

Social Conflicts and Infrastructure Projects in Mexico

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INTRODUCTION

On many levels, infrastructure projects shape the lives of local communities. During the life cycle of these projects, conflict and opposition frequently arise, thereby creating significant challenges, including delays, legal trials, and direct costs to investment. Mexico is no exception to this pattern. The extent of local opposition to infrastructure projects in recent years, as in the case of natural gas pipelines, hydroelectric projects, and wind parks planned in the Yucatán peninsula,¹ reveals how Mexican policymakers and firms have miscalculated both the value of effectively engaging local actors like indigenous groups and grassroots social movements, as well as the cost of neglecting social impact assessments prior to undertaking major infrastructure projects.² Even when an infrastructure project can easily lead to economic gains, assessing the project's social impact has to become an inherent part of the development process in a country as diverse, unequal, and complex as Mexico.

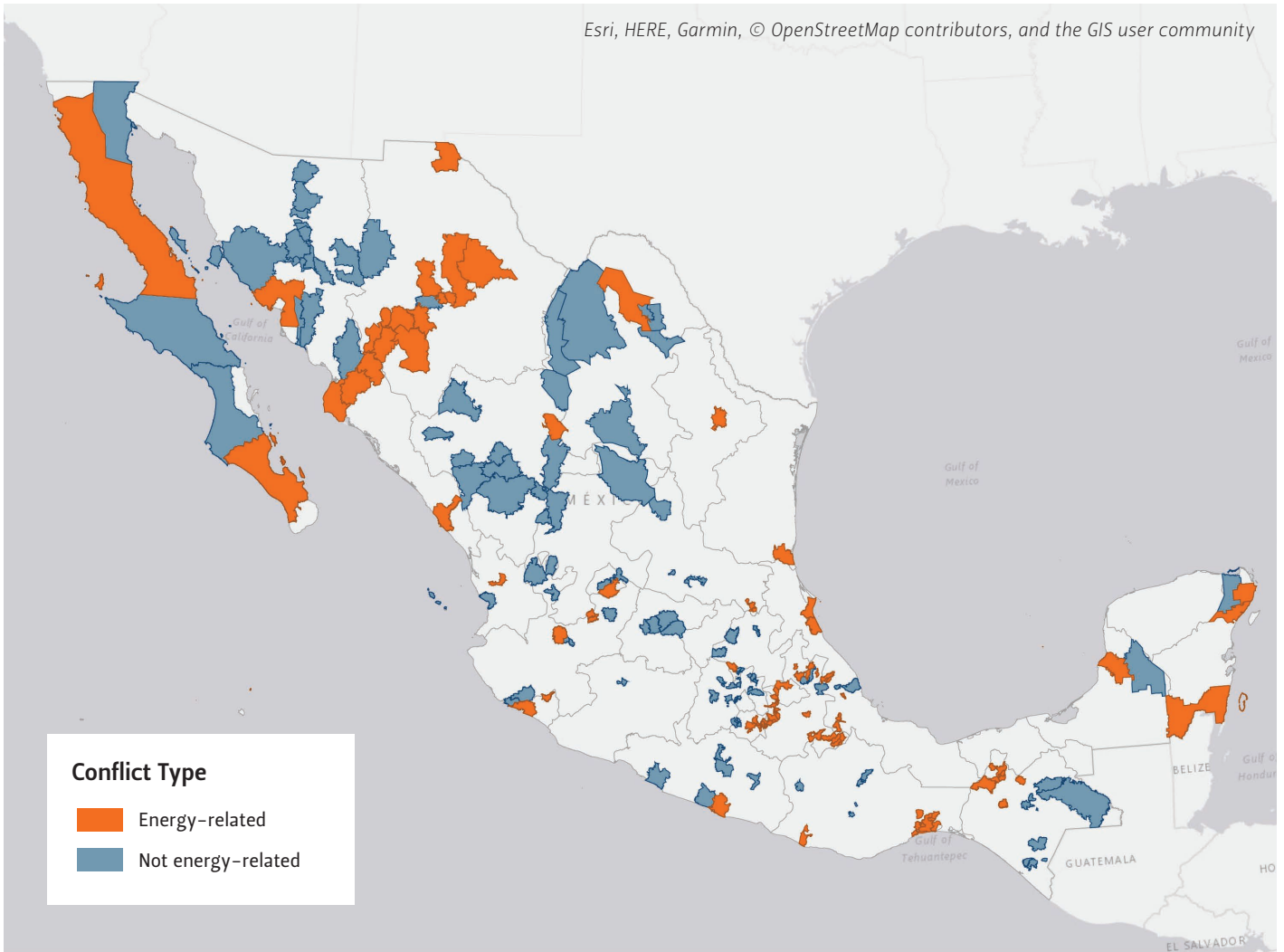
In recent years, local resistance to energy-related projects in Mexico has notably surged. The energy reform in 2013–2014 opened the hydrocarbon and electricity value chains to private participation and unleashed a wave of investment projects, many of which have faced substantial local opposition. To be sure, the reform prompted a paradigm shift for energy projects because it considered both sustainability and human

rights together with economic development. However, it failed to effectively implement a regulatory framework that incorporated social consultation processes in the formulation of energy projects. This became one of former President Peña Nieto's most challenging issues in the last years of his administration, as illustrated by the rising number of social conflicts affecting energy projects (Figure 1). This trend not only added to the dissatisfaction of companies concerning the government's role in creating adequate investment conditions, but it also empowered local and indigenous communities to seek a share of the profits. Inevitably, this raises questions about the corporate governance of infrastructure projects, as well as the formal and informal arrangements among stakeholders with conflicting interests such as participating firms, government officials, and local actors.

Before the 2013–2014 energy reform in Mexico, the governance of energy infrastructure issues was shaped by the dominant position of *Petróleos Mexicanos* (PEMEX) and the Federal Electricity Commission (CFE), which held disproportionate bargaining power over local actors due to their state-owned status. As a result, social opposition to infrastructure projects was manageable to a certain degree. Today, as the energy reform has resulted in a larger number of infrastructure projects with greater involvement of private players, PEMEX and the CFE may not have the same weight in local governance matters—or they may not be involved at all.

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FIGURE 1 — GEOGRAPHY OF SOCIAL CONFLICTS IN MEXICO FROM 2000 TO DECEMBER 13, 2017



SOURCE Map produced by Pamela Cruz with assistance from the Rice University GIS/Data Center, using data from Mexico’s Ministry of the Interior and GMI Consulting.³

The new investment environment has tested the capabilities of private firms developing infrastructure projects, many of which face construction delays due to opposition from local communities.⁴ The scope of project analysis now requires the inclusion of topics that were not traditionally featured among the main concerns of these private firms. The lack of familiarity to Mexico’s cultural, environmental, and social contexts among the newer development firms investing in Mexico is currently becoming a challenge for local governance matters. Given this situation, the question remains: do the existing protocols for dealing with local protests need to be adjusted?

This report reviews the concerns about social conflicts related to infrastructure and energy projects in Mexico. It explores the main drivers of these conflicts, documents the history and institutionalization of consultation practices, and addresses the current governance gaps after social consultation processes were instituted by the energy reform. The report also discusses how social conflict will shape Mexican investment politics in the new administration of Andrés Manuel López Obrador (AMLO) and provides public policy recommendations to address possible setbacks for future infrastructure projects in Mexico.

THE CORPORATE SOCIAL RESPONSIBILITY AGENDA IN LATIN AMERICA

Recent reports show that the Latin American and the Caribbean region has the highest number of conflicts related to infrastructure development and construction.⁵ The complex processes for social and indigenous consultation that extractive industries have faced in the last few years demonstrate how different interest groups are constantly struggling over status, resources, security, and power.⁶ The fact that populations in rural or remote areas, as well as indigenous groups, tend to be negatively affected by large infrastructure projects adds to the perception that some may not see infrastructure development in a positive light.

In Latin America, social conflicts result from different circumstances in specific industry development sectors. Whether these circumstances are social, environmental, governance-related, or economic, as suggested by the Inter-American Development Bank (IDB), the escalation of infrastructure-related conflicts brings nothing but turmoil to local communities, impacts foreign and local investment, disrupts urban environments, and generates violence that oftentimes results in the loss of human lives. Social conflicts also lead to project cancellations and delays, and they perpetuate an increasingly detrimental situation for all actors involved. Figure 2 illustrates some of the most common causes of conflict related to energy projects across Latin America.

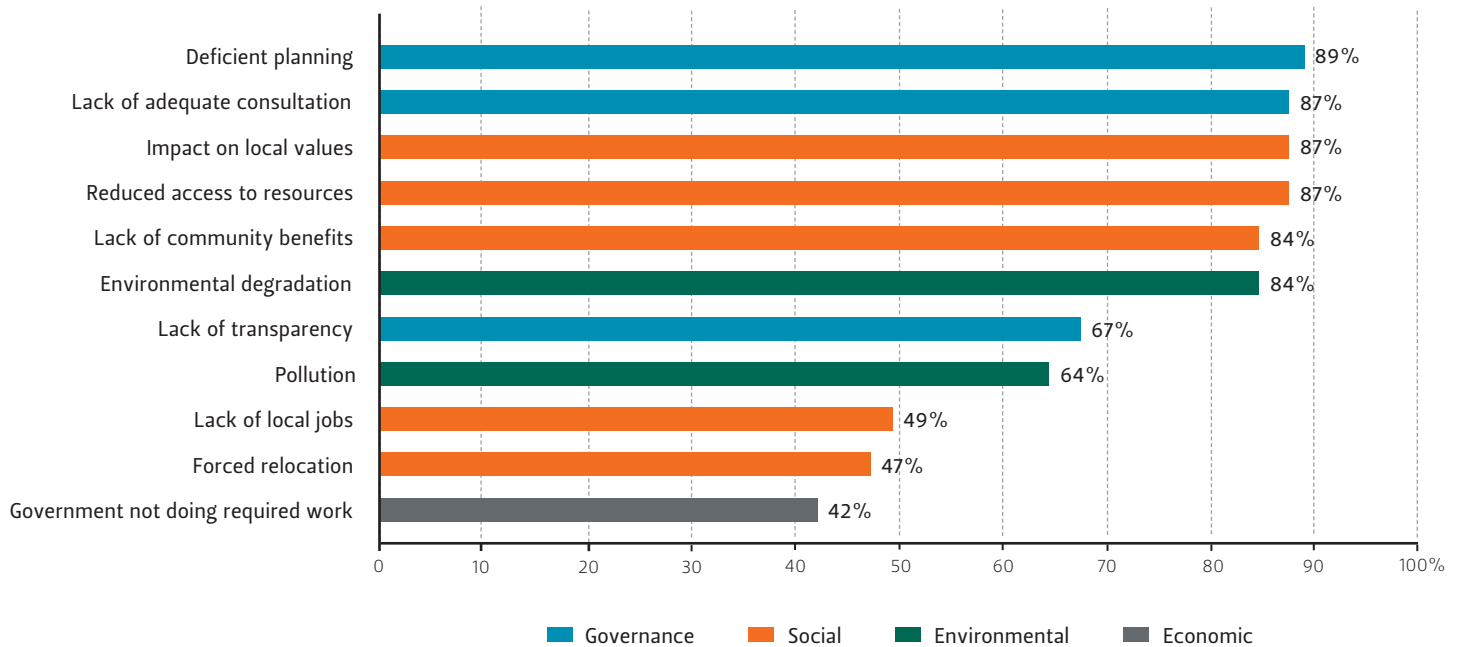
For Mexico specifically, large infrastructure and energy projects have neglected corporate social responsibility (CSR).⁷ The human rights violations and community displacement that took place during the 1980s as part of the government's efforts to expand the electricity grid nationwide, for example, were among the largest blunders in the history of CSR practices in the country. The government prioritized economic development over any social or environmental justice issues, thereby restricting the individual and collective

rights of the affected communities.⁸ These trends shifted in the early 1990s, when NAFTA's preliminary negotiations indicated that mandatory social and environmental practices would be adapted in the corporate sector as key conditions to operating under the agreement. The biggest shift, however, took place in 2010, when the concept of what we now know as *gestión social*, or corporate social regulations, began appearing in corporate reports and due diligence manuals.⁹

PEMEX was no stranger to this trend. In 2008, its exploration and production unit (PEP) included a much-needed community development program in its contracts, but its instrumentation proved more complicated than first anticipated. After reviewing the program, PEP decided to stop it in 2012, and it was replaced by the Community and Environment Support Program (PACMA) a year later.¹⁰ PACMA involved further provisions to engage local communities to achieve accountability under the so-called "framework agreements" with oil and gas operators, and also provisions to comply with other international frameworks already pointing toward CSR and sustainability goals (such as the Equator Principles, Global Compact, the Global Reporting Initiative, etc.). These framework agreements aimed to obtain, expand, and consolidate social licenses to operate for Pemex suppliers and contractors, and improve the quality of life for local communities.¹¹

It is worth noting that many of these efforts, including PACMA, fell short of protecting the rights of local and indigenous communities living in territories where large infrastructure projects were taking place. *Eólica del Sur* in the Tehuantepec Isthmus and the *Dzilam Bravo* wind and solar farms in the Yucatán peninsula are good examples of this, despite the ratification and presumed compliance with the International Labor Organization (ILO) Convention 169, which legally required the Mexican government to carry out free and informed consultations with indigenous communities and impose certain obligations on firms developing infrastructure projects. Both examples show the gaps caused by the design of a wind

The social, political, economic, and environmental conundrum created by these conflicts suggests the need for a new approach to address the social and environmental issues associated with infrastructure development in a country with complex cultural dynamics.

FIGURE 2 — TOP CONFLICT DRIVERS IN ENERGY PROJECTS IN LATIN AMERICA

SOURCE Inter-American Development Bank, 2017.¹²

policy that was too sectorial and pragmatic, without instruments of territorial regulation, unattached to other environmental policies, and where developers had a strong impact on public affairs.¹³

Incidentally, although the 2013–2014 energy reform initiated multiple changes, better regulations and normative provisions were still needed following its inception. The huge gap between legal developments and stronger normative dispositions, and their influence on social consultation protocols, took a toll on Peña Nieto’s administration. If these elements remain unchanged, they will become an enormous challenge for López Obrador’s team in the years to come. Mexico’s Supreme Court has begun to address this setback through the observation of what they have called the transversality principle,¹⁴ which stresses the importance of respecting indigenous people’s collective and individual human rights when affected by the development of high-impact projects in the territories inhabited or used by these communities. While this is a good step forward, it still lacks an appropriate overarching indigenous consultation law or further legislation to

apply sanctions within the energy reform and social impact assessment protocols.¹⁵ This last issue has ultimately generated one of the biggest gaps in the implementation of standardized methods to conduct social impact evaluations, which became a complex challenge in Peña Nieto’s administration.

PEÑA NIETO’S ADMINISTRATION: FRAMING THE PUZZLE

The 2013–2014 energy reform created a series of new regulations within the hydrocarbons law and the electricity industry law, including chapters on the social impact of energy-related activities and projects.¹⁶ To address this impact, both laws defined three key instruments to be carried out by the secretary of energy (SENER): social impact studies, social impact assessment evaluations (EVIS), and prior consultation processes for indigenous groups and communities. These laws and instruments added to the responsibilities concerning indigenous communities and human rights compliance already acquired in

previous years via the several international treaties and conventions signed by the Mexican government.¹⁷

Unfortunately, an intrinsic lack of guidelines and mechanisms to enact these three assessment tools precipitated their blurred interpretation and implementation. As noted earlier, the number of infrastructure-related conflicts increased toward the end of Peña Nieto's administration (Figure 1). As of 2017, the Commission for Dialogue with Indigenous Peoples of Mexico reported 335 conflicts originating in indigenous communities in response to infrastructure projects and private investment developments.¹⁸ The social, political, economic, and environmental conundrum created by every single one of these conflicts suggests the need for a new approach to address the social and environmental issues associated with infrastructure development in a country with complex cultural dynamics.

The problem is that there was never a clear plan for how to implement or monitor social impact evaluations, nor were any sanctions identified for noncompliant companies. It was not until June 1, 2018—four years after the energy reform—that SENER published the *General Administrative Provisions on Social Impact Assessment in the Energy Sector*.¹⁹ This document finally provided SENER with the responsibility to develop, manage, and oversee all governmental provisions and guidelines for social impact evaluations. In other words, SENER was granted the full authority to operate as judge and jury by defining all appropriate methods, areas of influence, identifications, characterizations, and evaluations of the social impacts resulting from energy projects. These tasks were to be ultimately carried out by an operational division known as the General Office for Social Impact Assessment and Land Occupation²⁰ and supervised by both SENER and the secretary of state.²¹

These administrative provisions were the main instruments to define the appropriate protocols to be implemented within private and public infrastructure contracts (mainly within the energy and extractive sector) in socially and environmentally fragile

environments.²² The challenge was that these protocols often appeared confusing for many of the parties involved, including governments, private entities, and local communities, as well as secondary actors involved in social consultation processes such as NGOs, local community groups, and other entities with vested interests. The lack of clarity or detail in the protocols together with legal loopholes²³ increased the likelihood for social conflicts to erupt around energy-related projects, including establishing electric grids and placing natural gas pipelines.²⁴

Peña Nieto's administration was characterized by two key features of the social impact evaluation realm. First was the introduction of much-needed decrees, laws, and dispositions in a corporate environment that was in the midst of a new energy reform and eager to respond to social impact assessments and sustainability compliance demands. Second, this administration lacked plans that dictated the extent to which such laws, decrees, and dispositions²⁵ were to be implemented, applied, regulated, and monitored. As a result, the social aspect of the energy sector became extremely relevant and strategic. Plenty of background work was done since the beginning of the 2013–2014 energy reform. The declaration of new legislation entailing consultation mechanisms in the electricity industry law and the hydrocarbons law, provided new guiding principles to change previous practices. Yet this work required further substantial rules and laws that would support these efforts.²⁶

In any case, the hydrocarbons and electricity industry laws provided elements that function as administrative provisions and guidelines to define the formal process of determining the social impact of any manufacturing or extracting practices (including pipeline placement). These key steps are described as follows:

Step 1. Development of a social impact study, consisting of a preliminary assessment conducted by SENER prior to any assignments (in the case of PEMEX) or oil and gas auctions or bids. This is followed by an EVIS, which is a requirement for developers

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Addressing the roots of social conflict in the realm of energy development serves to strengthen Mexico's energy security.

and investors once either assignments or contracts have been awarded. The aim is to establish a social and environmental management plan to estimate “significant impacts” to local communities, as well as the equitable distribution of benefits.

Step 2. The prior consultation phase. This step occurs when an industrial development project directly impacts indigenous peoples and communities. Prior, informed, and unbiased consultation is still a pending issue even though it is required under the administrative and general provisions for social consultation processes.²⁷ This process entails a comprehensive review of environmental, cultural, social, and economic impacts,²⁸ but the entities conducting these evaluations have not yet been defined properly for every process according to the type of project and/or specific circumstances.

Step 3. Supervision and monitoring take place once a consultation process has been undertaken and are meant to be supervised by SENER, the Indigenous Rights Commission (CDI), and indigenous community leaders.

The proposal for a General Law for Prior Consultation²⁹ took several years to be completed, and it has not yet been approved by congress. It was delayed during Peña Nieto's administration, despite the fact that several thorough social impact evaluations and indigenous consultations were formally conducted.³⁰ About 14 consultations within the energy sector took place during Peña Nieto's administration (nine were finished and eight had secured consent from indigenous communities).³¹ Yet the absence of a solid legal framework detailing how consultations need to be conducted, together with the roles of the different stakeholders and obligations of other sectors beyond the oil and energy industries, are yet to be determined by a comprehensive arrangement. Furthermore, an inclusive framework has yet to be developed that can ensure that the negotiations between the different actors lead to fair agreements and avoid conflict. There also needs to be guidelines to determine the extent to which

these new rules allow adequate governance of the social benefits of these projects.³² These are some questions that the energy reform contemplated but did not define any clear implementation processes.

THE NEW ADMINISTRATION AND LOOMING CONCERNS ABOUT UNRESOLVED ISSUES

AMLO's administration recently published a law that gave birth to the new National Institute for Indigenous Peoples (INPI), which highlights a series of principles that elevate indigenous agendas to a higher level in all government affairs.³³ This law provides indigenous communities with normative autonomy, self-determination, respect for their territories, and above all, the right to free and informed consent to approve any project or executive order that could impact their territorial, cultural, or environmental heritage. The creation of the INPI may respond to the challenges posed by AMLO's proposed projects (a new refinery, a railway network throughout the Yucatán peninsula, and a freight railroad across the Isthmus of Tehuantepec). The INPI is led by indigenous leader Adolfo Regino Montes, who is a strong advocate for indigenous rights and the preservation of indigenous languages and cultures.³⁴ The expectations for the INPI's new mission with high-level political representation are high. Regino Montes has also announced his zero tolerance approach for any public or private entities that violate indigenous rights and territories.³⁵ However, a few months into the new administration, it is still unclear how AMLO's government will address the growing number of social conflicts coinciding with infrastructure projects.

With the mantra “may all investment projects go through the social screening of proper consultation”, anticipation looms around three of the 25 strategic projects outlined by AMLO: 1) The Mayan Train, aimed to link the tourist route between Cancún and Palenque; 2) the construction of a modern freight railroad connecting the Gulf of Mexico with the Pacific Ocean across

the Isthmus of Tehuantepec; and 3) the construction of a new refinery in Dos Bocas, Tabasco.³⁶ These projects will require special consultations given that their sheer size and problematic nature are likely to affect indigenous populations and territories.

It is too soon to judge if the actions of AMLO's government will be enough to improve relationships with indigenous peoples to avoid opposition and build consensus for infrastructure projects. Creating a comprehensive framework of protocols and regulations, which should include approval of the General Law for Prior Consultation of Indigenous Peoples and their Communities, is a fundamental step forward in respecting indigenous rights and promoting Mexico's progressive agenda on social license to operate and CSR. The concept of a social license is based on the idea that institutions and companies need not only regulatory permission but also "social permission" to conduct their business. It relates to the actions of a company to build trust with the community it operates in and other stakeholders through ethic, labor practices, sustainability compliance, etc.³⁷

Moreover, addressing the roots of social conflict in the realm of energy development serves to strengthen Mexico's energy security, which is the uninterrupted availability of energy sources at an affordable price.³⁸ Mexico's energy security relies on several natural gas pipelines that are currently dealing with operational and construction delays due to social opposition. These pipelines are critical to transporting natural gas imports that are increasingly critical for Mexico's energy market. Falling domestic production combined with growing demand means that natural gas imports (mostly from the U.S.) fulfill most of Mexico's needs. Thus, building a functional, competitive, and reliable energy industry cannot be fully attained without addressing the social conflicts over energy development by sharing the benefits of these developments and taking into account the interests of affected local and indigenous communities.

POLICY RECOMMENDATIONS

It has become clear that the number of social conflicts caused by infrastructure initiatives illustrates the need to toughen the laws that govern such projects. Hence, for any social consultation process to become effective and fair, the current administration should approve pending laws. Failing to do so may be self-defeating to AMLO, principally in the areas of protecting energy security and the rights of indigenous communities, which could subsequently impact economic growth.

The EVIS mechanisms and protocols could benefit from further elaboration as to whether these processes apply only to energy-related projects (e.g., mining, oil/gas, renewables, electricity, etc.), to infrastructure and real estate developments, and/or to public services (e.g., transportation, water access, distribution, etc.). Clearly defining and institutionalizing these evaluations will delineate standardized, sector-specific guidelines that identify who leads these evaluations and the responsibilities of each party.³⁹ As of today, the EVIS protocols are not clear. For example, while some consulting firms have demonstrated proficiency in conducting successful social assessments and consultations as subcontracted entities of private firms, SENER has also established a set of protocols that are not yet standardized with those used by independent consulting groups. This is causing mistrust and unpredictability for all parties involved, especially the affected local and indigenous communities.

Accordingly, the proposal to standardize the evaluation methods by means of social license to operate certifications and trainings is an important action item in the new administration's agenda to develop best practices. Social licensing practices and protocols should further be overseen by a federal entity able to carry out social impact assessments throughout their development, and these practices and protocols should be available to interested parties (private companies, state agencies, community leaders, local governments, and so forth).

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The governance of infrastructure projects continues to be affected by loopholes and overlaps between dispositions and regulations as well as the lack of a normative framework for sanctions, cost shares, and the fair distribution of benefits and remediation of impacts.

Furthermore, the long-term impacts and benefits for communities should be identified from the inception of any infrastructure development plan, where ultimately the long-term perspective of the company must match the long-term perspective of the community.

Moreover, the governance of infrastructure projects continues to be affected by loopholes and overlaps between dispositions and regulations as well as the lack of a normative framework for sanctions, cost shares, and the fair distribution of benefits and remediation of impacts. These gaps should be addressed. For example, PACMA established a set contribution for social investment relating to the overall value of the project,⁴⁰ which provided a baseline for investors to determine the cost of distributing a project's benefits. This approach could be taken as a model to establish standardized quotas for social development as part of every major infrastructure project.

The General Law for Prior Consultation proposition addresses many of these gaps. Yet this proposition still lacks some specificity because it refers solely to indigenous communities when oftentimes the affected entities could be farmers, *ejido*⁴¹ owners, women's groups, rural communities, or other social entities. The legal wording should go beyond indigenous communities and include vulnerable communities of all sorts, who should be empowered to negotiate and establish substantive dialogue with the government and other private companies under conditions of equality and a nondiscriminatory scheme of rights.

This also relates to the lack of formally institutionalized social impact evaluations and previous consultation as mechanisms conducted by both private and public bidding entities. SENER and the newly established INPI should have the mandate, budget, personnel (including translators and mediators), and capacity to oversee social consultation activities through all stages of development. Professionalizing social licensing consulting practices and training would also be strategic to help address

social conflict in a more effective way. The number, nature, and status of projects and consultation processes should be tracked, and this data should be made available to the public to ensure compliance and fairness to infrastructure projects and those stakeholders involved.

Finally, it is imperative to look beyond the visible reasons and analyze the underlying structural causes of social conflict. Infrastructure projects are often developed in societal and territorial peripheries that may be affected by "structural violence" related to poverty, inequality, and a lack of opportunities or effective forums for dialogue and participation. Within this environment, infrastructure projects can reignite existing social conflicts by exerting greater pressure on pre-existing tensions and the results cannot be positive under these circumstances. Mistakes committed in the past are crucial lessons learned where Mexico's rule of law and respect of human rights have huge space to improve.

ENDNOTES

1. A prime example of these conflicts is the El Encino-Topolobampo pipeline run by TransCanada and contested by the Rarámuris communities in the state of Chihuahua due to the lack of prior consultation concerning rights given by Federal Electricity Commission. Another example is the confrontation between Yaqui groups on the construction of the Guaymas-El Oro gas pipeline in Sonora from IEnova, which still faces significant delays. Luis Carriles, "Conflictos Sociales amenazan proyectos de energía," February, 19, 2017, <https://bit.ly/2K7SuQ1>.

2. As of 2017, the number of conflicts involving indigenous communities amounted to 335, although these are not exclusively connected to infrastructure projects. Conflicts are also related to land rights, housing projects, environmental hazards, human rights, and security and justice. See Comisión para el Diálogo con los Pueblos Indígenas de México, "Conflictos indígenas en México," November 30, 2017, <https://bit.ly/2EZXkha>.

3. As of December 2017, according to: GMI Consulting, “Social conflicts caused by infrastructure projects in Mexico,” <https://bit.ly/2R9fnX5>.
4. Axel Sánchez, “Conflictos sociales frenan inversión de 7,370 mdd en gasoductos,” *El Financiero*, February 18, 2019, <https://bit.ly/2tpd8nB>.
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6. Miguel Concha, “Conflictividad Social en México,” *La Jornada*, January 13, 2007, <https://bit.ly/2MGCcmp>.
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14. Carla Sofa Loyo Martínez, “CNDH: entre defender y no a los indígenas,” *Animal Político*, January 9, 2017, <https://bit.ly/2K8Ms4N>.
15. Luis Carriles, “Conflictos sociales amenazan proyectos de energía,” *El Economista*, February 19, 2017, <https://bit.ly/2K7SuQ1>.
16. Chapter 5 of the Hydrocarbon Law, <https://bit.ly/2yEWCmL>. Chapter 2 of the Electricity Industry Law, <https://bit.ly/2MDJx69>.
17. For a full list of international treaties related to human rights observances and indigenous consultations, see Juan Fernando Ibáñez Parkman, “Social management of energy projects in Mexico: international law and human rights,” *International Law Office*, May 22, 2017, <https://bit.ly/2WC7Kyf>.
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21. In Spanish: Secretaría de Gobernación.
22. Secretaría de Energía, “Hacia un nuevo mercado de gasolinas y diésel: aspectos regulatorios: Evaluaciones de impacto social,” March 15, 2016, <https://bit.ly/2F3jeJE>.
23. The legal loopholes refer to the absence of defined attributions, responsibilities, and rights of each party involved in the consultation process, as well as the lack of standards for resolutions, contract mechanisms, mitigation actions, or compensation mechanisms between parties.
24. Axel Sánchez, “Conflictos sociales frenan inversión de 7,370 mdd en gasoductos,” *El Financiero*, February 18, 2019, <https://bit.ly/2tpd8nB>.

25. The final settlement of a matter or determination.

26. Rousseau, “The New Social Management,” 197–220.

27. Ibid.

28. Rodolfo Salazar–Gil, “El enfoque de sustentabilidad en el sector energético en México: Evaluación de Impacto Social” (PowerPoint presentation, SENER, March 14, 2016), <https://bit.ly/2l9W39p>.

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30. Notimex, “Sánchez Cordero alista Ley de Consulta Previa junto al INPI,” March 4, 2019, <https://bit.ly/2R5LLK3>.

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32. Moreno Chávez, “El régimen internacional,” 11.

33. Diario Oficial de la Federación, “Decreto por el que se expide la Ley del Instituto Nacional de los Pueblos Indígenas y se abroga la Ley de la Comisión Nacional para el Desarrollo de los Pueblos Indígenas,” December 4, 2018, <https://bit.ly/2QzDcJW>.

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35. Ibid.

36. Julio Mogel, “Megaproyectos y el filtro social de la consulta,” *Aristegui Noticias*, August 28, 2018, <https://bit.ly/2NvC6dk>.

37. Learning for Sustainability, Social License to Operate, <https://bit.ly/2wLj8c1>.

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39. This effort is already being launched by private consulting firms such as Conecta Cultura, whose goal has been to conduct and share their experiences with social consultation processes and building partnerships with private sector entities to train experts on different approaches to social and indigenous consultation processes. Conecta Cultura, “Evento: “Las Consultas Indígenas: Balance y Perspectivas,” September 27, 2018, <https://bit.ly/2IERrH8>.

40. PEMEX, “Memoria documental,” 4–5.

41. In Mexico, an *ejido* is a piece of land farmed communally under a system supported by the state.

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