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Mexico

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Mexico

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The results of the 2018 presidential elections brought a renewed air of optimism among Mexicans, who above all else demanded a departure from the traditional politics of the dominant parties. Nevertheless, the enthusiasm reflected at the ballots seems to have faded soon after President Andrés Manuel López Obrador (AMLO) took office. While the new administration clings to its pledge to end corruption and violence with austerity and goodwill, Mexico's levels of rampant violence and impunity have reached historical numbers. Moreover, the uncertainty generated by AMLO's controversial approach to decision-making has resulted in a paralyzed economy and in the mistrust of foreign investment. The transition of power, however, has not prevented legislative innovation, as significant reforms in the health, labor, and energy sectors have been introduced in the country throughout the year.

I. The New Administration: First Year in Review

A. FIRST YEAR OF PRESIDENT AMLO IN OFFICE¹

AMLO took the presidential office of Mexico on December 1, 2018, at the Legislative Palace of San Lazaro, the seat of Mexico's Federal Congress.²

For the first time in the modern history of Mexico, citizen consultations to decide on topics of great relevance for the country were conducted by AMLO's far-left party *Movimiento Regeneración Nacional* (MORENA) even before he took office.³ One of the first citizen consultations had the effect of cancelling the construction of Mexico City's new airport in its current location in Texcoco, a controversial move that has contributed to an

1. The author, Oliver Fernando Buenrostro Figueroa, is a fifth semester law student at Universidad Panamericana, in Guadalajara, Mexico, and currently serves as chair of the Law School's Student Association.

2. Patrick J. McDonnell, *Lopez Obrador Takes Office as Mexican President, Vowing to Fight Corruption*, L.A. TIMES (Dec. 1, 2018), <https://www.latimes.com/world/la-fg-mexico-amlo-inauguration-20181201-story.html>.

3. *Morena Strongholds Get a Big Say in Vote on Future of Mexico City Airport*, MEX. NEWS DAILY (Oct. 18, 2018), <https://mexiconewsdaily.com/news/morena-strongholds-get-a-big-say-in-vote/>.

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increased unease in the stock market and the Mexican economy by domestic and external investors.⁴ The cancellation of the new airport is estimated to cost around 100 million Mexican pesos (roughly \$5 million), according to Javier Jiménez Espriú, Secretary of Communications and Transportation.⁵

Likewise, in its first month in power, the current administration decided that the best strategy to tackle clandestine pipeline drilling would be to shut down certain pipelines across the country and instead distribute gasoline via freight trucks.⁶ This shift in distribution methods sowed chaos in most of the major cities in Mexico's center-west region.⁷ Although AMLO's strategy drastically decreased illegal drilling, a net loss of 87.8 million pesos has resulted, along with a drop in crude oil production of 6.7 percent in the last quarter of the year, compared with last year's period.⁸

B. AMLO'S NATIONAL GUARD⁹

In 2006, former President Felipe Calderón declared a war against drug trafficking.¹⁰ By using the term "war," he enabled the mobilization of military forces inside the country.¹¹ With the aid of several governmental institutions,¹² he launched a coordinated effort called *Operación Conjunta*

4. Gabriel Quadri de la Torre, *El Nuevo aeropuerto, víctima electoral [The New Airport, an Electoral Victim]*, EL ECONOMISTA (Mar. 23, 2018), <https://www.economista.com.mx/opinion/El-nuevo-aeropuerto-victima-electoral-20180323-0023.html>.

5. *Cancelación del NAIM costará menos de 100 mil mdp: Jiménez Espriú [Cancellation of the NAIM will cost less than 100 thousand mdp: Jiménez Espriú]*, EL FINANCIERO (Feb. 13, 2019), <https://elfinanciero.com.mx/empresas/cancelacion-del-naim-costara-menos-de-100-mil-mdp-jimenez-espriu>.

6. Ioan Grillo, *El saqueo del oro negro: el gran retro de AMLO [The Plunder of Black Gold: AMLO's Great Challenge]*, N.Y. TIMES (Mar. 28, 2019), https://www.nytimes.com/es/2019/03/28/huachicol-amlo-gasolina-mexico/?ref=collection%2Fsectioncollection%2Fnyt-es&action=click&contentCollection=huachicoleros®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection.

7. *Id.*

8. Gabriela Jimenez, *Comienza la distribución de gasolina en nuevas pipas: AMLO [The Distribution of Gasoline Begins in New Pipes: AMLO]*, EL SOL DE MEX. (Feb. 7, 2019), <https://www.elsoldemexico.com.mx/mexico/politica/comienza-la-distribucion-de-gasolina-en-nuevas-pipas-amlo-3026835.html>.

9. The author, Matías Medina Sánchez, is a fifth semester law student at Universidad Panamericana, in Guadalajara, Mexico, and is currently a member of the editorial committee of the Mexico Update Newsletter, a periodical publication by the ABA Section of International Law: Mexico Committee.

10. Brianna Lee, Danielle Renwick, & Rocio Cara Labrador, *Mexico's Drug War Backgrounder*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/backgrounder/mexicos-drug-war> (last updated Oct. 22, 2019).

11. James Fredrick, *Mexico's New President Has a Radical Plan to End the Drug War*, VOX (Aug. 15, 2018), <https://www.vox.com/2018/8/15/17690420/mexico-president-amlo-drug-war-cartels-violence-legalization>.

12. These institutions include the Secretary of Governance (SEGOB), the Secretary of Defense (SEDENA), the Secretary of Public Security (SEGURIDAD), Secretary of Navy (SEMAR) and the then-Attorney General's Office (PGR). Press Release, Presidencia de la República, Anuncio sobre la Operación Conjunta Michoacán (Dec. 11, 2006), <https://www>

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Michoacán, whose main purpose was to eradicate illegal drug plantations and establish control zones in order to dismantle drug-dealing centers in the state of Michoacán.¹³ But by 2012 the so-called “war on drugs” had failed to yield any tangible results. Rather, it drastically decreased security throughout the country, which continued into the next presidential term.¹⁴ Accordingly, the following president, Enrique Peña Nieto, enacted the Interior Security Law, which sought to allow the federal executive branch to send its military forces to any of Mexico’s states whenever the conflict exceeds local enforcement capacities.¹⁵

According to the National Institute of Geography and Statistics (INEGI) database, throughout 2012 there were 35,139 crimes committed for every 100,000 inhabitants, a number that increased to 39,369 by 2017.¹⁶ The current administration, led by President AMLO, seeks to depart from this approach through the creation of a national guard.

The National Guard was created through constitutional amendment to ensure “the public security which comprises the prevention, investigation and prosecution of crimes, the sanction of administrative infractions, the coordination and collaboration with the States and Municipalities and the safeguarding of goods and resources of the Nation.”¹⁷

The amendment was approved in the Chamber of Deputies by 362 votes in favor, 119 against and four abstentions on January 16, 2019.¹⁸ The Senate endorsed the reform and returned it to the Chamber of Deputies on February 26, 2019.¹⁹ Two days after, on February 28, 2019, the Chamber of Deputies referred it to each of the legislatures of the Mexican States for their

.resdal.org/caeef-resdal/assets/mexico—-anuncio-sobre-la-operaci%C3%B3n-conjunta-michoac%C3%A1n.pdf.

13. See Miguel Tinoco, *Michoacán fué el inicio de la crisis; combate al crimen [Michoacán Was the Beginning of the Crisis; Fight Crime]*, EXCELSIOR (Dec. 12, 2016), <https://www.excelsior.com.mx/nacional/2016/12/12/1133699>.

14. James Fredrick, *Mexico’s New President Has a Radical Plan to End the Drug War*, VOX (Aug. 15, 2018), <https://www.vox.com/2018/8/15/17690420/mexico-president-amlo-drug-war-cartels-violence-legalization>.

15. *Peña Nieto promulga la Ley de Seguridad Interior [Peña Nieto Enacts the Internal Security Law]*, EL ECONOMISTA (Dec. 21, 2017), <https://www.economista.com.mx/politica/Pena-Nieto-promulga-la-Ley-de-Seguridad-Interior-20171221-0098.html>.

16. *Incidencia delictiva [Criminal Incidence]*, INEGI, <https://www.inegi.org.mx/temas/incidencia/> (last visited June 12, 2020).

17. Press Release, Cámara de Diputados, Aprueban diputados, en lo general, reformas constitucionales para crear la Guardia Nacional [Deputies Generally Approve Constitutional Reforms to Create the National Guard], Bulletin No. 0892 (Jan. 16, 2019), <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2019/Enero/16/0892-Aprueban-diputados-en-lo-general-reformas-constitucionales-para-crear-la-Guardia-Nacional> (Mex.).

18. *Id.*

19. Cámara de Senadores del H. Congreso de la Unión, Dictámenes de Discusión y Votación [Opinions for Discussion and Voting], LXIV/ISPO-87/89770 (Feb. 21, 2019), http://www.senado.gob.mx/64/gaceta_del_senado/documento/89770.

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ratifications.²⁰ On March 14, 2019, the Senate announced that the legislatures of the Mexican states had unanimously approved the amendment, then turned it to the Federal Executive Branch for its promulgation,²¹ which happened on March 26, 2019.²²

The current members of the National Guard were distributed on 150 regional groups, with special attention to the highest criminal activity areas around the country, i.e. Mexico State (which concentrates thirty-two regional coordination groups), Oaxaca and Michoacán (nine groups each), Jalisco and Veracruz (eight groups each).²³ It is the Administration's intention to increase the number of regional groups to 266 and to recruit a total number of 140,000 members.²⁴

Even though the National Guard has an army-like structure and is subject to military discipline, its role in public security will mostly be carried out under civilian leadership, meaning that members would be prosecuted for a felony or administrative offense in a civil court.²⁵ However, National Guard members belonging to the Army or Navy forces shall maintain his or her rank and be tried by a military tribunal for any offenses.²⁶ The National Guard will remain active for as long as violence and insecurity in the country continue, being subject to review by both the federal executive and legislative branches every three years.²⁷

C. GLYPHOSATE LITIGATION AND TEXCOCO AIRPORT²⁸

At the end of November 2019, the Mexican government refused to allow a 1,000-ton shipment of the pesticide glyphosate into the country, citing

20. Press Release, Cámara de Senadores del H. Congreso de la Unión, Emite Cámara de Diputados declaratoria de reforma constitucional que crea la Guardia Nacional [Chamber of Deputies Issues a Declaration of Constitutional Reform that Creates the National Guard], Nota No. 1673 (Mar. 14, 2019), <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2019/Marzo/14/1673-Emite-Camara-de-Diputados-declaratoria-de-reforma-constitucional-que-crea-la-Guardia-Nacional>.

21. Cámara de Senadores del H. Congreso de la Unión, LXIV/ISPO-102/91252 (Mar. 14, 2019), http://www.senado.gob.mx/64/gaceta_del_senado/documento/91252.

22. *Id.*

23. Int'l Crisis Group, *Mexico's Everyday War: Guerra and the Trials of Peace*, LAT. AM. REPORT No. 80 (May 4, 2020), <https://d2071andvip0wj.cloudfront.net/080-mexicos-everyday-war-guerrero.pdf>.

24. Rebekah F. Ward, *Mexican National Guard Expands into Capital to Address Crime Surge*, REUTERS (June 27, 2019), <https://www.reuters.com/article/us-mexico-security-guard/mexican-national-guard-expands-into-capital-to-address-crime-surge-idUSKCN1TS2OB>.

25. Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de Guardia Nacional, Diario Oficial de la Federación [DOF] 26-03-2019 (Mex.).

26. *Id.*

27. *Id.*

28. Susan Burns, a solo practitioner based in Minneapolis, Minnesota, authored this article.

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health and environmental concerns.²⁹ With that step, Mexico became the latest in a string of countries to announce bans on glyphosate, the active ingredient in weed killer Roundup used in agriculture pesticides, primarily for use on genetically modified (GMO) corn and soybeans.³⁰ Mexico's environmental department has stated that "glyphosate represents a high environmental risk, given the credible presumption that its use can cause serious environmental damage and irreversible health damage."³¹ This statement is consistent with the 2017 decision by the first chamber of the Mexican Supreme Court of Justice of the Nation (SCJN), which rejected an appeal by Monsanto regarding the issuance of commercial permits for sowing of GMO—or transgenic—maize.³² There have been a series of U.S. lawsuits against Monsanto, now Bayer, in which plaintiffs have successfully demonstrated the causal link between glyphosate and cancer.³³

Another significant development came at the end of 2018, in which AMLO canceled the construction of the new, state-of-the-art, airport in Texcoco.³⁴ The project was designed to be the world's most sustainable airport, aiming for a LEED Platinum certification, the first phase of which would have opened in 2020.³⁵ But the AMLO administration abruptly shut down its development in late 2018 and instead started construction of an international airport at Santa Lucía airbase north of the city.³⁶ This highly controversial move has spawned several lawsuits³⁷ and has been criticized as an inadequate solution to Mexico City's saturation problem and contrary to the goal of the Texcoco project, which was to become a hub for air travel in Latin America. In fact, several Latin American based airlines have said the Santa Lucía airport will be difficult to use.³⁸ It is also controversial because

29. Associated Press, *Mexico Bars Shipment of Glyphosate Pesticide*, WASH. TIMES (Nov. 25, 2019), <https://www.washingtontimes.com/news/2019/nov/25/mexico-bars-shipment-of-glyphosate-pesticide/>.

30. *Id.*

31. *Id.*

32. *Mexican Supreme Court Refuses to Review Monsanto Appeal on GMO Maize Permits*, SUSTAINABLE PULSE (May 12, 2017), <https://sustainablepulse.com/2017/05/12/mexican-supreme-court-refuses-to-review-monsanto-appeal-on-gmo-maize-planting/#.XemF8EBFw2w>.

33. Leigh Day, *The Roundup on Toxic Pesticides - Regulatory Divergence, Growing Litigation*, LEXOLOGY (Sept. 12, 2019), <https://www.lexology.com/library/detail.aspx?g=03f2eb5b-0780-44d9-9383-3b7cea48c587>.

34. Mia Taylor, *Mexican Government Will Spend \$9 Billion to Cancel Texcoco Airport Project*, AVIATION PROS (Nov. 18, 2019), <https://www.aviationpros.com/airports/news/21114810/mexican-government-will-spend-9-billion-to-cancel-texcoco-airport-project>.

35. See *New International Airport Mexico City*, FOSTER & PARTNERS, <https://www.fosterandpartners.com/projects/new-international-airport-mexico-city/> (last visited June 13, 2020).

36. Taylor, *supra* note 34.

37. *Id.*

38. *Latin American CEOs Say it Would Be Difficult to Operate in Santa Lucía Airport*, YUCATAN TIMES (Oct. 30, 2019), <https://www.theyucantimes.com/2019/10/latin-american-airlines-ceos-say-it-will-be-difficult-to-operate-in-the-santa-lucia-airport/>.

of its alleged disruption of indigenous communities and their claims of the government's failure to conduct free, prior, and informed consent.³⁹

II. Legislative Innovation

A. MEXICO UNDER FIRE: THE FOURTH TRANSFORMATION'S NATIONAL PEACE AND SECURITY PLAN⁴⁰

The cautious optimism with which Mexicans received the long-awaited change brought by AMLO's election as president last year, was met with the sour taste of reality soon after he took office in December 2018. Through a series of ill-advised and impulsive decisions, the new government's self-proclaimed "Fourth Transformation" or "4T" (the past transformations being, in chronological order: Mexico's independence, Reform War, and Revolution)⁴¹ has proven to be yet another misstep in the political history of the country. AMLO's national security strategy has not been an exception to the new government's many deficiencies. Met with controversy since its presentation on November 2018,⁴² the 4T's National Peace and Security Plan (NPSP), has fallen short of its target to "recover peace, reestablish public security, prevent crimes, enforce justice, and reestablish the rule of law"⁴³ as violence reaches historic numbers in Mexico. In fact, during the first months of the new administration, the number of victims of Mexico's ongoing slaughter has increased at an alarming rate, becoming the most violent months in the history of the country since the Revolution (1910–1920), with 100 drug gang-related murders every day.⁴⁴ A policy based on "hugs not gunshots" is what AMLO promised his approach would be to organized crime,⁴⁵ but even then, such a pledge seemed to be the

39. *Indigenous Communities are Against Santa Lucía Airport Project*, YUCATAN TIMES, (Aug. 30, 2019), <https://www.theyucatanimes.com/2019/08/indigenous-communities-are-against-the-santa-lucia-airport-project/>.

40. This article was authored by Eduardo Sánchez Madrigal, a human rights master student and research assistant at the University of Oslo (UiO) and the Norwegian Centre for Human Rights, currently serving as Year-in-Review Vice-Chair for the ABA Section of International Law: Mexico Committee.

41. Yngrid Fuentes, *AMLO president: ¿qué es la "Cuarta Transformación" que propone Andrés Manuel López Obrador para México?* [AMLO President: What Is the "Fourth Transformation" that Andrés Manuel López Obrador Proposes for Mexico], BBC MUNDO (Nov. 26, 2018), <https://www.bbc.com/mundo/noticias-america-latina-45712329>.

42. *Presidente Electo Presenta Plan Nacional de Paz y Seguridad 2018-2024*, AMLO, (Nov. 14, 2018), <https://lopezobrador.org.mx/2018/11/14/presidente-electo-presenta-plan-nacional-de-paz-y-seguridad-2018-2024/>.

43. *Id.*

44. Jacobo García, *La Errática Política de Seguridad de López Obrador se Topa con la Violencia Descontrolada* [López Obrador's Erratic Security Policy Encounters Uncontrolled Violence], EL PAÍS (Oct. 21, 2019), https://elpais.com/internacional/2019/10/19/actualidad/1571506100_833972.html.

45. AMLO made this statement in Mexico's second presidential debate. INETV, *Segundo Debate Presidencial #Elecciones2018*, YOUTUBE (May 20, 2018), <https://www.youtube.com/watch?v=CYP1hHV9y4Y>.

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empty words of a populist leader rather than a reflection of the strong leadership the country so desperately needs.

Instead of the zero-tolerance and belligerent approach to the “war on drugs” started by President Felipe Calderón (2006–2012) and continued by his successor Enrique Peña Nieto (2012–2018),⁴⁶ the NPSP aims at achieving reconciliation while tackling corruption and impunity as the roots of the carnage the country has undergone during its recent history.⁴⁷ Despite its non-binding nature, the NPSP set the framework for a restructuring of the security sector, proposing the creation of the National Guard⁴⁸ and a departure from the traditional role of the armed forces in line with the general pacification efforts of the new administration.⁴⁹

Moreover, as explained by AMLO’s public security secretary Alfonso Durazo, the 4T seeks to put an end to organized crime by “following the money” instead of focusing on the arrest of drug lords.⁵⁰ Nevertheless, not only have the new strategy’s efforts proven to be futile,⁵¹ but the government’s legitimacy has been irreversibly jeopardized. On October 17, 2019, a suspiciously unprepared military operation to capture Ovidio Guzmán, son of the infamous drug lord Joaquín “El Chapo” Guzmán (recently sentenced to life in prison in the United States),⁵² resulted in a rampant reaction by the Sinaloa Cartel.⁵³ The Cartel quickly took over the city of Culiacán through a horrifying display of force that overpowered the military and led to the ultimate release of Ovidio in exchange for a ceasefire.⁵⁴

A couple of weeks after the alarming consequences of Ovidio Guzmán’s failed arrest, the presidency suffered another blow⁵⁵ when unidentified gunmen ambushed, killed, and incinerated nine members of activist Julián

46. Lee, *supra* note 10.

47. Alfonso Durazo Montaña, President-Elect Presents National Plan for Peace and Security 2018-2024 (Nov. 14, 2018) (transcript available at <https://lopezobrador.org.mx/wp-content/uploads/2018/11/Discursos-Durazo-y-Sandoval-PNS-14nov18.pdf>).

48. *Id.*

49. *Id.*

50. Jacobo García, “Perseguir el dinero es más importante que detener a los capos” [*Chasing Money Is More Important than Stopping Drug Lords*], EL PAÍS (Aug. 18, 2018), https://elpais.com/internacional/2018/08/07/mexico/1533607975_638555.html.

51. *Id.*

52. Alan Feuer, ‘El Chapo’ Guzmán Sentenced to Life in Prison, Ending Notorious Criminal Career, N.Y. TIMES (July 17, 2019), <https://www.nytimes.com/2019/07/17/nyregion/el-chapo-sentencing.html>.

53. *Violencia En Culiacán: Quiénes Son los Hijos de “El Chapo” que Siguieron su Camino y qué se Sabe del Poder que Tienen*, BBC NEWS MUNDO, (Oct. 19, 2019), <https://www.bbc.com/mundo/noticias-america-latina-50086131>.

54. *Id.*

55. Carlos Loret de Mola, *Caso LeBarón: AMLO pasó de la ingenuidad a la irresponsabilidad* [*LeBarón Case: AMLO Went from Naïvete to Irresponsibility*], WASH. POST (Nov. 5, 2019), <https://www.washingtonpost.com/es/post-opinion/2019/11/05/caso-lebaron-amlo-paso-de-la-ingenuidad-la-irresponsabilidad/>.

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LeBarón's family in northern Mexico.⁵⁶ Seven of his children (ranging from nine months to fourteen-years-old) managed to survive the attack and wandered into the desert alone for six hours before being rescued.⁵⁷ The tragedy of the LeBarón family, each of them Mexican-American members of the Mormon community in the State of Chihuahua, gained international attention. President Donald Trump proposed creating a joint strategy with Mexico to "wage war on the drug cartels and wipe them off the face of the earth,"⁵⁸ which AMLO promptly refused and confirmed that his national security strategy would not be altered.⁵⁹ Mexico's insecurity crisis is further aggravated by the controversial (and allegedly illegal) appointment of Rosario Piedra as president of the National Human Rights Commission (CNDH) in November 2019.⁶⁰ Her fierce support of AMLO's political party represents a serious impairment for the impartiality of the country's main human rights protection institution and a consequent increase in Mexico's already soaring levels of impunity.⁶¹

Although it is unquestionable that the AMLO administration inherited a country torn by conflict and systemic corruption, the time has come to look beyond polarizing excuses and accusations by addressing competently the issues that afflict the nation. The consequences of the 4T's ineffectiveness and unreliability have already been felt in Mexico's economy, as the country currently has a zero percent economic growth and has failed to create enough jobs for young people entering the labor market in 2019⁶² while companies struggle with corruption and violence on a daily basis.⁶³ Mexicans were hopeful that the same persistence with which AMLO sought

56. *Familia LeBarón: Quiénes son las víctimas de la emboscada en México que dejó al menos 9 muertos* [LeBarón Family: Who Are the Victims of the Ambush in Mexico that Left at Least 9 Dead], BBC NEWS MUNDO (Nov. 6, 2019), <https://www.bbc.com/mundo/noticias-america-latina-50310547>.

57. *Id.*

58. Lisbeth Diaz, *Nine Americans Killed in Mexican Ambush, Trump Urges Joint War on Drug Cartels*, REUTERS (Nov. 5, 2019), <https://www.reuters.com/article/us-mexico-violence/nine-americans-die-in-mexican-massacre-trump-proposes-war-on-drug-cartels-idUSKBN1XF0K1>.

59. Magali Juárez, *No vamos a cambiar de estrategia de seguridad: AMLO* [We Are not Going to Change Our Security Strategy: AMLO], EL PAÍS, (Nov. 7, 2019), <https://www.razon.com.mx/mexico/no-vamos-a-cambiar-estrategia-de-seguridad-amlo-violencia-culiacan-lebaron-conferencia-mananera/>.

60. *Controversy Dogs Human Rights Chief Even After Winning Senate Vote*, MEX. NEWS DAILY (Nov. 13, 2019), <https://mexiconewsdaily.com/news/controversy-dogs-human-rights-chief/>.

61. Patricia Dávila, *El Colegio de Abogados llama a Rosario Piedra a renunciar a la CNDH* [The Bar Association Calls Rosario Piedra to Resign from the CNDH], PROCESO (Nov. 24, 2019), <https://www.proceso.com.mx/607996/el-colegio-de-abogados-llama-a-rosario-piedra-a-renunciar-a-la-cndh>.

62. Viridiana Ríos, *¿Por qué México no crece? [Why Does Mexico not Grow?]*, N.Y. TIMES (Nov. 13, 2019), <https://www.nytimes.com/es/2019/11/13/espanol/opinion/crecimiento-mexico-violencia.html>.

63. Anthony Esposito, *Nearly a Year in, Mexico's President Doubles Down on Management of Economy*, REUTERS (Sept. 2, 2019), <https://www.reuters.com/article/us-mexico-politics/nearly-a-year-in-mexicos-president-doubles-down-on-management-of-economy-idUSKCN1VN02O>.

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the presidency for twelve years would somehow be reflected in a reinvigorated strategy to tackle violence and corruption, but the limitations of the NPSP and the 4T became evident since their beginnings.

B. CANNABIS LEGALIZATION IN MEXICO⁶⁴

Following the 2017 amendments to the General Health Law (LGS),⁶⁵ that legalized the medical and scientific use of cannabis products with up to one percent of tetrahydrocannabinol,⁶⁶ and the 2018 landmark resolutions issued by the SCJN regarding recreational use of cannabis,⁶⁷ advocates of legalization had great expectations for 2019.⁶⁸ While, as of December 2019, many of those expectations, e.g., full legalization, have not been met, not all is lost for supporters, as significant regulatory and legislative developments occurred in 2019.⁶⁹

“For industry stakeholders, lobbyists[,] and advocates, the year started with a close follow-up on the eleven bills (or proposals to amend existing laws) that had been introduced to the Senate”—not counting a number of bills introduced in the past years at the lower house of Congress.⁷⁰ These bills included proposals to amend the LGS and the Federal Criminal Code (*Código Penal Federal*) in different ways but generally introducing “a distinction between the psycho-active and non-psycho-active varieties of cannabis, [e.g.] cannabis vs. hemp, and more rigid treatment of adult use than industrial use” of the plant, among other elements.⁷¹ The bill introduced on November 6, 2018, by then Senator, now Secretary of the

64. The authors, Luis Armendariz and Alan Zamarripa, are, respectively, a founding partner and associate, of CAAM Legal, a Mexican boutique corporate law firm specialized in highly regulated industries such as cannabis.

65. See Erika Paz & Anna Arroyo, *Overview of the Cannabis Reform in Mexico and Its Implications in Patent Protection*, UNTHOFF (Aug. 16, 2019), <https://en.uhthoff.com.mx/articles/overview-cannabis-reform-mexico-implications-patent-protection/> (discussing amendments made to Art. 237, 245, and 290 of the General Health Law).

66. Commonly known as THC, the psychoactive component of a cannabis plant. The Editors of Encyclopaedia Britannica, *Tetrahydrocannabinol*, ENCYCLOPAEDIA BRITANNICA ONLINE, <https://www.britannica.com/science/marijuana#ref715034> (last updated June 2, 2020).

67. See Luis Miguel De Alva-Morales, *Status of Cannabis Legalization in Mexico*, GLOBAL CANNABIS COMPLIANCE BLOG (May 20, 2019), <https://globalcannabiscompliance.bakermckenzie.com/2019/05/20/status-of-cannabis-legalization-in-mexico/> (discussing Amparos en Revisión No. 547/2018 and 548/2018, declaring “that the prohibition on recreational cannabis was unconstitutional).

68. Luis Armendariz, *Mexico Cannabis Update – 2019 Cannabis Year in Review*, TORKIN MANES (Jan. 13, 2020), <https://www.cannabis-law.ca/post/cannabis-blog/mexico-cannabis-update>. The ABA has first publication rights to the aforementioned materials. However, due to the nature of the publication of *The YIR*, the website materials went to press first.

69. *Id.*

70. *Id.*

71. *Id.*

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Interior, Ms. Olga María Sánchez Cordero, appears to be the frontrunner to be voted at the Senate.⁷²

The SCJN granted in October 2018 two separate *amparo*⁷³ resolutions in favor of individuals challenging the LGS provisions that prohibited marijuana consumption.⁷⁴ This ruling from “the country’s highest court recognized and protected a person’s human right to self-determination, health, and personality” and became binding precedent.⁷⁵ As a result, federal district court began ordering the Federal Commission for the Protection of Sanitary Risks (COFEPRIS) to issue permits to individuals seeking to use marijuana recreationally.⁷⁶ More importantly, the court required the legislative branch to amend existing laws or issue a new law that would be consistent with its rulings by October 2019.⁷⁷

On the executive front, on March 26, 2019, COFEPRIS Director José A. Novelo Baeza “announced the revocation of the October 2018 Guidelines for the Sanitary Control of Cannabis and its Derivatives (*Lineamientos en Materia de Control Sanitario de la Cannabis y Derivados de la Misma*).”⁷⁸ These guidelines

set the criteria and licensing requirements to be used for medical and scientific use of cannabis, as well as the commercialization, exportation, and importation of such cannabis products.⁷⁹ The grounds for such revocation were largely based on omitted legal formalities needed for the issuance of government guidelines of general application. Since then, no new guidelines or regulations have been issued.⁸⁰

72. *Id.*; see also Senado de la República, Gaceta del Senado, LXIV/1PPO-44/85686 (Nov. 8, 2018), https://www.senado.gob.mx/64/gaceta_del_senado/documento/85686.

73. A constitutional challenge regulated in Mexican law, which, if granted, results in an injunction-like resolution. *Amparo, Writ of*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/amparo-writ> (last updated June 2, 2020).

74. Armendariz, *supra* note 68; Salvador Fonseca, Juan Pablo Moyano, & Carlos Vejar, *Mexico’s Supreme Court Issues Jurisprudence on Appropriateness of Amparo Indirecto*, JD SUPRA (Jan. 7, 2020), <https://www.jdsupra.com/legalnews/mexico-s-supreme-court-issues-64596/>.

75. Armendariz, *supra* note 68; *La Suprema Corte sienta jurisprudencia en uso recreativo de marihuana [The Supreme Court Sets Jurisprudence on Recreational Use of Marijuana]*, EXPANSIÓN POLÍTICA (Oct. 31, 2018), <https://politica.expansion.mx/mexico/2018/10/31/la-suprema-corte-sienta-jurisprudencia-en-uso-recreativo-de-marihuana>.

76. Armendariz, *supra* note 68.

77. *Id.*

78. *Id.*

79. Comisión Federal para la Protección contra Riesgos Sanitarios, *Se revocan lineamientos en materia de control sanitario de la cannabis y derivados de la misma [Guidelines on the Health Control of Cannabis and Derivatives Thereof Are Revoked]*, GOBIERNO DE MÉXICO (Mar. 27, 2019), <https://www.gob.mx/cofepris/prensa/se-revocan-lineamientos-en-materia-de-control-sanitario-de-la-cannabis-y-derivados-de-la-misma?state=published>.

80. Armendariz, *supra* note 68; Luis Armendariz, *Mexico Cannabis Update: Resolution of the Supreme Court on the Medicinal Use of Cannabis*, HLG GLOBAL (Sept. 18, 2019), <https://hoban.law/2019/09/mexico-cannabis-update/>.

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Therefore, those interested in applying for licenses to import or sell products currently permitted under the law “face legal uncertainty and government inaction.”⁸¹ By mid-2019, the SCJN unanimously approved a newly drafted ruling that ordered “the Health Secretariat and COFEPRIS to issue within 180 business days the regulations that would substitute [for] the revoked guidelines.”⁸²

On October 17, 2019, the Senate’s Justice Committee issued what would purportedly be the draft of the new law for Cannabis Regulation (*Ley de Regulación del Cannabis*) to be submitted to a general vote.⁸³ The new law would fully legalize the following uses: (1) recreational, which includes cultivation and possession at home or cannabis clubs, capped at four plants per person, or six per household; (2) scientific and research, allowing activities “ethically necessary” for scientific and research purposes; (3) medical or pharmaceutical and therapeutic or palliative; and (4) industrial, covering the sale, import and export.⁸⁴ Further, four contemplated types of licenses are available: cultivation, transformation (processing), sale, and export or import. They cover complementary activities of transportation and storage. “Permits” are also provided for personal use and for hemp transformation.⁸⁵ Finally, a new cannabis government agency called the Mexican Cannabis Institute, *Instituto Mexicano del Cannabis* (IMC), would be created and empowered to grant the aforementioned licenses as a decentralized government agency affiliated with the Secretariat of the Interior.⁸⁶

Some of the proposed provisions were controversial as some considered them to bar farming or low-income communities from growing cannabis and therefore failing to meet the “social justice” purpose sought by President AMLO through legalization.⁸⁷ For example, one controversial provision involves seed traceability and testing guidelines in order to avoid cultivation using “illicit” seeds, another is “the requirement to use sustainable (biodegradable, compostable and recyclable) materials for the packaging” of cultivated plants.⁸⁸ It is argued that low-income communities or farmers

81. *Marihuana y Sus Derivados*, Diario Oficial de la Federación, Dec. 20, 2013 (Mex.).

82. *Id.*

83. Armendariz, *supra* note 68; *see also* Senado de la República, Ley para la regulación del cannabis, REGULACIÓN DEL CANABIS, https://cannabis.senado.gob.mx/images/pdf/anteproyecto_LRC.pdf.

84. Armendariz, *supra* note 68.

85. *Id.*

86. María Fernanda Navarro, *Instituto Mexicano del Cannabis, la dependencia que controlaría tu consumo de marihuana* [*Mexican Cannabis Institute, the Agency that Would Control Your Consumption of Marijuana*], FORBES (Oct. 29, 2019), <https://www.forbes.com.mx/instituto-mexicano-del-cannabis-la-dependencia-que-controlaria-tu-consumo-de-marihuana/>.

87. Armendariz, *supra* note 68; María Camila Hernández, *El Largo Camino Hacia la Legalización del Cannabis en México* [*El Largo Camino Hacia la Legalización del Cannabis en México*], FRANCE24 (Nov. 13, 2019), <https://www.france24.com/es/20191113-el-largo-camino-hacia-la-legalizaci%C3%B3n-del-cannabis-en-m%C3%A9xico>.

88. Armendariz, *supra* note 68; *see also* Hernández, *supra* note 87.

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with limited capital would have a difficult time obtaining eco-friendly packaging materials.⁸⁹

“After the Senate failed to meet the October deadline to pass ‘proper legislation,’ on November 5, 2019, the SCJN granted an extension due to the complexity of the matter.”⁹⁰ Such deadline was initially set to expire on the last day of the first 2020 legislative period, that is, April 30, 2020.⁹¹ On March 4, 2020 three Senate committees approved the bill in general terms and was scheduled to be submitted to general vote. However, on April 17, 2020, the SCJN granted a second extension in light of the COVID-19 pandemic. The SCJN granted such second extension mandating that legalization be in place by December 15, 2020.

The Coming years “will pose a series of challenges to harmonize other pieces of legislation, such as import/export tax classifications, industrial property (patents), taxation, and the overall secondary regulation that has to follow and complement this new federal law.”⁹²

C. COLLECTIVE DISTRIBUTED ENERGY IN MEXICO⁹³

On May 27, 2019, the Energy Regulatory Commission (CRE), in its effort to find clean energy alternatives, presented a preliminary project before the National Regulatory Improvement Commission (CONAMER).⁹⁴ The project, which CONAMER has yet to approve, is known as the “Agreement by which the Energy Regulatory Commission issues the model contract to be entered into with the Basic Services Supplier and its consideration methodology applicable to the collective distributive generation” (The Agreement).⁹⁵ The term “distributive generation” in this project’s title is defined by Mexico’s Electric Industry Act as (a) that which is made by an exempted generator and (b) is made in an electrical center that is interconnected to a distribution circuit that contains a high concentration of

89. See Hernández, *supra* note 87.

90. Armendariz, *supra* note 68.

91. *Id.*; see also *Otorga Suprema Corte al Senado prórroga para legislar sobre cannabis [Supreme Court Grants the Senate an Extension to Legislate on Cannabis]*, SENADO DE LA REPÚBLICA COORDINACIÓN DE COMUNICACIÓN SOCIAL (Nov. 15, 2019), <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/46675-otorga-suprema-corte-al-senado-prorroga-para-legislar-sobre-cannabis.html>.

92. Armendariz, *supra* note 68.

93. The author, Ana Sofía Villa Hernández, is a legal counselor at Solar Energy Fund.

94. Nanda Singh, *Generación distribuida colectiva: los principales puntos del anteproyecto de la CRE que incluye modelo de contrato y metodología de contraprestación [Collective Distributed Generation: The Main Points of the CRE’s Preliminary Draft that Includes a Contract Model and Consideration Method]*, ENERGÍA ESTRATÉGICA (May 28, 2019), <https://www.energiaestrategica.com/generacion-distribuida-colectiva-los-principales-puntos-del-anteproyecto-de-la-cre-que-incluye-modelo-de-contrato-y-metodologia-de-contraprestacion/>.

95. *Id.*

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Charging Centers.⁹⁶ An exempted generator is the owner or possessor of an electrical center who is able to sell electric energy through a Supplier of Basic Services to final users in a charging center, without the need of an authorization or certification from the CRE.⁹⁷ While a model contract for the small-scale interconnection and collective generation already existed,⁹⁸ new alternatives would be available for projects and business models, if the agreement proposed by the CRE is approved. Such alternatives would allow final users, who are ordinarily prevented from installing electrical centers on their premises, to “access projects with which they will be able to generate their own energy, through the building and installation of electrical centers of distributed generation,” although they would be located in common areas.⁹⁹

Once the Agreement is approved, the criteria and guidelines for the collective consideration contracts to be entered into by the Basic Services Supplier with exempted generators shall be issued. On their part, the exempted generators will be able to enter into private agreements with beneficiaries or final users to determine the terms and conditions applicable to the distribution and sale of electric energy. This will cover (1) the conditions to maintain the qualification of beneficiary; (2) the proportional entitlements of each beneficiary; (3) the conditions for the operation of the electric central; and (4) payment conditions.¹⁰⁰

Currently, CONAMER is expected to issue a Regulatory Impact Assessment (MIR) that would set the Agreement in motion, as the provisions therein represent benefits that would far outweigh the costs in terms of competitiveness and market efficiency.¹⁰¹ Indeed, the project is relevant both for final users who would gain access to clean energy at lower prices and for private initiatives, which could develop business models based on collective distributive generation. Such initiatives could expand access to electric energy in locations with common areas and decrease the costs of energy consumption.

96. Decreto por el que se expiden la Ley de la Industria Eléctrica, la Ley de Energía Geotérmica y se adicionan y reforman diversas disposiciones de la Ley de Aguas Nacionales, ch. 1, art. 3, frac. XXIII, Diario Oficial de la Federación [DOF] 11-08-2014 (Mex).

97. *Id.* ch. 1, art. 3, frac. XXV.

98. See Singh, *supra* note 94.

99. *Acuerdo por el que la Comisión Reguladora de Energía emite el modelo de contrato con el Suministrador de Servicios Básicos y su metodología de contraprestación aplicable a la generación distribuida colectiva*, 27-05-2019, formato PDF, https://www.energiaestrategica.com/wp-content/uploads/2019/12/ACUERDO_Generacio%CC%81n-Distribuida-Colectiva.pdf?x53099.

100. See Singh, *supra* note 94.

101. *Manifestación de Impacto Regulatorio (MIR) de impacto moderado con análisis de impacto en la competencia [Regulatory Impact Manifestation (MIR) of Moderate Impact with Impact Analysis on the Competition]*, NAT'L REG. IMPROVEMENT COMMISSION (May 27, 2019), <http://187.191.71.192/mirs/47035>.

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D. REFORM TO THE FEDERAL LABOR ACT¹⁰²

On May 1, 2019, the Official Gazette of the Federation published a reform to several provisions of the Federal Labor Act, which entered into force the next day (the Labor Reform).¹⁰³ This reform stems from three sources:

- The constitutional reform on the impartation of labor justice, which entered into force on February 24, 2017;¹⁰⁴
- The principles and guidelines established in Chapter 23 and Schedule A of the trilateral free trade agreement between the United States of America, the United Mexican States, and Canada (USMCA);¹⁰⁵ and
- The ratification of Covenant 98 of the World Trade Organization (WTO) on November 23, 2018, by the Mexican Senate.¹⁰⁶

Generally speaking, the Labor Reform may be divided in three different sections: (1) a new labor justice system; (2) collective relations; and (3) individual relations. Moreover, it is important to emphasize that the provisions relating to outsourcing have not suffered any modifications but may be subject to subsequent legislative revision in the future.

The new labor justice system section establishes the (not immediate) dissolution of the conciliation and arbitration quasi-tribunals, creating in their place proper labor tribunals that shall operate at the federal and state levels of government, beginning their functions within a four-year and a three-year period respectively.¹⁰⁷ The new system also provides for the creation of a Federal Conciliation Center and Labor Registry (CFCRL) and State Conciliation Centers.¹⁰⁸ At the federal level, the CFCRL will perform conciliatory functions and shall conduct the registration of collective labor agreements, of internal work rules and of trade unions. At the state level, the activity of the Conciliation Centers shall be limited to conciliatory functions. From May 2, 2019, the CFRL shall have six months to draft and publish its organic statute, two years to begin the registration of collective labor agreements and trade unions, and four years to start its conciliatory

102. The author, Enrique García, is a corporate lawyer and partner at Cannizzo, Ortíz & Asociados.

103. Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de la Defensoría Pública, de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores y de la Ley del Seguro Social, en materia de Justicia Laboral, Libertad Sindical y Negociación Colectiva, Diario Oficial de la Federación [DOF] 01-05-2019 (Mex.) [hereinafter the Labor Reform].

104. Decreto por el que se declaran reformadas y adicionadas diversas disposiciones de los artículos 107 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Justicia Laboral, Diario Oficial de la Federación [DOF] 24-02-2017 (Mex.).

105. See United-States-Mexico-Canada Agreement [USMCA] ch. 23, Nov. 30, 2018.

106. *Mexico Ratifies the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, INT'L LABOUR ORG. (Nov. 26, 2018), https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/collective-bargaining/WCMS_651082/lang-en/index.htm.

107. See The Labor Reform, *supra* note 103 at transitory arts. 5–6.

108. See *id.* at transitory art. 3.

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functions.¹⁰⁹ The procedures that remain open in the quasi-tribunals shall be concluded in accordance to the laws applicable at the time they were initiated, as well as all the procedures that began before the new tribunals begin their functions.¹¹⁰

Regarding collective relations, workers shall vote for the obtention of a “Representative Certification” and for the approval and registration of a collective work agreement.¹¹¹ This measure aims to end unions and collective agreements that do not properly represent workers. Before May 2, 2023, all collective agreements must be reviewed in order to fulfill Mexico’s international obligations.¹¹²

In the case of individual labor relations, every contract shall include the appointment of beneficiaries in case of death or forced disappearance¹¹³ and terminations shall be ratified before the relevant body.¹¹⁴ Finally, employers shall provide every worker with a copy of the collective bargaining agreement once it has been submitted to the relevant authority. Employers will also implement a special protocol for the prevention of gender discrimination and violence and fulfill social security obligations.¹¹⁵

109. *See id.* at transitory art. 11.

110. *See id.* at transitory art. 3.

111. *See id.* at ch. XIII, art. 390 Bis.

112. Rosemarie Lally, *Changes to Mexico’s Labor Law Lead Employers to Reconsider CBAs*, SHRM (Oct. 1, 2019), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/global-mexico-amended-labor-law.aspx>.

113. *See* The Labor Reform, *supra* note 103, at ch. XIII, art. 503.

114. *Id.*

115. *Id.* at art. 132.

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