



Human Rights

SETBACK

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Image: El Sol de México en <https://tinyurl.com/tj25mwz5>

Human Rights SETBACK

Since years ago, there is a consensus about the severe violation of human rights in Mexico. Diverse non-governmental international organizations have documented the humanitarian crisis in the country. The very same Lopez Obrador criticized, as candidate and opponent, the Mexican state's actions in the human rights matter and considered it the main responsible of various violations to rights and liberties. Adversarially, already as a president, López Obrador has propelled a series of amendments instead of looking after Mexicans' rights, has reduced them and has diminished liberties that were already well established. Some of the most relevant regulatory modifications are constitutional article 22 reform, the enactment of the National Law of Forfeiture Proceedings, as well as The Use of Force National Law reforms, the National Guard Law, the General National Public Security System Act, and the Detention Records National Law. In the same way, the militarization of the migratory policy represented a significant setback in the humanitarian field.

The penal justice system reform in 2008 included the forfeiture proceedings figure; the constitutional article 22, reformed in 2019, instructed Congress to issue a law to rule the article mentioned above. These actions led to the Forfeiture Proceedings National Law (LNSED for its acronyms in Spanish).¹ Those country policy framework modifications were done, arguing the government's need to count on a mechanism to track and prosecute felonies related to organized crime. As it was widely discussed in the media, this law introduced a series of amendments that left citizens helpless facing many different situations. Even though it seems sensible that the state counts with tools to fight organized crime, which depends essentially on the enormous financial resources it has, the Forfeiture Proceedings Law contains a series of very obvious traps leaving all citizens in a state of enormous vulnerability.

THE FIRST TRAP consists that authorities, more specifically the prosecutor's office, can: (among other things)

- » Investigate any individual as a preventive crime measurement. It violates the principle of due process and the presumption of innocence.
- » Reserve gathered information to prepare the forfeiture proceedings until that action is presented to the judiciary authorities. It violates the right to free access to information.
- » Seize and forfeit properties that were used to commit any of the crimes mentioned and detailed below. This action violates private property rights as well as the right to legal certainty. The law considers this possibility even when the owners did not commit, were part of the crimes, or were ignorant about the crimes committed.

¹ This law was appealed by the CNDH but the resolution in the SCJN is still pending.



Image: “79 of the detained were tortured”. El Sol de México at <https://tinyurl.com/bentgek>



Image: “174 buildings are secured by 2019”. AFmedios at <https://tinyurl.com/2b6um4a5>

Thus, the owner should keep all documentation that proves the lawful origin for long periods. That is to say; as an example, if the owner of a rented house does not know the tenant is committing criminal activities, such as storing stolen gasoline, the owner could lose his ownership through a civil trial. That can occur without a penal sentence proving that the landlord or the owner knew or participated in the investigated crime.

It is worth mentioning that the authorities can also take forfeiture proceeding actions against individuals that cannot prove the legitimacy of their properties, even when those have been obtained before enacting this new law. In other words, there is a possibility to retroactively apply the law since the forfeiture proceeding is possible on properties obtained before this policy framework exists.

THE SECOND TRAP is granting federal government exclusivity to take forfeiture proceeding action. Article 1 of the Forfeiture Proceedings National Law (LNSED for its acronyms in Spanish) in its first fraction mentions, the forfeiture proceeding actions in the state's favor will be through the federal government and the federal entities accordingly.² However, fraction V of the same article establishes that the activities likely to be subjected to forfeiture proceeding actions are the ones included in the Federal Law Against Organized Crime: Kidnapping, crimes related to hydrocarbons, petroleum and petrochemical, crimes against health, human trafficking, corruption offenses, tampering, concealment offenses, and crimes committed by public officials,³ car theft (the ones covered in the Federal Penal Code in its article 376 bis), illegally obtained resources and extortion. Summing up, the dispositions included leave citizens in helplessness facing federal government's actions.

² National Law on Forfeiture Proceedings. Available at: <https://tinyurl.com/y6mfxayz>

³ CNDH (2019) Quote: "The ones covered in the Title X. Corruption felonies, Chapter II unlawful exercise of public service and the Title XIII, Crimes committed against the administration of justice of the Federal Penal Code. Available at: <https://tinyurl.com/46xms59r>

TABLE 1. RIGHTS, LIBERTIES, PRINCIPLES AND LEGAL, CONSTITUTIONAL AND CONVENTIONAL DISPOSITIONS VIOLATED BY THE NATIONAL LAW ABOUT FORFEITURE PROCEEDINGS

VIOLATED RIGHTS	LEGAL PROVISIONS VIOLATED
Legal Certainty Right	Constitutional Article 22
Access to Public Information Right	Constitutional Article 6 and Constitutional Article 19 of the Civil and Political Agreement Pact
Right to Property	Constitutional Articles 22 and 27, as well as Article 21 of the Human Rights American Convention
Personal Data Protection Right	Constitutional Article 16
Effective Judicial Protection Right	Constitutional Articles 16 and 22
Due Process	Constitutional Article 22
Rule of Law	Constitutional Articles 14 and 9 of the Human Rights American Convention
Principle of Máximum Publicity	Constitutional Article 6
The principle of non-retroactivity	Constitutional Article 14, Constitutional Article 9 of the Human Rights American Convention, and Article 15 of the Civil and Political Rights International Agreement
Principle of Constitutional Supremacy	Constitutional Article 1
Respecting and Protect Human Rights, Government Bond.	Constitutional Article 1, Articles 1, 2 and 13 of the Human Rights American Convention and Article 2 of the Civil and Political Rights International Agreement.

Source: In-house elaboration with information from LNSD, the CPEUM, the CADH and the PIDCP.

The Use of Force National Law reforms, National System General Law reforms, the General National Public Security System Act reforms, the Detention Records National Law reforms, and the National Guard Law violate twenty-five fundamental rights. They infringe various constitutional and conventional dispositions: the ones framed in the Human Rights American Convention, The International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in the Inter-American Convention to Prevent and Punish Torture, in the Inter-American Convention on Forced Disappearance of Persons, and International Convention for the Protection of All Persons from Enforced Disappearances (Signos Vitales, 2020).

López Obrador has promoted a serie of reforms that, instead of watching over for the human rights of Mexicans, they clearly pretend to reduce them, withdrawing liberties that were already achieved.

The 25 dispositions against fundamental rights that were approved, leave citizens defenceless against actions of the federal government.



Image: Protesting is a human right. Sonoramafm at <https://tinyurl.com/93unacfm>

Image: Demonstrators against “the bullet law”. Nayaritenlinea at <https://tinyurl.com/ypezeyct>

Image: Demonstration in Puebla. La Jornada de Oriente at <https://tinyurl.com/y4vxas6c>

The regulatory umbrella built barely two years ago enables law enforcement federal bodies like the National Guard and the Army and Navy⁴ –alternatively and temporarily–, to perform actions against the Constitution itself and the international treaties on human rights matters. Treaties that the Mexican State has signed and ratified. Highlighted by their severity: the use of guns against those who take part in demonstrations or public meetings deemed, unilaterally, as non-peaceful or unlawful aim; and the possibility of the individuals in charge of ensuring public safety to make use of all levels of public force. Among these actions can be found, besides using arms and lethal force when the force executioners judge the demonstrators are violent. Even though The National Commission of Human Rights (CNDH for its acronym in Spanish) contested all these laws, the Supreme Court of Justice of the Nation (SCJN for its acronym in Spanish) has not ruled on this respect.

In two years, the National Guard, the Army and the Navy, have been enabled to perform actions against those who take part in demonstrations or public meetings deemed as non-peaceful or unlawful aim.

⁴ Although the Army's initial responsibilities were not those related to public safety, the agreement published on May 11th 2020 enables it to perform public safety tasks for the rest of this government administration. Available at: <https://tinyurl.com/yc334yx9>

TABLE 2. RIGHTS, LIBERTIES, AND PRINCIPLES VIOLATED BY THE USE OF LAW NATIONAL LAW (LNSUF FOR ITS ACRONYMS IN SPANISH), THE DETENTION RECORD NATIONAL LAW (LNRD FOR ITS ACRONYM IN SPANISH), THE GENERAL NATIONAL PUBLIC SECURITY SYSTEM ACT (LGSNSP FOR ITS ACRONYM IN SPANISH) AND THE NATIONAL GUARD LAW (LGN FOR ITS ACRONYM IN SPANISH)

LAW	VIOLATED RIGHTS	CONSTITUTIONAL AND CONVENTIONAL ARRANGEMENTS VIOLATED
The Use of Force National Law	<ul style="list-style-type: none"> » Legal Certainty Right » Freedom of Speech » Freedom of Assembly » Rule of Law » Obligation to protect and guarantee the human rights 	<p>Political Constitution of the United Mexican States: Articles 1, 6, 9, 14, 16 and transitory provision fourth, fraction III, paragraphs 3, 4, 6, and 9 of the 26th March 2019 reform.</p> <p>International Treaties: <ul style="list-style-type: none"> » American Convention on Human Rights: Articles 9, 13, and 15 » International Covenant on Civil and Political Rights: Articles 19 and 21 </p>
The Detention Record National Law	<ul style="list-style-type: none"> » Legal Certainty Right » Principle of legality » Principle of immediacy on Detention Record » Obligation to protect, promote and guarantee the human rights 	<p>Political Constitution of the United Mexican States: Articles 1, 14, 16, as well as the transitory provision fourth, fraction IV, numeral 7 of the 26th of March 2019 decree whereby CPEUM was reformed (the Political Constitution of the United Mexican States for its acronym in Spanish)</p> <p>International Treaties: <ul style="list-style-type: none"> » American Convention of Human Rights: Articles 1, 2, and 9. » International Covenant on Civil and Political Rights: Article 2. </p>
The General National Public Security System Act	<ul style="list-style-type: none"> » The right to access public information. » The principle of maximum publicity 	<p>Political Constitution of the United Mexican States: Articles 1 and 6.</p> <p>International Treaties: <ul style="list-style-type: none"> » American Convention of Human Rights: Articles 1, 2 and 13 » International Covenant on Civil and Political Rights: Articles 2 and 19 </p>

CONT. TABLE 2. RIGHTS, LIBERTIES, AND PRINCIPLES VIOLATED BY THE USE OF LAW NATIONAL LAW (LNSUF FOR ITS ACRONYMS IN SPANISH), THE DETENTION RECORD NATIONAL LAW (LNRD FOR ITS ACRONYM IN SPANISH), THE GENERAL NATIONAL PUBLIC SECURITY SYSTEM ACT (LGSNSP FOR ITS ACRONYM IN SPANISH) AND THE NATIONAL GUARD LAW (LGN FOR ITS ACRONYM IN SPANISH)

LAW	VIOLATED RIGHTS	CONSTITUTIONAL AND CONVENTIONAL ARRANGEMENTS VIOLATED
The National Guard Law	<ul style="list-style-type: none"> » Legal Certainty Right » Right of Intimacy » Right of Privacy » Personal Data Protection Right » Right of Personal Safety » Right of Human Treatment » Right of equality and non-discrimination. » Right of Freedom to Work » Right to Hold a Public Office » Right of Labor Rest » Rule of Law » The Principle of Specificity » The principle of presumption of innocence » The Principle of Resocialisation » Prohibition of arbitrary or unlawful interference » The Obligation to Respect, Protect, and Promote Human Rights » Obligation to Punish Torture, Force Disappearance Based on its Seriousness 	<p>Political Constitution of the United Mexican States: Articles 1, 5, 11, 14, 16, 18, 20, 21 and 35, fraction VI.</p> <p>International Treaties:</p> <ul style="list-style-type: none"> » American Convention of Human Rights: Articles: Articles 1, 2, 7, 8, 11, 22, and 24 » International Covenant on Civil and Political Rights: Articles: 2, 9, 10, 17 and 26 » The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Articles 1 and 4. » The Inter-American Convention to Prevent and Punish Torture: Articles 2 and 6 » Inter-American Convention on Forced Disappearance of Persons: Article III » International Convention for the Protection of All Persons from Enforced Disappearance: Articles 4 and 7

Source: In-house elaboration with data from the LNSUF, LGNSP, LGN, LNRD, CPEUM, CADH, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The Inter-American Convention to Prevent and Punish Torture, Inter-American Convention on Forced Disappearance of Person, International Convention for the Protection of All Persons from Enforced Disappearance, and the PIDCP.

Additionally, the Criminal Proceedings National Code widens the custody merit crimes catalog, including the use of toy weapons to commit crimes, electoral crimes, and the interruption of railway construction. Also, the 2019 Penal Tax Reform was established as a threat against national security any unlawful act against the tax office, and unofficial custody was established for laundering, smuggling, tax evasion, and tantamount over 7,804,230 MXN.⁵ Some observers have pointed out this widening of the crimes catalog has as a goal to avoid the interruption of government period macro projects like Maya Train. This way guarantees the necessary collection estimated by the government to achieve its large-scale projects.

In the migration field, the violation of human rights has become not the exception but the rule. The CNDH had previously warned about the threats that migrants face traveling across Mexico to the United States. Although the Mexican State is obliged to guarantee individuals safety in the territory, the migrants have been abandoned to their own luck. This situation has encouraged organized crime to recruit or traffic them. Even though this phenomenon is not a novelty in the country, the bilateral agreement between Mexico and the United States signed on the 7th of June 2019, intending to improve the migration control systems and humanitarian protection, just aggravated the issue. As a result, the number of asylum applicants in the United States that follow the process in Mexico under the program “Quédate en México”⁶ increased. In addition, the COVID-19 pandemic had locked up thousands of migrants in Mexican territory (*Animal Político*, 2020).

⁵ Article 167 fraction XI, paragraphs II y II of National Code of Criminal Procedures.

⁶ Mexico and The United States joint statement (June 7th 2019). Available in: <https://tinyurl.com/yao8wgmng>



Image: Photo/Cuartoscuro “Migrant children, 10% disappeared in Mexico”. El Sol de México at <https://tinyurl.com/x5ywvu9s>

Just in the first year of the administration, the organization Human Rights Watch documented 32 kidnapping attempts or kidnapping on migrants in border cities. Children have been one of the main objectives; at least 38 have been kidnapping victims. Similarly, the organization reports more than 1,100 cases related to homicide, rape, kidnapping and torture against the asylum applicants that are part of the program “Quédate en México” (HRW, 2019). In contradiction to his campaign promises, the Mexican president’s migration policy is the most contentious in the country’s modern history.

In conclusion, it can be observed that in only two years of government, the Lopez Obrador administration has reduced the catalog of Mexican rights through a series of constitutional and legal modifications. Contrary to expectations, the legal uncertainty and the blatant violation of numerous rights is one of the marks of this federal government that still has almost four years to flinch and enlist politics in people's favor.

In conclusion, it can be observed that in only two years of government, Lopez Obrador administration has reduced the catalog of human rights of women and men in Mexico.



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