

DECEMBER 2018

Mexican Civil Society

Reclaiming Space Amidst Impunity

PROJECT DIRECTOR

Amy K. Lehr

AUTHORS

Sarah Baumunk

Linnea Sandin

A Report of the
CSIS Human Rights Initiative

iCON The International Consortium
on Closing Civic Space

CSIS | CENTER FOR STRATEGIC &
INTERNATIONAL STUDIES

DECEMBER 2018

Mexican Civil Society

Reclaiming Space Amidst Impunity

PROJECT DIRECTOR

Amy K. Lehr

AUTHORS

Sara Baumunk

Linnea Sandin

A Report of the
CSIS Human Rights Initiative

iCON The International Consortium
on Closing Civic Space

CSIS | CENTER FOR STRATEGIC &
INTERNATIONAL STUDIES

ABOUT CSIS

For over 50 years, the Center for Strategic and International Studies (CSIS) has worked to develop solutions to the world's greatest policy challenges. Today, CSIS scholars are providing strategic insights and bipartisan policy solutions to help decisionmakers chart a course toward a better world.

CSIS is a nonprofit organization headquartered in Washington, D.C. The Center's 220 full-time staff and large network of affiliated scholars conduct research and analysis and develop policy initiatives that look into the future and anticipate change.

Founded at the height of the Cold War by David M. Abshire and Admiral Arleigh Burke, CSIS was dedicated to finding ways to sustain American prominence and prosperity as a force for good in the world. Since 1962, CSIS has become one of the world's preeminent international institutions focused on defense and security; regional stability; and transnational challenges ranging from energy and climate to global health and economic integration.

Thomas J. Pritzker was named chairman of the CSIS Board of Trustees in November 2015. Former U.S. deputy secretary of defense John J. Hamre has served as the Center's president and chief executive officer since 2000.

CSIS does not take specific policy positions; accordingly, all views expressed herein should be understood to be solely those of the author(s).

© 2018 by the Center for Strategic and International Studies. All rights reserved.

Center for Strategic & International Studies
1616 Rhode Island Avenue, NW
Washington, DC 20036
202-887-0200 | www.csis.org

ACKNOWLEDGMENTS

This research was conducted through the CSIS International Consortium on Closing Civic Space (iCon), a network of experts whose insights helped shape the vision for this report. CSIS would like to thank all of those who were interviewed. We would also like to thank Miguel De La Vega for his contribution. Their invaluable contributions and perspectives informed the analysis and findings of this report.

This report was made possible by the generous support of the Oak Foundation and the Charles Stewart Mott Foundation.

EXECUTIVE SUMMARY

Despite the occasional setback or spark of progress, civic space in Mexico has remained mostly stable since the country elected its first opposition president in 2000. While Mexico's laws theoretically protect its citizens' rights, their faulty implementation has failed to yield results at best and has increased the vulnerability of human rights defenders at worst. Some laws have imposed significant administrative restrictions in the form of complex reporting requirements, which can be a burden for civil society organizations (CSOs), especially for smaller grassroots human rights organizations. Controversial laws that restrict civic space, coupled with the country's high levels of corruption, astronomical impunity rate, and lack of transparency, have caused many citizens to lose faith in the government's ability and willingness to protect and fight for rights. Newly-elected President Andrés Manuel López Obrador ("AMLO") seems to have a genuine interest in human rights, which is promising for the future of civic space in Mexico. However, the fact that he has already softened some of his policy stances on these topics, paired with the government's history of involvement in human rights violations, should prompt caution and consistent monitoring.

Civil society, and particularly human rights defenders and journalists, bear the brunt of the consequences of the Mexican government's inability and/or unwillingness to act. Since 2006, more than 32,000 Mexicans have gone missing. In 2017, Mexico was named the deadliest place for journalists, as more than 100 journalists have been killed in the country since 2000.¹ Companies play a significant role in these abuses, using threats and violence against those defending community lands from commercial development. Such defenders are often linked to local environmental or indigenous groups. The Mexican government has failed to take basic steps to address these urgent and life-threatening issues.

Mexican CSOs employ a number of approaches to reclaim space to operate and flourish. They have worked in coalitions to pass laws that, if implemented, should help address problems such as forced disappearances. They have also pushed back on anti-money laundering (AML) and tax laws that contain onerous reporting requirements that threat-

1 Human Rights Watch, *World Reports 2018, Mexico Events 2017*, Human Rights Watch, <https://www.hrw.org/world-report/2018/country-chapters/mexico>; Steven M. Ellis, "Mexico Most Deadly Country for Journalists in 2017," *International Press Institute*, December 19, 2017, <https://ipi.media/mexico-most-deadly-country-for-journalists-in-2017/>

en their financial survival. Some of these coalitions have incorporated other actors such as academics, pro bono private sector advisors, and even politicians to amplify their analysis and messaging.

Additionally, in the void of the Mexican government's failure to act, civil society members have taken it upon themselves to advocate for and protect themselves by creating "community police," forming other local coalitions, and pursuing legal actions. At a local level, civil society organizers have brought together landowners in rural areas through Agrarian Assemblies that have brought *amparos*, legal actions that seek to either bar or restrict companies from commercially developing communal or environmentally-protected land. Informally, rural organizations have banded together in official and unofficial communities to share resources and shed light on the abuses they are suffering at local, national, and international levels.

Moving forward, the Mexican government should emphasize engagement with civil society to better understand the needs of CSOs on the ground and ensure the laws it passes effectively satisfy those needs. The Mexican government should publicly signal its support for CSOs to help protect them and create an open and supportive environment for their work. Further, the government needs to increase efforts to combat impunity and strengthen judicial systems so that CSOs are protected, and end surveillance of CSOs and journalists. Finally, it should collect and publish transparent data on civil society abuses and reconsider laws that (even inadvertently) restrict civil society.

Foreign governments have a role to play in pressuring the government to address human rights violations and adequately protect journalists and media professionals. They should highlight abuses and provide the necessary resources to enhance Mexican judicial reform programs. International donors should continue their support of Mexican non-governmental organization (NGO) networks that work to create an enabling environment for civil society and help provide technical and advocacy support for grassroots organizations. Providing training to civil society on cybersecurity is essential, given the allegations that the government has used spyware against its critics.

The United States government should continue to provide assistance to Mexico that combats impunity and helps make the country more secure. This includes helping to strengthen its institutions, including civil society. In particular, programs aimed at improving Mexico's judicial sector and promoting a culture of rule of law should be continued.

Finally, Mexican CSOs with more resources and either national or international networks can play a role in ensuring that all CSOs—particularly small and rural organizations—have the appropriate resources and training they need to succeed. These larger CSOs can do so by engaging with both the Mexican government and the international community and cascading expertise down while more broadly disseminating the challenges that smaller organizations face.

METHODOLOGY

The results of this study were determined through a mixture of research techniques, including surveys, in-depth interviews, and a review of academic literature. The researchers began collecting baseline information through a brief 10-question survey administered to a broad range of civil society organizations. The survey asked general questions about the respondents' impression of the state of civic space in Mexico as well as specific restrictions the respondent or his/her organization had faced in the past.

Following the survey, the researchers conducted a series of in-depth interviews with respondents who had indicated interest in speaking further on the issues and with other personal and professional connections in Mexican civil society. These interviews, typically 20-30 minutes over the phone, offered the researchers an opportunity to obtain more information about the interviewees' personal experiences.

The advantage of these two research strategies is that they afforded the opportunity to hear directly from on-the-ground civil society representatives. This allowed researchers to gather more specific and up-to-date information, particularly through anecdotes, than could be readily found in academic literature. That said, the strategies have some weaknesses. Because survey respondents and interviewees were found through a network approach, the pool of respondents is not a representative sample. The majority of people interviewed were human rights defenders based in major metropolitan areas in Mexico, which represents a small sliver of the country's diverse and vibrant civil society community. Additionally, repression by the government or third-party groups is a highly sensitive topic for many civil society representatives, which in turn affected the ability of the researchers to collect information. Many interviewees were reluctant to divulge details about repression they or others have faced or did not feel comfortable sharing detailed information about specific tactics that CSOs

use to avoid government or third-party repression. This information seemed to be withheld in order to protect the human rights defenders themselves and to ensure that the information would not end up in the hands of government or third-party actors to be used against them.

BACKGROUND AND CONTEXT

Legal Framework

While the Mexican government holds the necessary legal tools to protect the human rights of its citizens, it has failed to use them effectively, especially in the context of the physical security of civil society actors. It has further created significant administrative barriers to the operations of CSOs, which has damaged them and even threatened their survival—particularly through the 2004 Federal Law for the Promotion of Activities Undertaken by Civil Society Organizations. Although some of these laws were intended to support transparency, they have had unintended and perverse consequences. The failure to adequately address corruption has also intruded on civic space.

Mexico's constitution guarantees citizens the rights to freedom of association, assembly, and speech, all of which are vital for a strong civil society. Articles 6 and 7 of the Constitution assert the freedom of writing and publishing writings on any subject, as well as the expression of ideas “unless it offends good morals, infringes the rights of others, incites to crime, or disturbs the public order.” Article 9 affords the right to assemble or associate peacefully, although this right only belongs to Mexican citizens, and armed protests are forbidden.

In 2011, the Mexican Constitution was revised to incorporate the concept of human rights. This is positive evidence of the government's willingness to promote and protect civic freedoms in the coun-

try. The modification recognizes citizens' rights, previously presented as “fundamental rights” (i.e., granted to people by the government), as human rights.² The new language states: “In the United States of Mexico, all persons shall enjoy the rights recognized by the Constitution and international treaties to which the Mexican State is party, as well as guarantees for their protection, the exercise of which may not be restricted or suspended, except in cases and under conditions established by this Constitution.”³ This change reflected the incorporation of all genders (i.e., “persons” rather than “men”), and added international treaties, as well as the Constitution, as the basis for recognized rights.⁴ These additions made important strides at the federal level to enhance and clarify the rights afforded to Mexican citizens.

In June 2013, the Supreme Court reaffirmed the country's commitment to freedom of expression, ruling that “It held that ‘having full freedom to express, gather, disseminate, and publish information and ideas is indispensable, not only as an essential means of self-expression and self-creation but also as a premise for the ability to fully exercise other human rights—the right of association and peaceful assembly with any lawful aim, the right of petition, and the right to vote and be voted for—and as a functional element that determines a country's democratic quality of life.’”⁵ The Court has upheld these principles on a number of occasions since 2013.

The 2004 Federal Law for the Promotion of Activities Undertaken by Civil Society Organizations is meant to provide a legal framework for nonprofit organizations operating in Mexico. The law grants

2 Victor Manuel Colli Ek, “Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges,” *Human Rights Brief* 20 (1), 2012, <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1850&context=hrbrief>.

3 Ibid.

4 Ibid., 4.

5 Edison Lanza, *National Case Law on Freedom of Expression*, (Inter-American Commission on Human Rights and Organization of American States, 2017), http://www.oas.org/en/iachr/expression/docs/publications/jurisprudencia_eng.pdf.

tax incentives to organizations engaged in the following: charity, sports, civic education, community development, environment, human rights promotion, culture, science, and technology. The Law also created a federal nonprofit registry (CLUNI). While organizations are not obligated to register, and registration is free, those interested in accessing certain federal funds must register (for example, “federal conversion funds” offered by the Ministry of Social Development).⁶ The registration process can be onerous for nonprofits, as it requires them to amend their bylaws with a notary public, which could be time consuming and costly.

In response to calls from the international Financial Action Task Force (FATF), the Mexican government implemented the Federal Law to Prevent and Identify Transactions using resources of illicit origin, an anti-money laundering law (AML Law), in October 2012. This law poses significant administrative barriers to the operations of CSOs due to the high volume and complex nature of its reporting requirements.⁷ More specifically, any individual or legal entity (including human rights organizations of every size) receiving donations over \$7,500 is required to adhere to onerous reporting requirements, which apply equally to organizations linked to money laundering activities and those with no such links. Noncompliance can result in penalties of up to \$250,000, a crippling financial risk for CSOs, especially smaller grassroots organizations.⁸

While the laws are meant to protect civil society organizations, they also contain burdensome reporting requirements for organizations receiving government funds, including monthly and annual transparency and social security reports, audits, and reports to various ministries and federal and state tax authorities. CSO pushback on the unnecessary impacts of the AML law is discussed later in this report.

Further, while the government typically does not actively harass CSOs—although there are striking examples of it doing so—it routinely fails to provide adequate protection to CSOs against threats of violence or retaliation.⁹ There are also restrictions on citizens who assemble, including a requirement for state-level advance notification, a legal prohibition on assemblies three days prior to elections, and a trend of states enacting laws allowing police to use excessive force on protestors.¹⁰

In December 2017, the Mexican Senate approved the Internal Security Law, which authorized the use of military force for domestic law enforcement operations. The law is meant to address the impact of the drug war in Mexico and problems with police corruption, but the military has a significant history of human rights abuses, with more than 10,000 complaints against it between 2006 and 2016.¹¹ The law stated that the military could be brought into any law enforcement situation but does not include ways to strengthen civilian police institutions, or a way to eventually end the use of the military in

6 Consuelo Castro, “Federal Law for the Promotion of Civil Society Organizations in Mexico,” *ICNL* 7, issue 2, February 2005, http://www.icnl.org/research/journal/vol7iss2/special_5.htm.

7 “FATF and Mexico: How Anti-money Laundering Legislation Has Weakened the Human Rights Response to the War on Drugs,” European Foundation Centre, October 2, 2015, <https://www.efc.be/human-rights-citizenship-democracy/fatf-and-mexico-how-anti-money-laundering-legislation-has-weakened-the-human-rights-response-to-the-war-on-drugs/>.

8 *Ibid.*

9 “Civic Freedom Monitor: Mexico,” The International Center for Not-for-Profit Law, <http://www.icnl.org/research/monitor/mexico.html>.

10 *Ibid.*

11 “Mexico: Reject Internal Security Law,” Human Rights Watch, December 7, 2017, <https://www.hrw.org/news/2017/12/07/mexico-reject-internal-security-law>.

these situations. There is also no independent civilian control or oversight of military operations, and no way to ensure that civilian authorities can investigate or prosecute alleged military abuses.¹² In November 2018, Mexico's Supreme Court overturned the law in a 9-1 decision.¹³

AMLO has vowed to move law enforcement strategies away from militarization. He has also promised to address the root causes of crime and drug trafficking, and to replace many military anti-drug operations with ones run by local police (whom he also plans to pay and train better).¹⁴ Given the military's history of abuses in Mexico, many human rights defenders feel that a move towards the demilitarization of the police will lead to less violence and better protection of citizens. However, despite AMLO's commitments to de-militarizing law enforcement, how he plans to implement these policies (and others) remains vague.¹⁵

Freedom House notes that NGOs working in Mexico, especially those working in rural and indigenous communities, face significant violence and threats because of their work. In fact, civil society pressure to protect them from this violence was so great that in 2012, the government created the Law for the Protection of Human Rights Defenders and Journalists ("Protection Mechanism") as a way to give threatened human rights workers protection.¹⁶ As

of October 2017, the Protection Mechanism has offered protection to more than 500 people, but human rights groups complain that it is slow and lacks government commitment.¹⁷

Although the Mexican government routinely fails to effectively prosecute crimes and protect human rights defenders, it has taken some steps to more effectively protect citizens. Partly because of work carried out under the bilateral Merida Initiative, Mexico transitioned in 2016 from a closed-door, written, and inquisitorial judicial process to a system with the presumption of innocence and oral arguments, although the implementation of this new system has proved challenging.¹⁸ The new model creates transparency in the judicial system, diminishing the opportunity for corruption among prosecutors and judges, which increases the likelihood that citizens will receive a fair trial. Increased transparency also creates greater opportunities for CSOs to track judicial results and hold government accountable to standards of fairness and equality.

Disappearances and Torture

Since 2006, more than 32,000 Mexicans have gone missing, and the government (at the local, state, and federal levels) has routinely failed to take basic steps to solve those cases.¹⁹ Moreover, the Mexican government has been directly involved in some of

12 Ibid.

13 "Mexico Supreme Court Overturns Security Law," AFP, November 15, 2018, <https://www.yahoo.com/news/mexico-supreme-court-overturns-security-law-001350157.html>.

14 James Fredrick, "Mexico's New President Has a Radical Plan to End the Drug War," Vox, August 15, 2018, <https://www.vox.com/2018/8/15/17690420/mexico-president-amlo-drug-war-cartels-violence-legalization>.

15 Vanda Felbab-Brown, "Andres Manuel Lopez Obrador and a New Era of Politics in Mexico," Brookings Institute, July 3, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/07/03/andres-manuel-lopez-obrador-and-a-new-era-of-politics-in-mexico/>.

16 "Ley para la protección de personas defensoras de derechos humanos y periodistas," Cámara de Diputados del H. Congreso de la Unión, June 25, 2012, <http://www.diputados.gob.mx/LeyesBiblio/pdf/LPPDDHP.pdf>.

17 "Freedom in the World 2018: Mexico," Freedom House, <https://freedomhouse.org/report/freedom-world/2018/mexico>.

18 Clare Ribando Seelke and Kristin Finklea, *U.S.-Mexican Security Cooperation: The Merida Initiative and Beyond*, CRS Report No. R41349 (Washington, D.C.: Congressional Research Service, 2017), <https://fas.org/sgp/crs/row/R41349.pdf>.

19 Ibid., 1.

these human rights abuses, some of which are directed towards civil society actors such as journalists and human rights defenders.

Despite some reaction from the federal government, the 2014 disappearance of 43 teaching students from Ayotzinapa in Guerrero highlights the crisis of unresolved forced disappearances in Mexico.²⁰ The students had gathered to attend a protest in Mexico City but were arrested by local authorities. It is alleged that the police then turned the students over to a local cartel, who murdered them. The incident sparked protests around the country and led to the arrest of the deputy police chief, the mayor of Iguala and his wife, and the resignation of the attorney general and governor of the State of Guerrero. To make matters worse, following their disappearance, a human rights activist named Miguel Ángel Jiménez Blanco was murdered for investigating the case, confirming a general trend of killings, harassment, and threats against human rights defenders in Mexico.²¹

The administration of former President (2012-2018) Enrique Peña Nieto attempted to address this issue by approving a constitutional reform in 2015 that would empower Congress to enact more general laws on forced disappearances and torture and establish a single nationwide definition for each of the crimes to facilitate their prosecution throughout the country.²² This reform was signed in November 2017, but Congress has not taken steps to pass

such laws as of 2018.²³ Further, Peña Nieto created a National Search Commission in 2017 to address the issue of forced disappearances and organize search efforts for missing people. However, this office is reportedly underfunded and understaffed, and thus far the Commission has been unable to take concrete steps towards establishing a strategy for coordinating search and recovery efforts.²⁴

The Ayotzinapa case is emblematic of a widespread problem. Four years have passed, and the Ayotzinapa case remains unsolved. Many Mexicans hope that AMLO will finally fully investigate and prosecute it. Similar cases have made national news in Mexico and have become known internationally as well. A recent poll in Mexico shows that impunity, corruption, and insecurity have become the biggest concern for Mexicans, surpassing drug trafficking and the drug war.²⁵

Threats Against Journalists and Human Rights Defenders

In 2016, the Inter-American Commission on Human Rights (IACHR) noted that there was a “crisis of gross human rights violations” in Mexico due to issues of impunity, insecurity, forced disappearances, and murders.²⁶ Both journalists and human rights defenders regularly face harassment and threats from the government and from criminal groups. In 2017, Mexico was named the most deadly place for journalists, and since 2000, more than 100 journal-

20 José Luengo-Cabrera and Tessa Buttler, *Justice in Mexico*, “Impunity in Mexico: A Rising Concern,” Institute for Economics and Peace, <https://justiceinmexico.org/impunity-mexico-rising-concern/>.

21 Poonam Joshi, The Fund for Global Human Rights, “FAFT and Mexico: How Anti-money-laundering Legislation Has Weakened the Human Rights Response to the War on Drugs,” <http://fatfplatform.org/wp-content/uploads/2015/09/Final-blog-on-Mexico-and-AML.pdf>.

22 *Ibid.*, 1.

23 *Ibid.*, 1.

24 “Mexico Must Summon Political Will to Fully Implement Law on Forced Disappearances,” *Advocacy for Human Rights in the Americas*, August 30, 2018, <https://www.wola.org/2018/08/mexico-disappearances-crisis/>.

25 Luengo-Cabrera and Buttler, “Impunity in Mexico: A Rising Concern.”

26 Human Rights Watch, “World Reports 2018, Mexico Events 2017,” <https://www.hrw.org/world-report/2018/country-chapters/mexico>.

ists have been killed in the country.²⁷ Furthermore, authorities are generally incompetent in investigating and prosecuting crimes against journalists; more than 1,000 investigations have been opened into crimes against journalists, but prosecutors in Mexico have only obtained 3 convictions.²⁸ Based on interviews with civil society actors, the inability of authorities to effectively prosecute these crimes is based on a combination of unwillingness and lack of capacity.²⁹

While there are no laws prohibiting criticism of the government or engagement in advocacy work, history shows a trend of retaliation against those who do. Human rights activists who focus on the defense of land are at particular risk for harassment and violence. These activists typically protest the actions of the government and large corporations that seek to develop large commercial projects. These activists are often subject to threats, killings, and even forced disappearances by those they protest against.

Furthermore, organizations that work on human rights issues that speak out against the government can be subjected to surprise and arbitrary inspections by government officials. These government officials justify such inspections with the claim that they are ensuring that software licenses and permits are in order.

In interviews, some activists have also claimed that their cellphone and internet usage is monitored.³⁰ This suspicion is backed up by reporting. For example, in 2017, three opposition politicians and 12 journalists and human rights defenders reported that they had been targeted by spyware on their cellphones. These individuals were investigating high-level official corruption or government involvement in human rights abuses.³¹ Although the Peña Nieto administration denied any involvement, the software used, Pegasus, was sold only to Mexican federal agencies, and NGO investigators noted “strong circumstantial evidence implicating the government of Mexico.”³² The coordinator for the investigators in the Ayotzinapa case also reported being targeted by the Pegasus software, receiving strange text messages that contained a link meant to secretly unlock his phone.³³ While the Mexican government acknowledged that it had purchased the software, it failed to follow through on a promise to thoroughly investigate the hacking. In fact, although government officials requested that the U.S. Federal Bureau of Investigation (FBI) assist with the investigation, the FBI declined, noting that its involvement would only provide legitimacy to a case it believed the Mexican government had no intention of actually solving.³⁴ It is obvious that the Mexican government lacks both the political will and the ability to protect many of these activists, and in some cases may be part of the problem.³⁵

27 “Mexico Most Deadly Country for Journalists in 2017,” International Press Institute, December 19, 2017, <https://ipi.media/mexico-most-deadly-country-for-journalists-in-2017/>.

28 Human Rights Watch, “World Reports 2018, Mexico Events 2017.”

29 Source: Interview.

30 Source: Interview.

31 John Scott-Railton, Bill Marczak, Bahr Abdul Razzak et al., “Reckless Exploit: Mexican Journalists, Lawyers, and a Child Targeted with NSO Spyware,” Citizen Lab, June 19, 2017, <https://citizenlab.ca/2017/06/reckless-exploit-mexico-nso/>.

32 Associated Press, “Mexico Spyware Scandal: Opposition Politicians ‘Targeted,’” *BBC News*, June 29, 2017, <https://www.bbc.com/news/world-latin-america-40452469>.

33 Azam Ahmend, “Spyware in Mexico Targeted Investigators Seeking Students,” *New York Times*, July 10, 2017, <https://www.nytimes.com/2017/07/10/world/americas/mexico-missing-students-pegasus-spyware.html>.

34 Ibid.

35 Source: Interview.

Impunity, Corruption, and the Rule of Law

Corruption and lack of transparency at all levels of government significantly affect Mexican politics and civic space. Mexico ranks near the bottom of Transparency International's Transparency Index (135 out of 180) and Freedom House ranks Mexico as a "partly free" country.³⁶ Corruption and impunity are inextricably linked. Corruption fuels impunity since it reduces the capacity of the government and judicial institutions, which are necessary to implement the rule of law. High levels of impunity continue to be one of Mexico's greatest challenges, and a lack of legal accountability emboldens many to break the law. Mexico has the highest rate of impunity in Latin America and the fourth-highest rate in the world.³⁷ The 2017 Global Impunity Index (GII), which generates quantifiable scores of impunity for each country based on inequality, corruption, and violence, observes that this is a region-wide issue, noting that "criminal justice systems of the Latin American region do not have material and human resources to prosecute and try crimes. This is an obstacle for the crime-punishment process within a context with high levels of violations to physical integrity of individuals."³⁸ The UN special rapporteur on extrajudicial, summary, or arbitrary executions noted in 2014 that Mexican security forces unlawfully kill civilians at an "alarmingly high rate" and that Mexico has an atmosphere of "systemic and endemic impunity."³⁹ The high rates of impunity in

the country mean that criminals feel emboldened to commit crimes because of the lack of accountability and the inability of victims to access justice.

GOVERNMENT AND CSO RESPONSES

The government has implemented a number of formal mechanisms at the national and local levels to protect human rights defenders in their work. These mechanisms are primarily preventative ways to block violence or repression from occurring in the first place, although some seek to protect journalists and human rights defenders already under threat. Some of the methods have been more effective than others. Broadly speaking, legislation and initiatives that were either originally driven by or heavily incorporated the voices of civil society in their creation have been more seamlessly implemented and successful than those that did not.

National Level

As noted previously, in 2012, the federal government created the Law for the Protection of Human Rights Defenders and Journalists.⁴⁰ This law put in place a number of measures intended to protect civil society actors from harm,⁴¹ including a new federal entity to receive claims of danger or threats that defenders receive. Defenders can obtain panic but-

36 "Civic Freedom Monitor: Mexico," The International Center for Not-for-Profit Law. Freedom House ranks countries based on "the electoral process, political pluralism and participation, the functioning of the government, freedom of expression and of belief, associational and organizational rights, the rule of law, and personal autonomy and individual rights." (Freedom House, "Frequently Asked Questions," <https://freedomhouse.org/content/frequently-asked-questions>.)

37 Juan Antonio Le Clerq Ortega and Gerardo Rodriguez Sanchez Lara, "Global Impunity Dimensions," *GII- 2017 Global Impunity Index*, August 2017, https://www.udlap.mx/cesij/files/IGI-2017_eng.pdf.

38 Ibid.

39 "Mexico," *World Country Report 2018*, 365-373, Human Rights Watch, 2018, <https://www.hrw.org/world-report/2018/country-chapters/mexico>.

40 "Ley para la protección de personas defensoras de derechos humanos y periodistas," Cámara de Diputados del H. Congreso de la Unión.

41 Viviana Giacaman and Mariclaire Acosta, "Protecting Journalists and Human Rights Defenders in Mexico," Freedom House, November 30, 2012, <https://freedomhouse.org/article/protecting-journalists-and-human-rights-defenders-mexico>.

tons and satellite phones and police or bodyguard patrols, and if necessary, they can be relocated domestically or internationally. While this law has been used to support 380 journalists since 2017,⁴² civil society interviews suggested that it has not been effective for those who need it most, namely rural and indigenous defenders. Panic buttons and satellite phones reportedly do not always work in rural areas, and many people do not trust that the government has the resources to properly relocate and fully protect the identities of those who require protection. Had civil society been more extensively involved in developing the law, it is likely that the technical issues could have been worked out and that more trust could have been built between institutions and CSOs through a collaborative process. The practical challenges arising when implementing this law underscore that the Mexican government should fully understand the needs of CSOs prior to passing “one size fits all” laws that do little to provide results on the ground but give a false sense of action to protect human rights defenders.

The Open Government Partnership (OGP), established in 2012, was another important development. This government initiative was an effort to incorporate CSO voices into efforts to increase transparency on a number of fronts.⁴³ OGP’s value for civil society derived less from the actions it took and more from how the initiative was run. The initiative used a “joint decision-making” model that allowed CSOs to be consulted in the planning and execution of a variety of policies. The initiative’s implementation was imperfect; a key complaint was

that it only gave voice to a limited number of CSOs on short-term projects rather than creating broad and large-scale change.⁴⁴ However, despite these concerns, the OGP serves as evidence of the government formally recognizing the value of civil society input. One respondent emphasized that it was essential to strengthening the reputation and capacity of CSOs. The Initiative confirmed to the public that open and collaborative dialogue between civil society and the government is vital to craft laws that effectively reflect the needs of civil society.

Interviews with a small group of respondents indicate that civil society actors—human rights defenders and journalists in particular—have pursued a number of strategies to protect their operating space, as well as to defend themselves against abuses perpetrated by the government and third-party groups. For example, CSOs, particularly those located in cities and with robust financial resources, have pushed for legislation at the federal level. One example is the 2017 General Law of Disappearances, which provides the federal government with the framework and systems necessary to better investigate cases of forced disappearances and prosecute those found guilty.⁴⁵ This law largely came into existence as a result of the tireless work of CSOs, which fought alongside and promoted the voices of the friends and families of the disappeared.

Another example of an important law that is being heavily influenced by civil society is the previously-discussed Internal Security Law, which authorizes the use of military force for domestic law enforcement operations. Given the numerous con-

42 Clare Ribando Seelke, “Violence Against Journalists and Media Workers in Mexico and U.S. Policy,” *Congressional Research Service Memorandum*, May 3, 2018, <https://fas.org/sgp/crs/row/violence-mexico.pdf>.

43 Pedro Gerson and Fernando Nieto, “Opening Government? The Case of Mexico in the Open Government Partnership,” *Global Integrity Transparency and Accountability Initiative (T/AI)*, <https://www.globalintegrity.org/wp-content/uploads/2016/06/Mexico-final.pdf>.

44 Ibid.

45 “Ley General en materia de Desaparición Forzada de Personas, Desaparición Cometida por Particulares y del Sistema Nacional de Búsqueda de Personas,” Federal Law from Comisiones Unidas de Justicia y de Derechos Humanos, no. 4884-IV, October 12, 2017, <http://gaceta.diputados.gob.mx/PDF/63/2017/oct/20171012-IV.pdf>.

cerns associated with this law (discussed in the “Legal Framework” section), civil society has actively worked and advocated for its repeal. They have used international fora to create pressure on the government. For example, the International Observatory, which includes 10 international human rights and justice groups, brought the law to a hearing before the IAHCR in March 2018.⁴⁶ Such efforts to publicly highlight the concerns of CSOs and those they represent have been crucial in prompting AMLO to back away from the law and seek other methods to combat violence.⁴⁷

Recently, civil society organized a sustained attempt to counter the impact of tax and AML laws that have adversely affected civic space.⁴⁸ As one interviewee noted, these laws are more subtle in restricting civil society, and thus it is harder to organize against them. In keeping with the international Financial Action Task Force’s recommendations to prevent terrorism, and as noted earlier in this report, Mexico in 2012 revised its AML Law so that donations to civil society organizations were classified as risky financial activities. The law demanded extensive documentation of donations and donors even for fairly small donations. If CSOs were unable to provide this information, they were supposed to refuse the donation. Relatedly, banks began to deny CSOs banking services as part of their “de-risking” process, to avoid liabilities under AML and sanctions laws and reputational risk, even though the Mexican government’s own risk assessment in 2016 concluded that the risk of money being laundered through Mexican CSOs is low. These changes made it difficult for CSOs to receive funding, particularly from international donors. A reform of the tax revenue law proposed in 2017

would have created additional burdens for CSOs. The reform proposed forcing CSOs to liquidate their assets in certain circumstances, have social impact voluntarily certified at their own expense, and adopt a formal form of governance, which was not required under the law generally governing CSO formation.

Mexican CSOs came together to combat these regulations, working not only with each other but also with academics and private sector pro bono advisors. The coalition, called UnidOSC, was formed in 2016 and, after discussion, adopted two strategies. The first strategy seeks to harmonize aspects of the Mexican legal framework with the goal of eliminating problematic limitations on the activities of CSOs and their freedom of association. One long-term goal of this strategy is to address problematic aspects of the AML Law. The second strategy is to block the proposed changes to the tax law.

UnidOSC employed several tactics that its members believe have strengthened its work:

- *The incorporation of academics and private sector pro bono experts in the coalition helped UnidOSC carry out technical analyses of the laws and develop convincing alternatives to present to Congress.*
- *They gained the support of legislators who realized that being on the side of civil society on these issues could strengthen their electoral position. They helped advise on how to present the proposals.*
- *The coalition combined advocacy and dialogue, engaging with various government regulators when appropriate.*
- *UnidOSC generated public interest, for instance by publishing a statement of concerns about the*

46 The International Observatory on Human Rights in Mexico, “Inter-American Commission on Human Rights Holds Important Hearing on Implications of Mexico’s New Internal Security Law,” Advocacy for Human Rights in the Americas, March 20, 2018, <https://www.wola.org/2018/03/iahcr-holds-hearing-mexicos-internal-security-law/>.

47 Fredrick, “Mexico’s New President has a Radical Plan.”

48 Information in the UnidOSC example is drawn from correspondence with a member of the coalition as well as Miguel de la Vega, “Subtle Restrictions on Freedom of Association,” *Sur International Journal of Human Rights* 26 (Dec. 2017), <http://sur.conectas.org/en/subtle-restrictions-on-the-freedom-of-association/>.

tax law in major newspapers signed by 500 organizations. The public interest this generated helped pressure regulators to engage with them.

- *Participation in the Global NGO Coalition on FATF and other international engagement helped UnidOSC learn about strategies to address these problems that had been employed elsewhere, as the impact of FATF's recommendations on CSOs have helped close civic space in other countries as well.*

UnidOSC has been successful to some degree and continues its work. The proposal to harmonize laws for an enabling environment for CSOs was approved by the Senate but blocked in the Chamber of Deputies, and will be reintroduced in spring of 2019. The efforts to block the proposed tax regulations have been quite successful. The tax authorities agreed to withdraw the certification requirement and are continuing their dialogue with the CSOs on some of the other proposed measures.

While civil society can be, and has been, essential in the creation and passing of important legislation to protect NGOs and those they represent, the implementation of these laws is a different story. As one respondent put it, “In Mexico we have amazing laws, but either they don’t have the budget to implement them, or otherwise people just don’t follow them.”⁴⁹ For example, while the General Law on Disappearances was a thoughtful piece of legislation, it requires the implementation of new databases and administrative procedures, and it would result in significantly more cases being brought

to trial before federal courts—all of which require resources and political will. As civil society is not well equipped to provide the necessary resources or political will, well-intentioned legislation often falls flat—as was the case with the General Law on Disappearances.⁵⁰

Local Level

At a local level, civil society efforts seek to prevent situations that could possibly lead to abuses. Local assemblies are a key element in such efforts. These are referred to as Agrarian Assemblies or Ejidal Assemblies (*ejidatarios*) in rural campesino areas where many members are “shareholders” in a certain parcel of land.⁵¹ These assemblies are official legal entities that manage communal land, decide how the land will be used (e.g., if private companies will be allowed to use the land), and determine how income generated by the land is distributed among shareholders. Many agrarian assemblies have issued legally-binding decrees that forbid developers from operating on their land or that allow private companies to use the land only for specific purposes, such as ecotourism.⁵² These assemblies can collectively help control how companies and the federal government interact with rural communities, reducing the risk of malicious action.

Mexico also has a long-standing legal recourse known as *amparo*. Mexicans and foreigners alike can file an *amparo* in federal court to question the constitutionality of laws, review judicial decisions, and protect communal land and those who live

49 Source: Interview.

50 “Mexico’s New Disappearances Law is an Important Step towards Ending the Disappearances and Impunity Crises in the Country,” Advocacy for Human Rights in the Americas, press release, October 12, 2017, <https://www.wola.org/2017/10/mexicos-new-disappearances-law-important-step-towards-ending-disappearances-impunity-crises-country/>.

51 “Ejidal Communal Land Assembly,” LATINNO, <https://www.latinno.net/en/case/13097/>.

52 Francesca Felicani Robles and Leo Peskett, “Carbon Rights in Mexico” (Washington, DC: World Bank, October 2010), http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1232059926563/5747581-1239131985528/5999762-1318623469948/WB_CSCarbonMexico.pdf.

on it (known as *amparo agrario*).⁵³ In recent years, *amparo agrario* has become a less common use of the *amparo*, but it remains a legal recourse for communities who feel their constitutional rights have been violated by private companies seeking to exploit communal land.

Evidence suggests that human rights defenders and organizations operating in rural areas are more likely to experience abuses from government or third-party groups than larger, city-based organizations. This is particularly true for organizations that work on indigenous issues or have female or indigenous staff members. For these types of organizations, government protections are often ineffective, requiring them to work among themselves to advocate for and protect themselves.

The most important way that organizations defend themselves is by creating communities and networks, both formal and informal. Some of the notable formal networks include: Network of Human Rights Organizations (Red TDT), Red Nacional de Defensoras de Derechos Humanos en México, National Network of Women Human Rights Defenders in Mexico (RNDDHM), Civil Society Organizations' Space (Espacio OSC), Frente por la Libertad de Expresión y la Protesta Social and Network for the Rights of the Children (REDIM), as well as state-level networks such as the Network of Civil Organizations of Guerrero (Red Guerrerense de Organismos Civiles de Derechos Humanos). There are also more focused networks of defenders. For example, the Movimiento Nacional por

Nuestros Desaparecidos en México and Campaña Nacional Contra la Desaparición Forzada focus on the issue of enforced and involuntary disappearances. These networks provide crucial help to human rights defenders, such as security training and capacity-building.⁵⁴ One of the major benefits of these communities is the capacity to tap into larger and more resource-rich organizations that can provide training, resources, and amplify the message of abuses suffered to a larger audience.

In addition to these national or statewide coalitions, human rights defenders also create informal, ground-level information-sharing networks within their communities. Rather than providing training or resources, these types of networks help create a more secure environment by keeping members alerted to dangerous situations. These communities, referred to as “community police” by one respondent and “take care networks” by another, designate trustworthy watchers in the community who spread important security-related information to vulnerable groups.⁵⁵ Information is typically communicated through secure social media platforms or encrypted texting software. On these platforms, human rights defenders will report threats or abuses that they have received or advise others on their movements throughout the community so that they can receive extra protection.⁵⁶ Of course, given the government’s alleged use of spyware such as Pegasus against critics, encryption and social media platforms may not be secure, as these do not protect against spyware on devices. This challenge

53 Norma Gutierrez, “Mexico: New Amparo Law is Enacted,” Library of Congress, April 30, 2013, <https://www.loc.gov/law/foreign-news/article/mexico-new-amparo-law-is-enacted/>.

54 Michel Forst, “End of Mission Statement by the United Nations Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst on His Visit to Mexico from 16 to 24 January 2017” (speech, January 24, 2017), United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21111&LangID=E>.

55 Source: Interview.

56 It is worthwhile to mention that, while all respondents interviewed for this report were willing to say that civil society organizations band together in order to protect themselves, many were uncomfortable and unwilling to provide any additional details, as they were concerned for the safety and security of themselves and their colleagues.

points to the need for additional training for human rights defenders about the various ways their communications can be compromised.

Interviewees mentioned that another way small, rural organizations protect themselves is by recruiting international volunteers or workers, a tactic called unarmed protective accompaniment (UPA). Many suspect that rural human rights defenders, and particularly those representing indigenous groups, are the most targeted groups for repression and violence because there is minimal political cost to the government or third-party group carrying out these acts. The governments of these rural communities often have little capacity to properly investigate these crimes, and news of such crimes is unlikely to spread far enough to cause any sort of public pushback. Therefore, incorporating an international volunteer increases the stakes for government or third-party actors attempting to carry out violence against the group, as the incident would likely lead to international attention.⁵⁷ It is difficult to empirically prove the success of UPA due to the number of complex factors that go into it (e.g., it is impossible to know how many attacks would have happened without UPA). However, studies conducted in Mexico and other Latin American countries generally support the technique as a positive and useful tool, pointing to statements by human rights defenders who feel much safer, and many of whom credit UPA with their own survival.⁵⁸

An example of an organization leveraging this tactic is Peace Brigade International (PBI), which recruits international workers or volunteers to join projects in rural areas of Mexico on behalf of these smaller

organizations. According to one respondent, these volunteers are often well-trained community organizers who give trainings, accompany existing civil society staff on particularly dangerous missions or assignments, and provide life-giving tools such as safe lines. These “safe lines” are phones that human rights defenders can call if they are in danger in order to receive outside support. PBI and similar organizations are also particularly useful because they are often excellent at communicating at a national and international level. For example, PBI recently delivered a report on the state of human rights defenders in Mexico to the European Union.⁵⁹ This kind of broad leverage is essential in attracting international attention to abuses in order to catalyze the appropriate action.

RECOMMENDATIONS & CONCLUSIONS

Civic space in Mexico remains restricted, but not completely closed. While the Mexican government has a long history of stifling or failing to protect the actions of human rights defenders, civil society has responded strongly and with some success. The election of AMLO reflects Mexicans’ exhaustion with the tactics of previous administrations, and the emergence of more popular pressure for the Mexican government to reform. The political shift of the past few years provides an opportunity for civic space in the country to open.

President Lopez Obrador campaigned on a platform that emphasized human rights and promised

⁵⁷ Source: Interview.

⁵⁸ Liatifa Ibragimova, “Towards Understanding the Effectivity of Unarmed Protective Accompaniment of Human Rights Defenders,” MA Diss. Utrecht University, 2015, <https://dspace.library.uu.nl/bitstream/handle/1874/320429/Thesis-5496934-Ibragimova.pdf;sequence=2>; and Sara Koopman. “Making Space for Peace: International Protective Accompaniment in Colombia,” *Geographies of Peace*, edited by Nice Megoran, Fiona McConnell, and Philippa Williams (London: New York, 2014).

⁵⁹ , “Annual Review 2017,” Peace Brigades International <https://www.peacebrigades.org/sites/www.peacebrigades.org/files/PBI%20AR2017.pdf>.

extensive judicial reform. However, many of his campaign promises have few policy details behind them, and one of AMLO's biggest challenges during his term will be finding a way to implement his big ideas.⁶⁰ Some have also expressed concern about AMLO's commitment to civic space, given his tendency to attack journalists who criticize him on social media.⁶¹

As reiterated throughout this report, the Mexican legal framework already provides fertile ground for the promotion of human rights and protection of human rights defenders. The challenge lies in implementation. This is partially a consequence of the government not having a firm grasp of the challenges CSOs face on the ground, which leads to ineffective "one size fits all" laws. To tackle this issue, it is essential that the government increase efforts to foster honest, open, and productive dialogue with civil society and international actors alike. With the new president's vocal support of human rights, there is an opportunity for vast improvement, and reason to be tentatively optimistic about the future of civic space in Mexico.

The authors recommend that the Mexican government, the U.S. government, international donors, and civil society take the following actions to improve and open civic space in the country:

For the Mexican government

- Open policy dialogue with civil society actors to consider revising the Federal Law for the Promotion of Activities Undertaken by Civil Society Organizations, as well as other controversial laws with adverse effects on CSOs;
- Create a platform for open dialogue with civil society to address and improve the public

image of CSOs and clarify their important role in Mexico;

- Continue to engage with CSO coalitions such as UnidOSC;
- Investigate and stop the use of Pegasus or other spyware and surveillance against civil society actors and journalists;
- Actively collaborate with local and international human rights activists and NGOs to collect and publish transparent data about the number and kinds of threats received by journalists and human rights defenders;
- Require that businesses seeking to develop projects on "social land" take part in a legally mandated consultation period with the population living on the land;
- Improve efforts against impunity and strengthen judicial systems; and
- Avoid implementing "one size fits all" laws with little to no effective implementation on the ground due to a lack of consultation with civil society.

For the U.S. government

- Provide support to AMLO's government to better train, equip, and pay police officers;
- Allocate security assistance funds to protect human rights defenders and prosecute human rights violators;
- Engage with Mexico as a partner to strengthen judiciary and law enforcement effectiveness; and
- Through multilateral platforms or bilaterally, raise concerns about forced disappearances, human rights violations, and lack of transpar-

60 Eric Martin, "AMLO Lays Out Broad Plan for Addressing Violence in Mexico," Bloomberg, November 14, 2018, <https://www.bloomberg.com/news/articles/2018-11-15/amlo-lays-out-broad-plan-for-attacking-mexico-insecurity-crime>.

61 Isaac Chotiner, "He Alone Can Fix It?" Slate Magazine, July 2, 2018, <https://slate.com/news-and-politics/2018/07/andres-manuel-lopez-obrador-mexicos-new-leader-thinks-he-alone-can-fix-it.html>.

ency in Mexico, and encourage these institutions to provide support and resources to address these challenges.

For civil society

- Continue to develop national networks of organizations that leverage national level resources to protect rural and indigenous organizations;
- Provide training to smaller, rural organizations on physical and cybersecurity so they are better prepared to protect and defend themselves;
- Continue to experiment with forming broad coalitions that include academics and pro bono private sector experts to generate legal change with regard to AML and tax laws or other technical areas;
- Engage the general population through media campaigns, as UnidOSC did through newspaper announcements;
- Push AMLO's administration to act on its expressed openness to a truth commission⁶² and to include abuses against CSOs in its jurisdiction;
- Use international platforms such as the IA-CHR to draw attention to corporate abuses of communities;
- Track the use of *amparos* and decrees seeking to prevent project development and whether or not they are respected and share those findings internationally;
- Promote awareness of abusive business actors to dissuade investors from supporting them financially through online campaigns, media engagement, and online informational platforms;
- Consider filing complaints with the relevant OECD National Contact Points, who can hear complaints about corporate abuses of

human rights, if the goal is to gain international attention;

- Work with socially responsible investors to create pressure on publicly-owned companies involved in attacks on activists.

For international donors

- Provide resources to human rights defender networks so that they can support each other and ensure these networks include smaller, rural actors where appropriate;
- Support organizations that raise the profile of attacks against and threats to human rights defenders and civil society actors;
- Fund and facilitate CSO engagement in initiatives such as OGP and UnidOSC that provide platforms for engagement with the government and legitimize the role of civil society;
- Support programs that provide sophisticated online safety training for human rights defenders, given the government's alleged use of malware to monitor activists.

62 Elisabeth Malkin and Paulina Villegas, "Mexico's President-Elect Rethinks His Campaign Promises," *New York Times*, October 20, 2018, <https://www.nytimes.com/2018/10/20/world/americas/mexico-lopez-obrador-campaign-promises.html>.

ABOUT THE AUTHORS

Amy K. Lehr is the director of the Human Rights Initiative (HRI) at CSIS. The HRI was launched in June 2014 and is the only program of its kind in the Washington think tank community. From this unique position, HRI brings together key actors, catalyzing creative, game-changing solutions to the globe's most pressing human rights challenges through a cross-sectoral and multidisciplinary approach. Amy comes to CSIS after a decade with Foley Hoag LLP's unique corporate social responsibility (CSR) practice. In this role, she carried out groundbreaking work across sectors, engaging with international financial institutions, corporations, non-governmental organizations, and governments, to help them develop best practices and apply international law to address global human rights challenges. Her expertise includes labor rights, privacy and freedom of expression and association, forced labor in global supply chains, security and human rights, land rights, and indigenous rights issues. She has carried out field work across the globe, including conducting human rights impact assessments for large projects. Previously, Amy served as legal adviser to the UN special representative on business and human rights, John Ruggie, and in that role helped develop the UN Guiding Principles on Business and Human Rights. She also served as a fellow at the Harvard Kennedy School's Corporate Social Responsibility Initiative. She previously worked for development NGOs in Burma (Myanmar) and Thailand, including Save the Children. She was a term member at the Council on Foreign Relations. Amy received her AB from Princeton University and her JD from Harvard Law School.

Sarah Baumunk is a research associate and program coordinator for the CSIS Americas Program. Her research interests include U.S. immigration policy, U.S. foreign policy in Latin America, refugee and immigration policy within the region, and Venezu-

ela. She holds an MPA and an MA in international relations from the Maxwell School at Syracuse University, with concentrations in Latin American studies and the intersection between security and immigration. She also holds a BA in Spanish, with minors in Latin American studies and chemistry, from Wake Forest University.

Linnea Sandin is the program manager and research associate for the CSIS Americas Program. Her research interests include security reform in Mexico and forced migration from the Northern Triangle countries in Central America. She previously worked as a paralegal at the Boston law firm Chin & Curtis, LLP. Ms. Sandin holds a BA in Latin American studies from Mount Holyoke College and an MA in law and diplomacy from the Fletcher School of Law and Diplomacy at Tufts University.

CSIS | CENTER FOR STRATEGIC &
INTERNATIONAL STUDIES

1616 Rhode Island Avenue NW, Washington, DC 20036

202.887.0200 | www.csis.org