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ENVIRONMENTAL AND SOCIAL CONCERNS THAT MAY RESULT FROM THE ENERGY REFORM IN MEXICO

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Concerns

In Mexico fossil fuels are preferred and privileged, wasting the **potential** to generate energy from **renewable sources** of energy. Just recommended by William Clinton to Mexico.

Some existing mega projects already show important problems, causing numerous **Human Rights violations and socio-environmental conflicts**: **Lack of proper consultation and information**; many environmental defenders have been **attacked**.

Also, the energy reform does **not properly contemplates** fundamental aspects such as **climate change, human rights, renewable energies**, the protection of the environment and leaves unresolved the goals to **reduce Greenhouse Gases Emissions** and the goals to promote an **energy transition**.



¿Why the possibility of human rights violations?

The new Energy regime establishes that **energy activities are to be privileged over any other activity** in the industrial sectors **because they are considered to be of public order and social interest.**

This, may have a severe impact on basic human rights such as: **the right to a proper consultation, the right to a healthy environment, the right to water and the right to property, access to information and, the rights of indigenous communities.**



Contradictions Arising From the Current Reforms of the Secondary Laws

The Law for the Use of Renewable Energy and for the Financing of Energy Transition **promotes the reduction of the dependency on hydrocarbons**, whereas the reform **establishes that its exploration and extraction should be given preference over any other activity**, given that it is considered to have a social interest.

SEMARNAT and SENER are **both pushing towards the exploration and exploitation of natural gas** (GHG emissions). **Cleaner but still a fossil fuel.**



Climate Change

Its effects will have **negative impacts** on:

- 15% of the national territory
- 68% of the population
- 71% of the economy

In the **General Climate Change Law commitment goals** have been established in order to **reduce the Greenhouse Gases Emissions** as follows:

- 30% for the year 2020.
- 50% for the year 2050 (in relation to the emissions of the year 2000).

These commitments were adopted during the 15th Conference of the Parties in 2009 in Copenhagen.



Climate Change

According to the **National Greenhouse Gases Emissions Inventory**, the **total of emissions in 2010** were 748 tons of millions of CO₂ = **19% more than in 2001**. It has been calculated that in **2020, Greenhouse Gases Emissions will be 28% higher than in 2010**.

Mexico contributes approximately each year with **1.6%** of the global emissions. The previous percentage puts the country within the first **13** countries whose emissions are highest.



Territorial Management Declaration of Public Interest

The Hydrocarbons Law, the Electric Industry Law, the Geothermal Energy Law and the Regulatory Coordinated Bodies Law regarding Energy Law establish that such activities are of public order and social interest, which is why **they should be preferred over any other activities that involve the use of the surface and the underground deposits.**

The former could provoke Human Rights violations already mentioned.

There is a lack of proportionality, given that no rules exist for the authority to determine which activity should be given priority. Energy prevails over everything else. **Good practices should be implemented to avoid conflicts.**



The Energy Reform **may restrict or suspend human rights**. This can only take place according to the case established in **article 29 of the Constitution** (invasion, public peace obstructed); **which is not envisaged in the energetic laws**.

Which is why the application of those new energy laws protecting energy activities over others, may result unconstitutional.

The **State** must therefore **establish clear rules for the enforcement and regulation of these new laws, ensuring due respect to human rights and transparency.**



Legal Easement and Temporary Occupation

The Mexican Constitution, the Universal Declaration of Human Rights and the Interamerican Human Rights Convention **recognize the right to private property and the right not to be arbitrarily deprived from our properties.**

This right can only be limited in terms of **article 27** of the Constitution, given that it establishes the **expropriation.**

Expropriation **can only take place if** it will have a public benefit (**for private interests in the new energy context?**), and in return a fair compensation must be given. **Restriction to property rights must comply with** the criteria set by international standards:

- a) It must be established by law.
- b) It must be necessary.
- c) It must be proportional.



Those interested can resort to the “**constitution of legal easements**” or to the “**temporary use**” figure in exchange of a remuneration (article 96, Hydrocarbons Law).

Regarding the establishment of legal easements, a balance between private interest and public benefit should be reached. This matter is “ignored” in the energy reform, given that the “**public benefit**” prevails upon private property (something that could only happen regarding expropriation cases).

Therefore, **legal easements mentioned in the reform may be equivalent to an expropriation, since the right to property is being restricted** and there’s no possibility to refuse to “give in” or limitate the rights, because if no agreement were reached the State would impose a legal easement.



Natural Protected Areas

Their **goal** is to preserve natural environments and their ecosystems to ensure a balance in the ecological and evolutionary processes.

The **Hydrocarbons Law** is the **only law** that forbids hydrocarbons **exploration and exploitation** in natural protected areas. Nonetheless, **other activities** of the productive chain may be **undertaken in the NPA**, such as transportation, distribution and **storage**.

The reform does not include requirements for the protection of other ecologically important areas, such as wetlands and mangroves. Wetlands are protected by the Ramsar Convention which has been ratified by Mexico.



Indigenous People

The **Constitution** of Mexico recognizes indigenous people rights, such as self determination, autonomy, access to land tenure and the use and benefit of natural resources.

Convention No. 169 of the International Labor Organization, ratified by Mexico, establishes the rights of the indigenous peoples in Mexico:

- a) Protection measures must be dictated in order to protect people and their environment.

- b) The **State must consult the communities, particularly when they could be affected. Those who are interested shall be entitled to participate freely in the decisions that are being made.** Such consults shall be done in good faith.



The **Indigenous Communities as such were not consulted** during the drafting process of the energy reform.

It matters because the **indigenous population represents 15%** of the entire Mexican population and they own **54.1%** of the countries lands.

To ignore indigenous peoples rights, increases the probability to face socio-environmental conflicts.

The new legal regime do recognize their right to be consulted but not according to international standards. **It is not recognized their free, previous, informed and in good faith consent** either.

It is troubling to realize that both, **the Ministry of Energy and the Ministry of the Interior, are not qualified** to take over these processes.

Neither one of them is in possession of the accurate process in which the consultation and the consent must be done.



National Industrial Security and Environment in the field of Hydrocarbons Protection Agency

Independent body of SEMARNAT, with autonomy and the possibility to dictate resolutions.

It creates an **exception regime** because it can regulate, supervise and sanction the hydrocarbons field activity, approve projects, monitor and supervise the compliance of its regulations, through audits, inspections and environmental verifications and sanction and impose infractions due to a breach of the regulations.

Conflict of interest: Regulator and Supervisor at the same time.



Concurrent Attributions

The Law for the National Industrial Security and Environment in the field of Hydrocarbons Protection Agency **grants the Agency powers that currently belong to other bodies. Example: EIA.**

This may causes **duplicity** regarding functions between the Agencies and the already existing bodies.

May result in **weakness and fragmentation** to the environmental sector in Mexico.



Transparency and Accountability

The Regulatory Coordinated Bodies Law regarding the Energy Law states that **contracts and other authorizations are subjected to certain laws to ensure transparency, access to information, accountability and avoid corruption.**

However, the Hydrocarbons Law, the Electric Industry Law, the Geothermal Energy Law and the Law for the National Industrial Security and Environment in the field of Hydrocarbons Protection Agency, **do not have public participation mechanisms**, they do not ensure transparency or accountability.

The **Law for the National Industrial Security and Environment in the field of Hydrocarbons Protection Agency has the power to classify information**, in order to protect it, without it having to comply with the criteria established in the Federal Transparency and Access to Public Governmental Information Law.

These laws do not establish dispute resolution mechanisms, they do not grant access to justice and **they do not include sanctions in the event of non-compliance.**



Conclusions

The government should take into consideration the following suggestions to **avoid socio-environmental conflicts and risks** to investors.

- a) **Harmonize secondary laws** in order to respect, protect and guarantee Human Rights.
- b) Ensure **respect and protection of the indigenous peoples rights**.
- c) Gradually reduce the hydrocarbons consumption in Mexico: **Promote transition to renewables**.
- d) Increase the level of ambition regarding the **goals to reduce Greenhouse Gases Emissions**.
- e) Ensure the **protection of Natural Protected Areas**.
- f) Establish clear rules based on **precautionary principles** before implementing activities such as “**fracking**”.
- g) Establish certain mechanisms to ensure sufficient and proper **information to rural communities**.
- h) Improve the processes to **access information, transparency and access to justice** with respect to the energy activities.





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