$600 Million Loan from Inter-American Development Bank will Support Controversial Energy Reform in Mexico

In 2013, Mexico's president Enrique Peña Nieto Peña Nieto touted the country's energy reform as a "historic opportunity" to "transform and elevate the quality of life of all Mexicans." The constitutional changes, which ended decades-long monopolies on oil, gas, and electricity held by two state-owned companies, have both Mexican and foreign private competitors salivating at the prospects for new investments.

But few would agree that this reform has considered the rights and opinions of *all* Mexicans – particularly those whose lives will be most impacted by these new energy projects. The 2013 reform undermines the right to prior consultation and consent, forces landowners to cede their lands, and will be implemented in conjunction with militarized security forces to protect energy investments, all of which represent potential human rights violations.[i] Notably, over half of Mexican land is owned collectively, either under *ejidos* (land granted to farmers and laborers after the Mexican Revolution) or *comunidades* (indigenous groups).[ii] According to the reform, these mostly marginalized communities will have to negotiate land issues directly with private, energy-sector investors. To confront these threats, human rights and environmental organizations have come together to highlight the risks posed by the energy reform.

The new legal framework establishes that hydrocarbon exploration and extraction, as well the electric power industry, are a public interest. Therefore, these activities will have preference over any other land use or activity.[iii] The new law does not recognize the right of affected communities to refuse these types of projects. How communities' rights will be enforced within this context remains to be seen.

Despite this, last month the Inter-American Development Bank (IDB) approved a substantial USD $600 million loan[iv] for Mexico to support the implementation of this controversial reform. The Mexican government had requested this policy-based loan from the IDB to "*advance the sustainability and security of the Energy Reform*."

With this loan from the IDB, Mexico intends to strengthen institutions in the energy sector, ensure the supply of natural gas and expand the gas pipeline network, reduce electric power distribution losses, promote the use of clean technologies and energy efficiency measures in electric power generation, and close the gap in access to electricity in rural communities and marginalized urban areas.[v]

Some of these objectives undoubtedly deserve immediate attention, such as the urgency to provide coverage to the 450,000 families that lack access to electricity and to reduce greenhouse gas emissions in the energy sector.[vi]

However, other objectives raise serious concerns, as does the way in which these objectives will be met. It is already commonplace for renewable energy projects to be implemented in communities that have not been properly informed and consulted. Indigenous groups throughout Mexico have testified about violations of their free, prior, and informed consultation and consent processes regarding projects such as wind farms (Oaxaca), solar projects (Yucatan), and gas pipelines (Sonora); these represent but a few of the energy projects marred by ongoing conflicts in the country. The question remains, how will the Mexican government ensure proper consultation and community engagement when the powers granted to private firms under this new legal framework condone overstepping the rights of communities?

Furthermore, the new legal framework includes a definition of "clean" energy sources that is so expansive that it is virtually meaningless and fails to assess the environmental impact of the technologies that it promotes.[vii] Alongside solar and other broadly accepted renewable sources, the definition includes large-scale hydroelectric power, nuclear energy, high-efficiency combined cycle technologies for natural gas, and the "efficient" use of fossil fuels (carbon capture and storage).[viii] Also worrisome is the promotion of non-conventional hydrocarbon exploitation through fracking, a practice that involves serious, adverse impacts on water, the environment, and human health. Groups in Mexico are alarmed that natural (shale) gas is being considered as a positive alternative to other fossil fuels and also viewed as a strategy to reduce GHG emissions.[ix]

Despite the clear and direct impacts that the energy reform will have on the environment, the IDB has labelled this loan as support for clean energy and environmental sustainability. The Bank has also failed to trigger the appropriate safeguards regime to respond to the diversity of impacts and depth of risks posed by implementation of the energy reform. According to the IDB, the project does not require any specific classification of environmental impacts since the $600 million loan will not "*finance physical investments; its objective is to support the process of the implementation of energy related policies.*"[x] Yet, while IDB money may not directly finance actual physical projects, it expects these projects to occur as a result: one indicator used to measure the project's results is the expansion of the national gas pipeline network. The IDB cannot in good faith claim its loan will not have a clear and direct impact on the environment and local communities.

Mexico deserves renewable energies and a sustainable energy future, but not at the expense of the rights of local communities, their livelihoods, and the environment. Facilitated by the umbrella of the energy reform, adverse social, environmental, and human rights impacts should be anticipated with the push for new energy infrastructure. The high risk of negative impacts should compel the IDB to put people and the environment at the center of its discussion and consideration for any investment under this new regime. Failing to do so, the IDB's support will not only contravene its own social and environmental policies, but also exacerbate the number of people negatively affected by energy projects throughout Mexico.

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[i] See: "Piden a CIDH incluir impactos de Reforma Energética en su informe de pueblos indígenas". Available at: http://hrbrief.org/wp-content/uploads/2015/03/BoletinPrensaCIDH20Mzo_ReformaEnergetica-1.pdf; "Diversas disposiciones de la reforma energética son violatorias de derechos humanos". Available at: http://www.cemda.org.mx/diversas-disposiciones-de-la-reforma-energetica-son-violatorias-de-derechos-humanos/ ; De la Fuente, A. *et al.* (2016). *El sector de hidrocarburos en la Reforma Energética: retrocesos y perspectivas.* Mexico City, Mexico: Fundar, Centro de Análisis e Investigación, A.C.; Centro Mexicano de Derecho Ambiental (CEMDA). *Posibles impactos ambientales y sociales de la Reforma Energética*. Available at: http://www.cemda.org.mx/wp-ontent/uploads/2011/12/CEM_Informe_Reforma_Energetica_impactosambientales-2.pdf.*;* Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. (Centro ProDH) (2017). *Cartilla preventiva frente a la Reforma Energética.* Mexico City, Mexico: Centro ProDh; Cárdenas, J. (2015). La nueva legislación secundaria en materia energética de 2014. *Boletín Mexicano de Derecho Comparado.* XLVIII (143): 547-613.

[ii] Reyes, J.A. *et al.*(2012). *Atlas de Propiedad Social y Servicios Ambientales en México*. Mexico: Instituto Interamericano de Cooperación para la Agricultura

[iii] Ley de Hidrocarburos. Article 96. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5355989&fecha=11/08/2014 ; and Ley de la Industria Eléctrica. Article 71. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5355986&fecha=11/08/2014

[iv] Approval date: March 12, 2018.

[v] IDB, Program to Support the Implementation and Strengthening of the Energy Reform (ME-L1264). Loan information available at: https://www.iadb.org/en/project/ME-L1264

[vi] *Ibid.*

[vii] See: Correa, N. (2016). *Defensa del territorio frente a proyectos del sector eléctrico en México*. Mexico City, Mexico: Fundar, Centro de Análisis e Investigación, A.C.

[viii] Ley de la Industria Eléctrica, Art 3. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5355986&fecha=11/08/2014

[ix] See: Olivera, B. (2015) "Recomendaciones y reiteraciones para una explotación energética sustentable a partir de la Reforma Energética". In: *Reforma energética y desarrollo industrial. Un compromiso inaplazable*. Mexico City, Mexico: Instituto de Investigaciones Jurídicas / Universidad Nacional Autónoma de México (UNAM); Environmental Defense Fund (2012).

[x] IDB, Program to Support the Implementation and Strengthening of the Energy Reform (ME-L1264). Loan information available at: https://www.iadb.org/en/project/ME-L1264