

“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”



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The Mayan Train

Final considerations. Environmental harm vs Economic Development

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Few years ago, at the beginning of the project called Mayan Train, we addressed some of the most important legal considerations that at that time surrounded the project¹. As described, this project was intended to be the most emblematic achievement in terms of infrastructure of the Mexican President and now that its mandate is about to conclude², we consider of utmost importance to evaluate whether the promised scope was really fulfilled but principally, if such project has fully complied with the applicable environmental, social, cultural, biological, geological but also economic and legal framework that a project of such magnitude implies; but also if the obligations assumed at the beginning are now a reality or were simply a political strategy.

“More than 30 motions for protection (“Juicio de Amparo”) have been filed since the beginning of this “megaproject”...”

As we mentioned in such delivery, the Mexican President repeatedly pointed out that this project would not cause any damage to the environment even insistently highlighting that “not a single tree would be cut”, a promise that of course was really impossible to believe. The point is that from then until now, no Environmental Impact Assessment (“Evaluación de Impacto Ambiental” – “EIA”)³ has been provided, nor any proposal of actions to actually mitigate their consequences.

Five sections of the so-called Mayan Train have been built and it is precisely the fifth⁴, the one that has exposed all its irregularities, non-compliance and shortcomings. More than 30 appeals for protection (“Juicio de Amparo”) have been filed since the beginning of this “megaproject”, but as explained, among all of them, those that were filed against such section five are particularly relevant as they are the only ones to which the court granted definitive suspension.

Some acts (or omissions) of authority against which these motions for protection were filed as they violate rights, are for example: (i) the human right to a healthy environment due to the deforestation and by not having the necessary environmental permits and authorizations for construction so damaging the jungle and seriously injuring the system of water caves (“cenotes”) and underground rivers (collectively known as the Great Mayan Aquifer (“Gran Acuífero Maya”), which is the main source of water supply for human consumption in the Yucatan Peninsula); (ii) the right of the communal land owners (“ejidatarios y pueblos indígenas”) for not complying with the prior right to be heard⁵ to which they are entitled and for the deliberated alteration of land use violating the integrity of its lands and territories, some of them even classified as Natural Protected Areas (“Area Natural Protegida”), (iii) the right to information (“derecho de acceso a la información”) for the omission to provide and make public the EIA (which as of today has not been provided at all); among others.

But speaking specifically about the environmental disaster, at the highest peak of the water crisis that Mexico is suffering and the worst drought in history, multiple civil and citizen organizations; as well as international ones have given videographic testimony of how thousands of caves have been exploited, drilled or collapsed due to the hard

1.-Terrum June 2019. “THE MAYAN TRAIN” A project full of irregularities with which the Mexican president intends to dress in glory. By Viridiana Barquín.

2.- Mexico will have elections on June 2, 2024, so the current Presidential administration will conclude, and the next Mexican President will take possession on October 1st, 2024.

3.- Pursuant to Article 28 of the General Law of Environmental Protection and Balance (“Ley General de Equilibrio Ecológico y Protección al Ambiente” - “LGEEPA”), the EIA is the first step of the procedure through which the Ministry of Environment specifies the conditions to compensate such activities causing environmental imbalance or that exceed the limits and conditions established in the applicable provisions to protect the environment and preserve and restore ecosystem; in order to avoid or minimize their negative effects on the environment.

4.- From Cancun Airport to Tulum.

5.- “Derecho de Audiencia”

vibrations of the constructions machines, and worst; intentionally poured with concrete, facts that have been actually confirmed officially with report rendered by the Federal Attorney for Environmental Protection ("PROFEPA") under the proceedings of the appeal for protection No. 1003/2022 in which confirms that the contamination of the Mayan Aquifer is clearly evidenced and unobjectionable⁶. So how is that, the Mexican President and all the governmental entities and bodies specifically created for this project of infrastructure, still affirm categorically that no damage is being caused to the ecosystem? Even denying having made the initial promise to not cut a single tree?

"...thousands of caves have been exploited, drilled or collapsed due to the hard vibrations of the constructions machines, and worst; intentionally poured with concrete, facts that have been actually confirmed officially with report rendered by the Federal Attorney for Environmental Protection..."

All of these conducts if carried out by any individual or private company, could be classified as an environmental crime; since it updates several acts described by the Federal Criminal Code ("*Código Penal Federal*"), for example:

Article 414: "A penalty of one to nine years in prison and a fine of three hundred to three thousand days will be imposed on any person who illegally, or without applying prevention or security measures, carries out activities of production, storage, traffic, import or export, transportation, abandonment, waste, **discharge, or carry out any other activity with substances considered dangerous due to their corrosive, reactive, explosive, toxic, flammable, radioactive or other similar characteristics, which orders or authorizes, that causes damage to natural resources, flora, fauna, ecosystems, the quality of the water, the soil, the subsoil or the environment**".

Article 418: "A penalty of six months to nine years in prison and a fine of one hundred to three thousand will be imposed on any person who illegally: I. Cut, uproot, fell or cut down any tree or trees, or II. Change the use of land on forest lands without the authorization issued by the competent authority..."

Article 420 BIS: "A penalty⁸ from 2 to 10 years of prison and from 300 to 30000 days (of minimum official salary) will be imposed on any person who illegally: **I. Damage, dry or fill wetlands, mangroves, lagoons, estuaries or swamps; II. Damage reefs; III. Enter or release in the natural environment, any exotic flora or fauna that harms an ecosystem, or that hinders, alters or affects native or migratory species in the natural cycles of their reproduction or migration, or; IV. Cause a fire in a forest, jungle, natural vegetation or forest land, damaging natural elements, flora, fauna, ecosystems or the environment. An additional penalty of up to 2 years of prison and an additional fine of up to 1000 days of salary will be applied, when the conducts described in this article are carried out in or affect a Protected Natural Area, when a profit or economic Benefit is obtained.**"

In the most authoritarian way, in order to block any questioning and evade the obligations of providing the EIA within the several motions for protection; supporting why the lack of the necessary permits and authorizations, and deliberately continue with the work and use of heavy machines despite the court orders to suspend its constructions,

6.- "The report establishes that evidence of cement spillage was found in the caves which solidified after falling into bodies of water within the affected caverns. PROFEPA also determined the collapse and alteration of the caverns due to drilling, water extraction without permission from competent authorities, filling and burial with stone material in the aquifer of a cavern". "El Economista" April 29, 2024.

<https://www.economista.com.mx/estados/Confirma-Profepa-contaminacion-de-cenotes-por-derrama-de-cemento-en-tramo-5-sur-del-Tren-Maya-20240429-0071.html>

7.- <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>

8.- Penalty that will be increased if the affected area is classified as a Natural Protected Area.

the Mexican President published in the Official Gazette of the Federation ("DOF" by its acronym in Spanish) a statement ("Decreto") to consider them of "public interest and national security, as well as priority and strategic for national development."⁹ Clear example that in this case, national security for the Mexican President is radically opposed to the principle of Common Good ("Bien Comun").

As of today, several of the motions for protection remain pending to be solved, however; the suspensions ordered by the court were not respected and the work continued with it the environmental damage described above. How can we then ignore the fact that more than an infrastructure and development improvement, it is a political whim plagued by irregularities and non-compliances? And even worse, ignore the negative impact on the already insufficient natural sources of water supply in the country?

The question now is whether all this visual and documentary evidence proves the premise that the Mayan train is completely harmful to society and the environment, or should we wait for the facts themselves to prove it to the point of facing absolute drought and then having to resort with emergency measures?

Finally, we will still have to wait and see if congress votes and passes these initiatives.

9.- DOF 18/05/2023. Statement by which the construction, operation, maintenance, operation, infrastructure, spaces, goods of public interest, execution and administration of transport infrastructure, services and development poles for the well-being and equipment of both the Mayan Train, as well as the stipulated airports, are of national security and public interest. https://www.dof.gob.mx/nota_detalle.php?codigo=5689265&fecha=18/05/2023#gsc.tab=0

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