document shows how companies from different sectors are contributing to peace and development in difficult environments around the world. It provides useful examples of how companies operating in complex environments and areas of conflict or post-conflict can address the challenges they face.⁶³⁵
- Swiss Government & International Committee of the Red Cross - Montreux Document on Relevant International Legal Obligations and Good Practices of States Concerning Operations of Military and Private Security Companies during Armed Conflicts (2008): This document outlines guidelines on how international humanitarian law applies to the activities of public security companies, specifically when operating in areas of armed conflict.⁶³⁶
- International Code of Conduct for Providers of Private Security Services (ICoC) (2010): The code sets standards for private security companies to respect human rights and International Humanitarian Law, and to ensure their operations adhere to the principles of the Montreux Document and the "Respect, Protect and Remedy" framework. In addition to business, governments and civil society organizations can join this initiative as members or observers. For instance, in Colombia, the Indepaz organization is part of this code.⁶³⁷

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

In 2015, the United Nations High Commissioner for Human Rights and the Economic, Social and Cultural Project (PRODESC) informed that official statistics showed that 98% of crimes reported in Mexico did not result in a conviction, without having properly investigated the majority of them.⁶³⁸ According to the Global Impunity Index of 2015, Mexico ranked 58 out of 193 UN Member states in terms of impunity. However, it ranked 58 out of 59 states that had enough statistical information to take part in the Global Impunity Index.⁶³⁹

The Inter-American Commission of Human Rights (IACHR) attributes these impunity levels to causes ranging from lack of political will, lack of resources, structural deficiencies and legal gaps that lead to the absence of a diligent investigation. Sometimes, local authorities cite lack of jurisdiction to investigate crimes that are codified only in special laws and not in local penal codes.⁶⁴⁰

Judicial Mechanisms

Access to national justice is provided for in article 17 of the Constitution. Also, the constitutional reforms of 2011 related to human rights and “*amparo*” elevated to the constitutional level the human rights contained in international treaties to which Mexico is a party, and made the “*amparo*” a judicial tool to seek redress for violations of those rights.⁶⁴¹

In this sense, the UN Working Group on Business and Human Rights indicated in 2016 that the *amparo* procedure serves as a last resort for the protection of persons against human rights violations, whose objective is to restore the rights violated and oblige the relevant authority to respect these rights. A change introduced by the *Amparo* Act in 2013 states that any legal person can be considered an authority responsible for actions or omissions that adversely affect the rights of a third party. In other words, an *amparo* judgment may in principle be issued against actions or omissions of a company, although to date there is no precedent in this regard. The large number of *amparo* remedies in cases of human rights violations by companies is a clear indication that other means of dispute settlement or mediation are not delivering results, since access to courts should normally be a measure of last resort.⁶⁴²

In addition, the Working Group indicated in 2016 that the nature of the *amparo* has certain limitations. Among them, that the sentences of *amparo* in favor of people aggrieved are not fulfilled, despite such a breach being clearly illegal. Another limitation is that the *amparo* procedure is not easily accessible and usually requires the intervention of non-governmental organizations that voluntarily provide legal assistance to victims.⁶⁴³

In 2015, the OECD reported that, according to the Technical Secretariat of the Coordination Council for the Implementation of the Criminal Justice System (SETEC), the average length of trials has been reduced following the last reform of the criminal justice system initiated by the constitutional reform of 2008, shrinking from 343 days with the previous system to 132 days

resulting from the new reform. It is worth noting that in only four states the new system is fully operational for crimes at the state level (for all cases), while at the end of 2014 it began to operate partially in some districts in 21 more states.⁶⁴⁴

In general terms, according to Fundar, the existing state mechanism presents obstacles to recognize and assume the obligations of providing comprehensive reparation for victims of human rights violations. Similarly, little progress has been made in developing the necessary legislative framework, although some secondary measures have been taken, such as the adoption in 2012 of the Victims' Law. Mechanisms that can help prove the harm inflicted on victims, such as cultural and psychological expert reports or environmental assessments, have only partially been incorporated into the justice system. Federal and local governments have also demonstrated a lack of political will to recognize massive and systematic violations of human rights. In general, the Mexican Government has only acted in cases that have been tried on behalf of the victims by the Inter-American Court of Human Rights.⁶⁴⁵

In 2011, the National Human Rights Commission (CNDH) pointed out that the bodies responsible for the procurement of justice, together with the authorities that perform public security functions in the states, were the units responsible for the highest number of cases of violations against human rights defenders.⁶⁴⁶ Also, according to the Executive Commission for Attention to Victims (CEAV), in 2014 some victims expressed that public servants charged them or requested from them financial contributions as a condition to carry out their corresponding duties.⁶⁴⁷

The 2012 Law for the Protection of Human Rights Defenders and Journalists created a protection mechanism and a framework for public institutions to work together to protect defenders. However, according to members of an international civil society mission to Mexico in 2015, there were grave weaknesses in its implementation, with key bodies envisaged in the law still not operative.⁶⁴⁸ In this regard, the United Nations Committee against Torture indicated in 2012 that there was widespread impunity for crimes against human rights defenders and noted that, while most crimes were attributed to criminal organizations, in some cases there were indications that members of the security forces might be involved in them.⁶⁴⁹

Moreover, the UN Special Rapporteur on the Independence of Judges and Lawyers, on her mission to Mexico in 2011, noted that in many cases, judges, court officials and legal professionals were unable to act freely or fully independently because they were faced with threats, intimidation, harassment and other forms of undue pressure. In addition, organized crime in particular was stepping up its efforts to infiltrate and interfere with judicial institutions through the use of corruption and threats.⁶⁵⁰

Regarding violations committed by companies, in 2015, data from the Focus Group on Business and Human Rights indicated that in Mexico it is extremely difficult to obtain access to justice regarding human rights violations committed by corporate actors. Large firms often use delaying tactics that make their cases end up requiring particular attention from the judicial system, and it is common for trials to be delayed for a year or more because of companies refusing to file documents or to inform their witnesses about hearings. This practice is repeatedly seen in lower courts and even agrarian courts, where the judiciary often responds by imposing minimal fines on these economically powerful actors.⁶⁵¹

The Business Transparency International (BTI) indicated in 2015 that most of the corruption at the federal, state and municipal levels continued with impunity and that only a couple of governors accused of corruption were in jail, while most were free.⁶⁵²

On the other hand, regarding environmental crimes, BTI declared that companies that pollute are rarely sanctioned. Those that are sanctioned because the problem they created is so huge typically pay a ludicrously small amount in fines.⁶⁵³ According to 2016 data provided to the United Nations High Commissioner for Human Rights, Mexico has no specific mechanism for access to remedy in relation to climate change-related crimes.⁶⁵⁴ As for environmental crimes, though there is no specific law on this subject, the Federal Attorney General's Office for Environmental Protection in Mexico and some state prosecutors are the specialized bodies that have jurisdiction over these issues.⁶⁵⁵

Mexican law establishes that a person or group of people, or organizations interested in protecting the environment, may initiate a process called "collective action" to combat environmental damage, damage to the health of their community, or to the environment in general.⁶⁵⁶ It is a judicial process that is filed before the Tribunals of the Federation against a company or authority that violates collective rights and interests, such as the right to a healthy environment.⁶⁵⁷

In 2011, the Mexican Center of Environmental Law (CEMDA) reported that in cases where the mining concession grants rights of the owner of the concession that conflict with the rights of the landowner or the person who has possession of the land, the latter does not have a right to a hearing. Therefore, the landowner does not have the right to defend himself before a judge, which is unconstitutional.⁶⁵⁸ In addition, regarding land tenure cases without free, prior and informed consent, the UN Special Rapporteur on the Right to Food received information in 2011 that on some occasions there was no compliance with judicial resolutions, there would have been no fair compensation or delivered too late.⁶⁵⁹

Regarding members of indigenous communities involved in legal proceedings as victims, accused or witnesses, the entrenched discrimination reportedly interferes with the respect for judicial guarantees to ensure full respect of their rights to due process, such as the lack of interpreters and of intercultural training for justice operators. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions found in 2014 that in Mexico it was common to set traps to incriminate innocent individuals, and this produced discriminatory effects on indigenous people and people living in poverty.⁶⁶⁰

The UN Working Group on Forced Disappearances observed in 2011 that in states with large indigenous and rural populations, such as Guerrero, the absence of legal assistance was serious, due to the lack of bilingual public defenders. There was also a lack of translation services and suitable infrastructure.⁶⁶¹

In this sense, Services and Advices for Peace (SERPAZ) declared in 2015 that the Mexican government had passed laws to protect indigenous communities, but foreign companies did not follow them.⁶⁶²

Non-Judicial Mechanisms

In 1990, the Mexican government established the National Commission of Human Rights, which receives complaints of abuses at the federal and state levels.⁶⁶³ However, the UN Working Group on Business and Human Rights indicated in 2016 that the CNDH and State Human Rights Commissions currently do not have a mandate to deal directly with cases of human rights violations related to acts or omissions of companies. Rather, they do so indirectly by pointing out acts or omissions by public authorities in such cases. In addition, some states have issued a number of recommendations related to the conduct of enterprises.⁶⁶⁴ Also, the Working Group noted that the CNDH has fully adopted the Guiding Principles, disseminating them and making companies be aware of the importance of due diligence.⁶⁶⁵

With regard to labour disputes, the Conciliation and Arbitration Boards are responsible for settling conflicts of interest between workers and companies. The Friedrich Ebert Stiftung Institute in Mexico said in a 2013 analysis that there were very few boards that publicize the criteria adopted in plenary sessions to resolve disputes and that they are generally unknown to litigants. The most important obstacles presented by these boards for access to justice are the high cost of supplementary payments; inappropriate legal advice; unjust decisions, unrelated to law; insufficient experience of officials; slowness in the adoption of resolutions and a low number of judgements executed. They also pointed out that the excessive duration of the trials – not attributable to the worker – has favored conciliations, with the consequent loss of rights, which in turn is a factor that discourages the spontaneous fulfillment of employers' obligations to workers.⁶⁶⁶ On April 28, 2016, President Enrique Peña Nieto presented a package of constitutional and legal reforms, as a result of the Dialogues for Everyday Justice. In this package, a substantial reform is proposed to the system of the Conciliation and Arbitration Boards.⁶⁶⁷

In 2016, Business Transparency International stated that the federal and state commissions of human rights are either totally controlled by the governors or when they are independent, as is the case on the federal commission and Mexico City commission, their recommendations are rarely implemented.⁶⁶⁸

Mexico, as a member of the OECD and under the framework of the Multinational Enterprises Guidelines, offers another non-judicial mechanism through the Mexican National Contact Point (NCP), attached to the General Directorate of Foreign Investment and which provides its good offices to solve conflicts that may arise from the existence of any conduct that is allegedly inconsistent with or contrary to a recommendation contained in the Guidelines. One of the activities of the NCP is to contribute to the resolution of issues related to the alleged violations in the implementation of the Guidelines by a multinational company. Any person, organization or company that is affected can present the case before the NCP of Mexico, in order to find a solution to a problem caused by nonconformity with the Guidelines.⁶⁶⁹ According to data from the 2015 Mexican Yearbook of International Law, five specific instances have been submitted to it at the time, alleging non-compliance with existing standards on employment and labour relations, and violations of rights humans.⁶⁷⁰

Informal Justice Mechanisms

The Civilian Observation Mission that visited Mexico in 2014 reported that beneficiaries of the Federal Human Rights Protection Mechanism declared serious deficiencies in their functioning, generating a lack of confidence in their ultimate ability to protect. Because of this, women's

rights organizations, and women human rights defenders themselves feel more secure in creating their own protection systems and protocols, such as the National Network of Human Rights Defenders in Mexico (RNDDHM), a network of human rights defenders from various non-governmental organizations.⁶⁷¹

On the other hand, indigenous peoples maintain their own ways of coexisting in their communities with their own systems of security and justice, although they are limited to minor issues and the limited space of small communities, since they are not considered by the State as being fully independent communities with their own regulatory systems.⁶⁷²

Studies published by the United Nations Development Fund for Women (UNDFW) documented in 2009 the conditions of disadvantage, racism and exclusion of indigenous women before the justice of the State, and the difficulties they faced before their own authorities when resorting to justice. Thus, in different regions of Mexico, organizational processes are committed to foster and promote the rights of indigenous women to influence the institutional spaces of justice, both within and outside communities.⁶⁷³

Regional and International Mechanisms

Mexico ratified the American Convention on Human Rights (ACHR) in 1981 and recognized in 1998 the contentious jurisdiction of the Inter-American Court of Human Rights, recognizing the unappealable and final nature of its judgments, which it undertakes to comply with the provisions derived therefrom in all its terms and time limits.

However, the Supreme Court itself appeared to indicate in a judgment of 2011 that when a judgment of the Inter-American Court entailed going against a “constitutional restriction,” such restriction should prevail. This reasoning appeared to be inconsistent with the State’s obligation to comply with its duties and obligations in accordance with the human rights treaties it has ratified.⁶⁷⁴

Another complementary mechanism from the Inter-American system of human rights is the Inter-American Commission on Human Rights (IACHR), whose functions include: receiving, analyzing and investigating individual petitions; observing the situation of human rights in the Member states; conduct country visits to analyze the human rights situation; publish reports on specific topics, including any topics relevant to the issue of companies and human rights; requesting Member states to adopt precautionary measures to prevent irreparable damage to persons or to the subject of a petition before the IACHR in serious and urgent cases; filing cases before the Inter-American Court; and receiving and examining communications on alleged violations of human rights, among others.⁶⁷⁵ In addition, it has held thematic hearings on business and human rights and related issues.

The United Nations system has two main protection mechanisms: Treaty bodies and Special Procedures, which may be Special Rapporteurs or Working Groups by theme or by country. It is necessary to comply with a series of requirements to be able to send communications to both mechanisms of protection. These requirements include for example, the identification of the complainants and/or victims, and a summary of the facts, place and time.⁶⁷⁶

In addition, Treaty bodies require action before the courts of the country and ratification of the treaty in question or approval of the mechanism that makes a complaint possible. Mexico has accepted all the individual complaint mechanisms of these treaties, that is, for matters of torture, civil and political rights, economic, social and cultural rights, enforced disappearances, discrimination against women, racial discrimination, migrant workers, children and the rights of persons with disabilities.⁶⁷⁷ The cases are reviewed by Committees of experts corresponding to each treaty, acting as a quasi-judicial complaint mechanism where the conclusions and recommendations by the Committees are not legally binding, but do have political and moral weight that guide states in compensating the damages when a violation of human rights has occurred. To date, six cases have been filed against Mexico under this international mechanism, in matters of civil and political rights and torture.⁶⁷⁸

Beyond individual cases of complaints, the Committees also issue conclusions and recommendations to state parties to the respective treaties, which guide the implementation by states of their human rights obligations. Another relevant mechanism from the United Nations human rights system is the Special Procedures, which drafts thematic reports on the interpretation of human rights standards, visits to countries and receives and issues communications to states on alleged violations of human rights.⁶⁷⁹

On the other hand, the Compliance Advisor Ombudsman (CAO) is the independent resource mechanism for projects supported by private sector World Bank Group bodies: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). IFC and MIGA promote poverty reduction through private sector development in countries around the world. Individuals who feel they may be affected by an IFC or MIGA project may ask the CAO to address their concerns. The CAO works with the main parties involved in a project to find real solutions that improve concrete social and environmental outcomes. For example, according to its 2014 Report, the CAO of Mexico received a complaint from an employee of Harmon Hall regarding unfair treatment, unfair dismissal, and retained earnings. During the course of the evaluation, the company expressed its preference for resolving this complaint through its internal complaint mechanism. The parties reached an agreement through this process to their mutual satisfaction.⁶⁸⁰

In 2012, the State Commission for Human Rights of Nuevo León mentioned the UN Guiding Principles on Business and Human Rights in a recommendation for a murder case at an establishment of the Casino Royale Company because of the conditions under which the authorities and Casino Royale were linked to the human rights violations that were investigated.

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Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **April 2016, Proceso:** Around one hundred Tarahumaras, accompanied by representatives of civil organizations and priests of the parish of this population, closed the Barrancas del Cobre airport in Creel, Bocoyna municipality to demand that state authorities stop simulating compliance with the sentence issued by the Eighth Court

District for a year and a half, which ordered the reparation of the damage caused to the community of San Elías Repechique Forest by the construction of the airfield without consulting them.⁶⁸²

- **September 2015, *El Imparcial*:** 1,166 Zapotec of the Isthmus of Tehuantepec filed a petition for *amparo* before the Seventh District Court of the State of Oaxaca "in order to protect rights that have been violated by federal, state and municipal authorities when approving the construction and operation of the Eólica del Sur company energy megaproject". The *amparo* was granted by the federal judge, "who issued a suspension order where it leaves without effect authorizations of change of land use to the wind company."⁶⁸³
- **December 2013 - March 2014, Compliance Advisor Office Mexico (CAO):** CAO received six complaints regarding labour issues at Harmon Hall. Complaints were filed by teachers and employees of the company alleging a number of labour-related issues, including employment rights, compensation and unfair treatment of workers. Concerns were also raised regarding the implementation of agreed remedies in the first case the CAO received on Harmon Hall. In all these cases, the company expressed its preference for handling complaints through its internal complaint mechanism. Cases are still under evaluation.⁶⁸⁴

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

- **State Commission for Human Rights of Nuevo León, 2012:** The Commission presented a project to create a network in which industrial chambers and companies voluntarily participate through the submission of a letter from the executive director or one of the senior officials of the company, to submit annually a detailed report in which they present the results obtained from the implementation of the Guiding Principles in their projects and business operations. Thus, the participating companies would be presenting an overall assessment of the impact of their operations on human rights, and the specific results of all new projects in which such an assessment has been carried out, an internal human rights policy, the existing mechanisms to remedy or mitigate negative impacts arising as a result of their operations, and all actions aimed at disseminating and implementing the Guiding Principles in their spheres of influence and control.⁶⁸⁵

Stakeholder Recommendations

Priority recommendations letter from civil society organizations to the UN Working Group on Business and Human Rights:⁶⁸⁶

- To reiterate the urgent need to respond to and investigate allegations of human rights violations linked to enterprises and to strengthen effective inspection and sanction

procedures for all authorities at the national and state levels, especially large-scale and extractive industry projects, to prevent future accidents with massive human rights impacts. Such processes should be independent, participatory, transparent and inclusive of all stakeholders, especially of potentially affected communities.

- Ensure full access to justice for victims of human rights violations caused by business activities through judicial and non-judicial mechanisms, and adopt measures to ensure the investigation and punishment of the actors involved, as well as compliance with the decisions and judgements, and repairing and remedying in a comprehensive manner.
- The judiciary must apply the *amparo* law in the most guaranteeing way to protect people in situations of vulnerability in relation to business activities and recognize the possible responsibility of these actors.
- Evaluate and implement the process of effective access to adequate redress and remediation, with the intention of strengthening judicial and non-judicial mechanisms, and identifying and addressing corporate-related human rights abuses.
- Highlight the importance of companies and all municipal, state and federal authorities to comply with the recommendations of the national and state human rights commissions and report on the progress made in this regard.
- Insist on the use of measures to strengthen compliance and non-repetition of human rights violations, including the creation of mechanisms to monitor compliance with sentences and sanctions, that takes into account the participation of concerned and affected communities and peoples; to impose consequences in case of non-compliance, both for moral and responsible persons, and to establish an independent database containing information on past complaints, closed cases and pending resolution cases involving companies.

UNICEF, Recommendations for the National Program on Business and Human Rights, Mexico 2016⁶⁸⁷:

- Train and inform customers, suppliers, service providers and other stakeholders about the available channels to report incidences. Phone hotlines and online channels for reporting child abuse incidences can be effective.
- Ensure that procedures are in place that can be implemented if an abuse or violation is reported, including contacting and assisting the relevant authorities to investigate the allegation.
- Ensure that grievance mechanisms are accessible to children. If a child reports an allegation to a company staff member, the child should be shown that she or he is taken seriously. Children should be interviewed by a professionally trained individual, and any investigation should be conducted by a relevant authority outside the company.
- Ensure that workers throughout hotel supply chains have access to an effective grievance mechanism.
- Establish guidance for how the industry should respond when child labour is discovered in the supply chain, ensuring that corrective actions and remedies provided are in line with the best interests of the children involved. Actions could include return of the child to school, payment of salary when the child is returned to school (or transfer of

employment to family member) and a guarantee of employment once education has been completed.

Sector Profiles

Industry-specific human rights risks

Extractives

Operating Environment	
Sector contribution to GDP (%)	<ul style="list-style-type: none"> • Mining (2014): 4%.⁶⁸⁸ • Extraction of oil and gas (2014): 6%.⁶⁸⁹
Sector contribution to employment (%)	<ul style="list-style-type: none"> • Mining-metallurgical sector (2015) 352,666 direct jobs and more than 1.6 million indirect jobs.⁶⁹⁰
Major products	<ul style="list-style-type: none"> • Natural gas, petroleum, coal, silver, gold, copper, bismuth, fluorite, celestite, wollastonite, cadmium, molybdenum, lead, zinc, diatomite, salt, barite, graphite, gypsum.
Relevant laws	<ul style="list-style-type: none"> • Tax Coordination Law • Federal Rights Law • Hydrocarbon Revenue Act • Law of the Mexican Petroleum Fund for Stabilization and Development (Mexican Petroleum Fund) • Law of Mexican Petroleum

Mexico is the 6th largest crude producer and the 10th largest exporter in the world, although exports have declined as resources deplete and domestic consumption increases. Mexico is also a major producer of natural gas. According to the 2013 Resource Governance Index, oil production has been the most important extractive activity in Mexico since the 1970s, and oil generates 33% of government revenues.⁶⁹¹

According to 2014 data from the National Institute of Statistics and Geography (INEGI), in Mexico there were 3,030 economic units in the extractive sector, 2,874 of which were mining (extraction, exploitation or benefit of metallic and non-metallic minerals) and 64 companies, whether of *Petróleos Mexicanos* (Pemex) or private companies associated with the state productive company, engaged in the exploitation of oil and gas. These figures do not include electricity distribution networks, pipelines, roads and transportation, storage centers, administrative offices, or sales centers.⁶⁹² According to data from the Directorate of Documentary Control of the Public Mining Registry of the Ministry of Economy, large mining has a share of over 95% in the extraction of all the most important minerals in Mexico.⁶⁹³

At the national level, the extraction of minerals and hydrocarbons is distributed differently in the federative entities. The Gulf of Mexico states, Campeche, Chiapas, Tabasco, Tamaulipas and Veracruz are the main producers of hydrocarbons at the national level: they jointly extract 90% of the resources. According to INEGI's economic census of 2014, total oil and gas production resulted in 1 trillion 36 thousand 356 million Mexican pesos.⁶⁹⁴

According to the Extractive Industry Transparency Initiative (EITI), unlike the hydrocarbon sector, Mexico's mineral sector has long been open to private investment. In 2012, according to the Secretary of Economy, which administers the sector, 287 companies were involved in 857 projects in Mexico that received direct foreign investment. The majority of these were headquartered in Canada (205) or in the United States of America (46).⁶⁹⁵

According to several civil society organizations in Mexico, negative impacts on the environment, access to land and property, food and a decent life prevail in the mining sector. There are also documented cases where there is intimidation and threats against the opponents of this extractive activity. In addition, according to reports, mining legislation opens the door for companies to invest in Mexican territory without considering environmental damages, violations of labour rights, collective rights of indigenous peoples and, in general, human rights.

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Indigenous Communities

According to the Civil Society Focus Group on Business and Human Rights, until 2014 the Mexican government had granted 29,000 mining concessions, many of them in areas dedicated to environmental conservation and inhabited by indigenous communities. In the case of the Wixarika indigenous people, the Mexican State has refused to revoke the mining concessions granted, even though they directly affect their right to land.⁶⁹⁷

During his visit in 2011, the UN Special Rapporteur on the Right to Food heard testimony from people in different regions of the country who were at risk of land expropriation or resettlement because of major development mining projects, such as at the Cerro de San Pedro in San Luis Potosí. Further, he urged Mexico to provide, without delay, a comprehensive review of the procedures established to ensure that large-scale development projects comply with existing international standards – which prohibit arbitrary forced displacement – and to ensure compliance with the ILO Convention No. 169 on Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples.⁶⁹⁸

A Segob study of 2014 indicated that the people most threatened by the extractive industry were the Paipái community, located in the north of Baja California. From the 68,326 hectares that comprise its territory, 66,360 are concessioned, representing 97.1% of its soil. The companies with more projects in the entity are US Cotton & Western Mining and Canadian Continental Gold.⁶⁹⁹

Human Rights Defenders

The IACHR learned in 2015 of the arrests of indigenous leaders in Guerrero, Oaxaca, Chiapas, Quintana Roo, Sonora, Chihuahua and Puebla, among others, in connection with their activities in opposition to various megaprojects.⁷⁰⁰

In 2016, according to data from the Observatory for the Protection of Human Rights Defenders on the State of Mexico, there was an increasing number of repressive situations by municipal authorities against natural resource defenders.⁷⁰¹

Global Witness reported in 2015 the murder of four defenders of environmental and land rights, due to their efforts and opposition to hydroelectric projects.⁷⁰²

Forced Labour

According to the the 2016 Global Slavery Index, forced labour was also prevalent in the mining sector, with the coal and silver industries accounting for the poor labour conditions of men, women and children in Mexico.⁷⁰³

Informal Sector

Part of mining exploitation is presumed to be associated with organized crime groups and the informal sector. For example, in 2014 the Federal Environmental Protection Agency (Profepa) reported that it closed two mines and four storage and crushing yards of clandestine material in the municipality of Aguililla in Michoacán because "the sites did not have the authorization regarding Land Use Change in Forests and Environmental Impact, issued by the Secretary of Environment and Natural Resources (SEMARNAT).⁷⁰⁴

Land Acquisition and Access

In many cases, mining concessions are connected to ejidal lands or communal goods, which are collective property of the populations that inhabit the territories where the minerals are found.⁷⁰⁵

In 2016, the International Work Group for Indigenous Affairs (IWGIA) reported that the Mexican State approved the "Surface Occupation Guide" issued by the Ministry of Economy, which according to anti-spoil organizations advocating against mining companies, promotes the dispossession of the land under the argument of promoting the development of the mining sector.⁷⁰⁶

The NGO PODER documented in 2015 the existence of 440 mining concessions, operated by Halliburton and Diavaz in the State of Puebla. Sixty percent of the mining concessions are reportedly in the hands of Almaden Minerals Company.⁷⁰⁷

According to the Mexican Center for Environmental Law, legal provisions granting preferential use of land to mining activities violate both the Mexican Constitution and the international human rights treaties ratified by Mexico.⁷⁰⁸

In this sense, official and public data updated until January 4, 2016, on the website of the Secretary of Economy (SE) and the Mexican Geological Survey (MGS), reported that the largest Canadian mining companies were established in the municipality of San Miguel Totolapan, where since only 2013, more than 10 communities of that municipality have reportedly emigrated to neighboring municipalities in a massive exodus because of forced displacements and deaths.⁷⁰⁹

Prior, free and informed consent

Peace Brigades International stated in 2011 that the fact that Mexico's Mining Law does not establish consultation mechanisms for communities affected by mining operations violates international treaties. Rural communities living in territories with high mineral content say that they are not adequately consulted on these projects and that they do not receive economic compensation proportional to the profits obtained by the company, nor the impact that extraction has on their lifestyle. In addition, if the affected communities oppose the mining projects, they often face episodes of violence.⁷¹⁰

During the Human Rights High Commissioner's visit to Mexico in 2015, NGOs reported that in relation to the companies involved in megaprojects, they were not adequately consulting the indigenous peoples whose lands and resources they planned to exploit.⁷¹¹

In 2016, a Coalition of Civil Society Organizations of Mexico pointed out that the Mining Law does not comply with international standards relative to the right to consultation and has been used on several occasions for the dispossession of communities. Currently, the biggest problem for indigenous peoples and communities is the so-called new mining or open pit mining, characterized by the use of technologies that allow in a short time and at low cost to move millions of tons of surface to extract minerals from the subsoil, using large amounts of water and rubbing chemicals, cyanide or mercury leaching, causing significant adverse impacts on the environment and affecting the rights of indigenous peoples and communities.⁷¹²

In terms of fracking, according to PODER data, in 2013 there were 233 wells that were used in the Sierra Norte without the population being informed about whether they were unconventional hydrocarbon deposits or not and consequently about the risks and negative impacts it implied for their territories, their environment and their lives.⁷¹³

Corruption

The 2013 Resource Governance Index indicated that corruption posed a high risk for Mexico's extractive sector. The oil and mining industries experience low transparency, ineffective audit processes, and weak legal frameworks in their contracting and reporting procedures.⁷¹⁴

National audit organizations have the power to review all government accounts, including those of Petróleos Mexicanos (Pemex), the fourth largest oil company in the world. In practice, however, auditors lack the effective capacity to oversee the oil sector and only review a small portion of public funds.⁷¹⁵

Public Procurement

In 2016, the Business Anti-Corruption Portal reported that Pemex had been subject to several high-level corruption cases. For instance, in 2011, fourteen company executives received a fine of US \$427 million for irregularities in the process of awarding contracts to companies that did not meet the established bidding requirements.⁷¹⁶

In legal terms, Pemex can award contracts through a direct non-competitive allocation process, thus contributing to non-transparent practices in the industry.⁷¹⁷ The Revenue Wacht Institute reported in 2013 that prior to contracts being awarded by Pemex, there was only partial information on its subcontracting policies. Information about selection processes is not always available and service contracts are not published.⁷¹⁸

Revenue Sharing

Regarding tax matters, the NGO PODER reported in 2015 that there were favourable conditions for the payment of taxes by the hydrocarbons and mining industry. In the case of mining, it is assumed that entrepreneurs have a decision-making capacity over the destination of 80% of their tax payments. In contrast, peasants do not have the ability to track the use of the taxes that these companies pay.⁷¹⁹ Since the energy reform, this situation has been aggravated because after one hundred years of being exempt from income tax, ejidatarios, comuneros, farmers and agricultural producers whose lands have been expropriated, "temporarily Occupied" or rented to oil or electric companies must pay the income tax, when the income they receive for it is higher than 200 minimum wages.⁷²⁰

Social Conflict

The Inter-American Commission on Human Rights (IACHR) observed in 2015 that confrontation with those who proposed or supported natural resources extraction projects led to situations of violence. Some social leaders who opposed mining projects, timber extraction plans, and the construction of dams and highways have been subject to threats, harassment, attacks, torture and assassinations.

Revolution 3.0 reported in 2015 that more than 40% of the national territory had been concessioned and 418 points of conflict had been registered between entrepreneurs and inhabitants of the localities related to the ownership of the concessioned lands, where at least 210 of them were destined to mining projects.⁷²¹

Hydrocarbon Industry

Since 1989, the Mexican hydrocarbon industry has undergone a series of transformations that divided the activities of Petróleos Mexicanos (Pemex) as a horizontally integrated company. This allowed private initiatives to be involved in strategic nodes of the distribution and transportation of gas, petrochemicals, financial services and refining. In a period of 24 years and until 2013, Pemex built a business structure made up of 65 companies engaged in the exploitation of oil and natural gas. Of the 65 companies, 16 were formed jointly or through partnerships with 14 privately owned companies such as Gas Natural SDG, Repsol, Semptra Energy, Schlumberger Limited, Mexichem, BNP Paribas, Muitsui, and Shell, among others.⁷²²

Participation and Access to Information

In December 2013, a constitutional energy reform was approved in order to eliminate the exclusivity of the Mexican State in the exploration and exploitation of oil and other hydrocarbons and to incorporate the national and transnational private sector into these activities, as well as to other activities in the electricity sector. A coalition of civil society organizations said in 2016 that this process of approving constitutional and legal reform in energy matters was carried out violating various rights of the Mexican population. First, the information provided by the federal government for the promotion and justification of the reform was insufficient and deficient in terms of availability, quality and accessibility for the population. Second, they reported that citizens were not allowed to participate in deciding on this reform that would have consequences for all Mexicans. In this way, they pointed out that the right of access to information was specifically violated.⁷²³

Social Conflict

According to a coalition of civil society organizations, the support of some local authorities to extractive projects that damage access to communities' natural resources and negatively impact their livelihoods, health and the environment, together with the lack of a consultative process and due diligence, often escalates into an inter-community conflict that complicates the execution of the project and the planned business activity and has consequential negative impacts on communities.⁷²⁴

Wind Power

In southern Mexican state of Oaxaca, , the Isthmus of Tehuantepec is located, benefiting from being in one of the regions with the highest wind potential worldwide, and attractive for foreign companies in the energy sector that seek to enter emerging markets. The exploitation of wind resources in this area is relatively recent. In 2004, the Global Environment Facility (GEF) granted economic support to Mexico, with no obligation to repay, to carry out a project called the Action Plan to Eliminate Barriers for Wind Generation Development in Mexico. Within this framework,

since 2006 tenders for the construction of wind farms have been awarded to foreign companies, mainly of Spanish origin. At present, 24 wind farms operate in the Isthmus of Tehuantepec.⁷²⁵

Human Rights Defenders

Between May 2014 and June 2015, the Mexican Center for Environmental Law (CEMDA) recorded 109 cases of attacks against environmental defenders in Mexico, placing Sonora as the state with the highest number of attacks at 16 reported attacks, and Oaxaca as the second, registering 13 cases. Eight of these attacks were linked to actions of the victims in questioning wind power mega-projects.⁷²⁶

In the context of the implementation of large-scale wind projects in the Isthmus of Tehuantepec, violent episodes have occurred, with a significant increase in human rights violations, including threats, intimidation, harassment, physical assault, surveillance and murder against community defenders. In 2015, Peace Brigades International noted the increased risk for human rights defenders and community leaders working in the region within this context.⁷²⁷

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **May 2014, Red TDTD:** In Unión Hidalgo, Oaxaca, the population, mainly indigenous Zapotec, have suffered from threats, intimidation, surveillance and physical aggression due to their demands to the wind company Demex, a subsidiary of Spain's Renovalia Energy, for dialogue to address environmental damage and human rights violations suffered as a result of their lease agreements with this company. The defenders have alleged that these aggressions were carried out by personnel hired by the company.⁷²⁸
- **May 2014, Red TDTD:** In "La Sierrita" Ejido where "La Platosa" mining project of Excellon Resources Inc. is located, defenders of the organization ProDESC were harassed and defamed for their work in defending labour rights as well as those of the mineral resources owned by ejidatarios.⁷²⁹
- **October 2014, Peace Brigades International:** An Observation Mission denounced the non-fulfillment of the previous criterion of consultation on the development of the power generation project, proposed by the company Energía Eólica del Sur. In addition, there was evidence of noncompliance with the requirement of free consultation, resulting in at least 30 attacks against members of the community who expressed opinions contrary to the construction of the proposed wind farm, and at least in one case, a government official was reportedly threatened.⁷³⁰
- **August 2015, PODER:** reported a spill of 40,000 cubic meters of copper sulphate over the Bacánuchi and Sonora rivers from the Buenavista del Cobre mine, a subsidiary of Grupo México in Sonora. The company incurred in 55 irregularities, was negligent and obtained economic benefits derived from lowering its costs for evading compliance with environmental standards in the management of leachate, hazardous waste and polluting emissions to the atmosphere.⁷³¹

Stakeholder Recommendations

Priority recommendations letter from civil society to the UN Working Group on Business and Human Rights: ⁷³²

- To reiterate to companies, including their value chains, that the obligation to respect human rights implies respect for the rule of law, the Constitution and international treaties. This includes administrative and judicial decisions that are imposed on them. Therefore, all companies should:
 - Make a public acknowledgment that companies with state participation have a special responsibility to respect human rights as established by the Guiding Principles. In this sense, for example, the Federal Electricity Commission (CFE) must demonstrate the measures taken to ensure that its actions respect national and international human rights standards, including the right to free, prior and informed consultation of good faith, culturally adequate for indigenous and rural communities that may be affected by power generation projects (including hydroelectric), infrastructure and/or other projects.
 - Show actions to establish a human rights policy and make public its strategies to ensure due diligence, in accordance with the Guiding Principles and international standards.

Inter-American Commission on Human Rights (IACHR):

- Conduct a participatory evaluation with affected communities and civil society on the process of the first consultation that was organized after the energy reform in Oaxaca (2014-15). ⁷³³
- Study the effects of genetically modified maize production, as well as the impact on the environment, and ensure that it does not affect the biocultural heritage of affected peoples and communities. ⁷³⁴

Agriculture

Operating Environment	
Sector contribution to GDP (%) ⁷³⁵	3,5% (2015)
Sector Contribution to employment (%) ⁷³⁶	13, 4% (2015)
Main products	<ul style="list-style-type: none"> • corn, wheat, soybeans, rice, beans, cotton, coffee, fruit, tomatoes; meat, poultry, dairy products; wood products
Relevant laws	<ul style="list-style-type: none"> • Agrarian Law • Goods Nationalization Act • Expropriation Law • Federal Agrarian Reform Law • Federal Water Law • Integral Rural Development Program (PIDER) • National Agricultural Plan • Sustainable Rural Development Act

According to data from the Food and Agriculture Organization of the United Nations (FAO), 50% of the total value of agricultural production and food production of animal origin is concentrated in seven federal states: Jalisco, Veracruz, Sinaloa, Michoacán, Sonora, Chiapas and Puebla. According to reports, the low growth of agriculture and its low productivity are cause for concern.⁷³⁷

Mexico has a heterogeneous production structure, with production systems that differ in information, technology, access to markets and generation of income. In that sense, in the Diagnosis of the Rural and Fishing Sector of Mexico of 2012, six strata of Rural Economic Units (REU) were distinguished in the different geographic regions, according to their level of sales, thus forming a mosaic in the national territory. The first two strata are subsistence family units, one with no relation to the market (22.4% of the total) and the second with market linkage (50.6%). The third is a group in transition (8.3%). The remaining three are business units, with "fragile profitability" (9.9%), "booming" (8.4%) and "dynamic" entrepreneurs (0.3% of the total). The concentration is compounded by inequality: only two groups of entrepreneurial REUs, counting for 8.7% of the total, accounted for 74.2% of the sector's sales.⁷³⁸

Indigenous Peoples

According to the latest census in the year 2000, 53% of the indigenous-speaking population was employed in low-skilled activities, either as employees, service sector workers - construction workers - or as day labourers, as a result of impediments to real access to education, given that they integrate the labour market from an early age.⁷³⁹

According to the National Survey of Agricultural Labourers (ENJO) 2009⁷⁴⁰, there were 2,040,414 agricultural labourers, of which 40% were indigenous, equating to 816,166 individuals.⁷⁴¹

On the other hand, while the general population received in 2014 an income of \$1,961 pesos per month, indigenous language speakers barely received \$886 pesos per month (CONEVAL, 2014). Many of these workers were agricultural labourers, without land and who had to travel long distances. They are used to living and working in very disadvantageous conditions.⁷⁴²

The *Los Angeles Times* reported in 2014 that indigenous farm workers in Mexico's poorest regions are driven by bus through hundreds of miles to large agricultural areas where they work six days a week for an equivalent payment of \$8 to \$12 US dollars per day.⁷⁴³

Women

FAO reported in 2012 that 25.6% of Rural Economic Units (REU) were headed by women. The female leadership tends to be more prominent in the poorest stratum but becomes less so moving upwards in strata.⁷⁴⁴

Likewise, in the strata of self-subsiding households, there is a greater participation of women, as well as a relatively greater presence of people who speak some indigenous language.⁷⁴⁵

The contribution of women to agricultural and rural economic activities in Mexico is diverse, although not always fully recorded in the available statistics. As part of the economically active population, a proportion of women contribute to REUs as unpaid family labourers.⁷⁴⁶

In 2014, Oxfam Mexico informed that more than the 50% of the food consumed in Mexico was produced by women but only 10 % of women has access to the property of the land.⁷⁴⁷

Child Labour

According to the World Bank, there are almost twice as many children in the countryside that work than in the city. Also, more of them work in states like Guerrero, in the South, (where 12% of 6 to 13 years-old children work), than in Chihuahua, in the North (where only 1.4% of children work). The older the child becomes, the more likely he or she is to drop out of school and start working.⁷⁴⁸

In 2012, UNICEF reported that 44% of farming households had at least one child working.⁷⁴⁹ According to the ILO, in 2014 agriculture was the second sector in terms of employed child population, with more presence of boys than girls.⁷⁵⁰

Also in 2014, the ILO declared that working as agricultural labourers in rural areas was considered a dangerous form of work that exposed children to heavy work, in extreme climate conditions, with strenuous work days, using dangerous tools, exposing them to biological and chemical risks, as well as situations of violence and mistreatment, among others. It was

estimated that 711,688 children and adolescents from 5 to 17 years of agricultural labour families work. Of these, 443,516 do so as agricultural labourers and 59,970 children work on farms.⁷⁵¹

Forced Labour

The US Department of State reported in 2014 that Mexican men, women, and children were exploited in forced labour in agriculture.⁷⁵² According to the 2015 Global Slavery Index, low, semi- and unskilled domestic and foreign labourers were at risk of forced labour within the agricultural sector in 18 states, particularly in maize harvesting, tomato fields, tomato processing plants and other plantations such as chilli pepper, cucumber and eggplant.⁷⁵³

Working Conditions

In 2012, 88.2% of the Rural Economic Units (REU) was engaged in agricultural activity, either as a single activity or in combination with other productive activities. However, the FAO noted that the agricultural sector had lost its preponderance in the generation of employment in rural areas. On the one hand, the population engaged in primary activities decreased by 8.9% between 2005 and 2010, while employment in non-agricultural activities increased by 7.9%. In rural areas, in 2010, 59.1% of the paid workforce received less than two minimum wages. In rural areas, this proportion was higher, reaching 64.9% of the total, while in semi-urban areas this figure was 51.8%. It should be noted that 18.3% of the rural population was not earning an income.⁷⁵⁴

The 76.9% of the REUs in the lower tier earns net monetary income below the minimum welfare line. The main activity of 75.8% of the REUs in this stratum is agriculture. These REUs use their land for the production of basic crops such as maize and beans, given that they are the products that form the basis of their food. The average production they obtain is lower compared to the national average and, in many cases, insufficient to cover the total needs of household consumption and therefore do not have surpluses to take to the market.⁷⁵⁵

The 25.6% of REUs managers sell their workforce to complement family income, and for many others it is difficult to get a job.⁷⁵⁶

On the other hand, the intermediate stratum, which represents 8.3% of REUs, earns sufficient income to cover the basic needs of a family, but faces problems in maintaining and improving the profitability of small business, because it is vulnerable to falls in demand, low prices, adverse weather, and illnesses that may affect any member of the family. Also, in this stratum, 9.3% of the leaders of the REU speak some indigenous language.⁷⁵⁷

Among the population registered in 2009 by the National Survey of Agricultural Labourers (ENJO), 90% of the day labourers had no formal contract, 48.3% earned an income of three minimum wages, 37% earned two minimum wages and 54% were exposed to agrochemical products on a daily basis.⁷⁵⁸

The *Los Angeles Times* reported in 2014 that many farmworkers were basically trapped for months in rat-infested fields, often without beds and sometimes without bathrooms or without a reliable supply of water. Some butlers in the camps illegally retained workers' wages to prevent them from leaving during harvesting periods. Day labourers often became deeply indebted

because they paid inflated prices for basic items, which are sold in the stores of the companies for which they work.⁷⁵⁹

Environment

One problem which is currently affecting rural areas in Mexico is the environmental degradation caused by agricultural, livestock, aquaculture and fisheries production systems, which are reported to be carried out in a non-sustainable way. At the national level, the most fertile soils cover 29% of the territory and it is estimated that, altogether, 45% presents some type of degradation.

Food production faces the reality of climate change, to which agricultural production also contributes. According to the Special Climate Change Program (PECC) 2014-2018, the category of agriculture, forest and other land uses is the second most important source of GHG emissions into the atmosphere in Mexico, representing about 19% of total emissions.⁷⁶⁰

On the other hand, according to Mexico's Climate Change Financing Group, poorer peasants face a greater risk at the hands of the climate phenomenon, given that they do not have irrigation systems, but depend on regular rainfall patterns.⁷⁶¹

Indeed, poverty and extreme poverty are much more pronounced in rural areas, making them more vulnerable to the impacts of climate change, especially small-scale temporary producers. In this scenario, rural women are impacted differently than men, implying that their needs must be addressed in a differentiated way in climate policies. For example, the current system does not consider the inequitable distribution on farmland (20% owned by women), nor the productive burdens associated with reproductive responsibilities.⁷⁶²

Food

According to Greenpeace, in the last decades the use of pesticides (insecticides, fungicides and herbicides) and synthetic fertilizers has increased, fomenting corporate control of the entire food system, beginning with a concentration of the seeds and pesticides market in a few companies and leading to the near extermination of millenarian practices of healthy food production for people and the environment, as pesticides are used without any regulation, monitoring, or necessary equipment to protect against its toxicity.⁷⁶³

Water

The OECD reported that, with respect to the management of water resources by agriculture, in 2013 the sector accounted for more than three-quarters of the water extraction in Mexico. In addition, about 15% of the total extraction was carried out from unsustainable sources, while the efficiency in the use of the water remained very low.⁷⁶⁴ In this sense, the Special Rapporteur on the Right to Food stated in 2011 that the overexploitation of key aquifers in the country is fuelled by Tarifa 9, an important subsidy on electricity use for agriculture (as groundwater is mainly pumped from wells) that leads to farmers paying only 23% of the cost of pumping and utilizing.⁷⁶⁵

Prior, free and informed consent

The Mexican Business and Human Rights Focus Group, in coordination with the NGO PODER, reported in 2014 that the Mexican government had granted permits without adequate scientific evidence, consequently facilitating the planting and cultivation of genetically modified organisms. Genetically modified maize of the company Monsanto would have reportedly been distributed without having previously consulted people living in plantations areas.⁷⁶⁶

Corruption and Public Procurement

Ecoosfera reported in 2015 that the strategies of some transgenic multinational corporations (Monsanto, Pioneer, Cargill, Dow AgroSciences, Syngenta) to try to control the national market allegedly include intense lobbying in the Executive and Legislative branches of the government, the practice of "revolving doors" (rotation of senior positions between the public sector and the private sector) to ensure decision-making in their favour and the formation of alliances between companies and some members of the scientific community, such as the Pro Transgenics Alliance.

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Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **September 2016, *ContraLínea*:** In the State of Sinaloa, the Bimbo Group operates under a model of industrial agriculture that puts health at risk by using 30 highly toxic pesticides banned in other countries, which are applied indiscriminately, and do not remain in the zone but rather filter into surrounding water bodies affecting essential natural resources such as water and surrounding communities.⁷⁶⁸
- **April 2016, *Expreso Campeche*:** Members of the Semillas Much'Kanan I'inaj collective, integrated by indigenous people, farmers, beekeepers and *ejidatarios* of the Mayan people of the west of Bacalar, filed an *amparo* against the permission granted by SAGARPA (Secretary of Agriculture, Livestock, Rural Development, Fisheries and Food) to the company Monsanto to plant commercial GM soy, claiming that the said permit was issued without respecting the binding nature that, according to the law, must have the biosafety assurance of Conabio and Conap, who recommended not to authorize such planting due to the risks it poses to human health and the environment.⁷⁶⁹
- **July 2015, *Americas Program*:** Exploited agricultural workers from San Quintin Valley staged mass protests against their abusive treatment and conditions.⁷⁷⁰
- **March 2015, *La Jornada*:** 200 farm workers from the Tarahumara mountains were rescued. They were victims of exploitation and were recruited to work for the company Corporativo El Cerezo Sociedad Agricola. These people, including children and women, were taken to rural areas of Comondú municipality in Baja California Sur to work in inhumane conditions, were exposed to illness, and were even illegally detained.⁷⁷¹

Region Profiles

Areas where human rights conditions or impacts differ markedly in nature or scale from the national profile.

Oaxaca, Guerrero y Chiapas

Human Rights Defenders

The Mexican Commission for the Defense and Promotion of Human Rights reported in 2014 that a Civil Observation Mission identified Guerrero and Oaxaca as the entities in which the greatest number of attacks on human rights defenders had been recorded.⁷⁷²

The IACHR learned in 2015 of the arrests of indigenous leaders in Guerrero, Oaxaca, Chiapas, Quintana Roo, Sonora, Chihuahua and Puebla, among others, in connection with their activities in opposition to various megaprojects.⁷⁷³

Agricultural migrant workers

A significant part of agricultural day labourers are migrant workers, most of whom migrate from southern states to the north, following harvest seasons. Business Transparency International reported in 2016 that at least one-fifth of agricultural day labourers are migrant workers from the poorer states of Guerrero, Chiapas and Oaxaca, or Puebla, Hidalgo, and Veracruz, in search of employment in the richest agricultural regions of the north of the country, especially in Sinaloa and Sonora.⁷⁷⁴

Informal Sector

The UNDP 2016 Human Development Report informed that five of the nine states in the southeast region had the lowest levels of formal work in the country and five of them were significantly far from receiving public spending on human development or decentralized federal government spending in accordance with its developmental needs. The degree of access to social security in these states does not exceed 25% of its employed population, which differs from 50-75% of the entities in the north of the country.⁷⁷⁵

Consultores Internacionales (CI) reported in 2016 that in states like Guerrero, Oaxaca, and Chiapas, informality reaches critical levels, that is, 8 out of 10 establishments or activities have no registration, do not pay taxes and do not generate jobs including benefits or social security. One reason for these high levels of informality is the entry of large companies, which affect medium and small enterprises, leading to closures and shifts towards informality.⁷⁷⁶

Mexico City⁷⁷⁷

Human Rights Defenders

A Civil Observation Mission in 2014 noted that the Federal District was one of the destinations for displaced human rights defenders.⁷⁷⁸

Informal Sector

In 2016, UNDP noted that labour markets in the Federal District and entities in the north of the country were more conducive to formality, associated with access to social security institutions, than the south and southeastern states. The formal sector is composed mainly of medium or large establishments, with high productivity and high remuneration, while the informal sector is characterized by small, unproductive production units with low wages. The average salary in the formal sector is 70% higher than that of the informal sector and the degree of access to social security in these states ranges from 50% to 75%.⁷⁷⁹

Air Pollution

Transportation accounts for almost half of Mexico City's air pollution, which according to government data, kills as many as 2,700 people every year. While low-polluting fuel is already sold in Mexico City, it has yet to be made available nationwide by Pemex, the state-owned oil company.⁷⁸⁰

Bloomberg reported in 2016 that millions of people in Mexico City were suffering the worst air quality in 14 years, as cars and trucks add to the pollution with their outdated emissions controls and Mexico's weaker pollution controls.⁷⁸¹

Environment Impact Assessment

Business Transparency International reported in 2016 that the new airport in Mexico City did not undergo an environmental impact assessment.⁷⁸²

Security

The American Chamber of Commerce of Mexico (AmCham/Mexico) reported in 2016 that Mexico City was among the 10 entities in Mexico with most security challenges, where companies faced external threats to operate in the country, such as corrupt authorities, extortion, impunity, kidnappings and violence.⁷⁸³

Access to Remedy: Non-judicials Mechanisms

In 2016, Business Transparency International stated that the federal and state commissions of human rights are either totally controlled by the governors or when they are independent, as is the case on the federal and Mexico City levels, their recommendations are almost never implemented.⁷⁸⁴

Chiapas

Water

According to Conservation International, Chiapas, the southernmost state in Mexico, provides 30% of the country's fresh water. But poor production practices and deforestation contaminate water and make Chiapas' communities more vulnerable to extreme weather.⁷⁸⁵

Moreover, due to the sowing of transgenic organisms by multinational corporations, concentrations of glyphosate in groundwater in Chiapas have been detected, generating a risk for the communities that depend on the consumption of well water.⁷⁸⁶

Social Conflict

In Chiapas, according to the Commission for the Dialogue of the Indigenous Peoples of Mexico, in 2015 a disturbing conflict occurred where the inhabitants of the municipality of San Cristóbal de las Casas created their own community police with which they tried to stop the attempts of the installation of two Frisco Group mine sites.⁷⁸⁷

Chihuahua

Human Rights Defenders

A Civil Observation Mission in 2014 noted that in Chihuahua there were high levels of aggression towards human rights defenders, particularly towards women's rights defenders, relatives of missing persons and persons defending migrants.⁷⁸⁸

Human rights organizations warned that in the State of Chihuahua, defenders, along with the victims and the communities they represent or accompany, won important rulings in favour of victims and communities, leading to an increase in the risks involved as trials are brought against powerful individuals or companies that have no interest in complying with judicial decisions.⁷⁸⁹

In this sense, in 2016, the Mechanism for the Protection of Human Rights Defenders and Journalists notified the Chihuahua government of the adoption of an early warning system to prevent attacks on human rights defenders and journalists. This unprecedented decision of the Governing Board of the Mechanism is the first of this kind in Mexico.⁷⁹⁰

Access to Remedy

In 2014, according to a report of the National Network of Human Rights Civil Organizations "All Rights for All", in states like Chihuahua, human rights defenders pointed out that the new criminal justice system of 2008 improved access to justice, but there were still vices and problems clouding investigation, in obtaining and presenting evidence and in judicial decisions.

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In addition, the Inter-American Commission on Human Rights (IACHR) received information in 2015 that indicated that some first instance judges were allegedly appointed by reason of their familial relationships with political figures of the state, which, if true, would prevent them from being independent of the political branches.⁷⁹²

Environment

Human rights groups and organizations indicated in 2016 that the Secretary of Agriculture, Livestock, Fisheries and Food (SAGARPA) allowed the importation of genetically modified or transgenic maize to Monsanto, Dow AgroSciences and PHI México agrobiotechnological companies to carry out experimental open field sowing in the state of Chihuahua, among others, a decision which favours future commercial plantings in larger areas and but consequently contributing to a growing dispersion of these transgenic materials in the rest of the national territory and affecting agrobiodiversity and environment.⁷⁹³

Coahuila

Human Rights Defenders

A Civil Observation Mission in 2014 noted that Coahuila presented high levels of aggression to human rights defenders, with special attention to women's rights defenders, relatives of missing persons and persons defending migrants.⁷⁹⁴

Trafficking

According to information from the 2016 Global Slavery Index, national activists reported that while the government response to trafficking in persons is fragmented and non-uniform, in states such as Coahuila, trafficking cases are actively monitored and pursued.⁷⁹⁵

Security

The American Chamber of Commerce of Mexico (AmCham/Mexico) reported in 2016 that Coahuila was among the 10 entities in Mexico with most security challenges, where companies face external threats to operate in the country, such as corrupt authorities, extortion, impunity, kidnappings and violence.⁷⁹⁶

Guerrero

Child Labour

According to the World Bank, the majority of child labour was concentrated in southern states like Guerrero, where 12% of 6 to 13 years-old children worked, while in states like Chihuahua, in the North, only 1.4% of children worked.⁷⁹⁷

Food

According to FAO, in 2010, the State of Guerrero stood out as the entity that presented the highest level of lack of access to food (42.6%), followed by Tabasco (33.3%).⁷⁹⁸

In this sense, high levels of social lag and lack of food are located in rural municipalities or in those with more indigenous population.⁷⁹⁹

Transparency

According to the UN Working Group on Business and Human Rights, in the State of Guerrero, victims and organizations denounced in 2016 the situation of violence, corruption with authorities and collusion with organized crime in which companies develop their operations; this environment being the cause of a number of human rights violations which are tolerated and promoted by state and federal authorities.⁸⁰⁰

Security

The American Chamber of Commerce of Mexico (AmCham/Mexico) reported in 2016 that Guerrero was among the 10 entities in Mexico with most security challenges, where companies face external threats to operate in the country, such as corrupt authorities, extortion, impunity, kidnappings and violence.⁸⁰¹

The State Federation of Chambers of Commerce of the State of Guerrero reported that, at the end of 2015, there were 4,800 companies of different areas that closed due to extortion and kidnappings.⁸⁰²

Access to Remedy

The Inter-American Commission on Human Rights was informed in 2015 that in the State of Guerrero, some judges were subject to pressure from political powers, as well as organized crime groups, which compromised their functions in a similar manner.⁸⁰³

The UN Working Group on Forced Disappearances observed in 2011 that in states with large indigenous and rural populations, such as Guerrero, the absence of legal assistance was serious, due to the lack of bilingual public defenders. There was also a lack of translation services and suitable infrastructure.⁸⁰⁴

Jalisco

Environment, water and livelihood conditions

The Santiago River in Jalisco is considered the most polluted river in Mexico, which receives discharges from more than 300 industries (metal-mechanics and metallurgy, chemical-pharmaceutical, electronics, automotive, and food and beverage) in the industrial corridor of Ocotlán-El Salto, one of the country's most important industrial corridors. One of the most polluted areas of the river flows through the municipalities of Juanacatlán and El Salto, home to a total of three hundred thousand inhabitants. A study by the Mexican Institute of Water Technology (MIWT) found a total of 1,090 toxic substances, chemicals and metals in the river, mainly from industrial sources. Local doctors cited an increase in the incidence of different diseases, including leukemia, miscarriages and birth defects, among others.⁸⁰⁵

Access to Remedy

Regarding the case of the Santiago River and the demands of the communities, the authorities carried out only corrective actions (creation of two wastewater treatment plants that deal only with domestic wastewater discharges from the southern part of the metropolitan area of Guadalajara but not with the wastewater from industries), which did not solve public health problems and industrial pollution.⁸⁰⁶

Michoacán

Child Labour

According to the International Labour Organization (ILO), in 2014 there was not a comprehensive policy in the country to prevent and eradicate child labour at the federal or state level. Only in the case of the State of Michoacán was a broad policy framework adopted called the State Program for the Elimination of Child Labour (PEETI) (Michoacan State Government, 2007). However, it has not yet been implemented.⁸⁰⁷

Social Conflict

BTI declared in 2016 that, since mid-2014, communities in some of the regions more affected by violence have organized popular defense groups to fight against criminal gangs. The government intended to legalize and control these groups, but some of them have been infiltrated by criminal gangs and others have started to fight among them to take control.⁸⁰⁸ The Inter-American Commission of Human Rights (IACHR) reported the case in 2015 with some of these groups in Michoacan, which supposedly started as community self-defense groups but turned into drug cartels, contributing to the increase in violence in the region.⁸⁰⁹

Security

The American Chamber of Commerce of Mexico (AmCham/Mexico) reported in 2016 that Michoacán was among the 10 entities in Mexico with most security challenges, where companies face external threats to operate in the country, such as corrupt authorities, extortion, impunity, kidnappings and violence.⁸¹⁰

Oaxaca

Indigenous Peoples and Prior, Free and Informed Consultation.

The State of Oaxaca is characterized by its great ethnic and cultural diversity, with the presence of 18 ethnic groups and where more than 60% of the population is recognized as indigenous.⁸¹¹

In the last ten years, the Isthmus region in the State of Oaxaca has been immersed in a context of invasion of large investment projects, mainly due to the arrival of multiple large-scale wind farms in the region.⁸¹²

In this context, for the implementation of a project called Eólica del Sur, the federal authorities (SENER) implemented an indigenous consultation process in affected communities, in accordance with ILO Convention 169, but this procedure did not follow the international standards on the right to free, prior, informed, good faith and culturally appropriate consultation. In light of these violations, and others of environmental and cultural nature, more than 1,000 people filed an *amparo* and the process is currently under review and the project is suspended. People affected by this project are mainly indigenous communities of the municipalities of El Espinal and Juchitán de Zaragoza, as well as those that live in the region of the Isthmus of Tehuantepec.⁸¹³

Human Rights Defenders and Social Conflict

Between May 2014 and June 2015, the Mexican Center for Environmental Law (CEMDA) recorded 109 cases of attacks against environmental defenders in Mexico, placing Oaxaca as the state with the second highest number of attacks, counting 13 reported attacks. Eight of these attacks were linked to actions of the victims in questioning wind power mega-projects.⁸¹⁴

Also, the diagnosis and strategic human rights agenda of the State of Oaxaca indicated in 2014 that the Zapotec and Huave peoples were not consulted in the development of wind farms. This omission has generated situations of high social unrest and alarming levels of violence against community defenders, who are a constant target of harassment, threats and physical aggression.⁸¹⁵

Land Acquisition

In Oaxaca, the Business and Human Rights Working Group met in 2016 with communities mainly affected by mining, wind and hydrocarbon extraction projects, among others, and in total there were 17 cases of human rights violations related to abuses and violations committed by companies and local, state and federal governments. In addition, the Working Group reported the lack of information and guarantees to the right to free, prior and informed consultation as in the case of Eólica del Sur.

Puebla

Participation and Access to Information

Since September 2014, PODER and a handful of local organizations have accompanied farming communities in the Sierra Norte region of the State of Puebla in implementing Mexico's first community-led HRIA (Human Rights Impact Assessment) in the extractive sector.⁸¹⁶

Land Acquisition

In Puebla State, the NGO PODER documented in 2015 the existence of 440 mining concessions, in addition to 15 private hydroelectric projects, as well as the exploration and exploitation of hydrocarbons in oil fields operated by Halliburton and Diavaz in the State of Puebla. Sixty percent of the mining concessions are allegedly in the hands of Almaden Minerals company.⁸¹⁷

Sonora

Human Rights Defenders

Between May 2014 and June 2015, the Mexican Center for Environmental Law (CEMDA) recorded 109 cases of attacks against environmental defenders in Mexico, placing Sonora as the state with the highest number of attacks, with 16 reported attacks. Eight of these attacks were linked to actions of the victims in questioning wind power mega-projects.⁸¹⁸

Environment

Human rights groups and organizations indicated in 2016 that the Secretary of Agriculture, Livestock, Fisheries and Food (SAGARPA) allowed the importation of genetically modified or transgenic maize to Monsanto, Dow AgroSciences and PHI México agrobiotechnological companies, to carry out experimental open field sowing in the State of Sonora, among others, which favours future commercial plantings in larger areas and consequently, a growing dispersion of these transgenic materials in the rest of the national territory, affecting agrobiodiversity and environment.⁸¹⁹

Water

The events which took place in the Sonora River represent the case of the largest toxic spill caused by a copper mine, contaminating the river and affecting approximately 22,000 people, as well as livestock and crops in 7 municipalities located on its shores.⁸²⁰

Access to Remedy

In 2016, in connection with the spill of the Buenavista del Cobre mine, the affected community told the UN Working Group that their rights were violated, the ecosystem damaged and, despite the commitment of the authorities and the company, promises to remedy the damage and ensure non-repetition have not been fulfilled.⁸²¹ The affected communities expressed the

perception of arbitrarily determined compensation (for example, compensation was granted up to a maximum number of livestock, regardless of the number of livestock affected).⁸²² It was also corroborated that there were impediments for people, whose rights were damaged, to access to justice.

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- **September 2016, *ContraLínea*:** In the State of Sinaloa, the Bimbo Group operates under a model of industrial agriculture that puts health at risk by using 30 highly toxic pesticides banned in other countries, which are applied indiscriminately, and do not remain in the application zone, but rather filter into surrounding water bodies affecting essential natural resources such as water and surrounding communities.⁸²³
- **September 2015, *El Imparcial*:** 1,166 Zapotecos of the Isthmus of Tehuantepec filed a petition for *amparo* before the Seventh District Court of the State of Oaxaca "in order to protect rights that have been violated by federal, state and municipal authorities when approving the construction and operation of the Eólica del Sur company energy megaproject".⁸²⁴
- **August 2015, *El Siglo Coahuila*:** Employees of the Prokarne company face human trafficking charges in the form of labour exploitation of more than 300 labourers and at least 50 minors.⁸²⁵
- **August 2015, *International Business Times*:** Over 60 children were found working at a vegetable packing factory in the northern State of Coahuila. Mexican authorities have found 63 children between the ages of 8 and 17 working long hours in oppressive conditions. Officials reportedly said that the minors alleged they only received half a day off in a week and were paid 100 pesos (about \$6) a day, a little above the minimum wage of about 70 pesos. The minors also said that they were only given two meals a day and were forced to sleep on thin mats in the property near Ramos Arizpe, southwest of the city of Monterrey. The minors reportedly worked alongside several dozen adults.⁸²⁶
- **August 2015, *US Department of State*:** The Coahuila state government rescued 78 child labourers, some as young as 8, from a farm near Ramos Arizpe. The state indicted 4 defendants under labour trafficking charges in the case, which also involved 228 adult victims. The victims reportedly worked at least nine hours daily, received insufficient food, and were forced to live in unhygienic conditions.⁸²⁷
- **August 2015, *ProDesc*:** Members of the Zapotec indigenous community of Juchitán, Oaxaca, filed a petition for *amparo* for serious violations of the right to consultation before the Seventh District Court of the State of Oaxaca. The presentation was made at the announcement by the Energy Secretary (SENER) that the construction of the wind farm of Eólica del Sur company in the communities of Juchitán and El Espinal, located in the Isthmus of Tehuantepec, Oaxaca, would begin.⁸²⁸

- **February 2014, BHRRC:** The First District Judge of the State of Guerrero issued an unpublished judgment in favour of the indigenous community Júba Wajiín, in which he considered that their rights had been violated by having been given the mining concessions without their consultation, invoking international treaties that Mexico has signed and ratified, such as Convention 169 of the ILO, as well as the jurisprudence of the Inter-American Court of Human Rights.⁸²⁹

Recommendations

Priority recommendations letter from civil society organizations to the United Nations Working Group on Business and Human Rights:⁸³⁰

Companies should reiterate the fact that, through their value chains, the obligation to respect human rights implies respect for the rule of law, the Constitution and international treaties. This includes administrative and judicial decisions that are imposed on them. Therefore, all companies should take additional measures to prevent human rights abuses, especially in areas of high conflict, such as the states of Guerrero, Oaxaca, Chiapas, Coahuila and the State of Mexico.

Endnotes

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⁸³⁰ Carta de “Recomendaciones prioritarias de organizaciones de sociedad civil al Grupo de Trabajo de Empresas y Derechos Humanos de Naciones Unidas”.