



Ottawa, October 19, 2018

Olga Sánchez Cordero
Secretary Designate,
Secretaría de Gobernación
Gobierno de México

Dear Señora Sánchez,

We are writing on behalf of the Americas Policy Group (APG), a regional working group of the Canadian Council for International Cooperation (CCIC). The Americas Policy Group (APG) is a Canadian civil society coalition focused on development and social justice issues in the Americas. It brings together approximately 40 international development and humanitarian NGOs, human rights groups, labour unions, research institutions, church and solidarity groups who work closely with partners in the Americas.

We would like to congratulate you on your designation as incoming Interior Minister and welcome you to Canada.

As civil society organizations with strong links to Mexico we have been closely watching the human rights and citizen security situation in Mexico. We are deeply concerned about troubling indicators of an acute human rights crisis in Mexico that has intensified since 2006 when the armed forces were deployed to fight organized crime. This human rights crisis has impacted the lives of millions of people. It is our sincere hope that your government will make meaningful, measurable action to address the human rights crisis a top priority of your agenda and seek the collaboration of civil society organizations.

Our coalition regularly engages in dialogue with Global Affairs Canada about the role Canada can play in supporting peace, social justice, and human rights in Mexico. Specifically, we have participated in annual consultations with Global Affairs Canada regarding the Canada-Mexico Bilateral Human Rights Dialogue which was established two years ago. We would like to share with you the brief and recommendations, developed in coordination with our civil society partners in Mexico, which we submitted to the Canadian government last February ahead of the 2018 Dialogue.

In addition to the recommendations in our February 2018 brief, we would like to underscore the importance of the following key issues for the new Mexican government and the future of the Canada-Mexico relationship:

- We are encouraged by your future government's commitment to listen to the victims of human rights violations and families of victims.
- We welcome the commitment by the president-elect to implement the court ordered Special Investigative Truth and Justice Commission on the Ayotzinapa case and call on the new administration to allocate enough resources to enable it to achieve its mandate.
- We urge your administration to present a proposal to the Mexican Congress to repeal the Internal Security Law (*Ley de Seguridad Interior*) and to put an end to the role of the armed forces in

public security by ensuring their orderly withdrawal, as well as appropriate reinforcement, training and supervision of the civilian police.

- In relation to crimes under international law and serious human rights violations, we urge your administration to comply fully with the judgments of the Inter-American Court on Human Rights and with the binding decisions of other international mechanisms on human rights, as well as with any recommendations they may make.
- As eyes focus on the thousands of people now on the move to escape desperate circumstances in Honduras, we underscore the right to asylum for those in need of international protection and call for guarantees that no one is illegally returned to situations where they could risk serious harm due to violence.
- We urge your administration to prioritize the design and implementation of effective public policy to address an alarming pandemic of gender-based violence against women and children, in coordination with women-led organizations on the front lines.
- We welcome the January announcement of the Canadian Ombudsperson for Responsible Enterprise. We encourage the Mexican government to use the opportunity of the delegation to Canada to express its support for the creation of an independent ombudsperson office and to extend an invitation to the yet-to-be named ombudsperson to independently investigate Canadian mining activities in Mexico.
- We welcome the creation of a labour chapter in the new United States Canada Mexico Agreement and hope that it will lead to greater Mexican diligence in supporting labour rights and freedom of association both in Mexico and in the other two countries through the use of trade sanctions to discipline violations of those rights.
- In future Canada-Mexico dialogues, we encourage the Mexican government to hold a meaningful consultation with Mexican civil society organizations prior to the governmental meeting, as the Canadian government has done with Canadian CSOs.

We appreciate your attention and hope to engage in future dialogue with you and your incoming government about how we can jointly contribute to peace and justice in Mexico.

Sincerely,



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Enclosure: Canada-Mexico Human Rights Dialogue 2018. Recommendations submitted to Global Affairs Canada by members of Americas Policy Group, a regional working group of the Canadian Council for International Co-operation.



Canada-Mexico Human Rights Dialogue 2018

Recommendations submitted
to Global Affairs Canada

By members of the
Americas Policy Group, a regional working group of the
Canadian Council for International Co-operation

February 7th, 2018



Canada-Mexico Human Rights Dialogue 2018

Summary of Recommendations

Americas Policy Group

On February 7th, 2018, Global Affairs Canada convened a consultation session with the Americas Policy Group (APG), a regional working group of the Canadian Council for International Co-operation (CCIC), in preparation for the second Canada-Mexico Bilateral Dialogue on Human Rights.

Members of the Americas Policy Group identified priority human rights issues for Canada's engagement with Mexico and recommendations for both the Canada-Mexico Bilateral Dialogue on Human Rights and Canada's ongoing relationship with Mexico.

Recommendations are organized around 6 key areas:

1. The protection of human rights defenders and the law of national security
2. Disappearances and the law on disappearances
3. Violence against women
4. Business and human rights, including mining issues and indigenous rights
5. Freedom of association – labour justice law reform
6. Migration and refugees

List of APG participants

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Alex Neve (Amnesty International)
Benoit André (Peace Brigades International)
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General overview of the situation of human rights in Mexico

- There was a marked increase in the number of homicides, with more than 42,000 recorded in 2017, the highest annual number of homicides registered by authorities since the start of the presidential term in December 2012 and indeed the record number of murders in 2017, made it the deadliest year in Mexico's modern history.
- Arbitrary arrests and detentions remained widespread, and often led to further human rights violations including torture and other ill-treatment, enforced disappearances and extrajudicial executions. Arbitrary arrests often included the planting of evidence, like guns and drugs, by law enforcement officials.
- In this context, it is also important to mention that the new adversarial criminal justice system, fully operational since June 2016, continued to replicate problems from the old inquisitorial system, including violations of the presumption of innocence and the use of evidence collected in violation of human rights and other illicit evidence.
- In February 2017, the UN Special Rapporteur on torture reported that torture and other ill-treatment remains widespread, including the alarming use of sexual violence as a frequent method of torture. In June 2017, a new general law on torture came into force, welcomed as an advance by civil society organizations. The Special Unit on Torture of the Federal Attorney General's Office commenced more than 700 investigations. But Federal authorities did not announce any new criminal charges against public officials, nor provide any information on arrests made for the crime of torture.
- The epidemic of enforced disappearances and disappearances continued to escalate. Official statistics now indicate more than 34,000 people are missing. The actual numbers are likely much higher. Impunity for these crimes continued amidst lack of adequate search or investigation. A new law entered into force this month and provides some tools to address the situation. It will require political will and an adequate budget to fully implement.
- Extrajudicial executions remain a worrying concern. To give one example: on May 3, 2017, military personnel carried out public security operations in the state of Puebla. Days later, video footage emerged from security cameras at the location. It clearly showed a person in military uniform shooting dead a man lying on the ground. For the fourth consecutive year, the authorities failed to publish the number of people killed or wounded in clashes with the police and military forces.
- In this context, it is deeply troubling that in December 2017, Congress passed a Law on Interior Security enabling the prolonged presence of the armed forces in regular policing functions without any effective provisions for transparency, accountability or civilian oversight.

- Human rights defenders and journalists continued to be threatened, harassed, attacked and killed. At least 12 journalists were killed, the highest number recorded in one year since 2000 and none were brought to justice. In June 2017, evidence emerged of surveillance against journalists and human rights defenders using software that the government was known to have purchased.
- Following her November 2017 visit to Mexico, the UN Special Rapporteur on Indigenous Peoples Rights, Victoria Tauli-Corpuz, expressed concern about what she called a “serious pattern of exclusion and discrimination, which in turn reflects in a lack of access to justice”, among other systemic violations of the rights of Indigenous peoples. The UN expert underscored her concern that indigenous peoples are not being properly consulted, according to international standards, on projects and other decisions that affect their rights, including their right to life.” Indigenous defenders of land, resources and the environment continue to be subjected to detention on trumped up charges and targeted with attacks and assassinations.
- Gender-based violence against women and girls was widespread provoking mass protests in multiple cities in September. Most of the cases were inadequately investigated and perpetrators enjoyed impunity.
- Impunity is a cross cutting theme that applies to all of the indicators of crisis.
- To add to this troubling panorama is what Amnesty International is describing as a hidden refugee crisis, documented in our January 2018 report, in which people fleeing life-threatening situations in Central America are being deported back to grave danger, including lethal attacks and horrendous sexual violence in the case of women, in violation of their rights.

1. The protection of human rights defenders and the law of national security

The trend of increased violence has been documented by Mexican civil society, and now 2017 has been the deadliest year yet with 27 101 homicides. According to the Cerezo Committee, a human rights organization that is accompanied by PBI, 48 human rights defenders were extrajudicially executed in 2017. They state that there has been an increase in this human rights violation during the current administration of Enrique Peña Nieto, and that 123 extrajudicial executions have been documented as of June 2017. Criminalization continues to take place and 795 defenders have been allegedly arbitrarily detained between May 2016 and June 2017.

According to the Inter-American Commission on Human Rights, criminalization is observed in a more systematic and repeated way in Latin America. It appears that it is taking place more frequently in contexts where there are tensions or conflicts of interest with state actors and non-state actors, particularly in communities that develop mega-projects and exploit natural resources and where economic interests are involved. Similarly, the UN Special Rapporteur on the situation of human rights defenders, Michel Forst,



has called attention on several occasions to the violence against defenders of the land, territory and the environment.

The militarized security strategy is reinforced by the Internal Security Law. The Senate of the Mexican Republic approved the Internal Security Law in 2017, despite concerns from international entities like the United Nations, the Inter-American Commission on Human Rights (IACHR), Mexican and international organizations, the National Human Rights Commission (CNDH) and others, due to the risks that this law can have for human rights. A group of experts from the UN points out that the “increasing role of the Armed Forces, without mechanisms for control and accountability could allow for the repetition of human rights violations like those that have taken place since the Armed Forces were given a primary role in the fight against crime. At the same time, according to Mexican Civil Society, the Internal Security Law contradicts international treaties ratified by Mexico and does not comply with specific recommendations from the IACHR and the UN High Commissioner for Human Rights in Mexico.

From our experience providing international accompaniment, we have observed that in the federal states where there is a security strategy based on militarization, there has been a significant increase in risk and attacks against defenders and human rights organizations.

We are concerned that the focus on the elections will take priority away from the protection of human rights defenders. For example, it is important to highlight that diverse organizations that receive PBI accompaniment have protection measures assigned by different entities on the international, federal and state level and unfortunately there is frequently a lack of adequate implementation of these measures. In this context it is concerning that in January, just a few months before the elections, the Secretary of the Interior changed, as well as several of the people in high positions in the Under Secretaries, including the Under Secretary of Human Rights. In particular, we are aware of the political will of the Oaxacan Government to remove protection measures from several human rights defenders, including members of Consortium for Political Dialog and Equity Oaxaca, who have been the target of 6 raids during the current administration of Alejandro Murat. We are concerned that the Oaxacan Government is not prioritizing protection for human rights defenders in the state and due to the serious violence against them, it is important to take immediate actions and effectively implement protection mechanisms.

As a result, we ask you to discuss these concerns in meetings with Mexican authorities.

Recommendations:

With regards to the case of criminalization of human rights defenders:

- Express concern to Mexican authorities for the security of human rights defenders in Mexico.
- Express concern for the intervention of the armed forces in public security tasks and the apparent excessive use of force.

With regards to the militarization of public security and the Internal Security Law:

- Urge the Mexican Government to implement the recommendations of the UN Working Group on Forced or Involuntary Disappearances (2011) and the IACHR (2015) about retiring the Armed Forces from public security tasks.
- Urge the Mexican government to open spaces for effective dialogue with Mexican civil society that allows for the construction of security alternatives that are in line with the international framework.
- Regarding the Internal Security Law: Canada should express concern that the law breaches international law and endangers human rights in Mexico. Canada should ask Mexico not to implement any part of the law until the Supreme Court reaches a decision.¹
- Canada should make a public statement regarding the risks and possible negative impacts on human rights with regard to the new Internal Security Law.

Given the increased violence in the pre-electoral context:

- Implement protection measures assigned to human rights defenders.
- Express concern for the increased risk of human rights defenders in the pre-electoral context and urge the government to implement strategies for prevention and to provide sufficient human and economic resources for their effective implementation.

2. Disappearances and the law on disappearances

The epidemic of disappearances continues in Mexico with the official tally now approaching 35,000 people, though everyone believes the real number is much higher with many too frightened to report, and the official figure excluding some cases, such as those classified as hostage-taking or human trafficking.

The lasting trauma for thousands and thousands of families is unspeakable and unacceptable. Equally unacceptable is the fact that these crimes continue because the perpetrators know they will not be brought to account.

¹ Amnesty International will submit an amicus curiae brief to the Supreme Court. [You can find here an open letter](#) from Salil to President Peña Nieto asking him to veto the law.



Even the most high-profile case, that of the 43 students from the Ayotzinapa teacher training college who were forcibly disappeared in Guerrero state in 2014, has not been brought to justice despite all the international pressure and concern. The investigations into this case made little progress during the year. In March of 2017, in a hearing before the Inter-American Commission on Human Rights, state representatives re-asserted the government’s version of events that the students had been killed and burned in a local rubbish dump – a theory that was proved to be scientifically impossible by the Interdisciplinary Group of Independent Experts appointed by the Commission.

Impunity has deep roots - the hundreds of enforced disappearances committed during the so-called “dirty war” of the 1960s and 1970s also have not been brought to justice or even acknowledged to have taken place.

In October, as a result of the tireless efforts of the families of the disappeared, Congress passed a general law against disappearances that defined the crime in accordance with international law and provided tools to prevent and prosecute it. They include:

- The creation of a National Search Commission which will be an institution in charge of generating programs and search operations to find disappeared and missing people nationwide in coordination with prosecutors, investigative police, etc.
- The establishment of the National Registry of disappeared and missing people, the National Registry of unidentified and unclaimed dead people and the National Forensic Database.
- The creation of a National Search and Location Program and a National Program of Exhumations.
- Special investigators tasked with bringing cases to justice.

The law will bear no fruit unless there is political will to implement it – and unless it receives sufficient budget.

Recommendations on disappearances:

At the Bilateral Human Rights Dialogue, Canada should:

- Express concern about the still rising number of disappearances, lack of effective search or investigations, and impunity.
- Express Canada’s support for the courageous efforts of Families of the Disappeared, including the National Movement for our Disappeared.
- Signal Canada’s support for full implementation of the General Law against Disappearances – including via sufficient funding for both Search Mechanisms and Investigators/Prosecutors
- A proper registry of disappearances is vital.
- Ask for detailed information regarding the status of implementation to date (there are various deadlines).



- Express concern that the case of the 43 students has yet to be resolved and that the government has returned to a version of what they say happened that is scientifically impossible. Express Canada’s interest in seeing truth and justice in this emblematic case.
- Press for full compliance with the recommendations of the Follow up Mechanism to the Group of Independent International Experts. Ask for information regarding implementation of the recommendations.

Earlier this month new authorities took office in the Ministry of the Interior (Secretaría de Gobernación), its Human Rights Department (Subsecretaría de Derechos Humanos) and the Federal Prosecutor’s Office on Disappearances (Fiscalía Especializada de Búsqueda de Personas Desaparecidas). Canada should make sure that the new authorities will prioritize the full and prompt implementation of the law.

Recommendations on torture:

- Given that Mexico now has the General Law on Torture Canada must press Mexico to fully implement the law, and especially to properly investigate torture cases and to bring those responsible to justice. Impunity for this crime is incredibly high. We believe that any change in this field will require a serious commitment to justice.

3. Violence against women

A recent report by the Immigration and Refugee Board of Canada cites sources calling violence against women in Mexico a “pandemic”. Women’s organizations in Mexico frequently refer to the levels of violence on women—resulting from a complex interplay of factors, including deeply embedded misogyny, high levels of impunity, failed security policies - being equivalent to a “war on women”.

In August the National Institute of Statistics and Geography published a survey estimating that 66.1% of girls and women aged 15 or above had experienced gender-based violence at least once in their lives, and that 43.5% of women had experienced gender-based violence committed by their partners. Domestic violence cuts across social, economic, cultural and age lines.

The Inter-American Commission on Human Rights reports that more women than men are victims of numerous serious crimes. These include rape, human trafficking, human smuggling, sexual abuse, domestic violence, statutory rape, and crimes against freedom.

National Mexican data indicates that between 2013 and 2014, 7 women were being killed every day, with the most killings being reported in the 12 or so states also associated with high levels of drug-related



crimes. Unfortunately, as Nobel Women's Initiative and other women's organizations have reported, the national, state and local response to drug-related crimes and the corresponding state corruption has only increased the climate of violence against women in recent years.

Most importantly, in recent years while Mexico has made great strides in creating legislation and mechanisms aimed at reducing violence against women and promoting gender equality, the reality on the ground for women has only gotten more dangerous. The lack of justice for women experiencing violent crimes is striking. Impunity for crimes against women is estimated to be as high as 95%. Data only tells part of the story of violence against women in Mexico because it is estimated that 91% of the crimes against women in fact go unreported. This is a vicious cycle—women get little justice and therefore there is little reason to report crimes against them.

Mechanisms known as “Alerts of gender-based violence against women” were active in 12 states. Established by the General Law on Women's Access to a Life Free from Violence, the Alert mechanisms relied on co-ordinated efforts to confront and eradicate violence against women and girls. By the end of the year, the Alerts mechanisms were not shown to have reduced gender-based violence against women and girls

Women human rights defenders (HRD) in Mexico work on addressing the full range of human rights abuses, including (especially in the case of Indigenous women) abuses resulting from community conflicts with corporations, including mining companies. Women defenders are targeted for violence in ways that are distinctly related to their gender; which means of course the use of sexual torture of women human rights defenders in jails or the rape of women community leaders or protesters as a way to silence women who are speaking out. In January 2018, a Mexican human rights defender from the State of Mexico who is leading her community fight against a highway being built through Indigenous sacred land, testified to the Americas Policy Group, and said very movingly: “You raise your voice in Mexico, and you are disappeared, displaced and threatened.” She was speaking in reference to another HRD who also was in Ottawa last month; this young woman had lost two close family members and her boyfriend to disappearances and violence, and has had to leave her home in one part of Mexico to living in hiding in another part of Mexico to avoid being disappeared or killed herself.

However, women are not being silenced, and as the crisis of violence has deepened in the last dozen years, so has the response of the women's organizations and movements in response to violence in its different forms across Mexico. Women and mothers have become the human face of the families of the disappeared movement – an informal and very grassroots response to an alarming trend of using disappearances to silence resistance and dissent. These organizations and movements are not just responding to disappearances of Mexicans, but also the disappearances of migrants and asylum seekers from El Salvador, Guatemala, Honduras and other countries moving through Mexico. These women have become human rights experts, advocating for legislation and providing frontline services to assist in locating bodies and advocate for families with various levels of governments.

Nobel Women's Initiative have heard direct testimony since 2010 from well over 200 women human rights defenders and women's right organizations about the violence and other problems they face, and their



response to the violence. They are critically important partners for bringing about change in Mexico, to truly respond to and end the violence in Mexico.

Recommendations:

Canada should, through funding and diplomatic accompaniment:

- Direct more support to both formal and informal women-led movements that are responding to the “pandemic” of violence in Mexico.
- Increase support to regional networks working on the protection of women human rights defenders.
- Revising Canada’s Guidelines for Human Rights Defenders to align more closely with the Feminist International Policy, and to address the special needs and circumstances of women human rights defenders.

4. Business and human rights, including mining issues and indigenous rights

In Mexico, Inter Pares has been working with three partner organizations located specifically in the state of Chiapas, a state with high levels of poverty and marginalization, especially affecting its relatively high Indigenous population (approximately 25%). Those organizations focus on a range of themes such as women’s rights, migrant population’s rights, Indigenous people’s rights and access to alternative justice.

An important part of their political analysis focusses on the systematic causes that affect the specific trends lived and seen by each of their different target populations. For our partners, the neoliberal economic model implemented in Mexico for the past three decades has had a wide range of negative effects on their lives and the territory they live on, such as damage to the communities’ social fabric or patterns of environmental destruction – both of them with their differentiated impact on women (increased workload, higher risk of suffering violence, etc.)

In the context of heightened violence and impunity that currently characterizes Mexico, specific types of economic activity have been more closely linked to human rights abuses than others, in Chiapas and elsewhere. Among those are extractive projects, hydroelectric dams, and large infrastructure projects such as highways.

Canada is Mexico’s second largest trading partner, with 40% of its investments going toward mining, fruit of an important promotion of the mining industry by the Canadian government. Canadian mining



companies comprise 70% of all foreign investment in the Mexican mining sector. Of the 293 mining companies operating in the country, 205 are from Canadian capital and are active in around 942 projects.

Canadian mining companies have a large presence in the country overall, including in four of the most violent states in Mexico (Guerrero, Morelos, Sinaloa, Michoacán). As we have seen and heard from partners, given the high levels of police corruption and presence of criminalized crime in different sectors of authority, companies have no choice but to “normalize” their relations with those actors – for example, in Guerrero’s *Cinturón de Oro* gold and silver-producing region, violence levels have escalated beyond control, with hundreds of displaced peoples, but also assassinations and forced disappearances.

The Justice and Corporate Accountability Project (JCAP) used Goldcorp’s *Los Filos* mine as a case study for its “Canada Brand” Report. The project is located between the town of Mezcala and Carrizalillo (in Guerrero’s *Cinturón de oro*), which have reportedly seen an increase in the presence of organized crime since the company began commercial production in 2008. Reports indicate that these groups have controlled and terrorized local communities, especially the town of Carrizalillo. They have used fear to extort local mine workers and groups/individuals receiving payments from the company for the use of their land. Local residents have also been the victims of turf wars between two organized crime gangs wishing, among other things, to control extortion linked to the mine. One of these groups, Guerreros Unidos, is suspected of being partly responsible for the disappearance of 43 students in the nearby town of Iguala in 2014. According to the JCAP report, the situation has led to at least: 17 deaths, 3 disappearances, 8 injured and hundreds of families being displaced in the two small communities. Therefore, Goldcorp is an important actor in the complicated context.

Moreover, at the core of the intersection between Business and human rights in Mexico is the question of free, prior and informed consent (FPIC). Civil society organizations in both Mexico and Canada are concerned by the fact that a large amount of Canadian mining concessions operate without the full consent of local communities, which should be paramount to any development project.

As a matter of fact, we have been reminded of this very recently by a delegation of Mexican human rights defenders that many of the APG members helped coordinate – around the case of Mariano Abarca. Mr. Abarca was a community activist from Chicomuselo, Chiapas, who led his community’s struggle against a barite mine by Canadian Company Blackfire Exploration. Community discontent around the project was already apparent when the company started mining in 2008 – when Mariano Abarca started speaking out about the existing and potential impacts of the mine. In the following months, Mariano Abarca and his family were robbed and beaten by employees of the mine; he was accused of organized crime by the company and taken into secret custody without charges in 2009. He continuously denounced the threats made against him, including to the Canadian Embassy in Mexico. This did not prevent him from being murdered in broad daylight in front of his house on November 27, 2009. All suspects in the case are linked to Blackfire Exploration. The lack of a full and impartial investigation means that no one is currently under arrest for his murder.

A lot of questions remain around the nature of the Canadian Embassy’s support to the company in the course of this ordeal. But in this case, such as in many others, it is worth mentioning there is an increasing



contradiction between the Canadian Embassies' mandate for economic diplomacy and its intent to protect human rights defenders.

Recommendations:

- Canada should share and publicize its Guidelines for Human Rights Defenders and actively implement them, especially when facing cases of human rights defenders facing threats that imply Canadian economic interest (especially mining) in Mexico.
- In recognition of the increasing number of mining conflicts in Mexico, it is vital that the Canadian government and Canadian mining companies respect the rights of Indigenous communities to self-determination and to free, prior, and informed consent before any mining activities are undertaken on their territories. This must include to respect the decisions of numerous communities, Indigenous and non-Indigenous, who have said no to large-scale mining because of its severe damaging impacts on the environment and social wellbeing.
- Together with women's organizations and communities impacted by mining, Canada can also be a leader in developing mandatory mechanisms that ensure that the gendered impacts of resource extractions projects are assessed and that the perspectives of women are heard and addressed when considering mining projects—even if this assessment leads to a decision not to go ahead with the project.
- Canada should ensure Canadian mining companies operating in Mexico do so in conformity with the international human rights standards established in treaties, which apply to both host countries and to Canada. As a full supporter of the Declaration on the Rights of Indigenous Peoples (UNDRIP), Canada should be proactive in improving the practices of mining companies – this is one of the most important ways Canada can improve human rights in Mexico.
- Canada express interest in the case of the Otomi Indigenous community of San Francisco Xochicuautla (whose leader met with MPs, Senators, civil society organizations in Canada to talk about how the highway project went ahead without meaningful consultation or FPIC) and request good faith in negotiating and implementing an alternative solution for the last 4 km of highway that will cut across their territory in order to protect the forest and sacred sites of the Otomi people.
- Canada urge Mexico to fully implement the recommendations of the Special Rapporteur on the rights of Indigenous people.

5. Freedom of Association – Labour Justice Law Reform

In February 2017, a Constitutional Reform to Mexico's labour justice system became law, which propose that the existing tripartite conciliation and arbitration boards (*juntas de conciliación y arbitraje or juntas*) be replaced by new institutions that are unbiased, independent and transparent. Controlled by representatives of corporatist unions, executive branches of state and federal governments and employer organizations, the *juntas* are criticized for blocking the registration of independent unions and registering "employer protection contracts" signed by employers and non-representative unions without the knowledge or consent of the affected workers. As well as eliminating the *juntas*, the February 2017 Constitutional Reform also propose to give workers the right to choose their union and to vote on their collective bargaining agreement (CBA).

President Peña Nieto submitted to Congress the Constitutional Reform in April 2016, he also submitted a Labour Law reform bill, which largely followed the intention and spirit of the Constitutional Reform bill. That proposal has languished in Congress, largely ignored, at least in public, by elected representatives, executive branch officials, the private sector, civil society and the media. Negotiations around the content of the implementing legislation have been limited to the traditional power brokers and have happened behind closed doors. There was no public dialogue with independent trade unions, labour rights experts, or other civil society actors.

At the end of 2017, two major corporatist union confederations, the CTM and the CROC, submitted a bill for implementing legislation to the Senate. Although technically submitted by the two Senators, it is widely believed that the bill was originated by the private sector and is endorsed by the Executive Branch of the Federal Government. Some of the provisions most relevant to the Constitutional Reform reflect concerns regarding:

- ❖ Re-establishing tripartism in the new institutions that will register unions and CBAs, with representatives of the official unions sitting on those institutions, just as they had in the *juntas*.
- ❖ Failing to mention anything about the right of workers to vote on CBAs, thereby leaving the right to select the union in the hands of the employer, along with the power to retain that union against the wishes of the workers.

These measures are legal obstacles which make it extremely difficult, if not impossible, for an independent union to gain recognition or for workers to change unions where a protection union has title to the CBA.

By allowing employers to dismiss workers without written notice it is making it easier for employers to dismiss supporters of independent unions, and more difficult for workers to successfully bring legal cases against their employers for unjust dismissal.



The Senate reconvenes on February 1st, 2018, three weeks prior to the February 24 deadline for the adoption of the legislation.

The debate on the secondary legislation is taking place against the backdrop of a possible overhaul of NAFTA. This has provided the context for pressure by trade unions in the three NAFTA countries to ensure not only enforceable labour conditionality in the agreement, but also that Mexican law be consistent with ILO norms and standards before the agreement is signed.

The Canadian governments' greater emphasis in strengthening labour standards provisions in a re-negotiated NAFTA is extremely important.

Recommendations:

Whatever the outcome of the NAFTA negotiations, the debate on the Constitutional Reform implementing legislation in the Mexican Senate and Chamber of Deputies, the Canadian government should:

- Maintain ongoing pressure on the Mexican government to make good on its commitment to make fundamental reforms to its labour justice system. Mexican and global union organizations are working to make sure that the International Labour Organization is fully informed if the Mexican government is backtracking on its commitment to fully implement the Constitutional labour justice reform. Meanwhile, the AFL-CIO and UNT have announced that they are filing a complaint under the existing NAFTA labour side agreement charging that by simply promoting the CTM/CROC bill, the Mexican government is violating its obligations to “provide high labour standards” and “strive to improve those standards”.

6. Migration and refugees

APG is expressing serious concerns on two fronts: refugees passing through Mexico and refugees seeking protection in Mexico. There has, perhaps, been more focus and attention on the former – how dangerous, often lethally so, Mexico is for refugees and migrants passing through on their way, hopefully, to the US or even onwards to Canada.

a) Concerns regarding migrants passing through Mexico

Migrants and asylum-seekers are frequently subject to muggings, extortions, kidnappings and killings on their journey through Mexico. Amnesty International has collected dozens of testimonies of migrants and asylum-seekers who, during their transit through Mexico, have been victim to such crimes. Women are particularly at risk of sexual violence, and unconfirmed reports have been received of women migrants that often take contraceptive pills before taking their journey as rape is so common along the way.

Organized criminal groups operating in Mexico often see migrants as an opportunity for economic gain, by kidnapping them for ransom until their relatives in their home countries or the United States wire a certain amount of money for their release. Other modus operandi of organized crime includes forced labour of migrants for the criminal groups. In 2009 and 2011, Mexico's National Human Rights Commission released two in-depth reports on the issue of kidnappings of migrants and acknowledged that Mexican officials at times have colluded with the criminal groups that carry out these kidnappings. 2011 report detailed 11,333 kidnappings in just six months. While no major statistical update has been published since this time, the phenomenon continues to be widespread. Massacres of migrants are also not uncommon, and a series of mass graves and discoveries of dismembered bodies of migrants involving hundreds of victims were discovered between 2010 and 2012 in the northern border states of Nuevo León and Tamaulipas. In June 2015, Amnesty International documented an armed attack against a group of approximately 120 Central American migrants travelling in the northern border state of Sonora. Such attacks are reported on a frequent basis.

b) Concerns regarding Mexico as a destination country

Mexico is increasingly a destination not only a transit country for those fleeing the NT. In 2016 a record 8,788 asylum claims were lodged in Mexico (in comparison to 1,296 in 2013).

The National Institute of Migration (INM) is the federal government body responsible for regulating borders. INM are required by domestic law to detect foreigners that can be presumed to be possible asylum seekers and inform them of their right to request asylum and refer potential claimants to Mexico's refugee agency, the Comisión Mexicana de Ayuda a Refugiados (COMAR). IMM officers have been given uniform training on human rights and international refugee law and should be capable of screening for protection needs in a variety of settings.

Amnesty International surveyed 500 individuals in 2017² to verify how well the INM is carrying out these responsibilities. Conclusion: the Mexican government is routinely failing in its obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the non-refoulement principle.

Of the 500 survey responses received - 120, nearly ¼ had been subjected to refoulement.

75% of those people detained by the INM were not informed of their right to seek asylum in Mexico, despite the fact that Mexican law expressly requires this and public officials assured Amnesty International that the requirement is complied with. Most people only became aware of their right to seek asylum through good fortune or word of mouth, or by humanitarian workers at migrant shelters. Mexican officials often told people that consular officials from their home country were responsible for explaining to them their rights to asylum in Mexico.

² See Amnesty International 2018 report [“Overlooked and Under-Protected” here](#).



Fair process is wholly lacking and deeply problematic. INM told Amnesty International each irregular migrant is given an interview of approximately one hour when detained, where the right to protection is explained. Only 68% told us they were interviewed, half of whom said it was less than 10 minutes. Numerous procedural deficiencies in accessing case files. No asylum database, meaning cases routinely fall through the cracks, leading to refoulement.

There are serious concerns about the role of the police, as federal police often assist INM. 2/3 of those who had an encounter with the police described abuse and criminality, primarily robbery or extortion.

The decision to detain an irregular migrant or asylum seeker is almost completely devoid of any individualized assessment. Detention is the automatic response, and all irregular migrants apprehended by INM are detained, even if they express a wish to seek asylum. Despite the fact that Mexican law expressly prohibits the detention of children, Mexico detained 40,542 children in migration detention centres in 2016, often for weeks or months. Those numbers continue to be extraordinarily high.

Recommendations:

- Ensure that all reports of abuses of migrants and asylum seekers in transit are promptly, impartially and effectively investigated, those responsible brought to justice and victims receive reparations.
- Consider expanding and replicating ‘safe corridor’ initiatives which allow for more effective coordination between security and investigative authorities along well-known areas of danger for migrants.
- Implement a pro-active screening system that improves identification of potential asylum seekers within the first moments of contact with the INM and ensures irregular migrants who are apprehended and detained are properly informed of their right to seek asylum in Mexico.
- Curb illegal practices of refoulement and ensure such practices are met with administrative sanctions.
- Ensure that no child remains in immigration detention.
- Put in place special mechanisms for vulnerable groups of asylum-seekers that may need to be urgently transferred from border areas to other parts of the country to await the outcome of their asylum proceedings, with a special emphasis on LGBTI communities.