The president's "solution" to safeguard his infrastructure projects from the opposition.

by Wendy Monitiel.

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The president's "solution" to safeguard his infrastructure projects from the opposition

by Wendy Montiel.

One of the cornerstones that supports Andrés Manuel López Obrador (AMLO), Mexico's president, discourse on the development of infrastructure are his current projects: "the Mayan train", "the airport of Santa Lucía", "the freight rail of the Istmo of Tehuantepec", "The refinery of Dos Bocas, Tabasco". However, their construction has encountered numerous obstacles, from the long and tedious administrative processes to obtain authorizations and permits, to the growing opposition from citizens who question the legal, environmental, economic and social impacts.

This was the case with the new airport of Santa Lucía. When construction had just begun, a social collective named "No More Waste Collective" (Colectivo No Más Derroches)[1] filed more than 140[2] amparo[3] claims with the purpose to try to stop it construction. The federal government argued that it was not possible to suspend said construction due to its development being considered a "national security" justifying this because it "is being built on the fields of the military air base No. 1, which is a strategic base for the Mexican Air Force"[4].

> *"Although it only consists of three specific orders divided into four paragraphs, its content is of great and delicate consequence, as shown below..."*

Therefore, AMLO found a quick but very controversial "solution" to these obstacles, by the issuance of a decree[5] on November 22, 2021 ("the decree"). Although it only consists of three specific orders divided into four paragraphs, its content is of great and delicate consequence, as shown below:

1.- *"It is declared a matter of public interest and national security the execution of infrastructure projects and public works performed by the Government of Mexico regarding the matters of communications, telecommunications, custom offices, borders, water, environment, tourism health, railways in all modalities, energy, seaports, airports and those by their purpose, characteristics, nature, complexity and magnitude, are considered a priority and/or strategic for the national development.*

2.- *The departments and entities of the federal government are ordered to grant the provisional authorization, permits or licenses that are necessary to begin the public works referred to in the preceding article, to ensure its timely execution, the expected social benefit, and the execution of the authorized budgets.*

The provisional authorization will be provided within statute of limitation of five legal working days, counted since the filling date of the corresponding request. Once said statute of limitation has precluded without the

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1.-A civil society collective that through strategic litigation challenges in court the legality of public projects that are questionable from a legal, website: https://nomasderroches.mx/comohacemos/

2.- Pérez A. Luis, "Due to legal attack" Santa Lucía airport was considered as "national security"": AMLO, Aristegui Noticias, disponible en: https://aristeguinoticias.com/1710/mexico/por-embestida-legal-se-considero-aeropuerto-de-santa-lucia-como-de-seguridad-nacional-amlo/

3.- An 'amparo' is a constitutional decision for the protection of human rights, which in this case could prohibit the construction of the airport, should it be considered a violation of human rights.

4.- ídem

5.- Entitled "The departments and entities of the Federal Public Administration are ordered to perform the actions indicated in this decree, regarding the infrastructure projects and public works developed by the government of Mexico considered matters of public interest and national security, as well as a priority and strategic for the national development" available in: https://www.dof.gob.mx/nota_detalle.php?codigo=5635985&fecha=22/11/2021

issuance of an express provisional authorization, it will be considered that the request has been positively resolved. In other words, it will be considered that the authorization has been granted.

3.- *The provisional authorization shall be effective for twelve months, during this period the definitive authorization must be obtained in accordance with the applicable provisions"*

> *"There are only thirteen scenarios in which a situation or matter may be classified as a matter of "national security", all of them have to be considered threats to the Mexican state."*

To understand the scope of these orders, it is necessary to begin answering the question: what does "national security" mean in Mexico? Mexican law[6] defines national security as "all actions that seek immediately and directly the stability, integrity and permanence of the Mexican State". To achieve this important objective, the same law establishes the assumptions in which a situation can be classified as national security.

This law further establishes the transparency regime for all matters pertaining to national security, they fall under the charge of a "security council." In terms of transparency, they are the council in charge of keeping the related information under maximum secrecy. Therefore, all the information regarding rules, proceedings methods, sources and technical specifications won't be made public for up to five years[7]. In the case of this decree, the information regarding the development of public works, including the agreements, payments, conditions, budgets, etc., entered between the constructions and other supplier companies with the government will fall under this category and thus will be classified.

There are only thirteen[8] scenarios in which a situation or matter may be classified as a matter of "national security", all of them have to be considered threats to the Mexican state. Among these scenarios are, terrorism, illegal arms trafficking, acts that prevent the fight against organized crime, acts against the security of aviation and maritime navigation, and acts that aimed to destroy or disable the infrastructure that provide public services. Although only a few were highlighted, it is important to note that the development of public works and infrastructure projects are not within these scenarios.

On the other hand, the result of the second rule of the decree that establishes the order to the departments and entities to "provisionally" authorize the infrastructure projects and public works developed by the federal government will be the direct issuance of any type of permit, authorization or license for their operation without any prior procedure or analysis of the impacts that may occur to the environment, society and even the economy during its development, avoiding all kind of legal regulation.

In this regard, on November 23, 2021, a couple days after the publication of the decree, during his routine morning conference, AMLO was questioned about the reasons for its issuance, to which he responded that it is an "internal announcement to speed up procedures." He also mentioned that the intention is to prevent citizens from filing more claims against his infrastructure projects.

The truth is that beyond agreeing with these motivations, it caused indignation in civil society. Which was

6.- "National Security Law"
7.- After the five-year period, the protected information may only be retrieved after petitioning the National Institute of Transparency, a process that can be lengthy and further delay access to said information.
8.- Article 5 of the National Security Law

highlighted by the organization "Mexicans against corruption and impunity"[9], who pointed out that this provision will be an "excuse" for departments and entities to "ignore the requirements established by law for the construction of works"[10]. The public servants will be allowed to "remain silent and with the simple passing of the five working days, without issuing any resolution, it will be understood that the project has been authorized"[11].

"..."excuse" for departments and entities to "ignore the requirements established by law for the construction of works."

From a constitutional law perspective, the three orders of the agreement are contrary to the Mexican Constitution, for some (of many) reasons summarized below:

1.- Violates the principle of division of powers, because through the decree the departments and entities are "allowed" to not comply with the laws that establish the methods, procedures and statutes of limitation for the issuance of permits, license and authorizations. In other words, the head of the executive power allows the insubordination to the laws and statutes enacted by the legislative power.

2.- Violates the access to public information, established in the Mexican Constitution and International Treaties[12] as a human right, due to the unavailability to the information regarding the public works and infrastructure agreement, causing darkness and probably corruption around the agreements with the construction and supplier companies. In reaction to this, the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI), as an autonomous entity, filed an action of unconstitutionality before the Mexican Supreme Court of Justice of the Nation (SCJN) which was admitted by one of the ministers under the case number 217/2021, at the same time the provisional decree suspension was granted "in order to suspend all effects and consequences of the challenged decree that classify the information as a matter of public interest and/or national security, without complying with the respective laws provided for such effect" according to the list of notifications, section of processing of constitutional controversies and unconstitutionality actions of the SCJN published on December 14, 2021.

However, it was specified that the suspension of "the actions indicated in the challenged decree regarding the projects and works of the Government of Mexico" was denied.

In the following months, the decision regarding INAI's petition questioning the constitutionality of the decree will be granted, and we will know, in detail, the position that the highest court (SCJN) will take. In addition, it is likely that multiple people, including private individuals will themselves file amparo claims against the decree. This would represent a second opportunity to question the constitutionality of the decree and essentially stop its effects, and if it be the case, the checks and balance process would be counterweight to the excessive executive power that is currently permitted by the decree.

9.- Civil society that investigates and litigates cases of corruption and impunity in Mexico, website: https://contralacorrupcion.mx/quienes-somos/.
10.- Castellanos R. y Alvarado L., "Is the controversial "Presidential Agreement" on national security projects and works constitutional?, MCCI, Ciudad de México, México, 2021, disponible en: https://contralacorrupcion.mx/es-constitucional-el-polemico-acuerdo-presidencial-sobre-proyectos-y-obras-de-seguridad-nacional/
11.- Ídem
12.- To which Mexico is a part of, such as the "International Covenant on Economic, Social and Cultural Rights", "Open Government treaty" and "The International Covenant on Civil and Political Rights".

In quest for energy independence, Mexico is buying a Texas oil refinery.

The refinery purchase is part of President Andres Manuel López Obrador's own bid for an independence of sorts. Mr. López Obrador aims to eliminate most Mexican oil exports over the next two years so the country can process more of it domestically. He wants to replace the gasoline and diesel supplies the country currently buys from other refineries in the United States with fuel produced domestically. The shift would be an ambitious leap for Petroleos Mexicanos, the company commonly known as Pemex. The company's oil production has been falling for more than a decade, and it shoulders more than $100 billion in debt, the largest of any oil company in the world. *www.nytimes.com/2022/01/18/business/economy/mexico-oil-refinery-texas.html 18/01/2022.*

Navy takes control of security at 7 Mexican airports and replaces the National Guard.

According to the first reports, federal government sources stated that Navy commanders replaced the National Guard commanders in charge of security at airports in Mexico City, Quintana Roo (Cancun and Cozumel), Yucatan (Chichen Itza and Merida), and Chiapas (Tapachula and Tuxtla Gutierrez). The change took place on January 19, 2022, and the Secretary of the Navy has not issued any official statement explaining the reason for these changes. *www.debate.com.mx/politica/Marina-toma-control-de-la-seguridad-en-7-aeropuertos-de-Mexico-y-sustituye-a-la-Guardia-Nacional-20220119-0152.htm 19/01/2022.*

US: energy market must remain open; 'reform would slow cooperation'.

The U.S. Energy Secretary, Jennifer M. Granholm, assured that the US wants to work with Mexico to boost a clean, competitive, and diversified energy economy. However, President López Obrador's electricity reform could have a negative impact on U.S. investment. In a public statement, she noted that Mexico was blessed with a wealth of potential renewable energy that, if fully harnessed, could boost the country's development at least 10-fold, create millions of high-paying jobs, and develop an extraordinary export industry geared to a world in need of clean energy. She also said that they seek the unification of the North American region so that it can become a decarbonized economy in which renewable energy can be developed. *www.excelsior.com.mx/nacional/eu-el-mercado-energetico-debe-seguir-abierto-reforma-frenaria-la-cooperacion/1494303 22/01/2022.*

Dozens of mobilizations in Mexico call for "enough violence against journalists".

Journalists and citizens from all over Mexico came out on January 25 to protest in more than thirty cities in rejection of the violence suffered by the profession. In Mexico City, half a thousand people gathered in front of the door of the Ministry of the Interior demanding justice for their murdered colleagues. Mexico is the most dangerous country in the world to work as a journalist, with dozens of murders every year and hundreds of assaults. Every year, around 90% of the crimes are lost in the files of the prosecutors' offices. According to the Committee to Protect Journalists (CPJ), at least 138 reporters have been murdered in Mexico since 1992. *www.elpais.com/mexico/2022-01-26/decenas-de-movilizaciones-en-mexico-claman-basta-de-violencia-contra-los-periodistas.html 25/01/2022.*

Mexico turns away 200 foreigners every day at its airports.

In total, Mexico forced 72 thousand 895 people to turn back during 2021, an average of almost 200 rejections per day. The number of foreigners forced to return to their country is four times higher than in 2020 (16 thousand 286) and more than double that of 2019 (31 thousand 008). The numbers grew exponentially since 2010, when only 1 thousand 650 people were rejected at airports because the INM considered that they did not meet the minimum requirements to enter México. With more than 12 million entry events in an entire year, rejections barely account for 0.5% of the people trying to reach Mexico. The Mexico City Airport, with more than 40 thousand rejections, and the Cancun, Quintana Roo Airport, with almost 30 thousand, concentrate almost all the cases. The increase in the number of people not allowed to enter Mexican territory has to do with the control to prevent migration to the United States. *www.animalpolitico.com/2022/01/mexico-rechaza-a-200-extranjeros-cada-dia-en-sus-aeropuertos/ 28/01/2022.*

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TERRUM.

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