



# sierra

# terrums.

Briefing, analysis, opinion and insight of legal affairs in Mexico Digital publication by ABOGADOS SIERRA

February 15, 2016 year 04 | No. 03

Violation of “Ejido El Zapote”  
fundamentals rights and their  
restitution during the Guadalajara’s  
airport bid.

by Gerardo Reyes  
P. 01-02

JANUARY AND FEBRUARY  
NEWS on  
Mexican Commercial Law  
P. 03

Contributor  
P. 04

# Violation of “Ejido El Zapote” fundamentals rights and their restitution during the Guadalajara’s airport bid.

by Gerardo Reyes

**A**ccording to article 9° of the Agrarian Law (*Ley Agraria*), “ejidos” are rural communities with legal capacity that have portions of cultivable lands and have different regulations that the ordinary lands. Only people who work the land with their “own hands” have the right to constitute these kind of legal entities.<sup>1</sup>

*“In November of 1972, the Mexican Government began the expropriation procedure against the “Ejido El Zapote” in order to expand Guadalajara’s International Airport. Few months later, the compulsory purchase was completed and the airport was expanded without a single complaint.”*

The Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*) regulates ejido’s legal structure; its article 27, section VII protects the ejidatario’s rights. After the Mexican Revolution in 1917, the New Mexican Government ordered land distribution and banned “latifundiums”<sup>2</sup>.

All the legal entities in Mexico, including the “ejidos” have the right to file Amparo Proceedings<sup>3</sup> in order to protect their violated rights. The Mexican Judicial System for a long time has embraced precedents sustaining the legal capacity of all legal entities to file an Amparo Lawsuit. In March 2015, the Mexican Supreme Court ratified that natural persons and legal persons (*legal entities*) are entitled to submit an Amparo Claim in order to retribute their rights<sup>4</sup>.

In November of 1972, the Mexican Government began the expropriation procedure against the “Ejido El Zapote” in order to expand Guadalajara’s International Airport. Few months later, the compulsory purchase was completed and the airport was expanded without a single complaint.

Nevertheless, in 2009 “Ejido El Zapote” filed an Amparo arguing the violation of the legality and access to a fair hearing principle. The Federal Court ruled in 2014 in accordance with the abrogated Amparo Law, as the suit was submitted four years before the Amparo Law reform.

Among other entitlements, the previous Amparo law recognized the following ejido’s rights:

- Any member of the ejido may file the suit.<sup>5</sup>
- If the ejido’s member dies, another member can continue the proceeding (in other cases when the plaintiff dies, the trial is dismissed).<sup>6</sup>

1.- “Ejidatarios” are members of the “ejidos” and own portions of the “ejido” lands, all decisions relative to the ejido lands have to be made by the ejidatario’s assembly.

2.- “Latifundium” is an extensive parcel where people worked for sole owner, The “Latifundium” lands cover almost all the cultivable land. The Mexican Constitution in the Article 27, Section XV, bans the “latifundiums” in the country.

3.- Proceeding that protect people’s and legal entities’ fundamentals rights.

4.- Mexican Supreme Court precedent: P./J. 1/2015(10a) “Principle of most favoured treatment”, Registry 2008584, Constitutional Matters.

5.- Article 213, section II of the Abrogated Amparo Law 2013 (Artículo 213, fracción II de la Ley de Amparo Abrogada en 2013).

6.- Article 216 of the Abrogated Amparo Law 2013 (Artículo 216 de la Ley de Amparo Abrogada en 2013).

- There is no legal timeframe to submit the Amparo Lawsuit.<sup>7</sup>
- The Amparo procedural rules have a shorter legal statute of limitations in order to grant a faster access to justice.<sup>8</sup>
- The Court must suspend the current action claimed act, without further analysis.<sup>9</sup>
- The Court must anticipate fundamental violations even if the plaintiff did not mention them in the lawsuit.<sup>10</sup>

*“In accordance with the articles 27 of the Mexican Constitution (Constitución Política de los Estados Unidos Mexicanos) and 21.2 of the American Convention on Human Rights (Convención Americana de Derechos Humanos) “Ejido El Zapote” must have a fair compensation according to the forms established by law.”*

In April 2014, the Third Administrative District Court of Jalisco protected the “Ejido El Zapote” claims and gave them the federal justice’s protection for three reasons:

1. The first expropriation’s notice did not fulfil legal requirements.
2. The “temporary occupation certificate” was issued and notified by the Departmental Head of Rural Issues (*Jefe del Departamento de Asuntos Agrarios*), but only Mexico’s President is entitled to issue that certificate.
3. The bidding and the land occupation of the Guadalajara’s International Airport is illegal because is resulted from an unlawful expropriation procedure.

During the expropriation procedure, the Mexican Authority violated articles 14 and 16 of the Mexican Constitution that protect the legality and access to fair hearing principles. The goal of the Amparo’s Proceedings is the restitution of rights. In this particular case, every procedure after the expropriation service of process is null, including the bidding and the airport occupation, but the land is no longer available to be restituted. Therefore, the Third Administrative District Court of Jalisco ordered the Mexican Government to compensate “Ejido El Zapote” damages.

The Court determined that the damages compensation have to be calculated by the Public Administration because if the Third Administrative District Court estimate the compensation amount the Judicial Authority would be interfering with the executive power competence.

In accordance with articles 27 of the Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*) and 21.2 of the American Convention on Human Rights<sup>11</sup> (*Convención Americana de Derechos Humanos*) “Ejido El Zapote” must have a fair compensation according to the forms established by law. On the other hand, the judgment described of the Amparo Proceeding 1788/2009 is now under review by the Second Collegiate Court in Administrative Matters of Jalisco.

7.- Article 217 of the Abrogated Amparo Law 2013 (*Artículo 217 de la Ley de Amparo Abrogada en 2013*).

8.- Article 222 of the Abrogated Amparo Law 2013 (*Artículo 222 de la Ley de Amparo Abrogada en 2013*).

9.- Articles 233 and 234 of the Abrogated Amparo Law 2013 (*Artículos 233 y 234 de la Ley de Amparo Abrogada en 2013*).

10.- Article 227 of the Abrogated Amparo Law 2013 (*Artículo 227 de la Ley de Amparo Abrogada en 2013*).

11.- Mexico ratified the American Convention on Human Rights in April 1981.

## **Bridge project could 'dry up' Niagara Falls.**

A proposal to replace two 115-year-old bridges connecting the U.S. mainland with Goat Island -- a green space located between American Falls and Bridal Veil Falls -- may require shutting down the American Falls, according to an assessment from New York State's park and transportation agencies. About 85% of the Niagara River flows over Horseshoe Falls -- on the Canadian side of the border -- while the rest goes over over American Falls. To "dewater" the American Falls, officials would build a temporary cofferdam that would redirect the entire river flow to Horseshoe Falls. CNN affiliate WKBW says it could take as long as nine months to build the new bridges. Viewing the dry falls "could be a once-in-a-lifetime opportunity for many people," he said. Plus it's not like the whole Niagara Falls will be shut down; while the American Falls may be dewatered, Canada's Horseshoe Falls will be at full gush. [www.edition.cnn.com](http://www.edition.cnn.com) 25/01/2016.

## **From Federal District to Mexico City.**

The new entity will be known as Ciudad de México, or CDMX. For English speakers there will be no change other than the disappearance of the abbreviated name, DF, for Distrito Federal. It will still be Mexico City. The metropolis of nearly 9 million people will not be a state but will take on some of the responsibilities and powers that the 31 states already have. It will also get its own constitution and congress, and what are now the 16 delegaciones, or boroughs, will become more like municipalities, and each borough chief will become a mayor. Writing the constitution is the next step in the process. A constitutional assembly made up of elected and appointed members will begin work on the document in September and finish up by the end of January 2017. [www.mexiconewsdaily.com](http://www.mexiconewsdaily.com) 31/01/16.

## **Remittances income over Oil revenue.**

Remittances sent home by Mexicans working outside the country surpassed petroleum revenues in 2015 for the first time ever. There was a 4.75% increase in money sent from abroad, most of which comes from the U.S., to total US \$24.8 billion last year, up from \$23.6 billion in 2014, said the Bank of México. The bank said it was the first time remittances had totaled more than petroleum revenues since it began tracking them in 1995. Oil revenues last year totaled \$23.4 billion. [www.mexiconewsdaily.com](http://www.mexiconewsdaily.com) 02/02/2016.

## **U.N. Announces 'Temporary Pause' in Syrian Peace Talks.**

(GENEVA) — The U.N. envoy for Syria has announced a "temporary pause" in peace talks in Geneva amid intensified fighting, saying the process will resume later this month. Speaking to reporters after a meeting with opposition leaders, Staffan de Mistura insisted "this is not the end, and it is not the failure of the talks." De Mistura said both sides were "interested in having the political process started," and that he had set a new date of Feb. 25 for the resumption of the talks. [www.time.com](http://www.time.com) 03/02/2016.

## **South Korea, Japan condemn planned North Korea satellite launch.**

North Korea has indicated that it will launch a satellite in the coming days, a United Nations agency said, drawing condemnation from South Korea and Japan. Pyongyang told the International Maritime Organization (IMO) on Tuesday that it intends to launch an Earth observation satellite between February 8 and 25, IMO spokeswoman Natasha Brown told CNN. While North Korea says it's putting a satellite into orbit, the launch is viewed by others as a front for a ballistic missile test. U.S. officials have said the same type of rocket used to launch the satellite could also be used to fire a long-range missile. South Korea condemned the planned launch as a "direct challenge against the international community," and warned that North Korea would pay a "grave price" if it went ahead. Japan's Prime Minister Shinzo Abe also urged North Korea to "refrain" from the launch and said his Cabinet is working closely with the United States and South Korea to gather information and prepare a potential response. [www.edition.cnn.com](http://www.edition.cnn.com) 03/02/2016.

*In this month extract was prepared by Vera García, Miguel Ruelas, Ivanna Craviotto and Andres Remis.*

# terrum.

Briefing, analysis, opinion and insight of  
legal affairs in Mexico.

## CONTRIBUTORS

### GERARDO REYES

Attorney at Law: Admitted to practice law in 2014. Mr. Reyes, of Mexican nationality obtained his law degree at Instituto Tecnológico y de Estudios Superiores de Occidente (ITESO), in Guadalajara, Jalisco, and he is attending a Master Degree in Human Rights and Guarantees by Instituto Tecnológico Autónomo de México, Mexico City.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Commercial Litigation, Administrative Litigation and Constitutional Litigation.

e-mail: [greyes@asyv.com](mailto:greyes@asyv.com)

  
sierra

Prol. Reforma No. 1190 25th Floor,  
Santa Fe México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com) / [www.asyv.aero](http://www.asyv.aero)

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.