



# OECD Responsible Business Conduct Policy Reviews

## MEXICO



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# Foreword

During the last years, there has been a growing expectation that businesses should produce and supply goods and services responsibly. It is widely recognised nowadays that companies should contribute to sustainable development and observe internationally principles and standards of Responsible Business Conduct (RBC). This expectation that businesses act responsibly has been accompanied by an increased acknowledgement that Governments have an essential part to play in creating an enabling policy and regulatory environment to drive, support and promote responsible business practices.

The OECD RBC Policy Review of Mexico takes stock of relevant legislations, regulations and policies existing in Mexico in areas covered by the OECD Guidelines for Multinational Enterprises, as well as in other relevant policy areas, and formulates policy recommendations to support Mexico not only regulating and enforcing in support of RBC, but also leveraging and incentivising responsible business practices. It also includes an analysis of the situation of the Mexican National Contact Point for RBC and puts forth actions to strengthen its functioning. These recommendations are key to build an enabling policy and regulatory environment for RBC in Mexico, which in turn can help the country recover from the COVID-19 crisis in a responsible and sustainable way and keep building on its openness to trade and investment as a strategy for economic growth in the aftermath of the crisis. Additionally, the Review could serve to inform the development of a National Action Plan on Business and Human Rights should the Mexican Government decide to proceed in that direction.

This Review was prepared by the OECD Centre for Responsible Business Conduct under the supervision of Froukje Boele, Manager for Latin America and the Caribbean, and the overall guidance of Allan Jorgensen, Head of the Centre. The team that drafted the Review was led by Marie Bouchard and comprised of Germán Zarama, Nicolas Hachez, and Sebastian Weber, with the help of Mónica Garay, Carolina Silvia López Rocha, and Valeria Patiño. Contributions were received from Stephanie Venuti, Frédéric Wehrlé and Lena Diesing. Inmaculada Valencia and Duniya Dedeyn also provided invaluable editorial support.

The Review has benefited from inputs from the Mexican Government and local stakeholders and from comments by the Chair and Delegates of the OECD Working Party on Responsible Business Conduct. In addition, different parts of the OECD Secretariat provided inputs on earlier drafts of the Review, including: the Anti-Corruption Division, the Corporate Governance and Corporate Finance Division and the Investment Division of the Directorate for Financial and Enterprise Affairs; the Environmental Performance and Information Division of the Environment Directorate; the Export Credit Division of the Trade and Agriculture Directorate; and the Infrastructure and Public Procurement Division of the Public Governance Directorate. The International Labour Organization and the Office of the United Nations High Commissioner for Human Rights also submitted valuable comments on the draft Review.

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The information contained in the Review is current as of 1 July 2021.



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# Executive summary

Over the past decades, Mexico has become an upper middle-income economy, transitioning from an oil dependent economy to a large hub in the manufacturing, automotive, electronics and financial services sectors. This transition has been driven by open trade and investment policies, export growth and an increasing participation in global value chains (GVCs). As a result, Mexico is now the second largest economy in Latin America.

Mexico's openness to trade and investment has also contributed to raise awareness that businesses should not only support economic development, but also play a role in social and environmental progress, and adopt responsible business practices. Responsible Business Conduct (RBC) is the expectation that businesses should contribute positively to sustainable development, while at the same time identifying, preventing and mitigating the adverse impacts that their activities, supply chains or business relationships may cause or contribute to on people, the planet or society. Occurrences of such impacts in Mexico, coupled with trade and investment partners' demands for the respect of labour and environmental standards have progressively led the Mexican Government, but also companies themselves, and other stakeholders, to take measures to promote RBC.

Shortly after concluding the North American Free Trade Agreement (NAFTA), Mexico became the first country in Latin America and the Caribbean (LAC) to adhere to the OECD Guidelines for Multinational Enterprises (OECD MNEs Guidelines) almost thirty years ago and its National Contact Point for RBC (NCP), which was established in 1994, is one of the oldest NCPs of the entire NCP system. In recent years, following the adoption of the United Nations Guiding Principles on Business and Human Rights, Mexico also took steps towards the elaboration of an overarching national policy on business and human rights, with a first attempt to develop a National Action Plan on Business and Human Rights (NAP) being carried out between 2015 and 2017. Civil society played an important part in this process, with the establishment of a Civil Society Focal Group on Business and Human Rights (*Grupo Focal de Sociedad Civil sobre Empresas y Derechos Humanos*). The Focal Group has since been actively advocating for the adoption and implementation of government policies related to RBC. In this regard, the recently issued National Human Rights Programme for 2020-2024 (*Programa Nacional de Derechos Humanos 2020-2024*, PNDH) sets out as one of its key objectives to promote and implement policies aimed to prevent and address businesses' adverse impacts on human rights and contemplates to relaunch the process of preparing a NAP. Throughout the years, the Mexican private sector has also gained awareness on the importance of adopting responsible business practices. Although most private sector's initiatives still follow a corporate social responsibility (CSR) approach, Mexico's main business organisations have started actively promoting the RBC agenda, with a focus on due diligence.

Notwithstanding these encouraging developments, Mexico is facing a number of obstacles to achieve inclusive growth and sustainable development. Due to its reliance on trade and investment, the Mexican economy was severely hit by the Coronavirus (COVID-19) pandemic, which contributed to increase poverty and exacerbate already existing inequalities and vulnerabilities. Labour informality is widespread in the country and seriously affects Mexican informal workers who do not have access to social protection. Child and forced labour also remain pervasive in Mexico. Additionally, high levels of corruption and impunity

constitute serious impediments to the rule of law, which affect the country's economic potential, its business environment, and its citizens' lives.

Against this backdrop, building an enabling environment for RBC in Mexico is key for the country to recover from the COVID-19 crisis in a responsible and sustainable way, keep building on its openness to trade and investment as a strategy for economic growth in the aftermath of the crisis, and ensure that the Government's well-being and sustainability objectives are met. The legal and regulatory frameworks currently in force to regulate business conduct and prevent the occurrence of RBC issues in the areas covered by the OECD MNEs Guidelines constitute a good basis to build such environment. However, gaps remain in some legislations and regulations and Mexico faces difficulties in effectively enforcing and implementing existing laws, regulations and policies.

Mexico has developed a solid legal framework for the protection of human rights. The country is party to all nine core international human rights treaties and the Constitution contains a chapter devoted to "Human Rights and their Guarantees". The recent PNDH for 2020-2024 also aims to place the promotion and protection of human rights at the centre of the Government's policies. However, serious human rights challenges still exist in Mexico. Pending the implementation of the General Law of Consultation of Indigenous and Afro-Mexican Peoples and Communities (*Ley General de Consulta de los Pueblos y Comunidades Indígenas y Afromexicanas*), the development of large-scale projects regularly puts indigenous peoples at risk of human rights abuses. Moreover, Mexico is considered the third most dangerous country in LAC for environmental and human rights defenders.

Recently, the country has also made significant efforts to improve its labour law framework and reinforce the protection of workers' rights. In 2019, prompted by the new trade agreement between the United States, Mexico and Canada – the United States-Mexico-Canada Agreement (USMCA) –, Mexico reformed its labour law to ensure the implementation of the International Labour Organization (ILO)'s standards, in particular those related to access to justice and freedom of association. In the past years, labour rights' violations in the country had repeatedly been the subject of complaints before ILO's supervisory bodies, and the number of labour conflicts was considerably high. This situation was further aggravated by the fact that access to justice in labour matters was hampered by Mexican courts' limited capacity to deal with the increasing number of cases.

With respect to the environment, Mexico has a comprehensive legal, institutional and judicial framework. Notably, the Office of the Federal Prosecutor for Environmental Protection (*Procuraduría Federal de Protección del Ambiente*, PROFEPA) which is in charge of enforcing environmental laws and regulations, has developed a National Environmental Audit Programme (*Programa Nacional de Auditoría Ambiental*, PNAA) to incentivise businesses to evaluate their environmental management systems and thereby reduce adverse environmental impacts. In addition, civil society organisations (CSOs) and individuals have standing to initiate collective claims (*denuncias populares*) for environmental harm, regardless of whether they were directly impacted. Nonetheless, there is still room for progress, as shown by the fact that the estimated costs of environmental harm in Mexico are high, amounting to 4.5% of the country's gross domestic product (GDP) in 2019. Furthermore, Mexico is the second largest contributor to GHG global emissions in LAC.

The fight against corruption has also been the object of increased efforts in Mexico over the past years. The National Anti-corruption System (*Sistema Nacional Anticorrupción*, SNA) has been put in place, new laws have been adopted and others amended to address past implementation and enforcement issues, and measures have been taken to promote the development and implementation of business integrity programmes. However, despite these efforts, Mexico remains the country with the highest corruption perception among all OECD Members and corruption is still a widespread problem for the country.

Addressing these different issues will be fundamental to build an enabling policy and regulatory environment that drives, supports, and promotes responsible business practices in Mexico. To this end,



Mexico can also leverage and incentivise RBC, either by leading by example in its role as economic actor or by including RBC considerations in policy areas that can contribute to shape business conduct.

Public procurement is one of the areas through which governments can influence business' behaviour and incentivise responsible business practices. The Mexican legal framework for federal public procurement already includes a few RBC considerations, in particular at the tender stage, with some provisions on the environment, gender, disabled workers, and integrity. However, and although reforms foreseeing the enhanced inclusion of RBC considerations in the federal procurement system are currently ongoing, opportunities exist to further use public procurement as a strategic tool through which the Mexican Government can leverage and incentivise RBC.

Governments can also lead by example by integrating RBC considerations in the functioning of their State-Owned Enterprises (SOEs). In the case of Mexico, the two main SOEs – Mexican Petroleum (*Petróleos Mexicanos*, PEMEX) and the Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE) – have started to integrate some RBC considerations into their policies, notably in terms of anti-corruption and integrity. Nonetheless, they have not developed a structured and comprehensive approach to RBC covering the different areas of the OECD MNEs Guidelines in a transversal and integrated manner.

Trade and investments policies can also be used by governments to promote RBC. This is particularly relevant for Mexico, whose foreign trade represents almost 80% of its GDP and which has an extensive network of trade and investment agreements. Mexico's policies for trade and investment promotion – which are currently the subject of important reforms – already include a number of RBC considerations. This is also the case of several trade and investment agreements concluded by Mexico. However, in both cases, this is sporadic and the country has yet to develop an overarching strategy to systematically put RBC at the centre of its trade and investment policies.

Mexico therefore still has some way to go in its path towards the construction of an enabling policy and regulatory environment for RBC. There is a need to effectively regulate and enforce in support of RBC by filling-in existing gaps in legislations and regulations in areas covered by the OECD MNEs Guidelines and enforcing and implementing existing laws, regulations and policies in such areas. It is also necessary to leverage and incentivise RBC by resorting more systematically to other relevant policy areas through which responsible business practices can be facilitated and encouraged. Doing so is fundamental if Mexico wishes to thrive economically and meet its citizens' expectations in a post COVID-19 world in which an ever-increasing amount of public and private actors will call to build back better, more responsibly and sustainably, and to adopt responsible business practices going forward.

Mexico has started to take some concrete first steps to build an enabling environment for RBC, as shown by the fact that it is the first OECD Member to undergo an RBC Policy Review. The elaboration of the Review included consultations with the Government, as well as with local business associations and other stakeholders, throughout the process. This allowed raising awareness about the importance of building an enabling policy and regulatory environment for RBC in Mexico among relevant actors. Through tailored recommendations, the Review now aims to support the Mexican Government in the construction of such environment by identifying key policy areas for action and suggesting concrete and coherent policy measures to this end. For instance, this would imply strengthening the Mexican NCP so that it can contribute to, and support, government action on RBC. If provided with adequate resources and capacity, NCPs can play an important role in promoting RBC across government and can underpin the construction of an enabling environment for RBC. The recommendations could also serve as an input for the development of the NAP contemplated in the PNDH. In the aftermath of the COVID-19 crisis, the RBC Policy Review aims to contribute to enhancing Mexico's economic, social and environmental outcomes by promoting responsible business practices that meet its trade and investment partners' demands, thereby reinforcing its integration in the global economy.



# Introduction and overview

Over the last decade, there has been a growing expectation for businesses to produce and supply goods and services responsibly. The concept of “Responsible Business Conduct” (RBC) – which entails that businesses contribute to sustainable development whilst preventing and mitigating the adverse impacts that their activities, supply chains, and/or business relationships may cause or contribute to on people, the planet and society – has gained increased attention. In addition, since 2015, businesses are expected to play a role in the implementation of the 2030 Agenda for Sustainable Development (the 2030 Agenda) and to contribute to solve sustainable development challenges, while respecting labour rights and environmental and health standards.<sup>1</sup> RBC and the 2030 Agenda are closely intertwined. Not only does RBC relate to several of the Sustainable Development Goals (SDGs) defined in the Agenda,<sup>2</sup> it is also envisaged as one of the means for its implementation, RBC being one of the most important business contributions to the SDGs.<sup>3</sup>

There is thus nowadays a wide recognition that businesses – regardless of their size, sector, operational context, ownership, and structure – should contribute to sustainable development and observe internationally recognised RBC principles and standards, such as the OECD Guidelines for Multinational Enterprises (the OECD MNEs Guidelines). The OECD MNEs Guidelines are the most comprehensive set of recommendations addressed by governments to businesses on a wide array of areas of potential business responsibility, such as the respect for human rights, the promotion of labour rights, the protection of the environment, or the fight against corruption. They notably encourage companies to conduct due diligence to identify and address the risks of adverse impacts that may be associated to their operations, supply chains and/or business relationships.

Additionally, responsible business is increasingly recognised as being good business leading to value creation. This has been further demonstrated in the context of the crisis triggered by the Coronavirus (COVID-19) pandemic. Businesses observing RBC principles and standards and implementing due diligence have generally been better equipped to face the disruptions and challenges brought about by the crisis and to recover due to enhanced resilience and a focus on long-term value.

The growing expectation that businesses act responsibly has been accompanied by an increased acknowledgement of the role governments play in promoting and enabling RBC. Governments that have adhered to the OECD MNEs Guidelines have the legal obligation to establish a National Contact Point for RBC (NCP) to promote and disseminate their recommendations and act as a non-judicial grievance mechanism in cases of alleged non-observance by businesses of such recommendations. However, beyond the establishment of NCPs, all governments – including those that have not adhered to the OECD MNEs Guidelines – have an essential part to play in creating an enabling policy and regulatory environment to drive, support and promote responsible business practices. In practice, such an environment can be constructed through a combination of policies that can be grouped into two main policy orientations, i.e.:

- *Regulating and enforcing in support of RBC*, which entails that governments not only embed in their domestic legal and regulatory frameworks the legislations and regulations necessary to govern business conduct and prevent the occurrence of RBC issues in the areas covered by the

OECD MNEs Guidelines, but also deploy the resources and capacities required to implement them; and

- *Leveraging and incentivising RBC*, which implies that governments resort to other relevant policy areas to facilitate and encourage RBC, either by leading by example in their role as economic actors and/or commercial activities, or through economic policies that can shape business conduct.

Developing an enabling policy and regulatory environment for RBC is becoming increasingly important to thrive in the global economy and ensure economic, social and environmental progress. Such an environment is key for a country to be perceived as a reliable and safe place to source from, trade with, and/or invest in. This is all the more true in a world in which the COVID-19 crisis has severely disrupted international trade and investment and global value chains (GVCs), and where major trade and investment players are paying more and more attention to RBC issues.

Several OECD legal instruments acknowledge the role that governments play vis-à-vis RBC. In particular, the Chapter on “Policies for enabling RBC” (Chapter 7) of the OECD Policy Framework for Investment (PFI)<sup>4</sup> recognises that governments have a role in providing an enabling environment for RBC and sets forth recommendations in this regard.<sup>5</sup> Additionally, various other OECD instruments and guidance documents on RBC and RBC-related areas contain policy guidance on government policies and policy coherence to promote and enable RBC.

The OECD is thus uniquely positioned to support governments in their paths towards the development of enabling policy and regulatory environments for RBC through coherent policies. It is in this context that the RBC Centre of the OECD takes part in the Project “Responsible Business Conduct in Latin America and the Caribbean” (RBC-LAC Project), together with the International Labour Organization (ILO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). This Project, funded by the European Union (EU), seeks to promote smart, sustainable and inclusive growth in the region by supporting responsible business practices in line with the international RBC instruments of the three implementing organisations.<sup>6</sup> The activities of the OECD under the Project are structured around three mutually reinforcing pillars, respectively aimed at: (i) reinforcing government policies for RBC, (ii) helping businesses to conduct due diligence in priority sectors, and (iii) facilitating access to remedy through the strengthening of NCPs.<sup>7</sup>

The present RBC Policy Review comes within the scope of the first pillar on government policies for RBC. It aims to bring support to the Government of Mexico in building an enabling policy and regulatory environment for RBC through coherent policies. The ultimate goal is that, in the aftermath of the COVID-19 crisis, such an environment contributes to enhance the country’s economic, social and environmental outcomes, by reinforcing its integration in the global economy through strengthened trade and investment relationships.

For this purpose, the Review takes stock of relevant policies existing in Mexico in selected areas covered by the OECD MNEs Guidelines, as well as in other relevant policy areas through which the Government can exemplify RBC and shape business conduct. On this basis, it formulates concrete and actionable policy recommendations to help Mexico regulate and enforce in support of RBC in areas covered by the OECD MNEs Guidelines and leverage and incentivise RBC through other relevant policy areas that have a bearing on business conduct. It also includes an analysis of the situation of the Mexican NCP and puts forth actions to strengthen its functioning. The objective is to ensure that the NCP can fulfil its mandate, but also play a key role in the design and implementation of RBC-related policies and act as a promoter of policy coherence for RBC across government.

The analysis presented in the present RBC Policy Review could serve to inform the development of a National Action Plan on Business and Human Rights (NAP) in Mexico, should the Government decide to proceed in that direction, as contemplated under the 2020-2024 National Human Rights Programme (*Programa Nacional de Derechos Humanos 2020-2024*, PNDH).<sup>8</sup> As such, the Review is also relevant for, and can be used as a resource document by, stakeholders wishing to better understand how Mexico could

build an enabling policy and regulatory environment for RBC and the different actions that could be taken towards this objective.

The Review was prepared by the OECD Secretariat in response to a formal request for an RBC Policy Review formulated by Mexico's Ministry of Economy (*Secretaría de Economía*, SE) in the fall of 2019. It was elaborated in cooperation with the Mexican Government through a process that involved, among others steps: the exchange of information on relevant legislations, regulations, policies and initiatives existing in Mexico via an RBC Policy Questionnaire completed by several government entities; detailed desk-based research; as well as a two-week fact-finding mission organised in October 2020 virtually due to the pandemic of COVID-19. During the fact-finding mission, the OECD Secretariat met with representatives of multiple government entities, business associations, trade unions, civil society organisations (CSOs) and indigenous peoples (see Annex A for a detailed list of the participants in the meetings). A consultation meeting was also held with representatives of EU and OECD countries in Mexico to inform them about the review process and obtain their inputs.<sup>9</sup> The draft of the Review was subsequently shared with the government entities that participated in the fact-finding mission, which provided feedback and inputs on its different sections. It also benefited from the views of various business associations and other stakeholders, which formulated comments on several aspects of the Review.<sup>10</sup> The draft was finally reviewed and approved by the OECD Working Party on Responsible Business Conduct through written procedure in June 2020.

This RBC Policy Review is structured as follows: after a brief explanation of the concept of RBC and an overview of the main OECD instruments and tools in the field (**Section 1**), it describes the main opportunities and challenges for RBC in Mexico in terms of socio-economic context, general legal and policy framework, RBC awareness, and institutional setting (**Section 2**). The Review then analyses the legislations, regulations, policies and initiatives existing in Mexico in selected areas of the OECD MNEs Guidelines (**Section 3**), as well in other relevant policy areas through which the Government can leverage and incentivise RBC, and formulates recommendations to develop and strengthen these different elements (**Section 4**). Finally, it examines the situation of the Mexican NCP and explores the role it could play across government to promote policy coherence for RBC (**Section 5**). The Review concludes by an overall assessment of Mexico's government policies pertaining to RBC and summarises the recommendations addressed to the Mexican Government to build an enabling policy and regulatory for RBC in the country (**Section 6**).



# 1 What is Responsible Business Conduct?

RBC has a two-fold objective. On the one hand, it entails that all enterprises – regardless of their legal status, size, ownership structure or sector – make a positive contribution to economic, environmental and social progress in the countries in which they operate with a view to achieving sustainable development. On the other, it implies that enterprises avoid and address adverse impacts on people, the planet and society caused by their activities and/or prevent and mitigate adverse impacts directly linked to their operations, products or services through supply chains and/or business relationships. As these impacts cover a range of substantive areas, the scope of RBC is broad and crosscutting. Risk-based due diligence is central to identifying, preventing and mitigating actual and potential adverse impacts, and is thus a key element of RBC (OECD, 2015<sup>[1]</sup>).

RBC is increasingly relevant for the global agenda. It is a powerful tool to deal with the downsides of globalisation and foster the positive contribution of businesses to economic and sustainability outcomes. It can help attract responsible investment, facilitate insertion in GVCs, minimise risks for businesses, and ensure the respect of stakeholder rights. It can also contribute to making progress towards sustainable development by maximising the private sector's contribution to the Sustainable Development Goals (SDGs) and mobilising the resources necessary for financing the implementation of the 2030 Agenda (OECD, 2016<sup>[2]</sup>).

## **Box 1.1. RBC, Corporate Social Responsibility, and Business and Human Rights: Lost in translation?**

Many businesses, governments and stakeholders are familiar with the term Corporate Social Responsibility (CSR), which has historically been used to describe business interactions with society.

Over the last years, CSR has increasingly been used alongside RBC and Business and Human Rights, with some using the terms interchangeably (e.g. the EU). How do these concepts relate to each other?

They all reflect the expectation that businesses should consider the impact of their operations, supply chains, and business relationships on people, the planet and society as part of their core business considerations and not as an add-on. This includes the need to avoid and address negative environmental and social impacts.

A key characteristic of CSR, RBC and Business and Human Rights is that they refer to corporate conduct beyond simply complying with domestic law and call on business to contribute positively to sustainable development while managing risks and impacts that may result from their activities. These concepts should not be understood to be equivalent to philanthropy.

Source:

ILO, OECD, UNOHCHR (2019), Responsible business – Key messages from international instruments, <https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf>.

## 1.1. OECD instruments and tools on RBC

The OECD has developed an important number of instruments and tools aimed at fostering the adoption and implementation of RBC practices by businesses but also of RBC policies by governments.

### 1.1.1. The OECD MNEs Guidelines and the NCPs

The main instrument aimed at promoting the adoption of RBC practices by businesses are the OECD Guidelines for Multinational Enterprises (the OECD MNEs Guidelines). The OECD MNEs Guidelines are recommendations from governments to businesses on how to act responsibly<sup>11</sup> that cover all areas of potential business responsibility, including human rights, employment and industrial relations, environment, information disclosure, bribery and corruption, consumer interests, science and technology, competition, and taxation. The OECD MNEs Guidelines were adopted in 1976 and last updated in 2011 to include a Chapter on human rights aligned with the UN Guiding Principles on Business and Human Rights (UNGPs), following the example of the Chapter on Employment and Industrial Relations, which is aligned with ILO's labour standards.

To date, 50 countries (of which 38 OECD members and 12 additional economies) – including Mexico, Chile, Colombia, Peru, Argentina, Brazil, Costa Rica and Uruguay<sup>12</sup> – have adhered to the OECD MNEs Guidelines, thereby committing to implement them and encourage their use.

Adherents to the OECD MNEs Guidelines have the legal obligation to set up a NCP to further their implementation. NCPs have two main functions. On the one hand, they promote the OECD MNEs Guidelines and handle enquiries to make them known among relevant stakeholders and across government entities. On the other hand, they serve as a grievance mechanism to resolve “specific instances”, that is cases relating to the non-observance of the recommendations contained in the OECD MNEs Guidelines.

Up to now, the 50 existing NCPs have dealt with more than 500 specific instances arising in over 100 countries, thereby playing a critical role in ensuring that the OECD MNEs Guidelines are implemented globally.

### 1.1.2. The Due Diligence Guidance

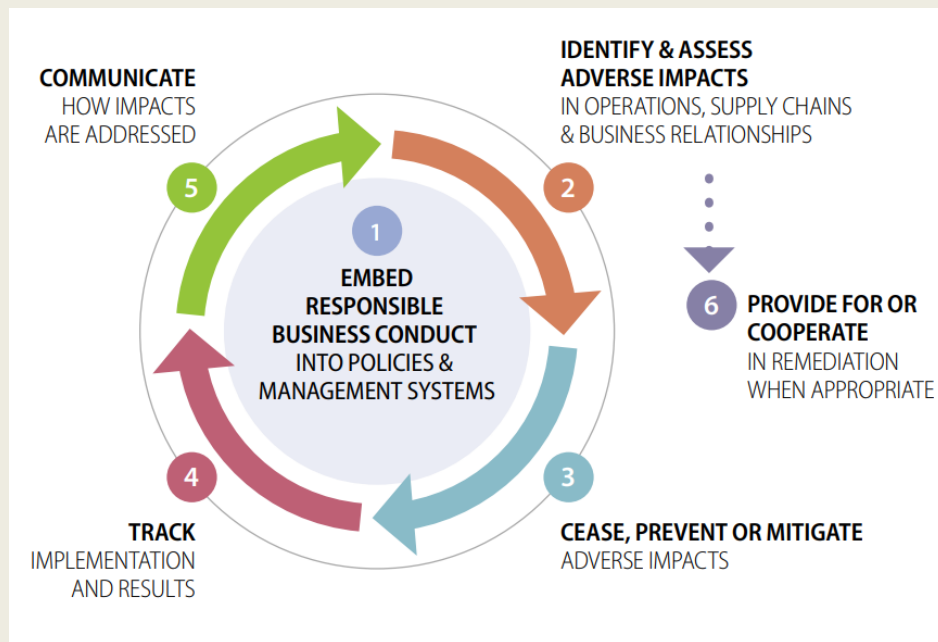
The OECD MNEs Guidelines embed the expectation that enterprises carry out due diligence to identify, prevent and mitigate real and potential adverse impacts on people, the planet and society, and to account for how those impacts are addressed. Based on this expectation, the OECD has developed a range of instruments providing guidance on due diligence, with the aim of helping companies operating in different sectors understand and address RBC risks.

In 2018, the OECD issued a general Due Diligence Guidance for RBC (the OECD Due Diligence Guidance for RBC) to promote a common understanding among governments and stakeholders of due diligence for RBC. The Guidance defines a six-step process for due diligence (see Box 1.2), which is relevant for all types of enterprises operating in all countries and sectors of the economy (OECD, 2018<sup>[3]</sup>). As such, it also serves to implement the due diligence recommendations contained in the UNGPs and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (the ILO MNE Declaration).

### Box 1.2. The due diligence process and supporting measures

Taking into account the fact that due diligence should be commensurate with risk and appropriate to a specific enterprise's circumstances and context, the OECD Due Diligence Guidance for RBC establishes a six-step process to conduct due diligence that can be used by any enterprise irrespective of the location or sector of its operations.

This process consists in embedding RBC into the enterprise's policies and management systems (step 1) and undertaking due diligence by identifying actual or potential adverse impacts on RBC issues (step 2), ceasing, preventing or mitigating such impacts (step 3), tracking implementation and results (step 4), communicating how impacts are addressed (step 5), and enabling remediation when appropriate (step 6).



Source:

OECD (2018), Due Diligence Guidance for Responsible Business Conduct, <http://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>

In addition to the general OECD Due Diligence Guidance for RBC, the OECD has developed sector-specific due diligence guidance for the minerals, extractives, agriculture, and garment and footwear sectors (OECD Sector-specific Due Diligence Guidance). This Guidance helps enterprises identify and address risks to people, the planet, and society that can be associated with business operations, products or services in these specific sectors (see Box 1.3).

### Box 1.3. OECD Sector-specific Due Diligence Guidance

The OECD has developed Due Diligence Guidance for four specific sectors, all of which have been embedded into OECD Council Recommendations:

- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

- OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector
- OECD-FAO Guidance for Responsible Agricultural Supply Chains
- OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector

These OECD Council Recommendations recommend that adhering governments and their NCPs actively promote the use and observance of the Guidance by enterprises operating in and from their territories, but also take measures to support the adoption of risk-based due diligence frameworks for responsible supply chains, and ensure the widest possible dissemination of the Guidance (including among relevant government entities), and their use as resources by stakeholders.

As part of its work on RBC in the financial sector, the OECD has also developed papers on RBC for Institutional Investors and Due Diligence for Responsible Corporate Lending and Securities Underwriting.

Sources:

OECD (2019), Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

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OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264252479-en>.

OECD/FAO (2016), OECD-FAO Guidance for Responsible Agricultural Supply Chains, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264251052-en>.

### 1.1.3. The Policy Framework for Investment

Besides fostering the adoption and implementation of RBC practices by businesses, the OECD also encourages the adoption and implementation of enabling policy and regulatory environments for RBC by governments through the PFI.<sup>13</sup> The PFI is designed to help governments maximise the development impact of investment (OECD, 2015<sup>[4]</sup>) and contains a chapter dedicated to policies for enabling RBC (Chapter 7). This Chapter has become a reference for designing and implementing strong RBC policy frameworks and coordinating government efforts on RBC (See Box 1.4).

#### Box 1.4. Extracts from Chapter 7 of the PFI – Policies for enabling RBC

Governments can enable RBC in several ways:

- Regulating – establishing and enforcing an adequate legal framework that protects the public interest and underpins RBC, and monitoring business performance and compliance with regulatory frameworks;
- Facilitating – clearly communicating expectations on what constitutes RBC, providing guidance with respect to specific practices and enabling enterprises to meet those expectations;

- Co-operating – working with stakeholders in the business community, worker organisations, civil society, general public, across internal government structures, as well as other governments to create synergies and establish coherence with regard to RBC;
- Promoting – demonstrating support for best practices in RBC;
- Exemplifying – acting responsibly in the context of the government’s role as an economic actor.

Source:

Policy Framework for Investment, <http://www.oecd.org/investment/pfi.htm>.

## 1.2. Alignment with other international instruments

The OECD instruments and tools on RBC are aligned and complement the other international instruments on responsible business practices developed by the ILO and the UN, i.e. the ILO MNE Declaration and the UNGPs. Jointly, the OECD MNEs Guidelines, the ILO MNE Declaration, and the UNGPs set the global expectations for RBC and have become a key reference for responsible business (ILO/OECD/UNOHCHR, 2019<sup>[5]</sup>).

The three instruments outline how enterprises can act responsibly. They all establish in this regard that any enterprise (regardless of its size, sector, operational context, ownership and structure) should make a positive contribution to the economic, environmental and social progress of the countries in which it operates, while avoiding and addressing adverse impacts on human and labour rights, the environment and society. This covers not only impacts that the enterprise may cause or contribute to through its own activities but also those impacts directly linked to its operations, products or services through its supply chains and/or business relationships. According to these instruments, enterprises should undertake due diligence to identify, prevent and mitigate adverse impacts and account for how those impacts are addressed. In addition, where enterprises identify that they have caused or contributed to adverse impacts, they are expected by the three instruments to provide access to remedy through legitimate processes (ILO/OECD/UNOHCHR, 2019<sup>[5]</sup>).

The OECD, the ILO and the UN each bring their own value-added to the implementation of the principles and standards contained in the OECD MNEs Guidelines, the ILO MNE Declaration and the UNGPs based on their mandate and expertise: the OECD with its broad approach to RBC and the links to economic policies, the ILO with its tripartite structure and authority on international labour standards, and the UNOHCHR and the UN Working Group on Business and Human Rights (UNWG) with their expertise on Business and Human Rights and UN human rights mandates (ILO/OECD/UNOHCHR, 2019<sup>[5]</sup>).



# 2 Context: opportunities and challenges for Responsible Business Conduct in Mexico

The way in which RBC can be promoted and enabled largely depends on a country's specific context. The socio-economic background, the existing policies pertaining to RBC, the degree of awareness of businesses and other stakeholders on RBC, or the existence and situation of the NCP, can all constitute opportunities and/or challenges for the adoption and implementation of responsible business practices. Analysing them is fundamental to better understand the drivers and hindrances that a national context may present for the construction of an enabling environment for RBC.

## 2.1. Socio-economic background

RBC is closely intertwined to the economy and society. The position of a country in the world economy, its main economic sectors and business fabric, its openness to trade and investment and integration in GVCs, but also its employment characteristics and informality rate, its level of inequalities and poverty, and other structural vulnerabilities, are all underlying factors that can underpin RBC or undermine it. Therefore, understanding the salient features of Mexico's socio-economic context is key to assess the opportunities and challenges to promote and enable responsible business practices in the country, as well as to comprehend the importance of doing it through adequate government policies.

Mexico is the 15<sup>th</sup> largest economy in the world and the second biggest economy in Latin America after Brazil, with a nominal GDP of United States Dollars (USD) 1.27 trillion in 2019 (World Bank, 2020<sub>[6]</sub>). It is also the second most populated country of the region, with 127 million inhabitants in 2019. Over the past decades, Mexico has transitioned from an oil dependent economy towards an open and globally integrated manufacturing hub (OECD, 2019, p. 10<sub>[7]</sub>). As a result, in the last ten years, Mexico's economy has been growing moderately at an average annual rate of 2.1% (OECD, 2020, p. 294<sub>[8]</sub>) and the country is nowadays classified as an upper middle-income economy (World Bank, 2020<sub>[6]</sub>).

The Mexican economy is dominated by services (60% of GDP), followed by industry (37% of GDP) and agriculture (3% of GDP) (ITC, 2020, p. 104<sub>[9]</sub>). The services sector employs 61% of the working population and includes various subsectors such as trade, real estate, tourism, transport and financial services (Santander, 2021<sub>[10]</sub>). In addition to services, Mexico has a large manufacturing industry, dominated by the automotive and electronics industries (Oxford Business Group, 2019<sub>[11]</sub>). Beyond services and industry, the agricultural sector is also an important component of the country's economy. The production of fruit and vegetables, beef, pork, sugar and beans employs 12.4% of the total workforce (World Bank, 2020<sub>[6]</sub>) (but also has a high share of over 80% of informality (INEGI, 2020<sub>[12]</sub>). It is central to the country's food security and represents an important part of its exports (World Bank, 2020<sub>[6]</sub>). Mexico also has a significant extractive sector. Mining activities contribute to 2.4 % of the national GDP (Government of Mexico, 2021<sub>[13]</sub>).

and, in 2019, the oil and gas industry's earnings accounted for about 30% of total government revenues (ITA, 2020<sub>[14]</sub>). Mexico is the top producer of silver and among the top ten producers of 15 other minerals worldwide (ITA, 2020<sub>[14]</sub>). Additionally, in 2018, it was the 11<sup>th</sup> largest producer of crude oil in the world and the second largest producer in Latin America, after Brazil (IEA, 2020<sub>[15]</sub>).

Notwithstanding its development over the last decades, Mexico still faces a number of challenges. Inequalities, poverty, gender gaps, informality, corruption, impunity and violent crime are all factors that continue to constrain inclusive economic growth and affect the business environment in the country (OECD, 2020, pp. 5-15<sub>[16]</sub>). Relative living standards have improved only slightly over recent years and high poverty rates affects disproportionately vulnerable groups, such as indigenous peoples (OECD, 2019, p. 15<sub>[7]</sub>). According to the National Council for the Evaluation of Social Development Policy (*Consejo Nacional de Evaluación de la Política de Desarrollo Social*, CONEVAL), 41.9% of the Mexican population was considered to be under the national poverty line in 2018, while this share amounted to almost 70% of the indigenous population (CONEVAL, 2018<sub>[17]</sub>). In addition, 23% of the population was considered to be in moderate poverty during the same year (World Bank, 2020<sub>[18]</sub>). Disparities across regions and states also affect the uniform development of the country. While the north and the centre of Mexico have high productivity rates, the south is characterised by a less modern economy and higher inequalities (OECD, 2019, p. 15<sub>[7]</sub>).

Mexico's economic growth over the last decades has been driven by open trade and investment policies, export growth, and an increasing participation in GVCs (OECD, 2019, p. 15<sub>[7]</sub>). The country has progressively emerged as a large hub in the manufacturing, automotive, electronics and financial services sectors, and multinational companies in these industries have moved to or invested in Mexico. Between 1990 and 2019, the share of Mexican exports of goods and services to GDP increased significantly, ranging from 19% in 1990 to 39% in 2019 (World Bank, 2020<sub>[6]</sub>). As a result, Mexico ranked 11<sup>th</sup> worldwide in terms of total gross product exports (which amounted to USD 441 billion) and 13<sup>th</sup> in total gross product imports (which amounted to USD 416 billion) in 2019 (Observatory of Economic Complexity, 2020<sub>[19]</sub>). During that year, the country's bilateral trade in goods was highest with the EU, China and the United States, Mexico's economy being highly integrated in the US automotive value chain (UNCTAD, 2020<sub>[20]</sub>). In 2019, Mexico's main trading partners for exports were the United States (77%), Canada (4.1%), Germany (1.8%), China (1.7%) and Japan (1.1%), and for imports the United States (56.9%), China (13.1%), Germany (4.1%), Japan (3.1%) and South Korea (2.9%) (Observatory of Economic Complexity, 2020<sub>[19]</sub>).

Manufactured goods, particularly motor vehicles, as well as computers and electronics, account for the largest proportion (80%) of Mexican exports<sup>14</sup> (OECD, 2019, p. 15<sub>[7]</sub>). For this reason, over the last decade, Mexico's performance in high-technology exports as a share of total manufactured exports has been above LAC and OECD averages (OECD et al., 2020, p. 294<sub>[21]</sub>). In 2019, exports of mineral and metal products accounted for 12% of Mexico's exports, amounting to USD 47.4 billion. In the same year, the value of Mexican agri-food and animal exports amounted to USD 34 billion, representing 8.7% of total exports (Government of Mexico, 2020<sub>[22]</sub>).

Beyond exports, Foreign Direct Investment (FDI) also makes up an important part of Mexico's economy. In 2019, inward FDI stocks accounted for 45% of the country's GDP (OECD, 2021<sub>[23]</sub>) and inward FDI net inflows amounted to USD 33 billion (UNCTAD, 2020, p. 12<sub>[20]</sub>). Out of all FDI inflows, 47% went to the Mexican manufacturing sector, especially to the automotive industry, which received more than 20% of FDI (UNCTAD, 2020, p. 52<sub>[20]</sub>). Other sectors of the Mexican economy receiving important amounts of FDI are the financial and insurance sector, the retail and wholesale trade sector, and the communication sector (Government of Mexico, 2020<sub>[24]</sub>). The largest investors in Mexico are the US and the EU, the main investing countries in 2019 being the US (36.8%), Spain (12.1%), Canada (9.7%), Germany (9.2%) and Italy (4.5%) (UNCTAD, 2020<sub>[20]</sub>).

Despite its openness and successful integration into the global economy, the Mexican economy is characterised by widespread informality and a high percentage of small and medium-sized enterprises

(SMEs), which raise a number of challenges for Mexico's economic performance. Informal work<sup>15</sup> accounts for about a quarter of the country's GDP (OECD, 2019, p. 94<sub>[7]</sub>) and, prior to the COVID-19 crisis, informal workers amounted to 56% of its total workforce. Informality is heterogeneously distributed across sectors and regions in Mexico (OECD, 2020, p. 7<sub>[16]</sub>). According to the National Institute for Statistics and Geography (*Instituto Nacional de Estadística y Geografía*, INEGI), informal employment is particularly high in the construction sector (84% of the working population), in the accommodation and food services (83%), as well as in agriculture, animal production, forestry, fishing and hunting (80%). Geographically, the highest rates of informality are found in the states of Oaxaca (79%), Guerrero (78%), and Hidalgo (74%) (INEGI, 2020<sub>[12]</sub>). Informal working arrangements have serious consequences for Mexican informal workers, who most of the time do not have access to social security or social protection mechanisms, such as parental leave, are not affiliated to any pension system, do not receive adequate wages, and cannot exercise basic labour rights, such as freedom of association and collective bargaining. Informality also has a negative impact on the country's economic development, as it constrains productivity and fiscal capacity (OECD, 2019, p. 96<sub>[7]</sub>). According to the latest OECD Economic Survey for Mexico, informal businesses face high costs and barriers to formalisation, such as tax requirements and regulations. Consequently, instead of stepping up in size and formalising, companies prefer to continue to be small and less productive (OECD Ecoscope, 2019<sub>[25]</sub>).

In Mexico, SMEs represent 99.7% of all companies in the country. The large majority of these SMEs (97.4%) are micro-enterprises with 1-9 employees (OECD, 2020, p. 2<sub>[26]</sub>), which operate in the services sector (mainly in wholesale and retail trade; accommodation and food; and real estate), as opposed to the manufacturing sector where large companies prevail (OECD, 2019, p. 2<sub>[27]</sub>). Mexican SMEs have low labour productivity levels in comparison to larger companies (OECD, 2020, p. 2<sub>[26]</sub>). Whereas four million SMEs generate 71% of employment, they only contribute to create 37% of value added (OECD, 2019, p. 2<sub>[27]</sub>). As a result, value added in Mexico remains low in comparison with peer countries (OECD, 2019, p. 15<sub>[7]</sub>). In addition, while large Mexican companies tend to be integrated in the global economy, this is not the case of medium sized and family businesses (OECD, 2020, p. 8<sub>[16]</sub>). According to the INEGI's "2018 National Survey on Productivity and Competitiveness of Micro, Small and Medium Enterprises", the vast majority of SMEs in Mexico (95.4%) do not participate in GVCs (INEGI, 2019<sub>[28]</sub>).

The salient features of Mexico's socio-economic context have been profoundly disrupted by the COVID-19 pandemic and the ensuing crisis (see Box 2.1), which is likely to create additional challenges to promote and enable responsible business practices in the country, but also opportunities to build back better, more responsibly and sustainably.

### **Box 2.1. The COVID-19 crisis' impact on the Mexican economy**

As most countries in the world, since Mexico registered its first Coronavirus (COVID-19) case on 28 February 2020,<sup>1</sup> its economy has been hit severely by the crisis resulting from the pandemic. It has notably suffered from demand and supply shocks and a dramatic contraction of GDP, which fell by an historic 8.5% in 2020, representing the most severe recession in the country since the 1930s.<sup>2</sup> Measures to slow the spread of the virus and the economic contraction in the US impacted two key elements of the Mexican economy – trade with the US and the car and vehicle-making industry –,<sup>3</sup> causing a heavy drop in output.<sup>4</sup> The impact on the Mexican automotive industry has also led Mexico to be amongst the countries with the most important decrease in FDI inflows.<sup>5</sup> In 2020, FDI inflows to the country fell by 8% compared to the previous year.<sup>6</sup>

Although some sectors performed well despite the COVID-19 crisis, the vast majority of Mexican companies has been impacted seriously by the consequences of the pandemic.<sup>7</sup> Disruptions in international supply chains, stalled investments, and hampered exports have affected Mexican exporting firms with global economic links, exports having decreased by -9.3% and imports by -15.8%

in 2020.<sup>8</sup> The COVID-19 crisis has also hit significantly Mexican SMEs, which face continued risks for their business.<sup>9</sup> According to a survey on the “Economic Impact Generated by COVID-19 on Enterprises” by the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*, CNBV), 93% of Mexican SMEs were affected by the crisis, suffering from a decrease in their income (91%), a reduction in demand (73%), and lower cash flows (46%).<sup>10</sup> Additionally, in April and May 2020, 12 000 informal companies closed due to the pandemic.<sup>11</sup>

As a result of its impacts on Mexican businesses, the COVID-19 crisis has affected deeply the employment situation in Mexico.<sup>12</sup> In March and April 2020 only, job losses increased dramatically, with more than 10 million informal and two million formal jobs lost.<sup>13</sup> Out of these 12 million people, 9.5 million people have been reintegrated in the labour market in 2020, but the unemployment rate in the country still rose to 4.5% during that year.<sup>15</sup> This state of affairs is expected to increase monetary poverty and inequalities in Mexico.<sup>15</sup> According to the National Council for the Evaluation of the Social Development Policy (*Consejo Nacional de Evaluación de la Política de Desarrollo Social*, CONEVAL), a projected 5% decrease in monetary income will worsen poverty rates by 7.2 to 7.9% in the country.<sup>16</sup>

Notes:

1. Government of Mexico (2020), Press release: Se confirma en México caso importado de coronavirus COVID-19, <https://www.gob.mx/salud/prensa/077-se-confirma-en-mexico-caso-importado-de-coronavirus-covid-19>.
2. IMF (2021), World Economic Outlook Update, <https://www.imf.org/-/media/Files/Publications/WEO/2021/Update/January/English/text.ashx>.
3. ITC (2020), SME Competitiveness Outlook 2020 – Mexico, p. 104, <https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/ITCSMECO2020.pdf>.
4. OECD (2020), OECD Economic Outlook, Issue 2: Preliminary Version, pp. 215-217, <https://doi.org/10.1787/39a88ab1-en>.
5. UNCTAD (2020), World Investment Report 2020, p. 49, [https://unctad.org/system/files/official-document/wir2020\\_en.pdf](https://unctad.org/system/files/official-document/wir2020_en.pdf).
6. UNCTAD (2021), Global Investment Trend Monitor, No. 38, p. 3, [https://unctad.org/system/files/official-document/diaeiainf2021d1\\_en.pdf](https://unctad.org/system/files/official-document/diaeiainf2021d1_en.pdf).
7. ITC (2020), SME Competitiveness Outlook 2020 – Mexico, p. 104, <https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/ITCSMECO2020.pdf>.
8. INEGI (2021), Balanza comercial de México, <https://www.inegi.org.mx/temas/balanza/>.
9. ITC (2020), SME Competitiveness Outlook 2020 – Mexico, p. 104, <https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/ITCSMECO2020.pdf>.
10. CNBV (2020), Boletín Trimestral de Inclusión Financiera – Tercer Trimestre 2020, [https://www.gob.mx/cms/uploads/attachment/file/585238/Boletin\\_IF\\_3T\\_2020.pdf](https://www.gob.mx/cms/uploads/attachment/file/585238/Boletin_IF_3T_2020.pdf).
11. OECD (2020), OECD Policy Responses to Coronavirus (COVID-19), <https://www.oecd.org/coronavirus/policy-responses/coronavirus-covid-19-sme-policy-responses-04440101/>.
12. World Bank (2020), Poverty & Equity Brief – Mexico – Latin America & the Caribbean – April 2020, [https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global\\_POVEQ\\_LAC.pdf](https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_LAC.pdf).
13. ILO (2020), Labour Overview in times of COVID-19 - Impact on the labour market and income in Latin America and the Caribbean, p. 18, [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms\\_756697.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_756697.pdf).
14. INEGI (2021), Empleo y ocupación, <https://www.inegi.org.mx/temas/empleo/>.
15. World Bank (2020), Poverty & Equity Brief – Mexico – Latin America & the Caribbean – April 2020, [https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global\\_POVEQ\\_LAC.pdf](https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_LAC.pdf).
16. CONEVAL (2020), La política social en el contexto de la pandemia por el virus SARS-CoV-2 (COVID-19) en México, p. 37, [https://www.coneval.org.mx/Evaluacion/IEPSM/Documents/Politica\\_Social\\_COVID-19.pdf](https://www.coneval.org.mx/Evaluacion/IEPSM/Documents/Politica_Social_COVID-19.pdf).

## 2.2. International instruments and national policies supporting RBC

At the international level, Mexico has ratified a number of key instruments that underpin RBC in areas such as human and labour rights, environmental protection and anti-corruption (see Table 2.1).

**Table 2.1. Mexico's adherence and ratification of key international instruments**

Instrument	Ratification or Adherence
<a href="#">9 Core UN Conventions on Human Rights</a>	9/9
<a href="#">UN Convention against Corruption</a>	Yes
<a href="#">Fundamental ILO Conventions</a>	8/8
<a href="#">Paris Agreement</a>	Yes
<a href="#">Convention on Biological Diversity</a>	Yes
<a href="#">Escazú Agreement</a>	Yes
<a href="#">Extractives Industries Transparency Initiative (EITI) Member</a>	Yes (Yet to be assessed against the Standard)
<a href="#">Voluntary Principles on Security and Human Rights</a>	No

Additionally, upon its accession to the OECD in 1994, Mexico became an Adherent to the OECD MNEs Guidelines. Later on, it also adhered to the OECD Council Recommendation on the Due Diligence Guidance for RBC in 2018,<sup>16</sup> as well as to the OECD Council Recommendations on Sector-specific Due Diligence Guidance regarding (i) the minerals sector in 2011,<sup>17</sup> (ii) stakeholder engagement in the extractive sector in 2016,<sup>18</sup> (iii) the agriculture sector also in 2016,<sup>19</sup> and (iv) the garment and footwear sector in 2017.<sup>20</sup>

At the national level, government policies related to RBC in Mexico have predominantly focused on corporate social responsibility (CSR) and the positive contribution businesses can make to sustainable development (Government of Mexico, 2019<sub>[29]</sub>). A more comprehensive approach to RBC, which also includes the prevention and mitigation of business-related adverse impacts on people, the planet, and society through risk-based due diligence, is still nascent (Government of Mexico, 2015<sub>[30]</sub>).

In terms of overarching government policies of relevance to RBC, the National Development Plan 2019-2024 (*Plan Nacional de Desarrollo 2019-2024*, PND) includes the eradication of corruption, the promotion of employment, health and well-being, as well as the full respect for human rights, as its main goals (Government of Mexico, 2019<sub>[31]</sub>). Yet, it does not address the role of companies in the achievement of these objectives, nor their responsibility with regard to the prevention of adverse impacts in these areas, and refers to some large-scale projects that have raised concerns of adverse human rights and environmental impacts (see Section 3.1.2).

Some national thematic policies and regulations linked to the PND address the role of the private sector in relation to human, labour and environmental rights.<sup>21</sup> This is notably the case of the recently adopted National Human Rights Programme for 2020-2024 (*Programa Nacional de Derechos Humanos 2020-2024*, PNDH). With its five priority objectives, 26 priority strategies<sup>22</sup> and 188 specific actions, the PNDH is the first instrument of this type that specifically addresses business activity and human rights. It seeks to promote the UNGPs, as well as the OECD MNEs Guidelines, across the activities of the public and private sector, as well as in the social economy (see Section 3.1). The PNDH foresees both a strategy to “[p]romote public policies aimed at reducing the negative impacts of public, private or mixed business activity” (priority strategy No. 3.6) and a specific action to “[p]romote the creation of a policy instrument that develops actions to respect and protect human rights within the business sector, as well as to prevent and repair the harm in the event of violations” (action No. 3.6.4) (Government of Mexico, 2020<sub>[32]</sub>). On this basis, the Ministry of the Interior (*Secretaría de Gobernación*, SEGOB), which is responsible for the development and implementation of the PNDH, intends to relaunch the process aimed at the elaboration of a National Action Plan on Business and Human Rights (NAP) based on international RBC principles and standards.<sup>23</sup>

Notwithstanding the above, it should be noted that several global indices suggest that Mexico can improve its performance in a number of areas of relevance for RBC, especially with regard to gender equality (see Section 3.1.2), integrity and anti-corruption (see Section 3.4), forced labour (see Section 3.2.2), and the rule of law (see Table 2.2).



**Table 2.2. Ranking in global indices**

Indicator	Country ranking	Number of countries
<a href="#">World Economic Forum (WEF) Global Competitiveness Index (2019)</a>	48	141
<a href="#">World Bank Doing Business (2020)</a>	60	190
<a href="#">ITUC-CSI Global Rights Index (2020)</a>	Rating 4 Systematic violations of rights	139
<a href="#">Yale Environmental Performance (2020)</a>	51	180
<a href="#">RSF World Press Freedom (2020)</a>	143	180
<a href="#">Global Slavery Index (2018)</a>	114	167
<a href="#">WEF Global Gender Gap Index (2020) - Economic Participation and Opportunity</a>	124	153
<a href="#">Transparency International Corruption Perception Index (2019)</a>	130	183
<a href="#">World Justice Rule of Law Index (2020)</a>	104	128

### 2.3. Stakeholders' awareness of RBC

Awareness on the importance of RBC has been growing in recent years in Mexico. The advancement of human rights (including gender equality and indigenous peoples' rights), respect for workers' rights, environmental protection, and the fight against corruption have progressively become key concerns for both the public and private sectors (see Section 3). The need for responsible business practices that promote economic development, whilst preventing adverse impacts on people, society and the planet, has become even more urgent in light of rising inequalities, deteriorating labour market, and the crisis triggered by the COVID-19 pandemic.

According to the responses to the OECD 2020 Business Survey on RBC in LAC (see Annex B for the Survey's methodology and sample), the majority of companies operating in or from Mexico that responded to the Survey has already adopted written policies and reporting on RBC. However, only a small share know the NCPs and their implementation of risk-based due diligence could be expanded. The responses also indicate that, although the COVID-19 pandemic has caused considerable human rights challenges for companies in Mexico, having RBC practices in place contributed to strengthen their resilience amid the crisis. Through the Survey, a majority of companies also signalled the need for further training to address human rights, social and environmental risks in their supply chains (see Box 2.2).

#### Box 2.2. Findings from the OECD 2020 Business Survey on RBC in LAC

The OECD 2020 Business Survey on RBC in LAC collected data on the RBC practices of 111 respondent companies operating in or from Mexico (respondents). The respondents answered different questions on their RBC policies, their risk-based due diligence processes, the COVID-19 crisis' impact on their activities, and their future needs in terms of RBC-related training.

Highlights of the Survey's findings include the following:

- **The majority of respondents (59%) has adopted a written policy on one of the following RBC issues: human rights, labour rights, environment, combating corruption, consumer interests, and disclosure.**<sup>1</sup> A higher share of large companies (71%) tend to have written policies than SMEs (37%). For large companies, these policies focus mostly on combating corruption (87%), whereas SMEs' policies concern principally labour rights (54%).
- **The majority of respondents (63%) have put in place reporting on RBC.** A significantly higher percentage of large companies (89%) carries out such reporting compared to SMEs (13%).

- **The majority of respondents (59%) are familiar with the NCP system, with one third (36%) indicating general knowledge of the NCPs.** However, only 4 to 7% of respondents report using resources provided by the NCPs, attending events organised by the NCP, or having been involved in a specific instance. Engagement with the NCPs was rated 4.2/10 by respondents (with 10 being the highest appreciation and 1 the lowest).<sup>2</sup>
- **Around one third of respondents (35%) report always adopting an enhanced due diligence process when they identify risks in the supply chain.**<sup>3</sup> In particular, as part of their supply chain due diligence process, one third of respondents (32%) carry out risk assessments on all suppliers and business partners. 30% also require all tier 1 suppliers and business partners to fulfil RBC expectations as a requirement under a contract or agreement. However, only 16% organise training sessions on RBC or due diligence for their suppliers and business partners.
- **The large majority of respondents (72%) indicate that the COVID-19 crisis triggered human rights challenges for their business.**<sup>4</sup> However, almost all of them (90%) report that having responsible business practices in place (such as due diligence processes) has helped navigate the crisis, mostly with respect to productivity issues and supply chain management (82%).
- **The majority of respondents indicate the need for training on RBC.** More specifically, 49% report being interested in general training on RBC and due diligence, 56% on due diligence tools, and 54% on NCPs.

Notes:

1. Based on 70 responses.

2. Based on 51 responses.

3. Based on 50 responses.

4. Based on 46 responses.

Most private sector initiatives to promote responsible business practices in Mexico to date have been based on the concept of CSR, focusing predominantly on philanthropic aspects and more recently on the promotion of the sustainable development agenda and the SDGs. For instance, initiatives such as the CSR programme of the Mexican Centre for Philanthropy (*Centro Mexicano para la Filantropía*, CEMEFI) and the Alliance for Corporate Social Responsibility (*Alianza por la Responsabilidad Social Empresarial*, AliaRSE) award each year the certification label “Socially Responsible Company” (*Empresa Socialmente Responsable*, ESR) to companies that generate value for their brands while committing to adopt a socially responsible management (CEMEFI, 2021<sup>[33]</sup>). In addition, many Mexican companies participate in the United Nations Global Compact (Global Compact) through the Global Compact Network in Mexico. The Network, that currently has 781 adherents, seeks to enhance the implementation of the ten principles of the Global Compact, which are aligned with RBC but do not include the due diligence component of the OECD MNEs Guidelines and the related OECD Due Diligence Guidance aimed at avoiding adverse impacts. In 2019, the Global Compact Network in Mexico and the Business Coordinating Council (*Consejo Coordinador Empresarial*, CCE) signed a collaboration agreement with the Government of Mexico through which they committed to incentivise their adherents and members to contribute to the achievement of the SDGs (Global Compact Mexico, 2019<sup>[34]</sup>). As a result of this agreement, 19 thematic working groups were created to help Mexican companies align their strategies and practices with the 2030 Agenda. These working groups focus on a wide array of issues related to sustainable development, such as climate change, diversity and inclusion, or decent work, and involve representatives of companies of all sizes, but also of civil society, the academia and the Mexican Government (Global Compact Mexico, 2020<sup>[35]</sup>). In September 2020, the 12 business organisations comprising the CCE, together with 150 other business organisations and companies, also launched the principles on the “Social Dimension of Companies” (Consejo Coordinador Empresarial, 2020<sup>[36]</sup>). These principles contain a series of ten commitments aimed

at ensuring that the Mexican private sector contributes to the consolidation of a more just, inclusive, responsible and sustainable society, among others by prioritizing sustainability in economic activities, being an example of integrity and ethics, and promoting inclusion, diversity and the strict respect of human rights (Consejo Coordinador Empresarial, 2020<sup>[36]</sup>).

Notwithstanding the above, some companies and business organisations in Mexico have recently started to focus their efforts on addressing the adverse impacts that their activities may cause or contribute to. For example, the CCE commits to promote the business and human rights agenda through diverse actions and strategies, including the participation in multi-stakeholder discussions and measures to encourage Mexican companies to establish due diligence mechanisms<sup>24</sup> (Consejo Coordinador Empresarial, n.d.<sup>[37]</sup>). Another example is the Human Rights and Business Initiative (*Iniciativa de Empresas y Derechos Humanos*, IEDH), a project led by Global Compact Mexico in partnership with the Institute for Business and Human Rights of the University of Monterrey and the RBC-LAC Project. Through different spaces for discussion and training with the business community in Mexico, the IEDH seeks to facilitate the inclusion of a human rights perspective in business operations and strengthen the application of RBC principles and standards in management processes (Global Compact Mexico, 2019<sup>[38]</sup>).

CSOs are an important driving force for the RBC agenda in Mexico. Civil society has notably created joint initiatives gathering businesses and CSOs to promote dialogue and exchange on RBC issues, such as the conduct of due diligence and access to remedy. This is, for instance, the case of the multi-stakeholder forum on “Human Rights Due Diligence and Remediation of Businesses’ Impacts”<sup>25</sup> organised at the beginning of 2020 by several Mexican CSOs with the support of various international organisations, which gathered public officials, representatives of business associations, CSOs, indigenous peoples and affected communities (BHRRRC, 2020<sup>[39]</sup>).

Additionally, in 2016, a coalition of CSOs established a Civil Society Focal Group on Business and Human Rights (*Grupo Focal de Sociedad Civil sobre Empresas y Derechos Humanos*) to support the NAP process ongoing at the time (Grupo Focal sobre Empresas y Derechos Humanos, 2016<sup>[40]</sup>).<sup>26</sup> The Focal Group brings together various stakeholder organisations, including community based organisations, with a view to protecting their rights. It advocates for an open, participatory and permanent dialogue between various sectors and actors to promote the adoption and implementation of government policies on RBC (see Section 3.1.2).

The COVID-19 pandemic and its consequences is likely to create a number of challenges for the promotion of RBC in Mexico. CSOs and trade unions have reported concerns about the COVID-19 crisis exacerbating certain business-related adverse impacts. Workers and vulnerable groups – such as women and migrant – have reportedly been particularly impacted, facing higher risks of lower pay, unjustified dismissals and discrimination. Business associations, on their end, expressed concerns about the lack of incentives to observe RBC principles and standards, the absence of dialogue with key government agencies, and the prevalence of informality, as challenges for the response to the COVID-19 crisis.

## 2.4. Mexico’s National Contact Point for RBC

The Government of Mexico established an NCP in 1994. In accordance with the OECD MNEs Guidelines, the Mexican NCP’s mandate is twofold: promote the OECD MNEs Guidelines and the related OECD Due Diligence Guidance, and handle cases (referred to as “specific instances”) as a non-judicial grievance mechanism.

In terms of institutional arrangements, the NCP is not set up as a distinct administrative unit, but its role is exercised by officials of the General Directorate of Foreign Investment (*Dirección General de Inversión Extranjera*) of the Ministry of Economy (*Secretaría de Economía*, SE). The Council Decision on the OECD MNEs Guidelines require adherent governments to provide their NCPs with sufficient human and financial

resources to deliver on their mandate. In the last years, the Mexican NCP has been operating with one part-time staff representative and did not have a dedicated budget to conduct its activities.

The Procedural Guidance also requires governments to provide NCPs with a structure that allows them to deal with the wide range of issues covered by the OECD MNEs Guidelines, and to maintain relations with, and gain and retain the confidence of stakeholders. Likewise, the Procedural Guidance requires that the structure of the NCPs enable them to operate impartially. Unlike many other NCPs, the Mexican NCP has not in this regard set up an advisory body including other government entities and/or stakeholder representatives to access expertise or build confidence with stakeholders. The location of the NCP in the General Directorate of Foreign Investment, without clear separation between the NCP role and other investment promotion functions, can also diminish the perception of impartiality of the NCP.

With respect to the promotion of the OECD MNEs Guidelines and the related OECD Due Diligence Guidance, the Mexican NCP has a well-designed and comprehensive website,<sup>27</sup> but its promotional activity has been limited, with only one event organised per year on average in recent years, and no participation in events organised by other actors. By comparison, over the last two years other NCPs from G20 countries have organised on average six events per year, and have participated in up to eight events organised by other actors. As a result, there appears to be a need to strengthen the visibility of the NCP among businesses, workers' organisations and CSOs. The private sector is not familiar with the NCP or its mandate. Although CSOs and trade unions are aware of its existence, both groups have indicated that they have had practically no engagement with the mechanism in recent years. Many of them consider that this little engagement is due to the lack of human and financial resources and institutional capacity of the mechanism.

As regards its case-handling function, the Mexican NCP has detailed rules of procedure in place. However, since its establishment, the NCP has dealt with only four specific instances brought by CSOs and trade unions related to alleged violations of the general policies, disclosure, human rights, employment and industrial relations, environment, and competition chapters of the OECD MNEs Guidelines in the mining and telecommunication sectors. In the past 13 years, no specific instance has been submitted to the NCP, the last one dating from 2007. This does not reflect the level of case activity that can be expected from the NCP of a G20 economy, as it is over five times below the average number of cases received by NCPs of G20 countries. Yet, in recent years, several cases handled by other NCPs had a nexus to Mexico, and the Mexican NCP provided support to the lead NCP (see Table 2.3 below). These cases have involved both the operations of Mexican companies abroad and the operations of Mexican companies in Mexico. Issues raised in such cases are most often linked to labour disputes, but also to the rights of local communities and indigenous peoples. A noteworthy case in this regard is the *EDF / EDF Renewables and ProDESC / Unión Hidalgo Agrarian and Indigenous Sub-Community* case, dealt with by the French NCP, concerning the construction of a wind farm in the state of Oaxaca by the Mexican subsidiary of EDF Energies Nouvelles in an area inhabited by indigenous peoples (see Box 3.4 below).

**Table 2.3. NCP cases with a nexus to Mexico**

<i>Lead NCP</i>	<i>Supporting NCP</i>	<i>Name of case and entry in OECD database</i>	<i>Year of submission</i>	<i>Summary of issues raised</i>	<i>Outcome</i>
Mexico	Germany	<a href="#">Manufacturing plant closure in Mexico</a>	2002	Closure of the subsidiary of a German company in Mexico	Concluded with agreement
Germany	N/A	<a href="#">Alleged causation of environmental issues in various countries</a>	2007	Contribution to climate change by a German multinational operating i.a. in Mexico	Not accepted
Mexico	N/A	<a href="#">Dismissal of workers in Mexico</a>	2008	Labour issues linked to the dismissal of workers by the Mexican subsidiary of a multinational company	Not accepted
Mexico	N/A	<a href="#">Violations of human rights and corruption in El Salvador and Nicaragua</a>	2011	Dismissal of union workers and dissolution of union issues by a Mexican telecommunication company abroad	Not accepted
Mexico	Canada	<a href="#">Mining in Mexico</a>	2012	Various issues, including labour and local communities' rights, linked to the operations of a multinational mining company in Mexico	Not accepted
Mexico	Finland	<a href="#">Union favoritism in Mexico</a>	2012	Collective bargaining issues linked to the operations of a multinational metallurgical company in Mexico	Not accepted
United States	Mexico	<a href="#">ASARCO, Grupo Mexico, USW and Mineros</a>	2016	Labour issues and union representation at a Mexican company subsidiary in the U.S.	Concluded without agreement
United States	Mexico	<a href="#">Grupo Comercial Chedraui and group of trade unions and NGOs</a>		Labour issues at a Mexican company subsidiary in the U.S.	Concluded without agreement
France	Mexico	<a href="#">EDF / EDF Renewables and ProDESC / Unión Hidalgo Agrarian and Indigenous Sub-Community</a>	2018	Indigenous peoples' rights issues linked to a windfarm project by a French company in Mexico	Concluded without agreement
France	Mexico	<a href="#">I-Buycott &amp; Starbucks Coffee France</a>	2019	Tax issues regarding the operations of French subsidiaries of a Mexican group in France	In progress (post-initial assessment)
France	Mexico and five others	<a href="#">Teleperformance and UNI Global Union</a>	2020	Labour issues related to measures to protect workers from COVID-19 by a French multinational operating notably in Mexico	In progress (post-initial assessment)

The Government of Mexico does recognise the challenges described above, many of which relate to a lack of resources. To address these issues, the NCP, together with the OECD Secretariat, has set up a roadmap of capacity-building activities to be conducted by end of 2022 and which relate to its institutional arrangements, as well as to its promotional activities and the handling of specific instances. Additionally, the Government of Mexico has committed to undergo a peer review of its NCP in 2023.



# 3

## Regulating and enforcing in support of Responsible Business Conduct in Mexico

Governments can promote and enable RBC by embedding in their domestic frameworks the legislations, regulations and policies necessary to govern business conduct and prevent the occurrence of RBC issues in the areas covered by the OECD MNEs Guidelines. To build an enabling environment for businesses to act responsibly, it is also key that governments deploy the resources and capacities required to implement such legislations, regulations and policies. Mexico can reinforce the steps already taken in this direction by strengthening its regulatory and enforcement actions in several areas of the OECD MNEs Guidelines, namely human rights, labour rights, environment, and anti-corruption.

### 3.1. Human Rights

Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. States have the primary duty to protect such rights by abiding by their human rights obligations. However, pursuant to Chapter IV of the OECD MNEs Guidelines on “Human Rights” – which draws on, and is aligned with, the UNGPs<sup>28</sup> – businesses are expected to respect human rights independently of the State’s ability or willingness to fulfil its human rights obligations. Failure either to enforce relevant domestic laws or to implement international human rights obligations, or the fact that the State may act contrary to those laws and obligations, does not diminish the responsibility of businesses to respect human rights. Thus, enterprises should conduct due diligence to avoid causing, or contributing to, adverse human rights impacts in their own activities, and prevent and mitigate impacts to which they are directly linked through their supply chains and business relationships.

#### 3.1.1. Legal and institutional framework

##### *Legal framework*

At the international level, Mexico is a party to all nine-core international human rights instruments and seven optional protocols<sup>29</sup> (UNOHCHR, 2020<sup>[41]</sup>). The country has also ratified the main human rights instruments of the Inter-American Human Rights System<sup>30</sup> and recognised the competency of its main organs (CNDH, 2016<sup>[42]</sup>).

At the national level, Mexico carried out a legal reform in 2011 to align its human rights legal framework with international standards (Colli, 2012<sup>[43]</sup>). The reform led to the introduction of a new chapter in the Constitution on “Human Rights and their Guarantees” (Government of Mexico, 1917<sup>[44]</sup>), which includes provisions regarding the State’s responsibility to prevent, investigate, sanction and redress human rights violations. In particular, Article 1 of the Constitution establishes that “[a]ll authorities, in their areas of

competence, are obliged to promote, respect, protect and guarantee human rights, in accordance with the principles of universality, interdependence, indivisibility and progressiveness. As a consequence, the State must prevent, investigate, sanction and rectify violations to human rights, according to the law” (Government of Mexico, 1917<sup>[44]</sup>). Beyond the Constitution, Mexico’s legal framework contains a number of laws dealing with human rights issues,<sup>31</sup> such as the 2003 Federal Law to Prevent and Eliminate Discrimination (*Ley Federal para Prevenir y Eliminar la Discriminación*),<sup>32</sup> the 2011 Migratory Law (*Ley de Migración*),<sup>33</sup> and the 2012 General Law to Prevent, Punish and Eradicate Human Trafficking Crimes and for the Protection and Assistance to the Victims of such Crimes (*Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos*)<sup>34</sup> (CNDH, 2020<sup>[45]</sup>).

The Ministry of the Interior (*Secretaría de Gobernación*, SEGOB), through the General Directorate of Human Rights Policy (*Dirección General de Política Pública de Derechos Humanos*), is the government entity in charge of promoting, guiding and monitoring human rights policies within the Government. Its main policy instrument is the National Human Rights Programme (*Programa Nacional de Derechos Humanos*, PNDH), which is a four year national policy derived from the National Development Plan (*Programa Nacional de Desarrollo*, PND) (Government of Mexico, 2020<sup>[46]</sup>).

The PNDH for 2020-2024 entered into force on 11 December 2020<sup>35</sup> (Government of Mexico, 2020<sup>[32]</sup>). It is the guiding instrument on human rights matters of the current administration (Government of Mexico, 2020<sup>[46]</sup>). As such, it deals with a wide array of issues such as children’s rights, human trafficking, equality and non-discrimination, violence against women, indigenous peoples, as well as RBC and business and human rights. On this last point, the PNDH lays the foundation for the elaboration of a National Action Plan on Business and Human Rights (NAP) through its strategic priority No. 3.6, in which the Government commits to “[p]romote policies aimed at reducing the negative impacts of business activity”. Among the different actions foreseen under this priority strategy, action No. 3.6.2 notably aims to “promote the incorporation of the UNGPs and the OECD MNEs Guidelines in the activities of the companies from the public, private and social sectors” and action No. 3.6.5 to “promote the creation of due diligence instruments to identify, prevent, mitigate and remedy adverse impacts generated by business activities, be they public, private or mixed, and to incentivise transparency and accountability in value chains”.

### **Mexico’s National Action Plan on Business and Human Rights**

A first attempt to develop a NAP in Mexico started in 2015 and lasted over the course of two years. The visit to Mexico of the UN Working Group on the issue of human rights and transnational corporations and other companies (UNWG) from 29 August to 7 September 2016 provided an important impetus for this process. At that time, the UNWG underlined that, for the NAP to succeed, “it will be critical to maintain its inclusive, multi-stakeholder nature in the development, implementation and monitoring phases” (UN Working Group on Business and Human Rights, 2017<sup>[47]</sup>). However, this first attempt did not culminate in the adoption of a NAP, as the CSOs involved in the process withdrew from it in July 2017. In light of this, it will be crucial to ensure that any future efforts to develop a NAP in Mexico consider the views of all stakeholder groups throughout the process (see Box 3.1).

#### **Box 3.1. Background on the development of Mexico’s NAP**

The first attempt to elaborate a NAP in Mexico emerged from the 2014-2018 National Human Rights Programme (PNDH), which established under strategy 4.4 the need to “promote a human rights and gender approach within the private sector, as well as in business policies and activities.”<sup>1</sup>

Based on this strategy, five main actions were considered in the 2014-2018 PNDH. These actions included strengthening mechanisms aimed at guaranteeing business respect for human rights,

encouraging companies to disseminate human rights and include them in their declarations of principles, codes and policies, and helping companies to identify and acknowledge their human rights obligations with respect to their workers and consumers.

On this basis and following the commitment made in the framework of the UN Annual Forum on Business and Human Rights in 2015, the Government started the process to develop a NAP in 2016. At the same time, seven Mexican CSOs established the Focal Group on Business and Human Rights to accompany the process,<sup>2</sup> ensure CSO participation, and elaborate the National Baseline Assessment (NBA) for the NAP.<sup>3</sup> The Government recognised the NBA elaborated by the Focal Group in October 2016.<sup>4</sup> However, following the presentation of the second draft of the NAP in July 2017 by the Government,<sup>5</sup> the CSOs of the Focal Group decided to withdraw from the process, arguing that they had concerns over the lack of alignment of the draft with the recommendations made by civil society, in particular with regard to the need to guarantee and improve access to justice and remedy for affected communities and individuals.<sup>6</sup>

Notes:

1. Government of Mexico (2014), Programa Nacional de Derechos Humanos 2014-2018, <https://bpo.sep.gob.mx/#recurso/1206/document/1>.
2. Civil Society Focal Group on Business and Human Rights in Mexico (2016), Diagnóstico de Línea Base para la Implementación de los Principios Rectores sobre Empresas y Derechos Humanos de la ONU en México, <https://poderlatam.org/wp-content/uploads/2020/02/DiagnosticoLineaBase2016.pdf>.
3. Danish Institute for Human Rights (n.d.), Global NAPs: Mexico, <https://globalnaps.org/country/mexico/>.
4. Government of Mexico (2017), Cronograma inicial de acciones del Grupo de Trabajo sobre Empresas y Derechos Humanos, <https://www.gob.mx/segob/articulos/abordar-los-derechos-humanos-en-todos-los-espacios-y-entornos-grupo-de-trabajo-sobre-empresas-y-ddhh>.
5. Government of Mexico (2017), Segundo borrador del Plan Nacional de Acción sobre Empresas y Derechos Humanos, [https://www.gob.mx/cms/uploads/attachment/file/225507/3.Borrador\\_PNEDH.pdf](https://www.gob.mx/cms/uploads/attachment/file/225507/3.Borrador_PNEDH.pdf).
6. Civil Society Focal Group on Business and Human Rights in Mexico (2017), Letter to the UN Working Group on Business and Human Rights, <https://mk0globalnaps.hq.kinstacdn.com/wp-content/uploads/2018/08/mexico-letter-from-cso-focal-group-withdrawing-from-nap-process.pdf>.

An overarching government policy on RBC, such as a NAP, constitutes a significant opportunity to align the policies of different ministries and government entities relevant for RBC, engage with businesses and other stakeholders (such as CSOs, trade unions and representatives of indigenous peoples) to understand gaps and needs and build a strategic action plan to promote responsible business practices and sustainable development in Mexico.

In addition to the specific recommendations formulated by the UNGW following its visit to Mexico in 2016, the recommendations deriving from Mexico's review by the UN Human Rights Council in 2018 in the context of the third cycle of Universal Periodic Reviews<sup>36</sup> (UPR) are also relevant for any future policy instrument on RBC (UN Human Rights Council, 2019<sup>[48]</sup>). This review resulted in 264 recommendations,<sup>37</sup> with several delegations agreeing on the urgent need to conclude the NAP adoption process in Mexico.<sup>38</sup> The recommendations also called to further strengthen and harmonise the policies for the protection of human rights defenders and journalists.<sup>39</sup> The Mexican Government stated that it would address the UPR's recommendations by: (i) promoting efficient coordination between the three Federal branches and levels of government; (ii) fostering the dialogue with CSOs; and (iii) engaging in cooperation with other governments to boost capacity-building through enhanced technical assistance and the adoption of best practices that lead to tangible benefits for society (Government of Mexico, 2019<sup>[49]</sup>).

***Mexico is encouraged to take measures to implement the PNDH and start the process to develop a NAP, following a defined timeline and with adequate financial and human resources. For this purpose, Mexico should work on building trust between the different stakeholders and the Government through transparency and meaningful engagement, and seek to enhance coordination***

**and cooperation among government entities. Moreover, the NAP elaboration process should build on Mexico's adherence to the OECD MNEs Guidelines and recognise the role of the NCP in the promotion of RBC and as a non-judicial grievance mechanism for corporate human rights violations.**

### *Institutional framework*

#### **Judicial and administrative remedies**

In order to be effective, a legal framework requires an adequate institutional framework that ensures its implementation. The judicial system is particularly important in this regard in order to respond to human rights violations, including by businesses.

Chapter IV of the Mexican Constitution concerns the judicial power, its organs and its functions (articles 94 to 107). It lays down fundamental principles for the functioning of the judiciary such as independence and impartiality. The Constitution also recognises the State's obligation to provide reparation for human rights violations (article 1) and to facilitate access to remedy for victims through the Attorney General's Office (article 20). In this regard, Mexico has an extraordinary constitutional control mechanism to protect human rights known as "writ of Amparo",<sup>40</sup> whose purpose is to solve before the courts controversies arising out of laws or federal authority acts that allegedly violate individual rights (Gudiño, 2002<sub>[50]</sub>).

However, the functioning of the Mexican judicial system is affected by persistent structural issues such as corruption, timeliness and barriers to access to justice. In 2020, Mexico ranked significantly low in the World Justice Project Rule of Law Index, with a ranking of 104<sup>th</sup> out of 128 countries and an overall score of 0.44 in 2020 (World Justice Project, 2020<sub>[51]</sub>). In terms of the quality of civil and criminal justice, Mexico ranked respectively 116<sup>th</sup> (with a score of 0.39) and 119<sup>th</sup> (with a score of 0.30) for the same year (World Justice Project, 2020<sub>[51]</sub>). This state of affairs led to a justice reform initiative presented in February 2020 (Government of Mexico, 2020<sub>[52]</sub>), which culminated with the recent adoption of two laws: the Organic Law of the Federal Judicial Power (*Ley Orgánica del Poder Judicial de la Federación*) (Government of Mexico, 2021<sub>[53]</sub>) and the Law on the Judicial Career of the Federal Judicial Power (*Ley de Carrera Judicial del Poder Judicial de la Federación*) (Government of Mexico, 2021<sub>[54]</sub>).<sup>41</sup> The adoption of these two laws reflects Mexico's efforts "to improve justice and law enforcement systems", already acknowledged in the UPR of 2018 (UN Human Rights Council, 2019<sub>[48]</sub>). However, their concrete effects in practice remain to be seen and measures still need to be taken to address the different recommendations of the UPR regarding the need to strengthen and expand access to justice for vulnerable groups such as indigenous peoples, women, children, migrants, asylum seekers and refugees.<sup>42</sup>

At the administrative level, the State Executive Committee for Victims Assistance (*Comisión Ejecutiva de Atención a Víctimas*, CEAV) was created in 2011 (CNDH, 2019<sub>[55]</sub>). This mechanism aims to provide assistance to victims of human rights violations, including by giving them support to access remedy. The legal basis for granting administrative reparation to victims of human rights violations is the Federal Law on Patrimonial Responsibility of the State (*Ley Federal de Responsabilidad Patrimonial del Estado*), which grants the right to victims to claim compensation in the material, patrimonial and moral domains (Comisión de Derechos Humanos del Distrito Federal, 2010<sub>[56]</sub>). However, the CEAV's capacity to efficiently provide assistance to victims of human rights violations is being put into question by the recent decision to reduce its operating budget by 75% (Government of Mexico, 2020<sub>[57]</sub>). Various CSOs, as well as victims' representatives, have requested the Government to ensure that the CEAV is endowed with sufficient resources to fulfil its mandate (Observatorio Ciudadano de Derechos de las Víctimas and others, 2020<sub>[58]</sub>).

**Mexico should ensure that barriers to access judicial remedies for human rights violations committed by businesses are removed, especially to materialise the victims' right to an adequate remedy, either judicial or administrative as appropriate. To do so, Mexico could reinforce the role**

**of administrative bodies in order to give preferential access to remedy mechanisms to vulnerable groups such as indigenous peoples, women, children, migrants, asylum seekers and refugees.**

### Non-judicial grievance mechanisms

In addition to the NCP, Mexico has established non-judicial grievance mechanisms to address human rights violations. The Mexican non-judicial system of human rights protection (*Sistema No-Jurisdiccional de Protección de los Derechos Humanos*) is divided into two large groups: on the one hand, the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) (see Box 3.2), and on the other hand, the Human Rights Commissions of the 31 States and the Federal District<sup>43</sup> (CNDH, 2011<sup>[59]</sup>). These different instances are mandated to hear cases involving business-related human rights impacts, and have produced recommendations and statements regarding various emblematic cases in this regard.<sup>44</sup> The CNDH has identified 162 laws whose content refers to remedy mechanisms for victims of human rights violations. These laws amount to 53% of the 305 laws published on the Congress' website (CNDH, 2019<sup>[60]</sup>).

The CNDH is an important institution in Mexico, as a non-judicial grievance mechanism not only for business-related human rights violations, both public and private,<sup>45</sup> but also for the promotion of RBC in the country. In 2018, it developed a “Business and Human Rights Programme” (BHR Programme) to promote a preventive culture and the respect for human rights in business-related activities through promotional, learning and training initiatives for public officials, businesses and the general population.<sup>46</sup> The BHR programme is built around three main objectives: (i) integrating business and human rights standards transversally in the work of the CNDH, (ii) influencing the formulation of related policies (including an eventual NAP), and (iii) raising awareness of, and disseminating, the relevant standards within the public and private sectors, as well as with CSOs (CNDH, 2020<sup>[61]</sup>).

#### Box 3.2. The CNDH's Recommendation No. 37 on Business and Human Rights

In May 2019, the CNDH issued the General Recommendation No. 37 (*Recomendación General No 37*) on the respect and observance of human rights in business activities.<sup>1</sup> This document contains 32 non-binding recommendations addressed to 91 authorities at federal and state level, which aim at “achieving a culture of respect for human rights in business-related activities through policy and initiatives for regulation”.<sup>2</sup> The General Recommendation No. 37 identifies 11 business sectors mainly associated with certain human rights violations<sup>3</sup> such as human trafficking, child labour, irregular working conditions, restrictions in the exercise of union rights, lack of consultation with indigenous peoples, and environmental impacts linked to large-scale projects. In order to implement the Recommendation, the CNDH has so far focused its efforts on organising promotional and dissemination activities (conferences, courses and participation in international forums), providing technical assistance to businesses, and developing training material for the Government, businesses and CSOs.<sup>4</sup>

The General Recommendation No. 37 also addresses the functioning of the NCP, indicating that “there is a lack of knowledge of its existence, operation and purpose, as well as a weakness in its engagement with businesses and chambers [...]”. It concludes that there is a need to “take the necessary actions for the proper functioning of the NCP, including the issuance of rules of procedure, agreements or operating manuals and the annual publication of an activity report”.

Notes:

1. CNDH (2019), Recomendación General No. 37 sobre el respeto y la observancia de los derechos humanos en las actividades de las empresas, [https://www.cndh.org.mx/sites/default/files/documentos/2019-07/RecGral\\_037.pdf](https://www.cndh.org.mx/sites/default/files/documentos/2019-07/RecGral_037.pdf).

2. Ibid.

3. Public services (water, gas, transportation, education, health, telecommunications); tourism (food, hotels and entertainment); agroindustry; hydrocarbons; infrastructure; energetic; extractive; manufacturing (textile, paper, plastic); private security; chemical and pharmaceutical, and financial sector.

4. CNDH (2021), Informe de actividades del 1 de enero al 21 de diciembre de 2020, [http://informe.cndh.org.mx/uploads/principal/2020/IA\\_2020.pdf](http://informe.cndh.org.mx/uploads/principal/2020/IA_2020.pdf).

**Mexico is encouraged to reinforce the collaboration between the Government and the CNDH to strengthen policy coherence on RBC, considering the CNDH's long-standing experience and expertise. Besides, in addition to effectively involving it in the eventual NAP elaboration process, Mexico should provide enough resources to the NCP to reinforce its role as a state-based non-judicial remedy mechanism for business-related impacts and facilitate access to remedy for victims of such impacts.**

### **3.1.2. Specific human rights impacts on particular groups related to business in Mexico: indigenous peoples, human rights defenders and women**

#### *Indigenous peoples' rights*

The Commentary to the Human Rights Chapter of the OECD MNEs Guidelines highlights that, depending on the context in which they operate, companies may need to consider additional relevant human rights standards – in this case standards pertaining to the rights of indigenous peoples – as part of their due diligence.<sup>47</sup> Both the OECD Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector and the OECD-FAO Guidance for Responsible Agricultural Supply Chains also includes recommendations on the engagement with indigenous peoples.

Mexico has one of the largest and most diverse indigenous populations in Latin America. There are approximately 17 million indigenous peoples in Mexico, representing 15.1 per cent of the Mexican population (International Work Group for Indigenous Affairs IWGIA, 2020<sup>[62]</sup>). According to the National Institute of Indigenous Languages (*Instituto Nacional de Lenguas Indígenas*, INALI), 25 million people recognise themselves as indigenous and more than 7.3 million of them are speakers of one of the 68 indigenous languages spoken in Mexico (Government of Mexico, 2019<sup>[63]</sup>).

Mexico is a signatory to the UN Declaration on the Rights of Indigenous Peoples and a party to the ILO Indigenous and Tribal Peoples Convention (ILO Convention No. 169). In addition, the rights of indigenous and Afro-Mexican peoples and, in particular, their right to free, prior and informed consent (FPIC) is a fundamental right enshrined in the Mexican Constitution. However, there are many structural challenges for ensuring the compliance with and the realisation of indigenous and Afro-Mexican peoples' rights in Mexico (Government of Mexico, 1917<sup>[44]</sup>) This is essentially due to the current state of the Mexican legal framework and, in particular, to the fact that, at the time of writing, the procedure to consult indigenous and Afro-Mexican peoples had not yet been regulated nor the cases in which consultations are mandatory, as the General Law on Consultation of Indigenous and Afro-Mexican Peoples (*Ley General de Consulta de los Pueblos y Comunidades Indígenas y Afromexicanas*) still had to be approved by the Senate (see Box 3.3) (CNDH, 2016<sup>[64]</sup>).

#### **Box 3.3. Enhancing the free, prior, and informed consultation of indigenous and Afro-Mexican peoples in Mexico**

Mexico's General Law on Consultation of Indigenous and Afro-Mexican Peoples (*Ley General de Consulta de los Pueblos y Comunidades Indígenas y Afromexicanas*) was approved in April 2021 by



the Lower Chamber of the Mexican Congress, and was awaiting final approval by the Senate at the time of writing.<sup>1</sup>

Building on the 2018-2024 National Programme for Indigenous Peoples (*Programa Nacional de los Pueblos Indígenas 2018-2024*), which envisaged the preparation of a legislative initiative on free, prior, and informed consent (FPIC),<sup>2</sup> this Law will regulate the existing constitutional rights of indigenous and Afro-Mexican peoples in accordance with international treaties. It will notably set the principles, norms, institutions and procedures to guarantee the right to FPIC of indigenous and Afro-Mexican communities.

The General Law on Consultation follows the guidelines set in the 2019 “Protocol on FPIC for the Constitutional and Legal Reform Process on the Rights of Indigenous and Afro-Mexican Peoples” (*Protocolo de la Consulta libre, previa e informada para el proceso de reforma constitucional y legal sobre derechos de los Pueblos Indígenas y Afromexicano*),<sup>3</sup> which lays down the principles and foundations of a federal law on the matter based on 16 priority points, including: self-determination and autonomy; rights of indigenous women; Afro-Mexican peoples’ fundamental rights; lands; territories; resources; biodiversity and the environment.

The General Law on Consultation details the consultation processes and notably provides that consultation agreements reached with indigenous and Afro-Mexican peoples are binding, and that consultation processes can be carried out by any government entity within the different levels of government, including autonomous public bodies that issue administrative or legislative acts likely to affect indigenous and afro-Mexican peoples’ rights. However, some stakeholders have reported that the Law lacks clarity with respect to the role of companies in the different phases of the consultation processes.

Notes:

1. Government of Mexico (2021), Press release: Boletín No. 6338 – La Cámara de Diputados aprobó, en lo general, la Ley General de Consulta de los Pueblos y Comunidades Indígenas y Afromexicanas, <https://comunicacionnoticias.diputados.gob.mx/comunicacion/index.php/boletines/la-camara-de-diputados-aprobo-en-lo-general-la-ley-general-de-consulta-de-los-pueblos-y-comunidades-indigenas-y-afromexicanas#gsc.tab=0>.

2. Government of Mexico (2019), Programa Nacional de los Pueblos Indígenas 2018-2024, <https://www.gob.mx/cms/uploads/attachment/file/423227/Programa-Nacional-de-los-Pueblos-Indigenas-2018-2024.pdf>.

3. Government of Mexico (2019), Protocolo de la consulta libre, previa e informada para el proceso de reforma constitucional y legal sobre derechos de los pueblos indígenas y Afromexicanos, <http://www.inpi.gob.mx/gobmx-2019/convocatorias/inpi-protocolo-consulta-reforma-constitucional-derechos-pueblos-indigenas.pdf>.

Beyond the legal framework, the National Institute for Indigenous Peoples (*Instituto Nacional de Pueblos Indígenas*, INPI) was established in 2018 to address some of the issues faced by indigenous and Afro-Mexican peoples and has since then taken responsibility for their protection by setting, implementing and evaluating standards, policies and programmes in this regard (Government of Mexico, 2020<sup>[65]</sup>). Yet, many indigenous and Afro-Mexican communities still face risks for their rights, in particular due to the development of large-scale projects (mainly in the mining, energy and infrastructure sectors) in the areas where they live (see Box 3.4) (CEMDA, 2015<sup>[66]</sup>). In this respect, the UN Special Rapporteur on Indigenous Rights concluded after its mission to Mexico in 2018 that current development policies, based on large-scale projects, pose a major challenge to indigenous peoples’ enjoyment of their rights. The mission report also noted that lack of self-determination and FPIC, as well as culturally appropriate consultation, are compounded by land conflicts, forced displacement, criminalization, and violence against indigenous peoples who defend their rights (UNOHCHR, 2018<sup>[67]</sup>).

A particular example is the so-called Mayan Train, a large-scale project which seeks to promote the socioeconomic development of the south and southeast regions of the country, putting an emphasis on tourism and aiming at transporting 8,000 passengers per day by 2023 (Bloomberg, 2019<sup>[68]</sup>). Although the Government reports having organised 30 informative and consultation assemblies with indigenous peoples

so far, many organisations claim that the potential environmental, social and cultural adverse impacts of the project are being neglected (CEMDA, 2019<sup>[69]</sup>). They also underscore the risk that the project contributes to fuelling illegal activities, such as human trafficking and drug smuggling (DPLF, 2020<sup>[70]</sup>). Furthermore, it is alleged that the consultation processes did not meet the relevant international standards, and cannot be considered to be prior, free, informed, and culturally appropriate consultations (UNOHCHR, 2019<sup>[71]</sup>).

In addition to the Mayan train, there have been growing concerns over numerous other large-scale investment projects of different nature (public/private and/or national/international), which have raised complaints from indigenous peoples and CSOs (CNDH, 2015<sup>[72]</sup>) (CDHAL, 2019<sup>[73]</sup>). The Trans-isthmian Corridor, the Dos Bocas Refinery, the Morelos Thermoelectric Plant and the Santa Lucía Airport are all projects that have been flagged for their potential adverse impacts on the rights of indigenous peoples and their failure to comply with the requirements of FPIC (UNOHCHR, 2018<sup>[67]</sup>), and which have met the opposition of several indigenous communities (FORBES, 2021<sup>[74]</sup>). Another recent example of concern regarding the potential adverse impacts of a large-scale project on indigenous peoples' rights in Mexico is the case handled by the French NCP regarding the construction of windfarm by an EDF subsidiary in the state of Oaxaca (see Box 3.4).

#### **Box 3.4. EDF / EDF Renouvelables and ProDESC / Unión Hidalgo Agrarian and Indigenous Sub-Community**

On 12 February 2018, a Non-Governmental Organisation (NGO) based in Mexico and two human rights defenders of local agrarian and indigenous communities (*asamblea de comuneros*) submitted a specific instance before the French NCP in relation to a windfarm project developed by a subsidiary of EDF Renouvelables, itself a subsidiary of EDF. The project is located in an area of the Oaxaca state in Mexico where agrarian and indigenous communities are present. The specific instance raised issues related to the implementation of the OECD MNEs Guidelines' recommendations on the respect of local and international law, due diligence, engagement with stakeholders, human rights, the environment, and disclosure with regard to indigenous peoples' rights.

On 12 June 2018, the French NCP announced that it accepted the specific instance and that both parties had accepted its offer of good offices. The NCP provided its good offices and carried out a mediation as of June 2018. During the mediation phase in July 2019, the submitters decided to withdraw their participation from the procedure. In accordance with its bylaws, the French NCP consequently announced in October 2019 that the procedure was entering the conclusion phase. On 10 March 2020, the French NCP issued a final statement commenting on the procedure and containing a substantive analysis of the issues raised in relation to the implementation of the OECD MNEs Guidelines. In particular, the NCP recommended that:

- EDF and EDF Renouvelables adapt their policies to engage with stakeholders, in particular with regard to indigenous peoples and communities potentially affected by their projects, and with respect to their social and cultural interests, by reference to the OECD Due Diligence Guidance for RBC and the OECD Sector-specific Due Diligence Guidance.
- EDF support its subsidiary EDF Renouvelables in establishing an RBC committee composed of external stakeholders and designating a person responsible to manage relations with these external stakeholders.
- When EDF's projects raise land-tenure issues linked to indigenous peoples, it consult with various stakeholders in relation to the project at hand and ensure that the consultation with indigenous peoples is carried out in an appropriate framework in order to avoid future disputes.

The French NCP coordinated its work on this specific instance with the Mexican NCP and announced that it would follow-up on the implementation of the above recommendations.

Sources:

France National Contact Point (2020), Website: Circonstance spécifique “EDF et EDF Renouvelables au Mexique”, <https://www.tresor.economie.gouv.fr/tresor-international/pcn-france/circonstance-specifique-edf-et-edf-en-au-mexique>.

France National Contact Point (2020), Specific instance “EDF and EDF Renewables in Mexico” – Final Statement of the French National Contact Point, <https://www.tresor.economie.gouv.fr/Institutionnel/Niveau3/Pages/8fd9ecb1-2cb5-4e35-95b7-587b6793f341/files/bd60d487-1d03-44b1-9bf2-13ea02ed7f01>.

Indigenous peoples have also been particularly affected by the COVID-19 crisis. As flagged by several CSOs, they were already vulnerable and exposed to health problems before the pandemic (Centro de Derechos Humanos de la Montaña and others, 2020<sup>[75]</sup>). However, beyond health risks, the crisis has brought with it an additional challenge linked to the reduction of their capacity to defend their territories and the environment since spaces for community decision-making have been restricted and access to judicial and non-judicial mechanisms limited by the sanitary restrictions (SERAPAZ, 2020<sup>[76]</sup>). In addition, the COVID-19 crisis has also affected the development of their economic activities, particularly indigenous cooperatives of tourism and native arts and crafts. These SMEs have been facing many difficulties to cover their operating expenses including their workers’ salaries. The production and sale of handicrafts, for instance, which represent more than a third of the jobs in the sector, has been practically paralysed (UNESCO, 2020<sup>[77]</sup>). These different issues have also been compounded by the fact that indigenous peoples often face difficulties to have access to the internet and information technologies and that digital solutions are not always adapted to the context of the remote areas in which they live in.

***Mexico is encouraged to adopt a legislative framework permitting the meaningful consultation of indigenous and Afro-Mexican peoples regarding potential business-related impacts on their rights, in particular in the context of public and/or private large-scale projects. In doing so, it should address the already identified flaws in the application of FPIC in the country to reinforce it in practice in accordance with international standards. The NCP should play a role in this regard, improving its visibility and accessibility to handle cases submitted by indigenous and Afro-Mexican peoples.***

#### *Human rights defenders*

As recommended in the OECD Due Diligence Guidance for RBC, people that may be affected by adverse impacts should be engaged in decision-making processes in the context of due diligence, including human rights defenders, who should be consulted both prior to and during projects or activities that may affect their communities to identify and assess specific actual and potential adverse impacts.

Mexico is one of the most dangerous countries for human rights defenders (Amnesty International, 2020<sup>[78]</sup>). In 2019, it ranked 4<sup>th</sup> in the world for human rights defender killings (Front Line Defenders, 2019<sup>[79]</sup>) and in 2020 it was labelled as the deadliest country worldwide for journalists (CPJ, 2020<sup>[80]</sup>). Territory, land and environmental rights defenders, as well as indigenous leaders, in Mexico constantly face risks such as death threats, harassment, and violent attacks in their homes or workplaces (UN Human Rights Council, 2018<sup>[81]</sup>; WOLA, 2020<sup>[82]</sup>). A huge proportion of these aggressions and attacks are linked to “individuals openly opposing large-scale development projects and the illegal exploitation of natural resources” (WOLA, 2020<sup>[82]</sup>).

In 2012, Mexico created the Mechanism to Protect Human Rights Defenders and Journalists (*Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*) (Government of Mexico, 2012<sup>[83]</sup>; Government of Mexico, n.d.<sup>[84]</sup>). Since its creation, 1,144 individuals received some form of protection from this mechanism housed within the SEGOB’s Human Rights Unit (Government of Mexico, 2019<sup>[85]</sup>). However, there are still many challenges for its functioning to be fully effective (UNOHCHR,

2018<sup>[86]</sup>). For instance, it currently does not contemplate any type of collaboration with, or feedback from, the private sector, which is an important factor given that concerns for the rights of human and environmental rights defenders are often linked to the development of business-related activities, in particular large-scale projects.

In his visit to Mexico in 2017, the UN Special Rapporteur on the Situation of Human Rights Defenders pointed out in this regard that “community leaders and defenders of land and environmental rights who oppose large-scale projects are facing acts of violence, and that violence often goes unpunished” (UN Human Rights Council, 2018<sup>[81]</sup>). The main factors behind this issue, according to the Special Rapporteur, are the low degree of independence of the judiciary, the high level of corruption of public officials, and the exploitation of the justice system by companies and other parties, who file complaints against human rights defenders (UN Human Rights Council, 2018<sup>[81]</sup>).

In light of recent attacks on human rights defenders and journalists, various organisations have called on the Government to develop a comprehensive policy that would include provisions to ensure their protection, but also to prevent, investigate, punish, and remedy the crimes perpetrated against them (Espacio OSC, 2019<sup>[87]</sup>). This is particularly urgent for those human rights and environmental defenders who have denounced possible impacts of large-scale projects, such as the Mayan Train or the Trans-isthmian Corridor. This is all the more urgent as attacks on human rights defenders have not stopped in the context of the COVID-19 crisis. Aiming to inform and alert on possible human rights impacts during the pandemic, the SEGOB’s General Directorate of Human Rights Policy issued a document entitled “Observations on Human Rights Violations during the COVID-19 Health Contingency” warning that, despite the health contingency measures, a worrying climate of violence against human rights defenders persists in Mexico, in particular for those defenders whose activity is the defence of the right to health protection (Government of Mexico, 2020<sup>[88]</sup>).

The ratification – and consequent implementation – by Mexico<sup>48</sup> of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) constitutes an important opportunity for Mexico to design and implement a policy to ensure the protection of human and environmental rights defenders. This is indeed the world’s first international agreement that includes provisions on the protection of human rights defenders in environmental matters.

***Mexico should ensure that human rights defenders who have suffered from adverse impacts in the past can have access to remedy and that those responsible for such impacts are held accountable. Going forward, Mexico should make sure that human rights defenders are effectively protected against all forms of violence, and especially those who defend their territories and natural resources, and are most exposed to threats and attacks. Mexico should also raise companies’ awareness of the necessity of involving human rights defenders in due diligence processes.***

### *Women’s rights and gender equality*

Women (girls included) in Mexico experience business-related human rights impacts in unique ways and are often disproportionately affected by these impacts (UNOHCHR, 2019<sup>[89]</sup>). According to the report “Women, Government and Policy Making in OECD Countries: Fostering Diversity for Inclusive Growth”, the Government’s capacity to address this issue and respond to overcome gender gaps – “such as those found in employment, unpaid work, violence, and access to decision-making roles – and deliver gender inclusive policy results depends on the quality of the institutional framework for designing and, most importantly, implementing gender sensitive policies” (OECD, 2014<sup>[90]</sup>).

Mexico has one of the lowest rates of female participation in the labour market. Only 47% of working age Mexican women are part of the labour force, compared with an OECD average of 67% and levels of around 60% in Chile, Colombia, Peru and Brazil (OECD, 2017<sup>[91]</sup>). The country also has one of the biggest gaps between male and female not in employment, education or training. Most inactive youth in Mexico are

women (OECD, 2017<sup>[92]</sup>) and Mexico has the highest adolescent pregnancy rate among OECD countries (Government of Mexico, 2021<sup>[93]</sup>).<sup>49</sup> As a result, in 2020, Mexico ranked significantly low in the WEF Global Gender Gap Index in terms of “Economic Participation” and “Opportunity for Women” (124<sup>th</sup> out of 153<sup>th</sup> countries, with a score of 0.574) (WEF, 2020<sup>[94]</sup>).

Women workers in the country are principally present in three important sectors: domestic work; agriculture and garment. Although all of them share major issues such as sexual harassment and inequalities, the situation in the maquilas<sup>50</sup> in Mexico is usually taken as an example for its adverse impacts on women and girls. Most women working in maquilas are informal workers who lack suitable equipment, generally work 12-13 hours a day, are abused by co-workers, and do not earn sufficient wages for a dignified life (UNOHCHR, 2019<sup>[95]</sup>).

Since 2009, the Ministry of Labour and Social Welfare (*Secretaría del Trabajo y Previsión Social*, STPS) implements the Mexican Norm<sup>51</sup> NMX-R-025-SCFI-2015 on Labour Equality and Non-Discrimination (*Norma Mexicana NMX-R025-SCFI-2015 en Igualdad Laboral y No Discriminación*), which is based on international and national regulations on equality and non-discrimination in employment, social security, adequate work environment, accessibility, and freedom of association (Government of Mexico, 2015<sup>[96]</sup>). The objective of the Norm is to evaluate and certify good business practices in workplaces regarding equality and non-discrimination. It also identifies good practices across companies such as mechanisms to prevent, address and sanction discrimination practices, recruitment and selection processes without discrimination, and organisational commitments.<sup>52</sup> More than 400 companies and workplaces (including public institutions) have been certified to date.<sup>53</sup>

In the private sector, the CCE and the Mexican Business Council (*Consejo Mexicano de Negocios*, CMN) made a commitment before UN Women to reduce the gender gap, in line with the findings of the first joint study on “Gender equality in the private sector” developed with the support of the Global Compact Network Mexico. (UN Women Mexico, 2020<sup>[97]</sup>). This commitment includes advocating for gender equality in businesses’ relationships and communications, investing in development programs and projects that promote gender equality and the empowerment of women, and supporting initiatives that address the deepening of gender gaps as a consequence of the COVID-19 crisis (FORBES, 2020<sup>[98]</sup>).

***Mexico should consider the possibility of including a gender approach in the development of an eventual NAP or national policy instrument on business and human rights, and seek to build a coherent approach across its labour policies and regulations in this regard beyond the Norm NMX-R-025-SCFI-2009 in order to address the specific issues women are facing in the workplace, mainly discrimination and harassment.***

### ***3.1.3. Due diligence, dealing with business-related human rights impacts in a preventative manner***

Central to the OECD MNEs Guidelines,<sup>54</sup> and to its human rights Chapter,<sup>55</sup> is the requirement that companies conduct due diligence to ensure that adverse human rights impacts are correctly identified, tracked, prevented and/or addressed, and that they provide for or cooperate in remediation where harm has occurred. This requirement applies indistinctly to multinational and domestic enterprises and independently of their ownership (private or public) (OECD, 2018<sup>[99]</sup>). In this regard, the UNWG stressed in its 2017 report that human rights due diligence requires consultation not only with indigenous peoples, for which specific human rights standards apply, but also with all other affected communities<sup>56</sup> (UN Working Group on Business and Human Rights, 2017<sup>[47]</sup>). This approach is also outlined in the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, which underlines the role of companies in avoiding and addressing adverse human rights impacts.

In line with specific impacts on particular groups, the most recurrent patterns of business-related human rights violations in Mexico pertain to the right to land and territory, the right to access to information and

the right to a healthy environment (Government of Mexico, 2019<sub>[100]</sub>). These violations often occur in the context of the development of business-related activities, in particular large-scale projects, due to inadequate human rights due diligence in their design and implementation (UN Working Group on Business and Human Rights, 2017<sub>[47]</sub>).

For instance, Mexico is one of the countries with the highest number of social conflicts in the mining industry in Latin America, registering 55<sup>57</sup> of the 277 conflicts identified in the region by the Observatory of Mining Conflicts of Latin America (OCMAL) (OCMAL, 2020<sub>[101]</sub>). Government diagnostics coincide with those of CSOs and academia in pointing to mining as one of the main causes of social and environmental conflicts in Mexico (PODER, 2020<sub>[102]</sub>; Gómez and Peláez, 2020<sub>[103]</sub>). They both explain that minerals extraction and processing methods have turned the activity into an important source of contamination affecting the environment and the health of local populations. This situation has been nurtured – especially during the last twenty years – by a legal and institutional framework that tend to be very permissive particularly with respect to the granting of concessions (Gómez and Peláez, 2020<sub>[103]</sub>).

Sectoral conflicts related to large-scale projects have also been exacerbated by the COVID-19 crisis. Different CSOs have denounced before the Special Representative of the European Union for Human Rights serious human rights issues that have had an important impact on vulnerable people such as human rights defenders, migrants and indigenous peoples amidst the crisis (PODER, 2020<sub>[102]</sub>). In particular, they have criticised the lack of FPIC and impact assessments on human and environmental rights for large-scale projects currently under development such as the Mayan Train or the Trans-isthmian Corridor (CCMSS, 2020<sub>[104]</sub>; CEMDA, 2020<sub>[105]</sub>). However, this kind of projects seems to remain a priority for the Government, even despite the pandemic (FORBES, 2021<sub>[106]</sub>).

***Mexico should seek to prevent social conflicts arising from business-related activities, and in particular large-scale projects, which often increase the risks of human rights violations and/or tend to create situations prone to such risks. It should actively encourage all companies, independently of their size and nature, to conduct due diligence on the basis of the OECD Due Diligence Guidance to identify, prevent and mitigate adverse impacts on human rights and carry out meaningful stakeholder engagement. It should also ensure that the NCP participates in these efforts and receives sufficient resources to prioritise the promotion of due diligence among businesses, particularly those engaging in large-scale projects.***

## Policy recommendations

1. **Materialise the Government’s commitment, enshrined in the National Human Rights Programme (*Programa Nacional de Derechos Humanos*) for 2020-2024, to develop a National Action Plan on Business and Human Rights (NAP) and ensure a transparent and balanced participation of all relevant actors in the development process of such NAP, including relevant ministries and government agencies, the National Human Rights Commission (*Comisión Nacional de Derechos Humanos, CNDH*), CSOs, trade unions, indigenous peoples, human rights defenders, women and businesses. Give an active role to the National Contact Point for RBC (NCP) in the development process of the NAP to help bring together the different governmental actors involved in the RBC / business and human rights agenda and promote coherence and alignment of existing policies with the NAP.**
2. **Ensure that laws protecting human rights, including through prevention and mitigation, are effectively enforced, and that remedies are available when violations caused by businesses occur.**
3. **Encourage all companies, independently of their size and nature, to conduct due diligence on the basis of the OECD Due Diligence Guidance in order to identify and assess actual and**



potential adverse human rights impacts, cease, prevent and mitigate such impacts, and carry out meaningful stakeholder engagement.

4. Ensure the protection of vulnerable groups through enhanced cooperation between the Ministry of Interior (*Secretaría de Gobernación*) and the CNDH to coherently promote the respect of their human rights in the context of business activities, particularly the development of large-scale projects.

## 3.2. Labour Rights

The OECD MNEs Guidelines aim to promote the observance by enterprises of the international labour standards developed by the ILO, notably the fundamental principles and rights at work, as recognised in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (ILO 1998 Declaration). Chapter V on “Employment and Industrial Relations” of the OECD MNEs Guidelines notably puts forth recommendations in relation to the provision of adequate information to workers on company operations, ensuring consultation and cooperation between employers and workers, as well as providing the best possible conditions of work, including adequate wages and occupational safety and health at work. Businesses are also expected to conduct due diligence on their operations and throughout their supply chains to identify, prevent and mitigate actual or potential adverse impacts on labour rights.

### 3.2.1. Legal and institutional framework

#### *Legal framework*

At the international level, Mexico has ratified 81 ILO Conventions, including the eight Fundamental Conventions, and one of the four Governance Conventions<sup>58</sup> (see Box 3.5).

#### **Box 3.5. ILO Fundamental and Governance Conventions ratified by Mexico**

##### **ILO Fundamental Conventions**

- Forced Labour Convention, 1930 (No. 29);
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Equal Remuneration Convention, 1951 (No. 100);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Minimum Age Convention, 1973 (No. 138);
- Worst Forms of Child Labour Convention, 1999 (No. 182).

##### **ILO Governance Conventions<sup>1</sup>**

- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Note:

1. Mexico has not yet ratified the following ILO Governance Conventions: C081 - Labour Inspection Convention, 1947 (No. 81); C122 - Employment Policy Convention, 1964 (No. 122); C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129). Neither has Mexico ratified the 2014 Protocol to the Forced Labour Convention, 1930 (P029).

Source:

ILO (n.d.), Ratifications for Mexico, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102764](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102764).

At the national level, the Mexican Constitution recognises the right to decent work, minimum wage and minimum work age, the right to equal pay for equal work, protection against arbitrary dismissal, as well as the right to collective bargaining and to strike.<sup>59</sup> More specifically, Articles 107 and 123 of the Constitution deal with labour relations and Article 123 lays out general principles on labour and social security. Beyond the Constitution, Mexico's legal and regulatory framework on labour rights and employment relations is comprised of the Federal Labour Law (*Ley Federal del Trabajo*)<sup>60</sup> (Government of Mexico, 1970<sub>[107]</sub>), which is complemented by the Social Security law (*Ley de Seguridad Social*) (Government of Mexico, 1995<sub>[108]</sub>). In addition, a special labour law has been enacted for public workers (*Ley Federal de los Trabajadores al Servicio del Estado*) (Government of Mexico, 1963<sub>[109]</sub>).

All of these constitutional and legal provisions were updated in the framework of the 2017 labour reform. This reform, which resulted from years of advocacy by national and international trade unions (Maquila Solidarity, 2017<sub>[110]</sub>) (Government of Mexico, 2017<sub>[111]</sub>), represented a milestone for the strengthening of trade union rights and the quality of justice for labour matters in Mexico. The Constitutional Decree of 24 February 2017 (Government of Mexico, 2017<sub>[112]</sub>) amended and added various constitutional provisions, mainly into articles 107 and 123 of the Constitution, in relation to three main issues (Government of Mexico, 2017<sub>[111]</sub>):

- First, in order to eradicate the so-called “employer protected unions”, it became mandatory for trade unions to verify that they actually represent workers through a free and secret vote.
- Second, the labour claims, which were until then handled by conciliation and arbitration boards belonging to the executive branch, were transferred to labour courts in the judicial branch to improve the process and the quality of justice.
- Third, in order to favour conciliation as a dispute resolution method for labour matters, preliminary conciliation became mandatory to bring a claim before the labour courts.

In addition, as part of its commitments under the new trade Agreement between the United States, Mexico and Canada – the United States-Mexico-Canada Agreement (USMCA) (Government of Mexico, 2020<sub>[113]</sub>) –, Mexico started carrying out another labour law reform in 2019 to complement the existing constitutional provisions and strengthen the implementation of ILO standards. Following the 2017 Constitutional Decree, the main points of the 2019 labour reform include: the creation of Specialised Labour Courts (*Tribunales Laborales Especializados*); the acknowledgement of the right of workers affiliated to a trade union to cast a personal, free, direct and secret vote for the election of their boards; and the creation of a Federal Centre for Labour Conciliation and Registration (*Centro Federal de Conciliación y Registro Laboral, CFCRL*). The latter will be in charge of keeping a record of trade unions and collective agreements existing at the national level and to monitor that unions' rights and workers' collective interests are respected (Government of Mexico, 2019<sub>[114]</sub>). The 2019 labour reform is foreseen to be concluded in 2023 with the installation of all regional CFCRL offices and the opening of the Specialised Labour Courts (Government of Mexico, 2019<sub>[114]</sub>).

The main policy instrument on labour issues is the 2020-2024 Sectoral Programme for Labour and Social Security (*Programa Sectorial de Trabajo y Previsión Social 2020-2024*), which derives from the PND (Government of Mexico, 2020<sub>[115]</sub>). It aims to promote and guarantee access to decent work and social security, to respond to structural issues such as discrimination, weak social dialogue, and to develop a wage recovery policy, in compliance with ILO standards.<sup>61</sup> This Programme, along with the labour reforms of 2017 and 2019, presents an opportunity to tackle some of the structural challenges that Mexico's legal and institutional framework for labour matters has been facing over the years.

Labour rights in Mexico are regularly the object of concerns and complaints before ILO's supervisory bodies. Overall, there have been 61 complaints (one of which is still active) against Mexico before the ILO Committee on Freedom of Association,<sup>62</sup> and nine representations for alleged violations of other ILO Conventions.<sup>63</sup> In addition, the number of labour conflicts in the country is considerably high. In 2019, 238,532 labour disputes (individual and collective) were filed, amounting to an increase of 4.7% compared to 2018. In the same vein, 27,008 strike action cases were registered in this same year and the number of strikes reached 76 (44 more than in 2018), resulting in an increase of 137.5% as compared to 2018 (INEGI, 2019<sup>[116]</sup>). Furthermore, it is worth noting that the five cases handled by the Mexican NCP<sup>64</sup> to date dealt with Chapter V of the OECD MNEs Guidelines on "Employment and Industrial Relations". Although the last case dates from 2012, all of the specific instances were initiated either by trade unions or by a Non-Governmental Organisation (NGO) representing several trade unions.

### *Institutional framework*

The labour institutional framework in Mexico is rather complex and involves different government actors. The institution in charge of designing, coordinating and implementing labour-related policies is the Ministry of Labour and Social Welfare (*Secretaría del Trabajo y la Previsión Social*, STPS)<sup>65</sup> (Government of Mexico, 2020<sup>[117]</sup>). The STPS also engages with trade unions and businesses on labour issues by monitoring the implementation of, and compliance with, the provisions contained in Article 123 and others of the Constitution and of the Federal Labour Law. For this purpose, the General Directorate of Federal Labour Inspection (*Dirección General de Inspección Federal del Trabajo*), attached to the STPS, is in charge of developing and implementing the new National Labour Inspection Programme introduced in 2019 and according to which employers can be investigated and sanctioned in case of non-compliance (Government of Mexico, 2019<sup>[118]</sup>).

The last Performance Audit of the Instrumentation of the Labour Policy (*Auditoría de Desempeño de la Instrumentación de la Política Laboral*), carried out in 2018, showed that, although inspections of workplaces increased over recent years, this was not reflected in an improvement of workers' safety conditions. In the 2001-2017 period, occupational accidents increased by an annual average rate of 1.5%, illnesses by 6.1%, and deaths by 1.5% (Government of Mexico, 2017<sup>[119]</sup>). Also, according to the INEGI, between 2018 and 2019, individual and collective labour conflicts increased by 4.7% (INEGI, 2019<sup>[120]</sup>). This situation has been aggravated by the COVID-19 crisis, which has had a significant impact on workers' fundamental rights in Mexico. A recent report from the Business and Human Rights Resource Centre (BHRRC) indicates in this regard that the most common allegations arising since the beginning of the pandemic pertain to violations of the right to health (40%) which, in turn, involve the following issues: lack of implementation of adequate health measures; exposure to or lack of support for workers in high-risk situations, either at the workplace or in transportation to and from their homes; unjustified, arbitrary or mass dismissals; and other adverse impacts such as wage reduction, "forced holidays" without pay, and drops in social benefits, among others (BHRRC, 2020<sup>[121]</sup>).

To address these issues, the new National Labour Inspection Programme of the STPS aims to substantially increase the quality of inspections by notably adjusting the procedures for on-site inspections and putting emphasis on the health and safety conditions of workers, the comprehensive protection of their labour rights and the eradication of abusive hiring practices. The STPS is also focusing on the inspection of informal companies, seeking to improve the legal framework governing such inspections so as to ensure that the workers of these companies are properly hired and registered with social security (see Section 3.2.3).

Furthermore, the STPS recently created a Decent Work Unit, which groups together the inspection and decent work areas and has specific resources dedicated to the promotion of decent work (Factor Capital Humano, 2020<sup>[122]</sup>). It has also developed an accreditation system to promote good labour practices among businesses (see Box 3.6).

### Box 3.6. STPS' Accreditation System

In order to promote good labour practices by businesses, the STPS developed in 2019 an Accreditation System for Good Labour Practices and Decent Work. Through this system, businesses can declare their level of compliance with labour regulations, certify that they have adopted good practices that go beyond the legal requirements, and receive assistance in the implementation of occupational health and safety management systems.<sup>1</sup> STPS's Accreditation System has three major components:

- A Voluntary Labour Verification Programme, which functions as a window to access the system and has an online component, as well as an on-site verification visit.<sup>2</sup>
- A Certification in Labour Responsibility, which grants a certification to businesses that observe labour standards going beyond the requirements of Mexican law through a common set of criteria relating to labour equality, labour inclusion and the eradication of child and forced labour.
- A Programme of Self-Management in Safety and Health at Work, which allows businesses to implement management systems in occupational safety and health through computer assistants and assistance from federal labour inspectors.<sup>3</sup>

This Accreditation System is built upon relevant international standards such as the International Organization for Standardization (ISO) 26000 Guidance on CSR<sup>4</sup> and the International Finance Corporation (IFC) / World Bank's Performance Standard 2 on Labour and Working Conditions.<sup>5</sup>

Notes:

1. Government of Mexico (2020), Distintivos que otorga la Secretaría del Trabajo y Previsión Social, <https://www.gob.mx/stps/acciones-y-programas/distintivos-que-otorga-la-secretaria-del-trabajo-y-prevision-social>.

2. Factor Capital Humano (2020), ¿Quieres evitar inspecciones de la STPS? En el autocumplimiento está la clave, <https://factorcapitalhumano.com/leyes-y-gobierno/quieres-evitar-inspecciones-de-la-stps-en-el-autocumplimiento-esta-la-clave/2020/05/>.

3. Government of Mexico (2020), ¿Qué es el PASST?, <https://autogestionsst.stps.gob.mx/Proyecto/Publico/Default.aspx>.

4. ISO (n.d.), ISO 26000 – Social Responsibility, <https://www.iso.org/iso-26000-social-responsibility.html>.

5. IFC (n.d.), IFC/World Bank's Performance Standard 2 – Labour and Working Conditions, [https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps2](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps2).

The STPS also has a subsidiary body in charge of protecting workers' rights through advisory services, conciliation and legal representation, namely, the Federal Attorney for the Defense of Labour (*Procuraduría Federal de la Defensa del Trabajo*, PROFEDET) (Government of Mexico, 2020<sub>[123]</sub>). The PROFEDET has the power to represent or advise workers and their unions before any authority, whenever they request it, on matters related to the application of labour standards (PROFEDET, 2019<sub>[124]</sub>).

In addition to the General Directorate of Federal Labour Inspection of the STPS and the PROFEDET, the 2019 labour reform introduced an additional consultation, planning and coordination body: the Coordination Council for the Implementation of the Labour Justice System Reform (*Consejo de Coordinación para la Implementación de la Reforma al Sistema de Justicia Laboral*) (Government of Mexico, 2019<sub>[125]</sub>). This Council aims to harmonise national policies as needed to implement the labour justice system reform at the federal and local levels. It is made up of the STPS, the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*, SHCP), the judicial branch, the National Conference of Governors (*Conferencia Nacional de Gobernadores*, CONAGO), the National Commission of Superior Courts of Justice (*Comisión Nacional de Tribunales Superiores de Justicia*, CONATRI), and the National Conference of Labour Secretaries (*Conferencia Nacional de Secretarios del Trabajo*, CONASETRA).

These recent additions to the institutional labour framework are a welcome development as the resolution of labour disputes in Mexico has been complicated over recent years by the limited capacity of the judicial

system and the increase in the number of labour disputes. On average, out of 1,000 workers, six filed labour complaints in 2019 (INEGI, 2020<sup>[12]</sup>). It is expected that the new Specialised Labour Courts and the corresponding financial and human resources will contribute to solve these issues and ensure access to justice for labour matters.

However, despite the progress made with the 2017 and 2019 labour reforms, trade unions have been calling for a more institutionalised social dialogue at the national level through the creation of an increased number of spaces for dialogue. In this regard, it remains to be seen whether the implementation of the 2019 labour reform will lead to more democratic industrial relations and greater respect for the union and collective bargaining rights of workers. For instance, at the time of writing, the five discussion roundtables foreseen by the 2019 labour reform were not functioning.

***Mexico should strengthen the mechanisms to implement the 2019 labour reform, especially in light of the impact of the COVID-19 crisis on workers. It should notably ensure that workers do not face obstacles to access the benefits brought about by the reform for the protection of their fundamental labour rights. The Coordination Council for the Implementation of the Labour Justice System Reform, in particular, should make the necessary institutional arrangements at the federal and local levels to promote effective social dialogue on labour-related policies.***

### **3.2.2. Specific labour rights impacts related to business in Mexico: fundamental labour rights**

#### *Freedom of association and collective bargaining*

Although the Federal Labour Law recognises the right to form trade unions without any distinction or prior authorisation,<sup>66</sup> Mexico has a very low level of collective bargaining coverage and a low number of unionised workers. With a collective bargaining rate of 9.9%, Mexico ranks just above Peru (4.8%), but has one of the lowest collective bargaining rates among upper-middle income economies in Latin America as compared to Brazil's (70%), Argentina's (50%), Chile's (18%), and Colombia's (16%).<sup>67</sup> Additionally, allegations of anti-union practices are frequent and the large proportion of self-employment and informality in Mexico (see Section 3.2.3) raises additional challenges for collective bargaining, since self-employed and informal workers are generally not unionised. Moreover, according to the International Trade Union Confederation (ITUC)'s Global Rights Index, Mexico is currently ranked among the worst countries for workers (Category 4 – Systematic Rights Violations<sup>68</sup>) (ITUC, 2019<sup>[126]</sup>).

This situation might partly explain why Mexico only ratified ILO Convention No. 98 on the Right to Organise and Collective Bargaining in 2018 (ILO, 2020<sup>[127]</sup>) and also why the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR) recently encouraged the Government to fulfil its obligation to publish the registration and statutes of trade unions, as well as existing collective agreements, and to “ensure that trade unions are able to exercise their right to freedom of association in law and practice” (ILO, 2019<sup>[128]</sup>).

***Mexico should reinforce the mechanisms guaranteeing the full application in law and practice of the right to freedom of association and collective bargaining, which are at the core of Chapter V of the OECD MNEs Guidelines and are instrumental for the exercise of all labour rights.***

#### *Child labour*

Child labour remains pervasive in Mexico. It is the second country in LAC with the highest prevalence of child labour, below Brazil and above Peru (El Economista, 2020<sup>[129]</sup>). In 2018, the United Nations Children's Fund (UNICEF) estimated that almost 2.5 million children and adolescents were working in the country (UNICEF, 2018<sup>[130]</sup>). In the same vein, according to the Child Labour Module (*Modulo de Trabajo Infantil*, MTI) of the National Survey of Occupation and Employment (*Encuesta Nacional de Ocupación y Empleo*,

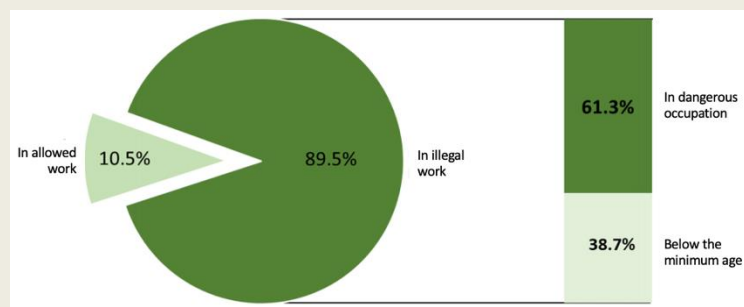
ENOE) (which was last updated in 2015), more than 2.2 million children and adolescents aged between 5 and 17 years carried out some economic activity. Among them, 60% were between 15 and 17 years old and 40% between 5 and 14 years old. 73% of these children and adolescents were male and 27% female (INEGI, 2019<sub>[131]</sub>). Children and adolescents in Mexico principally work in the agriculture (34.5%), services (22.3%), and retail (20.3%) sectors, as well as in the manufacturing, extractive, electricity, gas and water industries (14.3%), construction (6.9%) and other types of activities (1.7%) (INEGI, 2019<sub>[131]</sub>).

The Mexican Constitution prohibits child labour under the age of 15 (ILO-ECLAC, 2018<sub>[132]</sub>) and establishes the conditions under which adolescents can work to guarantee that their rights are respected in the performance of these activities. Adolescents over 15 years of age are allowed to do light work, limiting the activities they can perform to those that do not involve any risk or danger for their health and to a maximum of 6 working hours per day (Government of Mexico, 1970<sub>[107]</sub>) (see Box 3.7). The Federal Labour Law also provides that adolescents over 15 and under 18 years of age must obtain a medical certificate proving their aptitude for work and undergo medical tests periodically (Government of Mexico, 1970<sub>[107]</sub>).<sup>69</sup> In addition, the General Law on the Rights of Girls, Boys and Adolescents (*Ley General de los Derechos de Niñas, Niños y Adolescentes*, LGDNNA) stipulates that federal, state and municipal authorities must prevent, address and punish cases of child labour. This applies in cases in which children are under the minimum age of 15 years and/or in which the work carried out by adolescents older than 15 years may harm their health, education or impede their physical or mental development (Government of Mexico, 2014<sub>[133]</sub>).

### Box 3.7. Child labour in Mexico<sup>1</sup>

The Federal Labour Law considers work performed by minors under 15 years of age (the minimum age required to work) as illegal work, but not all work activities of adolescents are considered illegal work (see limitations above). According to the 2019 Child Labour Module (*Modulo de Trabajo Infantil*, MTI) an estimated 2.1 million children are engaged in unauthorized work in Mexico. Among them, 38.7% do not meet the minimum age to work and 61.3% perform dangerous work.

Figure A shows the percentage of children and adolescents between 5 and 17 years of age employed according to the status of child labour – allowed and not allowed – and the distribution by type of occupation not allowed in 2017.



In Mexico, child labour exists in almost all sectors. However, as shown in the table below, agriculture is the sector with the higher share of children engaged in illegal work (34.5%), followed by services (22.3%).



Economic activity sector	2007	2017
<b>Child population employed in illegal work</b>	<b>3 510 180</b>	<b>2 069 433</b>
Agricultural	32.1	34.5
Services	22.1	22.3
Commerce	22.9	20.3
Manufacturing industry, extractive, electricity, gas and water	14.6	14.3
Building	6.5	6.9
Not specified	1.8	1.7

Note:

1. The domestic labour market in Mexico and across the region is dominated by a high incidence of informality. Informality is more frequent among own-account workers, domestic workers and contributing family workers, and child labour is usually more prevalent within these categories.

Source:

Own elaboration based on INEGI data. See INEGI (2019), Press release: Estadísticas a propósito del día mundial contra el trabajo infantil (datos nacionales), [https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2019/infantil2019\\_Nal.pdf](https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2019/infantil2019_Nal.pdf).

Beyond the legal framework, the Government of Mexico is currently stepping up its efforts to prevent child labour in general and the worst forms of child labour in particular (Government of Mexico, 2019<sup>[134]</sup>). These efforts include the National Programme for the Protection of Girls, Boys and Adolescents (*Programa Nacional de Protección de Niñas, Niños y Adolescentes*, PRONAPINNA), which “sets out strategies and areas of work and facilitates the articulation of the public administration and the private and social sectors” (ILO, 2019<sup>[135]</sup>) and the Prevention and Care Programme for At-risk Minors (*Prevención y Atención de Menores en Riesgo*) coordinated by the National System for Comprehensive Family Development (*Sistema Nacional para el Desarrollo Integral de las Familias*).

While the ILO CEACR acknowledged the various programmes implemented by Mexico to eliminate child labour, it requested the Government to take the necessary measures to address the phenomenon by ensuring compliance with the minimum age to work, particularly for child migrant workers in the agriculture sector and children engaged in domestic work (ILO, 2019<sup>[135]</sup>). In this regard, the STPS recently announced that it would promote actions to eradicate child labour in Mexico in coordination with the INEGI (Government of Mexico, 2019<sup>[134]</sup>). Such actions will include the development of an award for child labour-free businesses and the update of the model of the MTI (INEGI, 2019<sup>[131]</sup>). The MTI is an initiative aimed to give indicators on the participation of children and adolescents in economic and dangerous activities, so that they can be analysed and taken into account for the design and implementation of actions for the prevention and eradication of child labour in Mexico.

***Mexico should ensure that the minimum age to work is being complied with, particularly in sectors where child labour is prevalent such as agriculture. It could also consider involving independent evaluators and representatives from CSOs in the newly created public initiatives and programmes to enhance monitoring and give visibility to best practices for the elimination of child labour.***

### *Forced labour*

Despite the constitutional prohibition of forced labour, and the provisions of the Federal Labour Law and the 2012 General Law to Prevent, Punish and Eradicate Human Trafficking Crimes and for the Protection and Assistance to the Victims of such Crimes (*Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos*) (Government of Mexico, 2012<sup>[136]</sup>), forced labour continues to be present in Mexico, especially among migrant workers in sectors with high rates of informality, such as agriculture (Inter Press Service, 2019<sup>[137]</sup>). This is notably reflected by the fact that Mexico ranked 114<sup>th</sup> (out of 167 countries) in the 2018 edition of the Global Slavery Index (Walk Free, 2018<sup>[138]</sup>) and that in 2020 the United States (U.S.)’ Department of

Labour (DOL) identified at least 13 Mexican products involving forced labour (including, beans, coffee, cucumbers, eggplants, melons, onions, sugarcane and tobacco) (U.S. Department of Labor, 2020<sup>[139]</sup>).

To fight the phenomenon, the STPS established in 2017 an inspection protocol to identify victims of forced labour in registered businesses and farms and report such crimes to law enforcement officials (Government of Mexico, 2017<sup>[140]</sup>). However, in 2019, the Government announced that it would stop providing funding to CSOs working on human trafficking (Reuters, 2019<sup>[141]</sup>). This could be a major obstacle to fighting forced labour, especially for migrant workers. In this regard, to ensure compliance with the Forced Labour Convention (No. 29), the ILO CEACR recently requested the Mexican Government to pursue its efforts to combat human trafficking, strengthen the capacities of the judicial, legislative and executive branches, as well as that of police, labour inspectorates and public prosecution authorities to improve the identification of the victims of trafficking, both for sexual and labour exploitation (ILO, 2021<sup>[142]</sup>).

***Mexico should ensure that its labour laws and regulations pertaining to forced labour are enforced. It should notably dedicate sufficient resources and mechanisms to monitor the effective implementation of such laws and regulations in sectors with high rates of informality, such as agriculture, which are more prone to involve forced labour, particularly from migrants. Mexico should also make sure that the PROFEDET has sufficient capacity to monitor business compliance with the laws and regulations on forced labour and respond to any infringements.***

#### *Non-discrimination*

One of Mexico's greatest challenges with respect to labour law matters is to ensure non-discrimination in employment and occupation, as well as equality of opportunities between men and women. In 2020, Mexico scored 0.64 in the Global Gender Gap Index with respect to "Economic Participation" and "Opportunity for Women", which means that Mexican women are 36% less likely to have equal economic participation and opportunities than men. Mexico also scored 0.72 on wage equality for similar work, meaning that Mexican women are approximately 28% less likely to receive an equal wage to that of men for similar work (WEF, 2020<sup>[94]</sup>). In fact, Mexico has one of the worst gender wage gap (28%) in Latin America (where the average is 17%) and one of the widest among OECD member countries (where the average is 13%) (OECD, 2020<sup>[143]</sup>).

Besides, sexual harassment at the workplace continues to be a widespread practice in Mexico. The most recent National Survey on the Dynamics of Household Relationships (INEGI, 2016<sup>[144]</sup>) showed that 27% of the women surveyed had experienced gender-based violence at work. In addition, 22.1% of women reported having suffered some type of discrimination in the workplace, with 11.8% of working women having been asked for a pregnancy test (INEGI, 2016<sup>[144]</sup>).

In order to address the issue of sexual harassment at the workplace, the 2019 labour reform established a series of mechanisms. The Federal Labour now "obliges businesses, as employers, to implement – with the participation of workers – a protocol to prevent and redress gender-discrimination, gendered-based violence, and sexual harassment, which must contain an operational grievance mechanism" (Open Global Rights, 2020<sup>[145]</sup>). Also, the reform created a "pre-judicial state-based conciliation procedure that provides victims of sexual harassment in the workplace the option to bring their case before a conciliator (mediator) prior to submitting a judicial claim" (Open Global Rights, 2020<sup>[145]</sup>). However, as these mechanisms were only put in place recently, their real impact on the reduction of sexual harassment at the workplace still remains to be seen.

In addition, the STPS promotes the implementation of the Mexican Norm NMX-R-025-SCFI-2015 on Labour Equality and Non-Discrimination among businesses (Government of Mexico, 2015<sup>[96]</sup>). This Norm certifies public and private companies that adopt and implement practices to promote labour equality and non-discrimination (see Section 3.1.2).

Notwithstanding these measures, an increase of discrimination practices by businesses was reported during the COVID-19 crisis. As of September 2020, the National Council for the Prevention of Discrimination (*Consejo Nacional para Prevenir la Discriminación*, CONAPRED) registered more than 400 complaints linked to discrimination amidst the COVID-19 outbreak. Over three-quarters (76%) of the discrimination allegations related to illegal or unfair labour practices and lack of protection against the risk of infection (Jornada, 2020<sup>[146]</sup>). According to the CONAPRED, the three main events complained of were: (i) the obligation to work while at risk due to a personal condition; (ii) the denial or obstruction of a service; and (iii) the obligation to work on-site. CONAPRED also warned about the persistence of layoffs due to pregnancy in work centres throughout the country (CONAPRED, 2020<sup>[147]</sup>).

***Mexico should ensure that labour laws and regulations aimed to address discrimination are effectively implemented and enforced to discourage businesses from adopting discriminating practices at the workplace.***

### **3.2.3. Informality**

Informal employment in Mexico is the highest among OECD members (ILO, 2018, p. 87<sup>[148]</sup>) and represents a key structural challenge for the construction of an enabling environment for RBC in the country. Informality contributes to hamper the realisation of fundamental labour rights and makes it difficult to ensure that RBC principles and standards are applied throughout supply chains. Despite the efforts by the Mexican Government to address the phenomenon, recent data indicates that 22.5% of GDP comes from the informal economy and that labour informality remains particularly high, with around 57% of the Mexican workforce (15 to 64 years old) working without social security or pension coverage (INEGI, 2018, p. 1<sup>[149]</sup>). Although prevalent in the country, informality is a diverse phenomenon. While it concerns up to 80% of the workforce in the country's less developed states (such as Oaxaca, Chiapas and Guerrero), this share drops considerably in states with a significant manufacturing base (OECD/CAF, 2019, p. 419<sup>[150]</sup>). In addition, according to the 2019 OECD Economic Survey of Mexico, informality is particularly high among low-skilled workers and other vulnerable groups, such as part-time and older workers. (OECD, 2019, p. 94<sup>[7]</sup>). Young people in Mexico are also particularly affected by informal employment, and around 60% of those in informal jobs have been working in such a condition for at least one year (INEGI, 2020<sup>[12]</sup>).

Labour informality in Mexico is thus a complex phenomenon with varying characteristics, which makes it a difficult issue to examine under a policy approach (OECD, 2019, p. 12<sup>[7]</sup>). For instance, companies can be formally incorporated and pay taxes, but informal when it comes to hiring practices or social security. Recent data shows, for instance, that out of a total of 27.1 million people employed in companies, 18.9% belong to the informal sector because they have no formal contract with the company they work for (IDIC, 2020<sup>[151]</sup>) or that only 20 million jobs in Mexico are insured by the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*, IMSS) (IMSS, 2020<sup>[152]</sup>).

This situation is also largely due to the high levels of outsourcing in Mexico, a mechanism commonly used to hire people for the provision of services but without an employment relationship. According to recent data, in the last five years, outsourcing registered an increase of 37% in the country, which represents more than 4 million people employed under this scheme (INEGI, 2019<sup>[153]</sup>). The use of outsourcing is particularly risky in terms of potential adverse impacts as it impedes having adequate control on contracted service providers, which can be responsible for RBC issues, such as poor working conditions, child labour or environmental pollution (Hiquet, Rose; Won-Yong Oh, 2019, pp. 336-347<sup>[154]</sup>). To address this particular problem, the Mexican Government recently presented a bill to reform outsourcing that aims to end tax fraud and its effect on workers' rights (Government of Mexico, 2020<sup>[155]</sup>). It was noted in this regard that some of the companies that evade their social contributions have up to 250 thousand outsourced workers, which implies a high risk of workers' exploitation with potential adverse impacts on their labour and social security rights (Government of Mexico, 2020<sup>[156]</sup>).

In light of this context, promoting the transition to formal economic activity and formal employment in Mexico requires a comprehensive strategy including several policy actions in the fiscal, labour, regulatory and productive transformation fields, as well as on social protection (OECD, 2020<sup>[157]</sup>). Such strategy can build on existing policy advice on formalisation and relevant experiences from around the world (see Box 3.8).

### Box 3.8. Examples of policy advice and government actions to promote formalisation

Recent intergovernmental discussions at the OECD on informality and social inclusion in the context of the COVID-19 crisis in LAC have addressed how policy action can contribute to boost formal employment. In the framework of the 2020 OECD-LAC Ministerial Summit, four broad policy actions were identified in this regard. They are as follows:

- i. promoting education and skills;
- ii. tailoring support for SMEs and own-account workers to scale-up their activities and participation in value chains;
- iii. directing support towards the most vulnerable groups active in the informal economy, and developing social protection systems; and
- iv. enhancing a consistent and accurate framework to track and measure informality.<sup>1</sup>

Additionally, six specific initiatives were also deemed relevant to reduce informality:

- First, using digital technologies to reach citizens who might otherwise remain outside the remit of social protection mechanisms.
- Second, simplifying and improving official universal registries (that is, the databases containing information on the population having recourse to social protection mechanisms) in order to facilitate and expedite access to such mechanisms and promoting the use of single identity documents, which can advance transition to formal employment.
- Third, providing incentives to households and companies with informal employees to formalise them.
- Fourth, increasing awareness among businesses of the benefits of formalisation and integration into social security systems, as well as of the high costs of informality for individuals and society as a whole.
- Fifth, improving the accuracy and consistency of informality metrics.
- Sixth, recognising title guarantees of informal workers and indigenous communities, such as land and property rights, to promote their inclusion into formal working arrangements and enhancing informal workers' ability to participate in capital market mechanisms.<sup>2</sup>

In a similar vein, recent research by the Inter-American Development Bank (IADB) suggests that alternative systems of fiscal policy can contribute to boost labour formalisation. These include, for example, the introduction of Negative Income Tax (NIT) or Earned Income Tax Credit (EITC) programmes, which can create incentives for formalisation while generating fewer distortions than traditional non-contributory social programmes.<sup>3</sup>

Beyond policy advice from international organisations, relevant experiences from other countries can also be illustrative of different policy actions to address informality.

For example, the 2019 OECD SME Policy Index for Latin America points to initiatives by Argentina and Uruguay to facilitate fiscal and administrative procedures through the introduction of the *monotributo*. This is a lump sum payment combining several taxes and social security contributions for the self-

employed and micro-enterprises, which aims to simplify compliance and incentivise formal economic activities.<sup>4</sup>

Likewise, an ILO study comparing formalisation policies in several LAC countries to identify good practices highlights a policy in Costa Rica that made the insurance scheme for domestic employees more flexible. In 2017, the Costa Rican Social Security Fund (*Caja Costarricense de Seguro Social*), which regulates domestic workers' insurance, adopted a new calculation scale for social security contributions on the basis of the amount of working hours. This facilitated the insurance and formalisation of unprotected workers in accordance with the characteristics of their jobs.<sup>5</sup> Moreover, the study lists good practices of incentives to promote the payment of taxes by companies, including the establishment of low-cost controls and more timely and appropriate penalties in case of non-compliance.<sup>6</sup>

Notes:

1. OECD (2020), OECD-LAC Virtual Social Inclusion Ministerial Summit "Informality and Social Inclusion in the Times of COVID-19" – Background Note for the Session on "Informality and Employment Protection During and Beyond COVID-19: Good Practices and the Imperative of Universal Safety Nets", p. 4, <https://www.oecd.org/latin-america/events/lac-ministerial-on-social-inclusion/2020-OECD-LAC-Ministerial-Informality-and-employment-protection-during-and-beyond-COVID-19-background-note.pdf>.
2. OECD (2020), OECD-LAC Virtual Social Inclusion Ministerial Summit "Informality and Social Inclusion in the Times of COVID-19" – Key Conclusions and Policy Considerations, <https://www.oecd.org/latin-america/events/lac-ministerial-on-social-inclusion/LAC-Ministerial-2020-Policy-Considerations.pdf>.
3. Under NIT programmes, the beneficiaries receive a minimum income, which is given to individuals who do not work or who work informally. The main difference between NIT and traditional social support programmes is that, when individuals benefitting from the NIT programme gets a formal job, their allowance does not drop to zero, but gradually decreases as their income increases. The EITC programmes follow the same approach as the NIT, but differs from them in that, for individuals with low incomes, the allowance increases as the income increases. Then, when the income reaches a certain level, the allowance stop increasing and is progressively reduced to zero. See IADB (2021), Now it is the Time to Foster Labour Formalization in Latin America and the Caribbean, <https://blogs.iadb.org/gestion-fiscal/en/now-it-is-the-time-to-foster-labor-formalization-in-latin-america-and-the-caribbean/>.
4. OECD/CAF (2019), Latin America and the Caribbean 2019 - Policies for Competitive SMEs in the Pacific Alliance and Participating South American Countries, SME Policy Index, pp. 82, 226, 506, <https://doi.org/10.1787/24136883>.
5. ILO (2018), Políticas de formalización en América Latina – Avances y desafíos, p. 254, [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms\\_645159.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_645159.pdf).
6. ILO (2018), Políticas de formalización en América Latina – Avances y desafíos, p. 232, [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms\\_645159.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_645159.pdf).

***Building on existing policy advice on formalisation and relevant experiences from other countries, Mexico should design and adopt a comprehensive strategy integrating several policy actions to generate formal jobs, while eliminating the factors that incentivise businesses to remain in the informal sector. Likewise, Mexico should encourage large companies, as well as business organisations, to lead by example and ensure that their supply chains are comprised of formal sector actors, favouring suppliers that comply with social security obligations and respect workers' contractual rights.***

## Policy recommendations

- 5. Ensure that sufficient human and financial resources are dedicated to the implementation of the recent labour reforms and accelerate the institutional adaptation to such reforms, especially with regard to trade unions' rights and workers' access to judicial and non-judicial remedy mechanisms for labour matters.**

**6. Building on existing policy advice on formalisation and relevant experiences from other countries, design and adopt a comprehensive strategy integrating several policy actions to tackle informality and promote businesses' respect for labour rights, by ensuring that companies operating in Mexico are not only formally incorporated but also comply with their contractual and social security obligations with respect to workers.**

### 3.3. Environment

Chapter VI of the OECD MNEs Guidelines on the “Environment” calls on enterprises to take action to protect the environment, public health and safety, and generally to conduct activities in a manner contributing to the wider goal of sustainable development. This entails sound environmental management that aims to control both direct and indirect environmental impacts (including impacts on public health and safety); establishing and maintaining appropriate environmental management systems; and improving environmental performance. It also entails proactive action to avoid environmental damage; working to improve the level of environmental performance in all parts of companies' operations, even where this may not be formally required; setting measurable objectives; training and education of employees with regard to environmental matters; and disclosure and awareness raising with stakeholders. Other parts of the OECD MNEs Guidelines (e.g. the chapters on disclosure and on consumer interests) are also relevant to environmental impacts, including greenhouse gas (GHG) emissions. For example, the OECD MNEs Guidelines refer to expectations to set targets consistent with international commitments; disclosure of social and environmental risks; reporting with a particular focus on GHG emissions; providing access to information; and informing consumers of the environmental and social impact of their decisions.

#### 3.3.1. Business interactions with the natural environment: trends and key risks in Mexico

Mexico is one of the world's 17 megadiverse countries with abundant natural resources, including over 25,000 living species throughout 14 different ecosystems (Government of Mexico, 2020<sup>[158]</sup>). In 2020, the country ranked 51 out of 180 in the 2020 Yale Environmental Performance Index, which ranks countries' performance on environmental health and ecosystem vitality. Mexico ranked 1<sup>st</sup> in the LAC region for ecosystem vitality, and 15<sup>th</sup> in the region for environmental health. However, the country's position has substantially worsened in the index of species habitat, which measures the proportion of suitable habitats for species that remain intact (Yale Center for Environmental Law & Policy, 2020<sup>[159]</sup>). In this regard, the conversion of forested land to alternative and more profitable land uses, including crop and livestock production, urban expansion and infrastructure development, are key drivers of deforestation and biodiversity loss (USAID, 2019, pp. 22-23<sup>[160]</sup>). In addition, overexploitation of fisheries, pollution from agricultural run-off and domestic and industrial sewage waters, is contributing to the degradation of marine ecosystems (OECD, n.d.<sup>[161]</sup>).

In 2019, the estimated costs of environmental damage in Mexico amounted to 4.5% of the country's GDP, with total costs of depletion and environmental degradation derived from economic activities amounting to over 50 million USD (INEGI, 2019<sup>[162]</sup>).

Mexico is the 12<sup>th</sup> largest contributor to GHG emissions globally, and the second largest in LAC. At the same time, Mexico is one of the most vulnerable countries to the impacts of climate change in the region, being particularly affected by increasingly frequent and extreme weather events, such as flooding along the Pacific and Atlantic coasts and in the Gulf of Mexico, droughts in the northern states and wildfires throughout the territory (World Bank, 2018<sup>[163]</sup>).

Water stress is also a critical vulnerability for Mexico, having regard to the rapidly expanding agricultural sector, population growth and climate change. Water availability per capita has fallen sharply, dropping



from 18,035 cubic meters (m<sup>3</sup>) per year in 1950, to 3,392 m<sup>3</sup> per year in 2015 (Solano-Rojas, 2015, p. 5<sub>[164]</sub>). Moreover, rising global temperatures and shifting precipitation patterns are already affecting the country's hydrological cycles. The increasing strain on the country's scarce water resources is also leading to the overexploitation of groundwater (IADB, 2015<sub>[165]</sub>).

### 3.3.2. Legal and institutional framework

#### *Legal framework*

Mexico's environmental legal framework includes federal, state and municipal laws and regulations. Since the mid-1990s, Mexico has implemented a number of reforms in environmental policy and environmental management focused on reducing pollution and supporting sustainable use of natural resources (OECD, 2010<sub>[166]</sub>; World Bank, 2018<sub>[163]</sub>). As of February 2021, the country has signed and ratified 72 international instruments related to environmental protection<sup>70</sup> – including the Paris Agreement (Government of Mexico, 2021<sub>[167]</sub>). Environmental provisions are also present in some of the trade agreements concluded by Mexico, such as Chapter 24 of the USMCA, which aims to promote coherent trade and environment policies and practices to ensure high levels of environmental protection and the enforcement of environmental laws by the signatories (see Section 4.2.2).<sup>71</sup>

Article 4 of the Mexican Constitution includes the right to a healthy environment, and explicitly recognises the right of “access, provision and drainage of water for personal and domestic consumption in a sufficient, healthy, acceptable and affordable manner”. Although the constitutional guarantee of the right to water is a positive foundation for water governance in Mexico, the lack of updated secondary legislation poses challenges to the advocacy for this right (OAS, 2019, p. 39<sub>[168]</sub>).

Mexico's overarching federal environmental law is the General Law on Ecological Equilibrium and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*, LGEEPA) (Government of Mexico, 2018<sub>[169]</sub>). Companies that perform activities that may pose environmental risks are bound to comply with the LGEEPA, which establishes the regulatory basis for Environmental Impact Assessments (*Evaluaciones de Impacto Ambiental*, EIA) (OECD, 2013, p. 51<sub>[170]</sub>). The Ministry for the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, SEMARNAT), as the entity in charge of administering the LGEEPA, is responsible for approving EIAs (Government of Mexico, 2018<sub>[171]</sub>). Civil society has advised the Government of Mexico to improve the regulations requiring Strategic Environmental Assessments (SEAs), with the Federal Congress discussing the inclusion of SEAs in the LGEEPA. However, no reform has been approved to date (CEIBA, 2018<sub>[172]</sub>).

#### *Institutional framework*

The SEMARNAT is responsible for establishing the criteria and instruments to guarantee the protection, preservation, and use of natural resources in Mexico. In order to effectively inspect and enforce Mexico's environmental regulatory framework, the SEMARNAT relies on four autonomous institutions: (i) the Office of the Federal Prosecutor for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*, PROFEPA) that is responsible for enforcing environmental laws and regulations; (ii) the Natural Water Commission (*Comisión Nacional del Agua*, CONAGUA), which is in charge of managing water resources in a sustainable manner; (iii) the National Commission for Natural Protected Areas (*Comisión Nacional de Áreas Naturales Protegidas*, CONABIO) that is in charge of establishing, managing and defending marine and terrestrial protected areas; (iv) and the Agency for Security, Energy and the Environment (*Agencia de Seguridad, Energía y Ambiente*, ASEA), which oversees environmental protection and industrial safety in the energy sector (Government of Mexico, 2012<sub>[173]</sub>).

The PROFEPA uses two strategies to enforce environmental regulations: command-and-control acts and voluntary audits (Alvarez-Larrauri and Fogel, 2008<sub>[174]</sub>). To exercise its command-and-control authority, the PROFEPA carries out administrative actions, such as inspections and surveillance visits, aimed at

determining the extent to which an economic activity or project is in compliance with applicable environmental legislation.<sup>72</sup> The PROFEPA may impose sanctions and penalties on companies if it detects an irregularity. In addition, the PROFEPA coordinates and manages a voluntary audit mechanism applicable to businesses willing to participate in the National Environmental Audit Programme (*Programa Nacional de Auditoría Ambiental*, PNAA) (see Box 3.9).

### Box 3.9. The National Environmental Audit Programme

The PROFEPA coordinates and manages the National Environmental Audit Programme (*Programa Nacional de Auditoría Ambiental*, PNAA), which is a voluntary audit mechanism available to businesses willing to evaluate their environmental management system. The purpose of this programme is to advise companies on the efficient use of resources to decrease their operational costs, reduce their adverse environmental impacts, and enhance their corporate reputation. Companies that participate in the PNAA must bear the cost of hiring an independent auditor to assess their environmental performance across 11 areas of impact outlined in the Regulation of the LGEEPA on Self-regulation and Environmental Audits (*Reglamento de la LGEEPA en Materia de Autoregulación y Auditorías Ambientales*), as well as in Mexican Norms (NMXs) NMX-AA-162-SCFI-2012<sup>1</sup> and NMX-AA-163-SCFI-2012.<sup>2</sup>

The areas of impact to be evaluated include the companies' actions to reduce and adequately manage waste, noise, hazardous materials, climate change, and emergencies in the context of their direct business operations. If the external auditor finds that the company complies with the obligations set out in the above-mentioned regulation and norms, the PROFEPA grants it a certificate of compliance. In 2020, the PROFEPA granted 455 PNAA certificates to companies, reaching a national total of 2,139 certificates. The PROFEPA reported that, between 2013 and 2018, the companies that had obtained the PNAA certificates were able to save an aggregated amount of 436 million cubic meters of water; 21,188 million KWh of electricity; 2,618 million tons of hazardous waste and 28 million tons of CO<sub>2</sub> equivalent.

Although the PNAA was initially created for large industrial companies, it is now open to large enterprises and SMEs operating in the trade, services and tourism sectors. Notwithstanding, most of the companies involved in the Programme remain large companies, as well as State-Owned Enterprises.

Notes:

1. Mexican Norm NMX-AA-162-SCFI-2012 titled Environmental Audit. Methodology for conducting environmental audits, environmental assessments and action plan compliance verifications. Facilities environmental performance determination. Environmental performance evaluation (*Auditoría ambiental – Metodología para realizar auditorías y diagnósticos, ambientales y verificaciones de cumplimiento del plan de acción - Determinación del nivel de desempeño ambiental de una empresa - Evaluación del desempeño de auditores ambientales*).
2. Mexican Norm NMX-AA-163-SCFI-2012 titled Environmental Audit. Facilities procedures and requirements for an environmental performance report (*Auditoría ambiental - Procedimiento y requisitos para elaborar un reporte de desempeño ambiental de las empresas*).

Sources:

PROFEPA (2020), Programa Nacional de Auditoría Ambiental, <https://www.gob.mx/profepa/acciones-y-programas/programa-nacional-de-auditoria-ambiental-56432>.

SEMARNAT (2019), Programa Nacional de Auditoría Ambiental – “Requisitos Nivel de Desempeño Ambiental 2”, [https://www.gob.mx/cms/uploads/attachment/file/445267/2\\_NDA2.28.feb.2019.pdf](https://www.gob.mx/cms/uploads/attachment/file/445267/2_NDA2.28.feb.2019.pdf).

SEMARNAT (2019), Programa Nacional de Auditoría Ambiental, [https://www.gob.mx/cms/uploads/attachment/file/459960/BROCHURE\\_2019.pdf](https://www.gob.mx/cms/uploads/attachment/file/459960/BROCHURE_2019.pdf).

PROFEPA (2020), Resultados Obtenidos por PNAA – Datos estadísticos sobre las empresas que forman parte del Programa Nacional de Auditoría Ambiental, <https://www.gob.mx/profepa/acciones-y-programas/resultados-obtenidos>.

The PROFEPA also developed the Environmental Leadership Programme for Competitiveness (*Programa Liderazgo Ambiental para la Competitividad*, PLAC), a voluntary mechanism for Micro, Small and Medium Enterprises (MSMEs) aimed at supporting their development of programmes fostering sustainable use of resources, with the objective of reducing their direct operating costs and enhancing their reputation (Government of Mexico, 2019<sub>[175]</sub>; Government of Mexico, 2019<sub>[176]</sub>). However, the PLAC does not have an assigned budget and does not carry out promotional activities among MSMEs. This has limited its outreach as reflected by the low number of companies that have joined the programme. In 2018, only 20 MSMEs joined the PLAC and developed environmental management systems in accordance with its requirements (Government of Mexico, 2017<sub>[177]</sub>; Government of Mexico, 2018<sub>[178]</sub>).

***Mexico should consider incentivising the participation of businesses in the PNAA and the PLAC. In addition, the PROFEPA could look to strengthen its collaboration with business associations to help disseminate information about both programmes and how these offer opportunities for businesses to align their activities with international environmental expectations on RBC, including the implementation of environmental due diligence across supply chains. To support the latter, the PROFEPA could seek to align its practices with the OECD Due Diligence Guidance, including as part of the assessments undertaken in the framework of the PNAA, and as a prerequisite to receiving relevant recognition or certificates under the PLAC.***

To help facilitate further engagement on the above, the Government should consider making efforts to raise awareness amongst businesses (of all sizes) on the role of the OECD Due Diligence Guidance in supporting business communicate their alignment with international environmental expectations on RBC (including *inter alia* those relating to the SDGs, climate change, biodiversity, disclosure requirements, and meaningful engagement with stakeholders), and how such efforts can bolster the social licence to operate, and increase access to market opportunities. This can also be supported by disseminating information on recent trends in environmental specific instances being filed and/or decided by NCPs.

#### *Relevant regulatory initiatives*

Two examples of reforms aimed at improving inter-ministerial coordination for the protection of the environment, and in engaging with the private sector, are noteworthy.

In February 2019, the Inter-ministerial Group of Health, Food, Environment and Competitiveness (*Grupo Intersecretarial de Salud, Alimentación, Medio Ambiente y Competitividad*, GISAMAC) was established to build into the Mexican food system an agro-ecological model. The GISAMAC is working with businesses across the full food supply chain, from production to consumption, to support the generation of healthy food through sustainable productive practices (Government of Mexico, 2021<sub>[179]</sub>).

Additionally, in the framework of the United Nations Biodiversity Conference of the Convention on Biological Diversity (CDB) held in Cancun in 2016 (COP13), the Government developed sectoral strategies for mainstreaming biodiversity across four key areas of economic activity: tourism, fisheries, agriculture and forestry (Biodiversidad Mexicana, n.d.<sub>[180]</sub>). The strategies aim to increase cross-sectorial public and private sector engagement, as well as engagement with civil society, and the development of partnerships and economic incentives for businesses to better integrate biodiversity and climate change into environmental management processes (Biodiversidad Mexicana, n.d., pp. 28, 23, 6, 10<sub>[180]</sub>).

***To strengthen biodiversity protection across all industries, Mexico should look to embed the OECD MNEs Guidelines and the related OECD Due Diligence Guidance as key tools to support the private sector, including investors, in mainstreaming biodiversity considerations as part of their risk management processes. Aligning with the OECD Due Diligence Guidance for RBC can also support businesses in conducting meaningful stakeholder engagement, which is a critical component to better understanding and managing dependencies, adverse impacts and threats related to biodiversity loss, business activities and building resilience across supply chains.***

### 3.3.3. Environmental Justice

Over recent years, Mexico has been identified as the third most dangerous country in LAC for human and environmental rights defenders, with 39 attacks against environmental defenders recorded in 2019 (CEMDA, 2019<sub>[181]</sub>; IADB, 2020<sub>[182]</sub>). In this regard, the ratification of the Escazú Agreement in November 2020 marked a decisive moment in the strengthening of environmental justice for Mexico and in the region more broadly. The Escazú Agreement, which entered into force on 22 April 2021 (United Nations, 2020<sub>[183]</sub>), is the world's first international agreement that includes provisions on the protection of human rights defenders in environmental matters based on the three pillars of protection of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which is expressly referenced in the OECD MNEs Guidelines.

Having regard to access to remedy for environmental matters, pursuant to amendments to the LGEEPA dating from 2012, NGOs and individuals have standing to initiate collective claims (*denuncias populares*) for environmental damage, even where they were not personally impacted by the harm (Government of Mexico, 2020<sub>[184]</sub>). Between December 2018 and June 2019, the PROFEPA performed 1,819 inspections of industrial companies on the basis of such claims. More than half of these inspections led to the identification of practices inconsistent with environmental laws and regulations, resulting in fines, and in 40 cases, the total closure of industrial facilities (Government of Mexico, 2019, p. 87<sub>[185]</sub>).

The CNDH also offers a quasi-administrative procedure to deal with environmental rights violations by federal government agencies concerning actions and omissions that contravene the laws protecting the environment (CNDH, 2016<sub>[186]</sub>). For example, in 2018, the CNDH issued a General Recommendation No. 32/2018 directing the Ministries of Health, Economy, Environment and Natural Resources, as well as the Regulatory Commission for Energy (*Comisión Reguladora de Energía*), to update national regulation on air pollution, and to ensure that gasoline and diesel sold by distribution companies met the environmental standards and norms. This General Recommendation was issued in response to the failure of the aforementioned government agencies to update norms and regulations on air pollution prevention and to evaluate compliance with such norms and regulations of hydrocarbon distribution companies in Mexico (CNDH, 2018, p. 5<sub>[187]</sub>).

***To strengthen the protection of procedural environmental rights – including access to justice and public participation – Mexico should seek to engage the private sector in protecting environmental and human rights defenders as part of their RBC and due diligence processes. The NCP can play a role in this regard, through awareness-raising and promotional activities with businesses.***

### 3.3.4. Challenges and opportunities for addressing climate change in Mexico

Mexico has been identified as a country particularly vulnerable to the impacts of climate change, which includes sea level rise in the Gulf of Mexico, intensification of hurricanes, changes in water precipitation cycles, and decreased water availability. In 2012, the Congress unanimously approved the General Law on Climate Change (*Ley General de Cambio Climático*, LGCC) and Mexico was among the first LAC countries to submit its Intended Nationally Determined Contribution (INDC) under the Paris Agreement. The LGCC provides that Mexico's National Policy on Climate Change (*Política Nacional de Cambio Climático*) shall be evaluated systematically and periodically to meet its adaptation and mitigation objectives by the Coordinating Office for Evaluation (*Coordinación de Evaluación*), which was established in 2015 (Government of Mexico, 2018<sub>[188]</sub>). In December 2020, Mexico updated its Nationally Determined Contribution (NDC) with a non-conditional target of a 22% GHG emission reduction and a conditional target of a 36% reduction by 2030, as compared to a business as usual scenario (Government of Mexico, 2020<sub>[189]</sub>).

Since 2015, industrial and energy companies operating in Mexico, among others, are obliged to provide annual reports on GHG emissions to the SEMARNAT (Government of Mexico, 2020<sub>[190]</sub>; GIZ, 2020<sub>[191]</sub>).

Currently, companies that fail to report in accordance with the LGCC face fines equivalent to 3,000 to 10,000 days of minimum wage and the risk of being immediately labelled as non-compliant.

However, a 2019 study analysing the 500 largest companies in Mexico in terms of sales reported that only 151 companies publically reported on their GHG emissions. Among them, only 54% publicly reported on their GHG emissions resulting from direct operations and electricity consumption (i.e. scope 1 and 2), while only 20% of companies reported on indirect emissions from their value chain, business trips, distribution, transportation and use of products (i.e. scope 3). In addition, only 23% of the companies included in the study have set scope 1 and 2 emission reduction targets and a small number have set scope 3 goals (World Wild Fund Mexico, 2020<sup>[192]</sup>).

The SEMARNAT also manages the Voluntary Clean Transport Programme (*Programa de Transporte Limpio*, PTL) to help cargo and passenger transportation companies implement a strategy to reduce fuel consumption and decrease their carbon footprint (Government of Mexico, 2020<sup>[193]</sup>). The companies that participate in the PTL commit to report to the SEMARNAT their yearly emissions reductions. In July 2020, 512 companies, owning 75,185 vehicles, registered in the Programme. However, out of the 512 registered companies, only 205 reported that they had reached their commitment to decrease GHG emissions (Government of Mexico, 2021<sup>[194]</sup>).

***Mexico should look to incentivise businesses to mainstream climate change mitigation and adaptation needs as part of their risk management processes, including across supply chains and in alignment with the OECD Due Diligence Guidance. This includes incentivising meaningful disclosure of climate change related considerations with reference to relevant recommendations within the OECD MNEs Guidelines, and setting science based targets, particularly with respect to identified priority sectors.***

### **3.3.5. Sector-specific environmental risks and impacts related to business in Mexico: extractive and agricultural sectors**

The extractive and agricultural sectors in Mexico offer sector specific examples of environmental risks and adverse impacts driven by industry, and areas where RBC tools and instruments can be further integrated into policy approaches supporting business in mitigating these impacts and better contributing to sustainable development priorities. This section provides an outline of key environmental risks and impacts relevant to both sectors, followed by further in-depth discussion of water usage as a specific environmental challenge faced by both sectors and where due diligence recommendations, as aligned with the OECD Due Diligence Guidance, can be further embedded to promote sustainable use.

Mining activities are present in most of Mexico's territory (U.C. Berkeley, 2020<sup>[195]</sup>). In 2018, the SEMARNAT's National Inventory of Contaminated Sites (*Inventario Nacional de Sitios Contaminados*, INSC) ranked mining as the economic activity responsible for the largest number of contaminated sites and identified 62 mining projects in Natural Protected Areas (Government of Mexico, 2018<sup>[196]</sup>). Moreover, as mining activities frequently overlap with territories that have a large share of indigenous populations, adverse environmental impacts caused by mining activities have increased social tensions with affected communities. In 2019, the SEMARNAT registered 173 conflicts between communities and mining companies with environmental implications (Government of Mexico, 2019<sup>[197]</sup>).<sup>73</sup>

Increasing agricultural production has also generated diverse environmental challenges, ranging from soil erosion and salinization to biodiversity loss (FAO, 2016<sup>[198]</sup>). Mexico has a national territory of 198 million hectares, of which 145 million is dedicated to agriculture (FAO, n.d.<sup>[199]</sup>). The rising demand for Mexican agricultural products in international markets has been a key driver for deforestation and land use change, with the conversion of forests into pastures for agricultural fields (Greenpeace, 2020<sup>[200]</sup>). For example, Mexico's position as the world's largest avocado producer and the intensive avocado production in the central region of the country has caused extensive soil degradation and biodiversity loss (WEF, 2020<sup>[201]</sup>).

In addition to land-use change for agricultural production, vast natural forests have been turned into cattle ranches throughout the country, with such livestock production systems generating 10.1% of national GHG emissions (Government of Mexico, 2019<sub>[202]</sub>). In 2019, 321,000 hectares of forests were thus depleted to exploit forest products and allow for livestock grazing (El País, 2019<sub>[203]</sub>).

To address this situation, the Government of Mexico has committed to formulating policies promoting sustainable practices in both the extractive and agricultural sectors with the objective of preventing environmental risks (Government of Mexico, 2020<sub>[204]</sub>) and mitigating impacts of related economic activities on natural ecosystems (Government of Mexico, 2018<sub>[205]</sub>).

***Mexico could look to draw on the OECD's RBC instruments, including the OECD Sector-specific Due Diligence Guidance, to further embed environmental considerations into industry-led risk management practices for both sectors, as well as sustainable development policy objectives, in order to enhance the identification, prevention and mitigation of environmental impacts.***

*Example of cross-sector environment-related risks and impacts of business activities in Mexico: water use*

Although the right of access to water is recognised in the Mexican Constitution, the depletion and degradation of water resources linked to business activities poses on-going challenges in Mexico. Mexico's water resources have been reported as amongst the most degraded of all OECD countries (OECD, 2010<sub>[166]</sub>). The increased use of water has exacerbated water consumption, the overexploitation of groundwater, and contamination triggered by untreated wastewater (United Nations, 2019<sub>[206]</sub>). In 2018, 76% of water resources in Mexico were being used for agricultural purposes and 4.5% for industrial purposes (Government of Mexico, 2018<sub>[207]</sub>).

Agricultural activities contribute to water pollution through the run-off of substances, such as pesticides, herbicides, and fertilizers, entering rivers and groundwater (UNAM, 2012<sub>[208]</sub>). This is aggravated by the lack of requirements for agrochemical producing corporations to educate consumers on the appropriate use of their products (Muñoz Piña and Ávila Forcada, n.d.<sub>[209]</sub>). In terms of water usage, CONAGUA identified that 57% of the total water used by agricultural and livestock producers is wasted due to inefficient irrigation infrastructure and infiltration or evaporation when the water is stored (UNAM, 2018<sub>[210]</sub>). In addition, agricultural companies benefit from low electricity tariffs for pumping groundwater and have little incentive to prevent over-pumping of aquifers and lowering groundwater deposits (World Bank, 2006<sub>[211]</sub>) (Palacios-Vélez and Escobar-Villagrán, 2016<sub>[212]</sub>). The intensive use of water in agricultural production and the lack of safeguards for the use of agrochemicals has led to intermittent water availability in certain regions of the country and high levels of pollution affecting fresh and salt water bodies (UNAM, 2012<sub>[208]</sub>).

***Mexico should seek to promote the OECD-FAO Guidance for Responsible Agricultural Supply Chains among agri-business and enhance coherence between due diligence processes and certification schemes in the agri-industry, including having regard to initiatives related to water use, as well as related climate change and biodiversity loss.***

Although they do not use a high share of the total of water resources (CAMIMEX, 2021, p. 89<sub>[213]</sub>), mining activities can also contribute to the pollution of groundwater, with permit holders often being exempt from paying water rights for groundwater discovered and used in the exploration, extraction, and discharge process (CNDH, 2018<sub>[214]</sub>) (Government of Mexico, 1981<sub>[215]</sub>). In fact, CONAGUA identified mining as one of the economic activities that pollutes groundwater the most, either due to leakage in mining tailings, accidental spills, or poorly disposed wastewater (CNDH, 2018<sub>[214]</sub>). For example, in 2014, the Sonora River was affected by the worst environmental disaster caused by a Mexican mining company, with 40 million litres of acidified copper sulphate being spilled into the Las Tinajas River and reaching the Bacanuchi and Sonora rivers. Following a number of collective claims (*denuncias populares*), the SEMARNAT required Grupo Mexico to pay a fine of 23.5 million Mexican pesos and develop a trust fund of two billion Mexican



pesos to remedy the environmental and health damages (Government of Mexico, 2020<sup>[216]</sup>). Notwithstanding Grupo Mexico's efforts to prevent similar accidents, in July 2019, the company's activities again led to a spill of 3,000 litres of sulphuric acid in the Sea of Cortez, resulting in the SEMARNAT temporarily closing the company's installations in the Guaymas Port where the spill occurred (BHRRRC, 2019<sup>[217]</sup>).

With regard to the pollution of water resources across all sectors, in 2017, the CNDH recommended that CONAGUA limit the granting of permits to dispose of wastewater only to companies that have committed to implementing the UNGPs in their daily operations, and that the users of national goods that carry out activities which may result in water contamination be required to put in place a guarantee of remedy or a deposit or have an insurance that guarantees the compensation for environmental damage (CNDH, 2017, p. 164<sup>[218]</sup>). According to information provided by the CNDH, to date, the Recommendation – which aims to establish a programme to clean the basin of the Atoyac River with the intervention of 11 government entities and the participation of businesses and civil society – has been accepted and some government entities have demonstrated having started to comply with it. However, complementary measures are still needed to ensure full compliance with the Recommendation.

***Mexico should incentivise businesses, particularly in the mining and agricultural sectors, to consider dependencies and adverse impacts on water resources as part of the implementation of their environmental due diligence processes. This should also include increased awareness-raising amongst businesses of the importance of information sharing (with all stakeholders, including workers) on environmental risks and adverse impacts (including with regard to the use of water resources), as well as providing adequate training for workers on environmental protection practices in line with the OECD Due Diligence Guidance.***

***Having regard to the Recommendation addressed by the CNDH to the CONAGUA mentioned above, CONAGUA could reinforce the measures already taken to promote the implementation of this recommendation by including a requirement of alignment with the OECD MNEs Guidelines (in particular, the chapter on the environment), and the related OECD Due Diligence Guidance with respect to both environmental and human rights matters. The OECD MNEs Guidelines and the related OECD Due Diligence Guidance include recommendations relevant to managing waste, including wastewater and use of natural resources.***

Additionally, a large share of the water dams built in Mexico since 1980 have caused social conflicts prior to, during, or after, the construction process (Ruiz Ortega, 2016<sup>[219]</sup>). Such conflicts have arisen primarily from inadequate consultations with affected communities (Domínguez, 2019<sup>[220]</sup>) and the fact that they have been carried out only upon an express request from interested parties or the SEMARNAT (pursuant to article 34 of the LGEEPA) (Government of Mexico, 1988<sup>[221]</sup>). By way of example, between June and December 2019, the SEMARNAT managed two conflicts, in Sonora and Jalisco, between affected communities and dam developers. In both cases, the affected communities claimed that their right to consultation and participation had not been respected. The SEMARNAT organised round table discussions to reinstate the dialogue between the parties and required state-level authorities to guarantee local consultations with the communities (Government of Mexico, 2020<sup>[216]</sup>).

***To support meaningful stakeholder consultations, prior to, during and after a project, in particular for large-scale infrastructure projects, Mexico should seek to incentivise businesses to align environmental risk management processes with the OECD Due Diligence Guidance and in particular, the provisions on stakeholder engagement.***

## Policy recommendations

7. Incentivise the participation of businesses in the National Environmental Audit Programme (*Programa Nacional de Auditoría Ambiental*) and the Environmental Leadership Programme for Competitiveness (*Programa Liderazgo Ambiental para la Competitividad*).
8. Embed the OECD MNEs Guidelines and the related OECD Due Diligence Guidance as key tools to support the private sector, including investors, in mainstreaming biodiversity considerations as part of their risk management processes.
9. Draw on the OECD's RBC instruments, including the OECD Sector-specific Due Diligence Guidance, to further embed environmental considerations into industry-led risk management practices for the extractive and agricultural sectors, as well as sustainable development policy objectives, in order to enhance the identification, prevention and mitigation of environmental impacts.
10. Engage the private sector in protecting environmental and human rights defenders as part of their RBC and due diligence processes.
11. Incentivise businesses to mainstream climate change mitigation and adaptation needs as part of their risk management processes, including across supply chains and in alignment with the OECD Due Diligence Guidance.
12. Implement the Recommendation addressed by the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*) to the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*), together with a requirement of alignment with the OECD MNEs Guidelines (in particular, the chapter on the environment) and the related OECD Due Diligence Guidance with respect to both environmental and human rights matters.

### 3.4. Anti-corruption and Integrity

The OECD MNEs Guidelines emphasise the important role of the private sector in combating corruption. Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage, and should also resist the solicitation of bribes and extortion. In this respect, Chapter VII on “Combating Bribery, Bribe Solicitation and Extortion” calls on enterprises to develop and adopt adequate internal controls, ethics and compliance programmes, or measures for preventing and detecting bribery through risk-based due diligence. For governments, combating corruption is key as it can erode democratic institutions, discourage investment, and undermine citizen welfare, trust in public institutions, and sustainable development.

#### 3.4.1. Corruption in Mexico: a challenging environment for businesses

Corruption is a multifaceted and widespread problem in Mexico that hinders the country's economic potential and growth, as well as its business environment (OECD, 2017, pp. 19-22<sup>[222]</sup>; U4 Anti-Corruption Helpdesk, 2018, p. 9<sup>[223]</sup>). In 2019, the costs of corruption related to public services, payments or processes reportedly reached 12,770 million Mexican pesos (i.e. approximately USD 614 million), experiencing a 63% increase between 2017 and 2019 (INEGI, 2020<sup>[224]</sup>). The extent of corruption in Mexico is reflected in the country's ranking in international corruption-related indices. In 2019, Mexico ranked 116<sup>th</sup> (out of 141 countries) in the Incidence of Corruption Index of the World Economic Forum's 2019 Global

Competitiveness Report (WEF, 2019, p. 387<sup>[225]</sup>). Despite an improvement between 2018 and 2020, the country ranked 124<sup>th</sup> (out of 179 countries) in the 2020 edition of Transparency International's Corruption Perception Index (compared to 138<sup>th</sup> in 2018), and Mexico still has the highest corruption perception among all OECD countries (Transparency International, 2021, p. 3<sup>[226]</sup>; Transparency International, 2019, p. 3<sup>[227]</sup>). In 2020, Mexico ranked 121<sup>th</sup> (out of 128 countries) for absence of corruption in the Rule of Law Index of the World Justice Project, obtaining the second lowest score in the region (World Justice Project, 2020, p. 106<sup>[228]</sup>). Citizen-based surveys also confirm the widespread nature of corruption in the country. For instance, despite reporting that 61% of the interviewees in Mexico consider that the government is doing well in tackling corruption, Transparency International's 2019 Global Corruption Barometer for LAC reports that 44% of these interviewees believe that corruption has been on the rise in 2018-2019 and 90% of them are of the view that corruption in government is an important issue in the country (Transparency International, 2019, pp. 8-10, 13, 46<sup>[229]</sup>). In a similar vein, the 2018 edition of the Latinobarometro indicates that 14% of the interviewees in Mexico consider corruption as the most important problem of the country (Corporación Latinobarómetro, 2018, p. 59<sup>[230]</sup>). National surveys to businesses also reflect a similar state of affairs. In a 2016 survey carried out by the INEGI, 82% of the companies surveyed considered corruption acts from government officials as being frequent and 13.2% of large and 10.5% of small enterprises reported having experienced first-hand such acts (INEGI, 2016, pp. 47, 51<sup>[231]</sup>). Other surveys also report on a lack of sufficient progress by Mexico to effectively root out corruption in comparison to other Latin American countries. For example, in the 2020 Capacity to Combat Corruption Index, published by the Americas Society/Council of the Americas (AS/COA) and Control Risks, Mexico ranked 8<sup>th</sup> out of 15 Latin American countries (Americas Society, Council of the Americas and Control Risks, 2021, p. 3<sup>[232]</sup>).

### 3.4.2. General legal and institutional framework for combating corruption in Mexico

#### *Legal framework*

In order to combat corruption, Mexico has ratified several international instruments in the field (see Box 3.10). Additionally, to abide by its international commitments, the Government has sought to adapt the country's anti-corruption legal and institutional framework (U4 Anti-Corruption Helpdesk, 2018, p. 13<sup>[223]</sup>). A constitutional reform was notably carried out in 2015 to strengthen this framework and enhance corruption prevention and sanctioning. Following this reform, a National Anti-corruption System (*Sistema Nacional Anticorrupción*, SNA) was established and other reforms were undertaken to grant investigative and prosecutorial powers to administrative and criminal anti-corruption agencies (OECD, 2017, p. 30<sup>[222]</sup>).

#### **Box 3.10. Key international instruments against corruption and bribery ratified by Mexico**

Mexico's adoption of international commitments to combat corruption started with the ratification of the Inter-American Convention against Corruption in 1997. It was followed in 1999 by the ratification of the OECD Anti-Bribery Convention, which focuses on "active bribery", i.e. the offense of offering, promising or giving a bribe to a foreign public official in international business transactions. Mexico then ratified the United Nations Convention Against Corruption (UNCAC) in 2004.

Under the OECD Anti-Bribery Convention, Mexico partakes in the peer-review process carried out by the OECD Working Group on Bribery in International Business Transactions (the Working Group on Bribery). This process aims at evaluating and making recommendations on the country's implementation of the Convention and related OECD anti-bribery instruments through different phases. Phase 4 focuses on three key horizontal issues – detection, enforcement of the foreign bribery offence, and corporate liability for such offence –, as well as outstanding recommendations and follow-up issues from Phase 3. Mexico's Phase 4 evaluation was completed in 2018 and the corresponding report

adopted in October 2018. In this Phase 4 Report, the Working Group on Bribery concluded that the absence of prosecution of foreign bribery by Mexico more than 19 years after the entry into force of the foreign bribery offence raises concerns. This is all the more subject to concerns as Mexico's growth over recent years has been export driven and Mexican exports largely originate from sectors with high corruption risks. The Working Group therefore recommended that Mexico enhance the enforcement of the foreign bribery offence. In its Phase 4 two-year follow-up evaluation of Mexico in March 2021, the Working Group again expressed serious concerns about the ongoing lack of foreign bribery enforcement. It noted that, although Mexico has made efforts to combat domestic bribery, the fight against foreign bribery has not followed suit, and that none of its Phase 4 recommendations has been fully implemented.

In addition, as an OECD member, Mexico has adhered to several OECD Council Recommendations on corruption-related topics, namely the Recommendations on: (i) guidelines for managing conflict of interest in the public service (2003); (ii) principles for transparency and integrity in lobbying (2010); (iii) principles for public governance of public-private partnerships (2012); (iv) public procurement (2015); (v) public integrity (2017); (vi) on bribery and officially supported export credits (2019); and (vii) the governance of infrastructure (2020).

Sources:

OAS (n.d.), Website: Inter-American Convention Against Corruption – Signatories and Ratifications, [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption\\_signatories.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption_signatories.asp).

OECD (2018), OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – Ratification Status as of May 2018, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>.

United Nations (n.d.), Website: United Nations Treaty Collection – 14. United Nations Convention Against Corruption, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-14&chapter=18](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-14&chapter=18).

OECD (2018), Implementing the OECD Anti-Bribery Convention, Phase 4 Report, Mexico, pp. 5, 56 <http://www.oecd.org/corruption/anti-bribery/OECD-Mexico-Phase-4-Report-ENG.pdf>.

OECD (2021), Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report, Mexico, p. 3, <https://www.oecd.org/daf/anti-bribery/mexico-phase-4-follow-up-report.pdf>.

OECD (n.d.), OECD Legal Instruments – Adherences, <https://legalinstruments.oecd.org/en/adherences>.

As a follow-up to the 2015 constitutional reform, in July 2016, Mexico adopted new laws and amendments to existing ones aimed at combatting corruption, amongst which: (i) the General Law of the National Anti-corruption System (*Ley General del Sistema Nacional Anticorrupción*, LGSNA), which establishes the institutional and governance arrangements of the system; (ii) the Organic Law for the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*), which strengthens the mandate of the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) and puts it in charge of the federal public administration's integrity policies; (iii) the General Law of Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*, LGRA) that sets public officials' duties and responsibilities, as well as administrative disciplinary procedures in case of misconduct, extends liability for integrity issues to natural and legal persons, and provides for corporate administrative liability; (iv) the Organic Law of the Attorney General's Office (*Ley Orgánica de la Procuraduría General de la República*), which creates the function of Specialised Anti-corruption Prosecutor (*Fiscal Especializado en Combate a la Corrupción*, FECC) and defines its responsibilities; and (v) the Law of Auditing and Accountability (*Ley de Fiscalización y Rendición de Cuentas de la Federación*, LFRCF) that extends the mandate of the Supreme Audit Institution (*Auditoría Superior de la Federación*, ASF) to increase accountability (OECD, 2017, pp. 30-32<sub>[222]</sub>). It also amended its Federal Criminal Code (*Código Penal Federal*, CPF) to clarify the proceedings for the prosecution of corruption-related crimes and the sanctions applicable to such crimes. These laws and amendments, and the creation of the SNA, marked a turning-point in Mexico's fight against corruption, as they aimed to resolve past implementation and enforcement issues (OECD, 2017, p. 16<sub>[222]</sub>).

### *Institutional framework*

The SNA is a governmental structure that coordinates anti-corruption efforts at the federal, state and municipal levels (Government of Mexico, 2016<sub>[233]</sub>).<sup>74</sup> It is in charge of designing and evaluating anti-corruption policies, and coordinates the various tasks carried out by the different entities that constitute it to prevent, detect, investigate and sanction corruption acts and administrative faults, as well as to audit and control public resources (Government of Mexico, 2016<sub>[233]</sub>).<sup>75</sup> The SNA is comprised of: (i) a Coordination Committee (*Comité Coordinador*, CC) in charge of the development and monitoring of national anti-corruption policies; (ii) a Citizen Participation Committee (*Comité de Participación Ciudadana*, CPC) that allows for civil society's participation in the SNA and is tasked with monitoring its progress and results; (iii) an Executive Secretariat of the SNA (*Secretaría Ejecutiva del Sistema Nacional Anticorrupción*), which provides technical support to the CC's organisation; (iv) an Executive Commission (*Comisión Ejecutiva*) that supports the design and implementation of the CC's activities; and (v) state systems, whose responsibilities and activities are meant to be similar to that of the SNA (Government of Mexico, 2016<sub>[233]</sub>; OECD, 2017, pp. 32-33<sub>[222]</sub>).<sup>76</sup>

The CC is the governing entity of the SNA (OECD, 2017, pp. 34-35<sub>[222]</sub>). It is presided by a member of the CPC and is also comprised of the heads of (i) the ASF,<sup>77</sup> (ii) the FECC,<sup>78</sup> (iii) the SFP,<sup>79</sup> (iv) the Federal Court of Administrative Justice (*Tribunal Federal de Justicia Administrativa*, TFJA),<sup>80</sup> (v) the National Institute for Transparency, Access to Information and Protection of Personal Data (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, INAI),<sup>81</sup> as well as of (vi) a representative of the Federal Judicial Council (*Consejo de la Judicatura Federal*)<sup>82</sup> (Government of Mexico, 2016<sub>[233]</sub>; OECD, 2017, pp. 33-34<sub>[222]</sub>).<sup>83</sup> Each of these institutions plays a key role within the SNA to combat corruption. The SFP, as the federal institution in charge of ethics, internal audit and control, plays an active part in prevention, detection and enforcement. The ASF, which carries out performance audits of integrity systems, also assumes an important role in preventing and detecting corruption. This is also the case of the INAI, which publishes relevant information to prevent and detect corruption. As to the FECC and the TFJA, the Anti-Corruption Prosecutor and the Administrative Tribunal, they are meant to be key players in the detection, investigation and sanction of corruption (OECD, 2017, pp. 34-35<sub>[222]</sub>).<sup>84</sup>

The CPC acts as the oversight mechanism of the SNA (U4 Anti-Corruption Helpdesk, 2019, p. 22<sub>[234]</sub>). In theory, it is comprised of five citizens renowned for their expertise in the fields of transparency, accountability or the fight against corruption.<sup>85</sup> However, at the time of writing, four out of the five seats of the CPC were vacant, a situation which hinders its effective functioning (Comité de Participación Ciudadana, 2020<sub>[235]</sub>).<sup>86</sup> The members of the CPC are in charge of creating and developing a network of CSOs and experts on anti-corruption and of inputting its work (results of research, recommendations) into the SNA. The CPC also develops its own annual work programme, which include activities such as research projects, developments of instruments and tools, etc. (Government of Mexico, 2016<sub>[233]</sub>; OECD, 2017, pp. 33-34<sub>[222]</sub>).<sup>87</sup> More importantly, over the last years, the CPC has intervened in cases in which either the SNA's entities were not fulfilling their responsibilities or external entities were hindering the SNA's functioning (U4 Anti-Corruption Helpdesk, 2019, p. 22<sub>[234]</sub>; Comité de Participación Ciudadana, 2021<sub>[236]</sub>).<sup>88</sup> It is worth mentioning that 32 local CPCs exist at the state level and that they are gathered in a national network (Comité de Participación Ciudadana, 2020<sub>[237]</sub>; Comité de Participación Ciudadana, 2020<sub>[238]</sub>).

The involvement of civil society, through the national and the local CPCs, is an important feature of the SNA. It contributes to enhance the design and implementation of anti-corruption policies, as well as the legitimacy and effectiveness of the entire system (OECD, 2017, pp. 36-37<sub>[222]</sub>). However, stakeholders' involvement in the SNA should not be limited to civil society and should also include the private sector. Corruption often arises at the intersection between the public and the private sectors and also solely in the private sector. As pointed out by the OECD MNEs Guidelines, both sectors should be in charge of fighting corruption and promoting integrity (OECD, 2011, p. 49<sub>[239]</sub>).<sup>89</sup> Otherwise, there is a risk that an important part of corruption is left unaddressed (OECD, 2017, p. 37<sub>[222]</sub>). Currently, the private sector does not seem

to play an important role in the SNA. The latest OECD Integrity Review of Mexico reported in this regard that, even if the private sector appears to be involved in the activities of the CPC and to be consulted regularly, no formal working group has been created with the CPC to engage with private sector representatives and the existing cooperation has not been formalised in a partnership to promote private sector participation in the SNA (OECD, 2019, p. 19<sup>[240]</sup>).

**Mexico should accordingly consider involving more formally the private sector, including SMEs, in the functioning of the SNA, through for instance enhanced engagement of the national CPC and the 32 CPCs created at the state level with business associations and representatives** (OECD, 2017, p. 37<sup>[222]</sup>; OECD, 2019, p. 18<sup>[240]</sup>).

Consulting on a regular basis with businesses of all sizes, structures and sectors, and taking into account their perspectives and concerns on corruption issues through, for instance, the establishment of a working group can bring several positive outcomes. On the one hand, by promoting businesses' engagement and buy-in, it can enhance the legitimacy and effectiveness of the SNA and facilitate the implementation of anti-corruption and integrity policies (OECD, 2017, pp. 37-38<sup>[222]</sup>). On the other, it can create opportunities for raising awareness and exchanging on responsible business practices in the anti-corruption and integrity area among public officials, civil society and the private sector, thereby promoting the observance of relevant RBC principles and standards by businesses.

A greater participation of the private sector in the SNA would align with the current administration's approach to anti-corruption, which considers the role of the private sector as an important element. In the PND, the Government commits to combat corruption, including private corruption acts by enhancing transparency in public procurement (Government of Mexico, 2019, p. 17<sup>[31]</sup>). In a similar vein, the 2019-2024 National Programme to Fight Corruption and Impunity and to improve Public Administration (*Programa Nacional de Combate a la Corrupción y a la Impunidad, y de Mejora de la Gestión Pública 2019-2024*) recognises the importance of private sector participation in the fight against corruption (Government of Mexico, 2019<sup>[241]</sup>).<sup>90</sup> It would also be in line with the National Anticorruption Policy (*Política Nacional Anticorrupción*) approved by the CC of the SNA in April 2020, which includes, as its fourth strategic axis, the involvement of society and the private sector and, as one of its specific objectives, promoting the adoption and implementation of integrity and anti-corruption principles, policies and programmes by the private sector (Government of Mexico, 2020, pp. 188-190<sup>[242]</sup>). To this effect, the Policy defines two policy priorities in the short term: (i) strengthening the role of the CPCs to promote a culture of integrity and fight against corruption with a special focus on the private sector and (ii) developing collaboration schemes with business associations to promote the adoption of anti-corruption programmes by the private sector (Government of Mexico, 2020, p. 190<sup>[242]</sup>).

It would also contribute to implement some of the provisions of two trade agreements recently concluded by Mexico: the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the USMCA, which contain chapters dedicated to anti-corruption (see Section 4.2.2).<sup>91</sup> Amongst the various commitments undertaken in these chapters, the signatories commit to promote private sector participation in the fight against corruption through different measures.<sup>92</sup> This includes *inter alia* measures to encourage professional associations in their efforts to incentivise and assist companies, in particular SMEs, in developing internal controls, ethics and compliance programmes.<sup>93</sup> By enhancing the engagement of the national CPC and the 32 local CPCs with business associations and representatives Mexico would be taking steps in this direction.

### **3.4.3. Specific legal framework and initiatives for involving businesses in the combat against corruption in Mexico**

In order to involve companies in the fight against corruption, Mexico has taken steps to strengthen its corporate liability regime, which is nowadays both criminal and administrative (OECD, 2018, p. 40<sup>[243]</sup>).



### *Corporate criminal liability*

In the framework of the 2015 constitutional reform, amendments were made to the CPF and the National Code of Criminal Proceedings (*Código Nacional de Procedimientos Penales*, CNPP) to impose criminal sanctions on legal entities for certain crimes, including bribery (Government of Mexico, 1931<sup>[244]</sup>; Government of Mexico, 2014<sup>[245]</sup>; OECD, 2018, pp. 40-41, 44<sup>[243]</sup>).<sup>94</sup> As a result, legal entities are now liable when (i) the crimes are committed on their behalf, by themselves, in their interest/benefit, or with the means provided by them and (ii) it has been established that they failed to exercise or comply with due controls within their organisation.<sup>95</sup> These crimes include domestic and foreign bribery. The CPF indeed prohibits promising, offering or giving, to any public official,<sup>96</sup> any benefit in exchange for an act or omission in the performance of its functions, employment, position or charge (Government of Mexico, 1931<sup>[244]</sup>).<sup>97</sup> It also prohibits, directly or indirectly, promising, offering or giving, to any foreign public official,<sup>98</sup> money or any other advantage, in order to obtain or retain any undue advantage in international commercial transactions (Government of Mexico, 1931<sup>[244]</sup>).<sup>99</sup> The sanctions applicable to companies for domestic and foreign bribery are financial penalties, suspension of operations, and/or dissolution of the corporation.<sup>100</sup>

### *Corporate administrative liability*

Additionally, as a result of the 2015 constitutional reform, corporate administrative liability for corruption-related acts was introduced into Mexican law with the enactment of the LGRA. The LGRA punishes private parties for bribery of public officials in the federal, state or municipal public procurement context or otherwise. More specifically, it prohibits companies from, directly or indirectly, promising, offering or giving, to public officials, any undue benefit, in exchange for an act or omission in the performance of their functions or to exert their real or apparent influence, for the purpose of securing or retaining an improper advantage, regardless of the acceptance or receipt of the benefit, or the outcome (Government of Mexico, 2016<sup>[246]</sup>; OECD, 2018, p. 41<sup>[243]</sup>).<sup>101</sup> Article 25 of the LGRA specifies that, when determining whether a company should be held administratively liable, the existence of an integrity programme should be taken into account, and outlines the key elements that such programme must include (Government of Mexico, 2016<sup>[246]</sup>; OECD, 2018, p. 42<sup>[243]</sup>; OECD, 2019, p. 44<sup>[240]</sup>).<sup>102</sup> The sanctions applicable to companies for serious administrative offences, including bribery and collusion, are financial penalties, temporary disqualification from participating in public procurement, suspension of operations, dissolution of the corporation, and/or payment of compensation (Government of Mexico, 2016<sup>[246]</sup>).<sup>103</sup>

### *Initiatives promoting the adoption of corporate measures to prevent and detect corruption*

Beyond strengthening its corporate liability regime for corruption related acts, Mexico has also recently taken action to encourage businesses to adopt preventative measures.

#### **Measures for preventing corruption: internal controls, ethics and compliance programmes**

In order to assist business associations and industry organisations, as well as individual companies, in the development of self-regulation mechanisms, the LGRA entitles Ministries to sign cooperation agreements with them (Government of Mexico, 2016<sup>[246]</sup>; OECD, 2019, p. 44<sup>[240]</sup>).<sup>104</sup> Against this backdrop, in June 2017, the SFP published the Model Business Integrity Programme (*Modelo de Programa de Integridad Empresarial*) to provide guidance to businesses on how to develop and implement integrity programmes in accordance with the LGRA (Government of Mexico, 2017<sup>[247]</sup>; OECD, 2018, pp. 41-42, 50<sup>[243]</sup>; OECD, 2019, p. 44<sup>[240]</sup>). The Programme, which was developed with the principal business associations in Mexico, contains a series of guidelines and actions that businesses can follow and take to develop each of the key elements of the integrity programme mentioned in Article 25 of the LGRA. It also includes, for each of these elements, examples of good practices implemented by companies (Government of Mexico, 2017, p. 2<sup>[248]</sup>; OECD, 2019, p. 44<sup>[240]</sup>). This Programme, but also more broadly the 2015 constitutional reform and the

introduction of corporate administrative liability into Mexican law, gave rise to several business-led initiatives aimed at fighting corruption in the private sector (see Box 3.11).

### Box 3.11. Business initiatives for combatting corruption in Mexico

Building on the Government's efforts to combat corruption, Mexican business associations have also developed initiatives to fight the phenomenon in recent years.

#### The CCE's Code of Business Integrity and Ethics and its Integrity Guide

The CCE, for instance, started developing an integrity initiative at the time of the 2015 constitutional reform. In this context, it adopted a Code of Business Integrity and Ethics (*Código de Integridad y Ética Empresarial*), which was then updated in 2017 to take into account the new anti-corruption legislation enacted in 2016 and the Model Business Integrity Programme released by the SFP in 2017.<sup>1</sup> The Code is comprised of ten simple principles pertaining to anti-corruption, integrity and transparency. It is complemented by an Integrity Guide (*Manual de Integridad*).<sup>2</sup> The Guide, in addition to providing background information on corruption's costs and legal risks, details the different steps that a company should follow to develop an integrity programme.<sup>3</sup> All the business associations that are part of the CCE are in charge of disseminating the Code of Business Integrity and Ethics and promoting its implementation by their affiliated companies.<sup>4</sup>

#### The CMIC's Code of Ethics and Code of Conduct for its Affiliates

Following the 2015 constitutional reform, the Mexican Chamber of the Construction Industry (*Cámara Mexicana de la Industria de la Construcción*, CMIC) also launched an initiative to help its affiliates adopt integrity programmes compliant with Article 25 of the LGAR.<sup>5</sup> For this purpose, in 2017, it adopted its own Code of Ethics (*Código de Ética*), which is mandatory for all its affiliates and associates.<sup>6</sup> The Code aims to fight corruption within the construction industry but also, more broadly, to set the principles and values of the CMIC and the corresponding behaviour expected from its affiliates.<sup>7</sup> It also enshrines the commitment of the CMIC and its affiliates to adopt corporate social responsibility practices.<sup>8</sup> Additionally, the CMIC developed a model Code of Conduct for its Affiliates (*Modelo de Código de Conducta para nuestros Afiliados*) that the latter can use as an example or guide to adopt their own code of conduct.<sup>9</sup>

Notes:

1. Consejo Coordinador Empresarial (2017), Código de Integridad y Ética Empresarial, p. 7, [http://codigoeticaeintegridad.com/wp-content/uploads/2017/10/Codigo\\_Impronta\\_doble\\_oct.pdf](http://codigoeticaeintegridad.com/wp-content/uploads/2017/10/Codigo_Impronta_doble_oct.pdf).
2. Consejo Coordinador Empresarial (2017), Manual de Integridad, <http://codigoeticaeintegridad.com/wp-content/uploads/2017/10/Manual.pdf>.
3. Consejo Coordinador Empresarial (2017), Manual de Integridad, pp. 8-29, <http://codigoeticaeintegridad.com/wp-content/uploads/2017/10/Manual.pdf>.
4. Consejo Coordinador Empresarial (2017), Press release: El sector privado anuncia su nuevo Código de Integridad y Ética Empresarial, <http://www.boletin.org.mx/Resources/Medias/consejo-coordinador-empresarial/5c5101f95a76e8274526b850600732b0/5c5101f95a76e8274526b850600732b0.pdf>.
5. Cámara Mexicana de la Industria de la Construcción (n.d.), Website: Modelo de Código de Conducta para nuestros Afiliados, <https://www.cmic.org.mx/cmic/Normatividad/formatocodigoconducta/>.
6. Cámara Mexicana de la Industria de la Construcción (2017), Código de Ética, pp. 4, 33, [https://www.cmic.org.mx/comisiones/tematicas/normatividad/codigoEtica/Codigo\\_de\\_Etica.pdf](https://www.cmic.org.mx/comisiones/tematicas/normatividad/codigoEtica/Codigo_de_Etica.pdf).
7. Ibid., pp. 8-19.
8. Ibid., pp. 29-32.

9. Cámara Mexicana de la Industria de la Construcción (2017), Website: Modelo de Código de Conducta para nuestros Afiliados, <https://www.cmic.org.mx/cmic/Normatividad/formatocodigoconducta/>.

Additionally, in 2018, the SFP, in cooperation with the Business Working Group (*Grupo de Trabajo Empresarial*, GTE), developed a specific initiative to help SMEs implement integrity programmes pursuant to Article 25 of the LGRA. The initiative consists of several tools aimed at providing guidance to SMEs on how to adopt and put in place actions to enhance integrity in their operations (Government of Mexico, 2018<sub>[249]</sub>; UNDP, 2018<sub>[250]</sub>).<sup>105</sup>

More recently, in April 2020, the SFP launched the Business Integrity Registry (*Padrón de Integridad Empresarial*, PIE) to adopt preventive measures in the fight against corruption. The initiative has been developed in cooperation with chambers of commerce, business associations and industrial organisations,<sup>106</sup> as well as with representatives of the academia, civil society, indigenous peoples and international organisations. Its objective is to offer incentives to companies in order to encourage them to adopt integrity programmes and good business practices (Government of Mexico, 2019<sub>[251]</sub>). For this purpose, the PIE grants a certification label to businesses that register on its digital platform and meet a series of requirements aimed at determining if they have the necessary tools and processes to prevent corruption (see Box 3.12) (Government of Mexico, 2021<sub>[252]</sub>). The PIE has reportedly been the object of an important promotional and awareness-raising campaign with a wide array of actors and notably the companies that are part of Mexico's registry of suppliers and contractors.

### Box 3.12. Mexico's Business Integrity Registry

The Business Integrity Registry (*Padrón de Integridad Empresarial*) is an initiative developed by the SFP to grant a certification label to companies that have adopted good practices and an ethical behaviour, not only in their operations, but also in relation to their suppliers and collaborators. It is voluntary and free and available principally for multinational enterprises and SMEs involved in public procurement, or wishing to do so, but also to any business wishing to enhance its reputation.

In order to obtain the Business Integrity Label, companies must register in the digital platform of the PIE and submit information to demonstrate that they have adequate tools and processes to prevent corruption, including an integrity programme compliant with Article 25 of the LGRA, as well as good environmental, labour and corporate governance practices. The information to be submitted pertains to the following five modules: (i) person in charge of the registration process; (ii) the company; (iii) compliance of its integrity programme with Article 25 of the LGRA, as well as its practices in the field of environmental protection, social impact and commitment to the Agenda 2030; (iv) compliance with the legal obligations on labour security (including gender equity, inclusion and non-discrimination); and (v) compliance with the legal obligations pertaining to taxation, social security, retirement and housing. The third module on the compliance of the companies' integrity programmes with Article 25 of the LGRA is associated to a self-diagnosis tool that allows companies to assess the level of implementation of their integrity programme and the requirements they will have to satisfy to make progress in this regard.

To help companies adopt and implement the required tools and practices, the SFP has developed model documents and processes for the different key elements of an integrity programme mentioned in Article 25 of the LGRA (i.e. (i) code of conduct; (ii) whistleblowing mechanism; (iii) risk control system; (iv) risk assessment system; and (v) anti-corruption guide). These model documents and processes are available to businesses on the digital platform of the PIE, together with information on social responsibility and specific RBC issues (respect for human rights, protection of the environment, promotion of diversity, inclusion and gender equality, etc.).

## Sources:

Government of Mexico (2021), ¿Qué es el Padrón de Integridad Empresarial?, <https://integridadempresarial.funcionpublica.gob.mx/#que-es>.

Government of Mexico (2021), Padrón de Integridad Empresarial – Distintivo, <https://integridadempresarial.funcionpublica.gob.mx/#distintivo>.

Government of Mexico (2021), Padrón de Integridad Empresarial – Preguntas Frecuentes, <https://integridadempresarial.funcionpublica.gob.mx/preguntas-frecuentes/>.

Government of Mexico (2021), Padrón de Integridad Empresarial – Capacitación – Política de integridad, <https://integridadempresarial.funcionpublica.gob.mx/politica-de-integridad/>.

Government of Mexico (2021), Padrón de Integridad Empresarial – Infografías, <https://integridadempresarial.funcionpublica.gob.mx/infografias/>.

Government of Mexico (2020), Guía de Inducción – Registro al Padrón de Integridad Empresarial.

At the time of writing, more than 1,023 companies have reportedly registered on the PIE's digital platform and 312 have submitted the information requested throughout the registration process (Expork, 2020<sup>[253]</sup>). Interestingly, almost 88% of these 312 companies are SMEs. The SFP is currently working with external partners on the development of a model for the verification of the registered businesses' integrity programmes. The objective is to start the verification process soon to determine if the 200 fully-registered companies have adopted all the required tools and practices and proceed to grant the first certification labels (Government of Mexico, 2021<sup>[254]</sup>).

For the time being, the PIE is not associated to any specific incentive for businesses beyond that of obtaining the Business Integrity Label. It is, however, foreseen that the companies that are granted the certification label will eventually enjoy additional benefits, such as an easier access to public procurement and additional points in public procurement processes using the points and percentages method (see Section 4.1.1) (Government of Mexico, 2019<sup>[251]</sup>).

The PIE and the related Business Integrity Label is a welcome development. It reflects Mexico's recent efforts to involve the private sector in the fight against corruption by encouraging businesses to adopt preventative actions and raising their awareness on adequate compliance measures. That said, its potential to effectively incentivise businesses to adopt and implement integrity programmes and good business practices still remains to be seen, as it was launched recently and is still in the development phase. It will principally depend on the verification process and the PIE's capacity to ensure that the adoption of integrity programmes and the development of related documents and processes is actually followed by the implementation of said programmes and the use of such documents and processes in practice.

To fully exploit the PIE and the Business Integrity Label's potential, **Mexico could consider granting businesses that register in the PIE and obtain the Business Integrity Label a series of positive incentives in different policy areas.**

To start with, Mexico could contemplate concretising the plans of using the PIE as a registry of suppliers with certified integrity practices in public procurement and of giving an advantage to companies that obtain the Business Integrity Label in public procurement processes (see Section 4.1.1). Beyond public procurement, Mexico could also consider granting benefits to businesses that obtain the Business Integrity Label in other policy areas, such as international trade and export promotion. By linking the PIE and its Business Integrity Label to positive incentives in various policy areas, Mexico could encourage different kinds of businesses to adopt and implement integrity programmes, thereby expanding the scope and reach of the PIE. Granting benefits to businesses on the basis of the Business Integrity Label in the export promotion area would, for instance, allow to target companies that are active internationally and can be subject to foreign bribery risks. By creating such link, Mexico could also ensure that the companies with

which it interacts through its different roles as an economic actor have certified integrity practices, which would reduce the risks of public-private corruption in these interactions.

It is worth noting that linking the PIE and its Business Integrity Label to positive incentives in various policy areas would also contribute to implement some of the provisions of the CPTPP's and USMCA's anti-corruption chapters. By expanding the scope and reach of the PIE through positive incentives, Mexico would encourage enterprises of different sizes, structures and sectors to establish compliance programmes to prevent and detect corruption, as provided by the USMCA.<sup>107</sup> It would also encourage businesses to adopt internal auditing controls to assist in preventing and detecting corruption, as foreseen by the CPTPP and the USMCA,<sup>108</sup> given that the existence of controls and monitoring systems are elements taken into account in the framework of the PIE.<sup>109</sup>

**Additionally, Mexico could contemplate using the framework of the PIE and its digital platform to promote RBC and incentivise responsible business practices in additional areas of the OECD MNEs Guidelines.**

The SFP has started using the PIE's digital platform to publish material about social responsibility in order to encourage businesses to take actions in this regard (Government of Mexico, n.d.<sup>[255]</sup>). However, the information contained in the infographic on social responsibility only promotes business practices that contribute to local communities' development, acknowledging their value for business continuity (Government of Mexico, n.d.<sup>[256]</sup>). It does not mention the prevention and mitigation of the adverse impacts that the companies' operations, supply chains, or business relationships may cause on local communities. As such, the actions promoted do not fully correspond to an RBC approach. In addition, the infographic does not make reference to the OECD MNEs Guidelines, despite expressly referring to other international instruments such as the UNGPs. As a first step, the SFP could therefore consider reviewing this infographic to promote a fully-fledged RBC approach and include a mention to the OECD MNEs Guidelines and the related OECD Due Diligence Guidance.

The digital platform of the PIE also contains information on RBC issues and, in particular, on the actions businesses can take to respect human rights, protect the environment, and promote diversity, inclusion and gender equality (Government of Mexico, n.d.<sup>[255]</sup>). Nevertheless, the measures recommended in the infographics dealing with each of these topics are one-off actions. They do not include carrying out on-going due diligence to identify, prevent and mitigate adverse impacts on a continued basis, which is key for all these topics. As a second step, the SFP could accordingly contemplate publishing material on due diligence and the different steps of the due diligence process in accordance with the OECD Due Diligence Guidance for RBC. This would help companies registered with the PIE identify, prevent and address corruption risks, but more generally become familiar with the actions to be taken to identify, prevent and address adverse impacts in all the areas covered by the OECD MNEs Guidelines, which include the above-mentioned topics.

Beyond the publication of RBC material on the PIE's digital platform, Mexico could also more generally consider using the PIE to encourage responsible business practices broadly. To do so, it could request businesses to submit information on their due diligence processes and include the conduct of due diligence in the elements taken into account to grant the Business Integrity Label, the scope of which could be extended. If endowed with sufficient resources, the NCP, in its capacity as expert on RBC and due diligence, could bring support to the SFP in relation to these different actions.

### **Measures for detecting corruption: private sector whistleblowing**

Pursuant to the LGRA, businesses' internal control programmes shall contain internal reporting mechanisms and tools to ensure whistleblower protection (Article 22 of the LGRA). Additionally, the LGRA lists the existence of adequate internal and external whistleblowing systems as one of the elements that integrity programmes must include (Article 25).<sup>110</sup> The SFP's Model Business Integrity Programme indicate in this regard that, in order to comply with the LGRA and mitigate their responsibility in case of corruption,

businesses' integrity programmes should include internal reporting mechanisms that ensure the confidentiality and protection of whistleblowers (Government of Mexico, 2017, pp. 6-7<sup>[248]</sup>; OECD, 2018, p. 22<sup>[243]</sup>). In addition, the existence of internal whistleblowing mechanisms is one of the elements taken into account in the framework of the PIE to grant the Business Integrity Label (Government of Mexico, 2020, pp. 6, 8<sup>[257]</sup>) Notwithstanding these welcome developments aimed at promoting the adoption of internal reporting mechanisms by businesses, Mexico does not seem to have taken much concrete action to encourage private sector whistleblowing through the creation of external reporting channels or the adoption of a specific legislative framework to protect corporate whistleblowers.

Over recent years, Mexico has adopted measures to promote whistleblowing in the public sector, developing several channels to report to the authorities. For instance, the Attorney General's Office (*Fiscalía General de la República*, FGR) has put in place two reporting mechanisms. Since 2003, the Centre for Complaint and Citizen Attention (*Centro de Denuncia y Atención Ciudadana*, CEDAC) receives reports of citizens related to a wide array of topics pertaining to the FGR's competencies, which include bribery (Government of Mexico, 2020<sup>[258]</sup>; OECD, 2018, p. 22<sup>[243]</sup>). In 2018, the FGR launched the Citizen Support System entitled "VISITEL" to allow reports by citizens of suspicions of administrative and criminal violations, including bribery, committed by its public officials in the performance of their duties (Government of Mexico, 2019<sup>[259]</sup>; OECD, 2018, p. 22<sup>[243]</sup>). The SFP has also developed reporting channels. The Comprehensive System of Citizen Complaints (*Sistema Integral de Denuncias Ciudadanas*, SIDEC) is available to citizens wishing to report corruption acts or administrative faults of federal public officials, or of individuals and companies that relate to government actions, in the framework of the LGRA (Government of Mexico, n.d.<sup>[260]</sup>; OECD, 2018, p. 22<sup>[243]</sup>). More recently, in 2019, the "System of Citizens Reporting on Corruption" (*Sistema de Ciudadanos Alertadores Internos y Externos de la Corrupción*) was launched to allow citizens and public officials to report serious corruption-related acts involving federal public officials (Government of Mexico, 2019<sup>[261]</sup>).

Mexico has also started to take steps to enhance the protection of whistleblowers who report instances of corruption in the public sector. Up until recently, the different provisions pertaining to whistleblower protection were scattered across different laws, including the LGRA (OECD, 2017, pp. 125-126<sup>[222]</sup>). However, the launch of the "System of Citizens Reporting on Corruption" was accompanied by the adoption of various documents pertaining to the protection of public officials and citizens who disclose misconduct in the public sector. In June 2019, the Guidelines for the promotion and operation of the System (*Lineamientos para la Promoción y Operación del Sistema de Ciudadanos Alertadores Internos y Externos de la Corrupción*) were adopted (Government of Mexico, 2019<sup>[262]</sup>). They contain a section on the protection of whistleblowers that detail the different protection measures that the latter can request.<sup>111</sup> Additionally, on the basis of these Guidelines, in October 2020, the SFP issued a Protocol for the Protection of the Persons that Report on Corruption through the System (*Protocolo de Protección para Personas Alertadoras de la Corrupción*) (Government of Mexico, 2020<sup>[263]</sup>). This Protocol – which is the first of the kind in Mexico and is legally binding for the entities of the federal administration on pain of administrative sanction – lists different protection measures that can be taken based on a risk assessment to ensure the defence, protection and integrity of public sector whistleblowers (Government of Mexico, 2020<sup>[263]</sup>).<sup>112</sup>

Nevertheless, beyond the provisions of the LGRA on the protection of whistleblowers' identity that apply to any company, individual or public official that report to the authorities, Mexico has not yet developed a legislation on comprehensive whistleblower protection applicable to both the public and private sectors (OECD, 2017, p. 126<sup>[222]</sup>). The Guidelines and the Protocol of the "System of Citizens Reporting on Corruption" focus on the protection of whistleblowers who report instances of corruption in the public sector and do not cover private sector whistleblowing. Thus, as underlined by the OECD Integrity Review of Mexico and the Phase 4 Report of Mexico by the Working Group on Bribery,<sup>113</sup> no specific legislation currently exists in Mexico that provides broad protections to corporate employees who report in good faith and on reasonable grounds suspected acts of corruption committed by other corporate employees, by



companies and/or by sub-contractors to the competent authorities (OECD, 2017, pp. 126-129<sup>[222]</sup>; OECD, 2018, pp. 22-23<sup>[243]</sup>).<sup>114</sup>

***Mexico could hence consider developing a framework to ensure that easily accessible channels are in place for the reporting by corporate employees to the competent authorities of suspected acts of corruption committed by other corporate employees, companies and/or subcontractors, and that comprehensive protection from all kinds of retaliation is granted to corporate employees who report such misconduct in good faith and on reasonable grounds.***

The OECD MNEs Guidelines recommend that companies adopt adequate measures to detect corruption.<sup>115</sup> Reporting by corporate employees is an important means to do so. However, to be efficient, internal reporting mechanisms, as foreseen by Articles 22 and 25 of the LGRA and promoted by the PIE, must be accompanied by easily accessible external channels to report to the authorities, and a framework granting comprehensive protection to corporate employees who report misconduct. Such a framework is key to encourage potential whistleblowers in companies to report suspected violations. Without it, there exists uncertainty about how effective legal protection can be ensured through mere company whistleblower mechanisms (OECD, 2018, p. 22<sup>[243]</sup>). This uncertainty deters the reporting, as corporate employees have no legal guarantee that they will be protected against reprisals. This is why most OECD countries have adopted comprehensive protection frameworks to facilitate external reporting to the authorities and protect whistleblowers from retaliation both in the public and private sectors (OECD, 2019, p. 36<sup>[240]</sup>).

To adopt a framework on private sector whistleblowing, Mexico could proceed in different ways. It could seek to adjust the frameworks existing for citizens and public officials to extend them to corporate employees. Alternatively, it could develop a separate framework for corporate employees adapted to the specificities of private sector whistleblowing and the specific risks of retaliation faced by corporate employees. In any case, easily accessible external channels to report to the authorities and broad protections covering all kinds of potential reprisals should be foreseen. Once adopted, the framework for private sector whistleblowing should be the object of a broad communication strategy and awareness-raising campaign. In particular, steps could be taken, as appropriate with business organisations and other stakeholders, to develop guidance for corporate employees on how to report to the competent authorities about suspected acts of corruption committed by corporate employees and companies. This is key to effectively encouraging corporate employees to report and ensure the implementation of the framework. It will not only allow them to understand the importance of whistleblowing in the fight against corruption, but also to know concretely how to report. Most importantly, it will help corporate employees become aware of their rights and of the legal protections they may be afforded in case they decide to report.

It is worth noting that developing a framework on private sector whistleblowing is aligned with action No. 3.6.6 foreseen under priority strategy No. 3.6 of the PNDH. This action aims at strengthening the mechanisms that allow individuals to report on cases of human rights infringements, corruption, and bad practices in the private sector in a safe, confidential and anonymous way, whilst guaranteeing their protection.<sup>116</sup> The development of such a framework would also contribute to implement the provisions of the anti-corruption chapters of the CPTPP and the USMCA that pertain to whistleblowers' protection.<sup>117</sup>

## Policy recommendations

**13. Involve more formally the private sector, including SMEs, in the functioning of the National Anti-corruption System (*Sistema Nacional Anticorrupción*), through for instance enhanced engagement of the national Citizen Participation Committee (*Comité de Participación Ciudadana*, CPC) and the 32 CPCs created at the state level with business associations and representatives.**

- 14. Grant businesses that register in the Business Integrity Registry (*Padrón de Integridad Empresarial*) and obtain the Business Integrity Label (*Distintivo de Integridad Empresarial*) a series of positive incentives in various policy areas in order to encourage different kinds of businesses to adopt and implement integrity programmes.**
- 15. Use the framework of the Business Integrity Registry (*Padrón de Integridad Empresarial*) and its digital platform to promote RBC and incentivise responsible business practices in other areas covered by the OECD MNEs Guidelines beyond anti-corruption.**
- 16. Develop a framework to ensure that easily accessible channels are in place for the reporting by corporate employees to the competent authorities of suspected acts of corruption committed by other corporate employees, companies, and/or subcontractors, and that comprehensive protection from all kinds of retaliation is granted to corporate employees who report such misconduct in good faith and on reasonable grounds.**

# 4 Leveraging and incentivising Responsible Business Conduct in Mexico

In addition to regulating and enforcing in support of RBC, governments can promote and enable RBC through the integration of RBC considerations in policy areas that have a bearing on the conduct of businesses. To build an enabling environment for businesses to act responsibly, it is fundamental that governments promote policy coherence and ensure alignment of policies relevant to RBC (OECD, 2015<sup>[1]</sup>). The Mexican Government can take steps in this direction by integrating RBC considerations in its operations as an economic actor and/or commercial activities, as well as in its economic policies that contribute to shape business conduct.

## 4.1. Exemplifying RBC in the Government's operations as economic actor

To promote and enable responsible business practices, it is key that governments lead by example and follow RBC principles and standards in their role as economic actors (OECD, 2015<sup>[1]</sup>). By doing so, they can encourage RBC and enhance the legitimacy of RBC policies. Mexico could lead by example by integrating RBC considerations in its activities as procurer of goods, services, and works, and as owner of enterprises.

### 4.1.1. Incorporating RBC considerations in Mexico's public procurement

#### *Public procurement as a strategic tool to promote RBC*

Public procurement plays a significant role in economies. Governments are the largest purchasers in the global market place and a principal source of demand in many sectors, acquiring goods, services, and works to carry out their functions and deliver services to citizens (OECD, 2020, p. 4<sup>[8]</sup>). In most countries, public procurement represents an important part of taxpayers' money, government expenditures, and GDP (OECD, 2019, p. 4<sup>[264]</sup>). In the case of Mexico, public procurement accounts for 18.7% of general government expenditures and 3.6% of GDP (OECD, 2019, p. 3<sup>[265]</sup>; OECD, 2020, p. 2<sup>[266]</sup>). While significant, this is lower than the average of OECD countries, for which public procurement accounts for around 30% of government expenditures and approximately 13% of GDP (OECD, 2019, p. 135<sup>[267]</sup>).

Over the last years, the concept of value for money in public procurement has changed. Increasingly, there are expectations that governments carry out public procurement with high standards of conduct and the aim of pursuing public interest objectives (OECD, 2020, pp. 15, 19-20<sup>[8]</sup>). Public procurement constitutes a powerful instrument for governments, which, if used strategically, can help pursue broader policy objectives beyond mere efficiency and economy. Governments' buying power notably gives them a strong lever to promote sustainable development and create reliable global supply chains, thereby minimising

risks that their purchasing decisions are linked to adverse impacts on people, the planet, and society (OECD, 2020, pp. 9, 13<sub>[8]</sub>).

The COVID-19 pandemic has reinforced the importance of integrating RBC considerations in public procurement to identify, prevent, and mitigate such impacts (OECD, 2020, p. 29<sub>[8]</sub>). Following the outbreak of the disease, many procuring entities have had to procure healthcare supplies with extreme urgency in a lockdown context where many suppliers were unable to respond to the high demand. This increased the risks of business-related adverse impacts, in particular on labour rights, and highlighted the need for governments to embed RBC considerations in public procurement (OECD, 2020, p. 29<sub>[8]</sub>).

A number of OECD instruments recognise the role public procurement can play in promoting RBC. According to the PFI, governments can promote RBC by developing public procurement criteria related to RBC (OECD, 2015, p. 77<sub>[11]</sub>). Likewise, the OECD Recommendation on Public Procurement acknowledges that public procurement can be used to advance broader policy objectives, such as RBC (OECD, 2015, pp. 6, 9<sub>[268]</sub>).<sup>118</sup> The Recommendation foresees that Adherents strike a balance between different policy objectives in three ways: (i) by evaluating the use of public procurement as a method to pursue broader policy objectives; (ii) by developing an appropriate strategy for the integration of such objectives in public procurement systems; and (iii) by measuring the effectiveness of public procurement in achieving these objectives (OECD, 2015, p. 9<sub>[268]</sub>). In addition, it recommends that Adherents integrate risk management strategies for mapping, detecting and mitigating risks throughout the public procurement cycle (OECD, 2015, p. 12<sub>[268]</sub>). The recent OECD report “Integrating RBC in Public Procurement” highlights that public procurement can be a means to advance RBC and formulates several recommendations in this regard (OECD, 2020, pp. 9-10<sub>[8]</sub>).

Concretely, responsible business practices can be promoted and enabled through the three phases of the procurement cycle. During the pre-tender phase,<sup>119</sup> RBC can be promoted by engaging with businesses and other stakeholders to assess the risks of adverse impacts associated to procurement projects, the potential measures to mitigate such impacts, and the ability of suppliers or contractors to meet potential requirements related to RBC (OECD, 2020, pp. 76-77<sub>[8]</sub>). In the tender phase,<sup>120</sup> RBC can be promoted by including RBC considerations in the tender documents (qualification or award criteria) or in the contracts (performance clauses) and by verifying, before signing the contracts, that the suppliers or contractors meet the tender requirements (OECD, 2020, pp. 77-84<sub>[8]</sub>). Finally, during the post-tender phase,<sup>121</sup> RBC can be promoted by monitoring that the RBC considerations included in the tender documents and/or contracts are being complied with, not only by the supplier or contractor, but more extensively in its supply chain, and by taking action if this is not the case (OECD, 2020, pp. 84-87<sub>[8]</sub>).

### *Reinforcing the use of public procurement as a strategic tool to promote RBC in Mexico*

Mexico has different public procurement systems: the federal, the state<sup>122</sup> and the municipal<sup>123</sup> systems, as well as the system of the two State productive enterprises (*empresas productivas del Estado*),<sup>124</sup> Mexican Petroleum (*Petróleos Mexicanos*, PEMEX) and the Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE). The present Review focuses on Mexico’s federal public procurement system, which corresponds to the federal Government’s public procurement or to that of state or municipal governments when the public resources used come from the federal budget (Sánchez, 2018, pp. 7-8<sub>[269]</sub>).

### **Expanding the integration of RBC considerations in Mexico’s federal public procurement**

The Mexican Constitution sets the principles for managing public resources and specifies the criteria that must guide public procurement. Pursuant to Article 134 of the Constitution, public funds must be managed with efficiency, effectiveness, economy, transparency and honesty. In addition, public procurement shall be conducted so that the State obtains the best terms possible with respect to price, quality, financing, opportunities, and other relevant circumstances (Government of Mexico, 1917<sub>[44]</sub>).<sup>125</sup> Beyond the Constitution, two main laws and their respective regulations govern public procurement at the federal level.

The Law on Public Sector Acquisitions, Leases and Services (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) and its regulation apply to the procurement of goods and services (Government of Mexico, 2000<sup>[270]</sup>). The Law on Public Works and Related Services (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*, LOPSRM) and its regulation govern the procurement of works and related services (Government of Mexico, 2000<sup>[271]</sup>). Both laws include RBC considerations, principally at the tender stage through qualification and award criteria.

One of these RBC considerations is the protection of the environment. The LAASSP provides that public procurement shall include environmental sustainability aspects.<sup>126</sup> It also stipulates that bidding processes must ensure that the State obtains the best terms possible not only with respect to the criteria enshrined in Article 134 of the Constitution, but also as regards energy efficiency, responsible water use, optimisation and sustainable use of public funds, and the protection of the environment.<sup>127</sup> In this regard, the LAASSP sets specific qualification criteria for the procurement of timber and/or wooden furniture or office supplies, for which suppliers must submit certificates delivered by third parties guaranteeing that the timber originates from sustainably managed forests.<sup>128</sup> It also establishes that procured office paper must contain a minimum of 50% of fibres or material originating from certified sustainably managed forests.<sup>129</sup> A Decree and specific Guidelines further complete these provisions.<sup>130</sup> The SEMARNAT's Guidelines, for instance, list the environmental sustainability aspects to be taken into account by procuring entities (efficient and rational use of water and energy, and prevention of water, soil and air contamination) and how they can do so throughout the procurement cycle.<sup>131</sup> They also provide guidance on how to ensure that procured timber and/or wooden furniture or office supplies come from sustainably managed forests and that office paper meets the criteria set in the LAASSP.<sup>132</sup>

The LOPSRM, on its end, requires procuring entities to assess the potential environmental impacts of public works based on the EIAs foreseen by the LGEEPA. In addition, where environmental conditions may be degraded because of public works, it provides that the projects must include the works necessary to preserve or restore such conditions.<sup>133</sup>

Beyond environmental objectives, the federal public procurement legal framework also includes social considerations in award criteria. The LAASSP notably provides that, in procurement processes where bidders' offers are to be evaluated based on points and percentages, additional points shall be granted to companies employing more than 5% of disabled staff or with gender equality policies.<sup>134</sup> A similar provision is also included in the LOPSRM, but only for companies employing disabled workers.<sup>135</sup> The regulation of the LAASSP specifies that, to benefit from these additional points, bidders must include in their offers a proof that they effectively employ disabled persons.<sup>136</sup>

The legal framework applicable to federal public procurement also includes integrity considerations. The LAASSP and the LOPSRM both provide that tenders must require bidders to submit a declaration of integrity through which they commit to refrain from adopting a conduct that could incentivise procuring entities to influence the results of the procurement processes.<sup>137</sup> In addition, according to both laws, procuring entities must not receive offers from, or contract with, persons and/or companies that may have or could generate conflicts of interest, or which are prohibited from contracting with the public administration and registered in the Directory of Black-listed Suppliers and Contractors (*Directorio de proveedores y contratistas sancionados*).<sup>138</sup>

Over recent years, the Government has been aiming to reform the federal public procurement system. In 2018, the SHCP became responsible for the general public procurement policy regulated by the LAASSP and the LOPSRM, a function previously exercised by the SFP,<sup>139</sup> which remains in charge of managing and implementing the policy pertaining to the internal control, inspection and revision of public procurement.<sup>140</sup> More recently, the SHCP and the SFP signed a collaboration agreement with a view to building a new federal public procurement system.<sup>141</sup> The initiative seeks *inter alia* to combat corruption in public procurement, avoid the waste of resources, and enhance the use of public funds through more efficient implementation.<sup>142</sup>

In this context, reforms foreseeing, among others, the enhanced inclusion of RBC considerations in the federal public procurement system are currently ongoing. Plans to amend the LAASP and the LOPSRM have been developed and various bills modifying several provisions of the LAASP presented to Congress.<sup>143</sup> One of these bills amends the award criterion granting additional points to companies employing disabled staff and/or with gender equality policies in tenders using the points and percentages method. It foresees that additional points should also be granted to SMEs and cooperatives constituted by vulnerable social groups, as well as to companies with an integrity programme aligned with the SFP's guidelines.<sup>144</sup> In relation to this last point, the current reform plans also seek to integrate the Business Integrity Registry developed by the SFP (see Section 3.4) into Mexico's e-procurement system, CompraNet, to help procuring entities identify easily which companies have integrity practices certified by the Business Integrity Label.<sup>145</sup>

Although the above demonstrates that Mexico has started to have recourse to public procurement as a method for pursuing broader policy objectives related to RBC, there is little information about the concrete results of this use, which, in addition, is still partial. Opportunities therefore exist to further use public procurement as a strategic tool through which the Government can leverage and incentivise RBC in a comprehensive manner. Mexico's current approach seems mainly aimed at obtaining certain positive RBC results through public procurement, such as promoting the employment of disabled workers. It does not require suppliers or contractors to carry out due diligence to ensure that the goods, services or works procured are not linked to adverse impacts on people, the planet and society.

***Mexico could accordingly adopt an overarching strategic approach on RBC and public procurement to integrate more systematically and comprehensively RBC considerations into its public procurement policies and processes, by extending their number and scope, and including a due diligence approach to prevent, mitigate and address the adverse impacts that may be associated to purchasing decisions.***

Such a strategic approach is crucial to clarify the Government's expectations that its suppliers and contractors abide by RBC principles and standards and to require that they prevent and mitigate real and potential adverse impacts caused not only by their operations, but also by their supply chains and other business relationships. This implies clarifying that due diligence extends beyond winning bidders and immediate suppliers or contractors to also encompass subcontractors, including informal ones. Such a clarification is key as it can create incentives for the formalisation of informal companies present in the supply chains of the suppliers or contractors of procuring entities.

The development of an overarching strategic approach to integrate more systematically and comprehensively RBC into Mexico's federal public procurement system would first imply extending the number and scope of RBC considerations integrated into the legal framework applicable to federal public procurement. It would also require developing enhanced institutional capacity to implement the new features of the legal framework. The recent transfer of responsibilities from the SFP to the SHCP and the current plans to reform the federal public procurement system represent an opportunity to adopt this strategic approach, which could be developed progressively.

As a first step, Mexico could contemplate reinforcing the integration of RBC considerations already included in its federal laws and regulations, such as integrity, by moving forward with some of the existing plans to reform the LAASSP and the LOPSRM. In this regard, the amendment of Article 14 of the LAASSP proposed by a recent bill to grant additional points in evaluation processes to companies that have obtained the Business Integrity Label would be a positive development. Likewise, there would be value in pursuing the plan aimed at incorporating the PIE into CompraNet (or any succeeding system) so that procuring entities can easily identify companies with robust integrity programmes.

Subsequently, Mexico could consider building on its initial experience of integrating environmental, social and integrity considerations into public procurement and expand it. This could entail not only including additional RBC considerations in the federal public procurement laws and regulations, but also doing so



throughout the procurement cycle. All the different stages of the cycle, from market engagement to contract management, are key to leverage RBC. Hence, RBC considerations should be included not only at the tender stage, but also in the pre- and post-tender stages. At the pre-tender stage, Mexico could seek to engage with businesses and other stakeholders to assess the risks of adverse impacts associated to procurement projects, identify the potential measures to mitigate such impacts, and the ability of suppliers and contractors to meet potential requirements related to RBC, as recently done by Canada (see Box 4.1). With respect to the tender stage, in addition to including RBC considerations in tender documents, Mexico could consider inserting RBC-related contractual provisions, such as performance clauses with RBC considerations, in procurement contracts as well. At the post-tender stage, Mexico could monitor that its suppliers and contractors comply with the RBC considerations included in tender documents and contracts, as further detailed below.

### Box 4.1. Examples of government measures integrating an RBC approach at the pre-tender phase

#### The case of Canada

Canada's central purchasing body, Public Services and Procurement Canada (PSPC), developed requirements to guarantee that, within the federal public procurement supply chain, apparel is acquired from ethical and socially responsible suppliers. According to the Requirements for the Ethical Procurement of Apparel, suppliers selling apparel to government entities must self-certify that they and their first-tier subcontractors comply with local laws and international standards on labour and human rights.

To develop these Requirements, during the pre-tender phase, PSPC engaged not only with industry organisations from the apparel sector, but also with civil society and trade unions through an official request for information. This request aimed at: (i) gathering information on suppliers' current obligations with respect to ethical procurement; (ii) obtaining information on the potential impact of the implementation of the proposed certification requirements on suppliers; and (iii) engaging with stakeholders in the development and refinement of the requirements. PSPC also met with suppliers and CSOs to discuss the proposed self-certification requirements, as well as existing practices regarding ethical manufacturing and sourcing of goods in apparel supply chains.

Sources:

Government of Canada (2017), Request for Information – Ethical Procurement, <https://buyandsell.gc.ca/procurement-data/tender-notice/PW-PR-760-73815>.

Government of Canada (2017), Press release: Contracts to include human and labour rights responsibilities for suppliers, [https://www.canada.ca/en/public-services-procurement/news/2017/11/government\\_of\\_canadatakessteptowardsethicalprocurementofapparel.html](https://www.canada.ca/en/public-services-procurement/news/2017/11/government_of_canadatakessteptowardsethicalprocurementofapparel.html).

Government of Canada (2018), Requirements for the ethical procurement of apparel, <https://buyandsell.gc.ca/policy-and-guidelines/policy-notifications/PN-132>.

OECD (2020), Integrating Responsible Business Conduct in Public Procurement, OECD Publishing, Paris, p. 52, <https://doi.org/10.1787/02682b01-en>.

The second step could imply integrating a risk management framework for RBC considerations in the federal public procurement laws and regulations to ensure that purchasing decisions are not associated to adverse impacts on people, the planet and society. This framework should integrate a risk-based due diligence approach and requirements that suppliers or contractors of procuring entities conduct due diligence based on the OECD Due Diligence Guidance for RBC to identify and mitigate potential and real adverse impacts caused, or contributed to be caused, by their activities, supply chains or business relationships.

The COVID-19 pandemic and the related emergency procurement of healthcare supplies have reinforced the importance of adopting a strategic approach to incorporate RBC considerations in public procurement. In the context of the COVID-19 crisis, Mexico applied emergency procedures to secure supplies.<sup>146</sup> This situation, in Mexico and elsewhere in the world, led to increased risks of purchasing counterfeited or unsafe health products, as well as of labour rights violations in the supply chains of essential products (OECD, 2020<sup>[272]</sup>; OECD, 2020, p. 29<sup>[8]</sup>). It also showed the need to prepare for emergency procurement and to develop and implement risk management strategies based on due diligence to increase knowledge of supply chains, make informed decisions, and avoid adverse impacts (OECD, 2020, p. 29<sup>[8]</sup>). Adopting a strategic approach to integrate more systematically and comprehensively RBC considerations into the federal public procurement system is therefore also particularly important to increase Mexico's preparedness to face future crisis and its capacity to respond to citizens' needs responsibly.

In addition, by creating incentives for the formalisation of informal companies present in the supply chains of the suppliers or contractors of procuring entities, the strategic approach would directly contribute to the implementation of action No. 3.6.9 foreseen under priority strategy No. 3.6 of the PNDH, which aims at incentivising companies to adopt the measures necessary to promote the formalisation of employment.<sup>147</sup>

### **Monitoring the integration of RBC considerations in Mexico's federal public procurement**

To date, Mexico has adopted some mechanisms to verify that suppliers or contractors of the federal public administration comply with the environmental, social and integrity considerations included in the LAASSP and the LOPSRM. This verification is carried out at the tender stage before contracts are awarded. Bidders are notably requested to present certificates delivered by third parties or governmental entities or sworn statements certifying that their goods come from sustainably managed forests,<sup>148</sup> that they effectively employ disabled persons,<sup>149</sup> or that they will act with integrity in the tendering procedure to either participate in the tender or obtain additional points in the evaluation process.<sup>150</sup>

This monitoring, however, is limited to the tender stage and does not appear to extend to the other phases of the procurement cycle. During the pre-tender phase, Mexico does not seem to check if procuring entities constantly integrate the RBC-related qualification and award criteria set in the LAASSP and LOPSRM in the tender documents they develop. Likewise, at the post-tender stage, no mechanism appears to ensure that the suppliers or contractors of the federal public administration continue to comply with the RBC considerations included in these qualification and award criteria during contract implementation. More broadly, Mexico does not seem to have developed tools to assess the impact of public procurement on the uptake of responsible business practices. There is, hence, little visibility on whether the RBC considerations included in the qualification and award criteria of the LAASSP and the LOPSRM have concrete results in practice. For example, as things currently stand, a bidder could present in its offer a statement certifying that it employs disabled persons to benefit from additional points in the evaluation process of the tender phase, but subsequently stop employing such persons during the implementation of the contract.

***Mexico could hence consider taking steps to enhance the monitoring and follow-up of the inclusion of RBC considerations in its public procurement policies and processes during the different phases of the procurement cycle to promote their uptake, ensure impact, and measure progress.***

Monitoring and follow-up processes are fundamental to ensure that an overarching strategic approach on RBC and public procurement leads to concrete results in practice. Without such processes, there is no guarantee that the RBC considerations included in public procurement laws and regulations are effectively implemented by public procurement practitioners at the pre-tender and tender stages, and met by suppliers and contractors during the tender and post-tender phases.

As a general and preliminary step prior to the development of such processes, Mexico could seek to enhance the engagement of public procurement policy-makers and practitioners with stakeholders and existing RBC-focused networks. This would strengthen the tracking of the RBC issues that can arise at the

different stages of the procurement cycle and allow identifying the potential and real adverse impacts that may be associated to purchasing decisions more easily.

With respect to the pre-tender phase, Mexico could consider designing processes to verify that public procurement practitioners constantly include the qualification and award criteria of the LAASSP and the LOPSRM based on RBC considerations in tender documents. Subsequently in the tender phase, Mexico could reinforce and develop the existing mechanisms to check that potential suppliers or contractors meet the RBC considerations included in the qualification and award criteria before the actual award of the contracts. In relation to the post-tender phase, Mexico could consider developing mechanisms to ensure that the requirements pertaining to RBC included in tender documents are still being met during contract implementation. They could also serve to verify that suppliers and contractors comply with the RBC considerations included in potential performance clauses of procurement contracts. These mechanisms could take different forms: justifying documents, labels, standards, certificates, surveys, questionnaires, third-party audits, on-site visits, meetings, digital technology, etc. They could cover suppliers and contractors, but also more extensively their supply chains and business relationships. Mexico could also contemplate designing follow-up actions to monitoring, such as applying sanctions in case serious violations related to RBC issues are detected during contract performance.

Finally, and going a step further, Mexico could also consider developing a methodology to measure the effects of including RBC considerations in public procurement on the uptake of responsible practices by businesses dealing with Mexico's procuring entities. For this purpose, Mexico could consider having recourse to its e-procurement system, CompraNet (or any succeeding system), and the expertise developed in this context to gather and make accessible documents and data on public procurement (OECD, 2018<sup>[273]</sup>; OECD, 2019<sup>[274]</sup>). Such expertise could be used to collect data pertaining to RBC considerations, which could in turn serve to measure, according to pre-defined key performance indicators, the impact of public procurement on the uptake of RBC. Finland's example is illustrative of how measurement efforts can be put into practice (see Box 4.2).

#### **Box 4.2. Example of government efforts to measure public procurement impact**

##### **The case of Finland**

The OECD worked with Finland to define how to measure public procurement's impact on the achievement of specific policy outcomes, such as: (i) unlocking innovation; (ii) increasing SMEs' participation and competition; (iii) increasing exports and employment; and (iv) pioneering clean technology. As part of this work, a set of performance indicators were suggested to measure such impact. These indicators are as follows:

- SME participation: number of bids submitted by SMEs.
- Reduction in energy consumption: comparison of energy consumption of historical goods and services bought by the government and new goods and services selected using criteria other than the lowest-price criterion.
- Reduction of emissions: comparison between emissions of historical goods and services bought by the government and new goods and services selected using emissions as criteria.
- Improvement in air/water quality: comparison between impacts on air/water quality of historical goods and services bought by the government and new goods and services selected using environmental considerations as criteria.
- Incorporation of social considerations in government contracts: ratio of contracts pursuing social objectives (including the aggregation of social outcomes secured through public contracts).

- Skills/jobs creation: number of jobs/training qualifications generated through public procurement.

Sources:

OECD (2020), Integrating Responsible Business Conduct in Public Procurement, OECD Publishing, Paris, p. 61, <https://doi.org/10.1787/02682b01-en>.

OECD (2019), Productivity in Public Procurement – A Case Study of Finland: Measuring the Efficiency and Effectiveness of Public Procurement, <https://www.oecd.org/gov/public-procurement/publications/productivity-public-procurement.pdf>.

### **Training Mexico’s federal public procurement policy-makers and practitioners on RBC**

Over recent years, Mexico has developed trainings for public procurement practitioners (OECD, 2017, p. 239<sup>[222]</sup>). The SHCP’s and CompraNet’s websites, for instance, indicate that several training courses are available on different aspects of the LAASSP and the LOPSRM or the use of the e-procurement system (Government of Mexico, 2020<sup>[275]</sup>). In addition, courses on RBC-related issues have also been developed. The SFP notably reported that a permanent programme has been put in place to train the procuring entities of the federal public administration on integrity considerations. To date, it has reportedly organised around 60 meetings on issues such as the detection of conflicts of interest, whistleblowing mechanisms, and business integrity programmes. The SFP also indicated that it seeks to raise procuring entities’ awareness on other RBC matters such as human rights, diversity, gender equality, and the protection of the environment. However, such trainings seem to be targeted only at public procurement practitioners and to focus principally on the theory and legal aspects of these issues instead of practical implementation. Most importantly, for the time being, public procurement policy-makers and practitioners do not receive any specific training on the inclusion of RBC in public procurement and its strategic relevance.

***Mexico could take advantage of the transfer of public procurement responsibilities from the SFP to the SHCP to enhance public procurement policy-makers’ and practitioners’ awareness of the importance of using public procurement as a strategic tool to promote RBC, as well as their knowledge, capacity and practical ability to implement RBC considerations in public procurement, with the support of the NCP.***

This is particularly important, as the integration of RBC into public procurement cannot be achieved without raising public procurement policy-makers’ and practitioners’ awareness of how public procurement can leverage and incentivise responsible business practices, as well as enhancing their knowledge, capacity and practical ability to implement RBC considerations in public procurement. A recent OECD survey and report on the integration of RBC in public procurement revealed that the lack of understanding and knowledge as to how to implement RBC considerations in public procurement is the prevalent challenge for the development of legal frameworks in this regard (OECD, 2020, pp. 50-51<sup>[8]</sup>). The report also highlighted the importance of enhancing public procurement policy-makers’ and practitioners’ capacity and practical ability to implement RBC considerations (OECD, 2020, pp. 50-51<sup>[8]</sup>). A change of culture and the acquisition of new knowledge, capacity and practical ability is therefore indispensable. Public procurement policy-makers and practitioners must be given the means to realize the strategic relevance of using public procurement as a conduit to promote and enable RBC and the tools to do it.

Different actions could be envisaged to that end. First, creating a central contact point or several focal points with expertise and resources on RBC and on the practical implementation of RBC considerations into public procurement could help disseminate knowledge and build capacity throughout the federal public procurement system (OECD, 2020, p. 92<sup>[8]</sup>). A number of countries have, for instance, developed knowledge centres with specific expertise on RBC and public procurement (see Box 4.3) (OECD, 2020, p. 57<sup>[8]</sup>). The development of guidance materials and a specific training action plan on RBC could also contribute to the acquisition of the relevant knowledge and practical skills by public procurement policy-makers and practitioners.

### Box 4.3. Examples of government efforts to increase knowledge of RBC in public procurement

#### FIDO – The Belgian knowledge centre

The Belgian Government established a knowledge centre, the Federal Institute for Sustainable Development (FIDO). FIDO developed a Sustainable Procurement Guide that outlines the sustainability criteria to be included in specifications for the purchase of supplies and services. It continuously updates the Guide and advises on the interpretation of the specifications and other clauses contained therein.

#### The Dutch expertise centre: PIANOo

The Dutch Minister of Economic Affairs is responsible for PIANOo, a centre that supports public procurement practitioners through training and tools. It also disseminates best practices and develops practical guidelines, including on sustainable public procurement and RBC considerations. The aim of PIANOo is to enhance public procurement practitioners' knowledge of different markets, risks, innovative tendering and the interpretation of rules.

#### The German Competence Centre for Sustainable Procurement: KNB

The Competence Centre for Sustainable Procurement (KNB) was created within the Ministry of the Interior of Germany to help public procurement practitioners consider sustainability criteria in their procurement projects. KNB uses a variety of channels to disseminate information, build capacity, respond to questions and provide advice to public procurement practitioners on sustainable procurement.

Source:

OECD (2020), Integrating Responsible Business Conduct in Public Procurement, OECD Publishing, Paris, pp. 58-59, <https://doi.org/10.1787/02682b01-en>.

Public procurement policy-makers' and practitioners' training and capacity building could also be advanced through the participation in international cooperation initiatives aimed at sharing best practices and exchanging information on approaches, tools and lessons learned on RBC and public procurement, as well as through engagement with stakeholders with specific expertise on RBC issues. Finally, facilitating the cooperation and exchange of information between public procurement policy-makers and practitioners and the entities in charge of RBC and RBC-related issues, such as the SEGOB, the SEMARNAT and the STPS, could also be fundamental. The NCP could also play an active role in this regard. If endowed with adequate resources and capacity, it could notably act as liaison entity and organise training activities on RBC, with a specific focus on the OECD MNEs Guidelines and the related OECD Due Diligence Guidance (see Section 5). In light of the recent transfer of responsibilities from the SFP to the SHCP, the collaboration between the two entities on all the above-mentioned actions would be key to enhance public procurement policy-makers and practitioners' understanding of the strategic relevance of integrating RBC into public procurement, and their knowledge, capacity and practical ability to do so.

## Policy recommendations

**17. Strengthen the use of public procurement as a strategic tool to promote RBC through the adoption of an overarching strategic approach to integrate more systematically and comprehensively RBC considerations into public procurement, by extending their number and scope, and including a risk-based due diligence approach to prevent, mitigate and address the risks of adverse impacts that may be associated to purchasing decisions.**

**18. Take steps to enhance the monitoring and follow-up of the inclusion of RBC considerations in Mexico's public procurement policies and processes during the different phases of the procurement cycle to promote their uptake, ensure impact, and measure progress.**

**19. Take advantage of the transfer of public procurement responsibilities from the Ministry of Public Administration (*Secretaría de la Función Pública*) to the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) to enhance public procurement policy-makers' and practitioners' awareness of the importance of using public procurement as a strategic tool to promote RBC, as well as their knowledge, capacity and practical ability to implement RBC considerations in public procurement, with the support of the National Contact Point for RBC.**

#### **4.1.2. Incorporating RBC considerations in the functioning of Mexico's State-Owned Enterprises**

##### *SOEs' observance of RBC principles and standards as a means to encourage RBC*

SOEs can play an important role in the economy (OECD, 2017, p. 7<sub>[276]</sub>). In many countries, they are responsible for the provision of essential public services, having a direct impact on citizens' lives (OECD, 2015, p. 7<sub>[277]</sub>). In addition, SOEs increasingly engage in trade and investment (OECD, 2016, pp. 13, 20<sub>[278]</sub>) and have become important actors in GVCs outside their territories (OECD, 2015, pp. 11-12<sub>[277]</sub>). In fact, 132 of the world's largest 500 enterprises are either state-owned or effectively state-controlled (OECD, 2020, p. 148<sub>[279]</sub>).

This is particularly true in Mexico, where PEMEX and CFE – the two State productive enterprises and the main Mexican SOEs – are amongst the largest companies in the country and worldwide. PEMEX is not only the largest oil company in the country, but also one of the most important oil companies in the world (PEMEX, 2019, p. 10<sub>[280]</sub>; PEMEX, 2020, p. 3<sub>[281]</sub>). In 2018, its income reportedly amounted to 8% of Mexico's GDP (PEMEX, 2019, p. 11<sub>[280]</sub>). As to CFE, it is the most important electricity producer in the country and also one of the largest electric power companies in the world (Standard and Poors, 2019, p. 6<sub>[282]</sub>; CFE, 2020<sub>[283]</sub>). In 2018, the value of CFE's income reportedly represented 1.9% of Mexico's GDP (Center for Public Finance Studies, 2019, p. 13<sub>[284]</sub>). Together, PEMEX and CFE contributed to 12.5% of Mexico's budget revenues for the first semester of 2020 (Government of Mexico, 2020, p. 9<sub>[285]</sub>).

Given SOEs' capacity to impact economic and social development (OECD, 2015, p. 8<sub>[277]</sub>), ensuring that they operate in accordance with good governance practices and RBC principles and standards is fundamental to guarantee their positive contribution to the economy (OECD, 2015, p. 11<sub>[277]</sub>). This is all the more important as SOEs often operate in sectors where RBC risks may be prevalent (OECD, 2019, p. 3<sub>[286]</sub>).

This is notably the case of PEMEX and CFE, as the oil and gas and electricity sectors face accrued risks with respect to several RBC areas, such as human rights, integrity and anti-corruption, or the environment. PEMEX, for instance, was the first Mexican SOE to be the object of a recommendation issued by the CNDH for human rights infringements in 1995 (CNDH, 2019, pp. 88, 93<sub>[60]</sub>). Furthermore, over recent years, the oil company not only had one of its former executives extradited to Mexico in the context of a corruption investigation (Government of Mexico, 2020<sub>[287]</sub>), but was also ranked as the ninth most polluting fossil fuel producing company in the world (Climate Accountability Institute, 2020<sub>[288]</sub>; The Guardian, 2019<sub>[289]</sub>).

Several OECD instruments acknowledge the importance of SOEs complying with RBC principles and standards. The OECD MNEs Guidelines apply to all enterprises, regardless of their ownership and legal status.<sup>151</sup> Adherents are therefore expected to apply them to the SOEs they directly control.<sup>152</sup> In addition,



the PFI recognises that governments should ensure that the practices of their SOEs exemplify RBC (OECD, 2015, p. 77<sub>[11]</sub>). In the same vein, the OECD Guidelines on Corporate Governance of State-Owned Enterprises<sup>153</sup> (the OECD SOE Guidelines) include a chapter on “Stakeholder relations and responsible business”, which recommends, among others, that SOEs observe high RBC standards. To this effect, governments should disclose their expectations regarding RBC and SOEs in a clear and transparent manner and establish mechanisms for their implementation (OECD, 2015, pp. 23, 60<sub>[277]</sub>). The OECD SOE Guidelines also recommend that SOEs observe high standards of transparency and disclose relevant financial and non-financial information<sup>154</sup> (OECD, 2015, pp. 26, 64<sub>[277]</sub>). Additionally, the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (the OECD ACI Guidelines) provide specific guidance with respect to the fight against corruption and the promotion of integrity in SOEs (OECD, 2019, p. 10<sub>[286]</sub>). They recommend *inter alia* that governments apply high standards of conduct in order to set an example in SOEs and to exhibit integrity to the public. They also call on governments to require that SOEs act in accordance with high standards of performance and integrity (OECD, 2019, pp. 17, 20<sub>[286]</sub>).<sup>155</sup>

*Strengthening the observance of RBC principles and standards by Mexico’s main SOEs as a means to encourage RBC*

The way in which governments can ensure that SOEs observe RBC principles and standards and lead by example on RBC depends on the characteristics of the domestic legal framework applicable to SOEs and the corresponding system of SOE ownership, regulation and governance. The Mexican legal framework does not contain a definition of “State-owned enterprise” and several types of legal entities governed by different rules can be considered SOEs as per the definition of the OECD SOE Guidelines. These SOEs generally take the form of weakly incorporated “parastatals”, which operate under close control of the line ministries responsible for public policy in their sector of operations. Correspondingly, Mexico has a highly decentralised system for SOE ownership, regulation and governance (OECD, 2018, pp. 26, 31 and 34<sub>[290]</sub>). No single institution or state actor is responsible for the ownership function of all SOEs and different line ministries regulate, oversee and develop the priorities and policies of each SOE (OECD, 2018, pp. 24, 31 and 34<sub>[290]</sub>).

In light of the challenges that a decentralised model poses for the analysis, the present Review focuses on Mexico’s main SOEs, PEMEX and CFE. As a result of the 2013 energy reform, both PEMEX and CFE were granted greater autonomy for their administration, organisation, management and budget. They are regulated and supervised by the Ministry of Energy (*Secretaría de Energía*, SENER), the Minister of Energy being the president of their boards (Government of Mexico, 2014<sub>[291]</sub>; Government of Mexico, 2014<sub>[292]</sub>).<sup>156</sup> However, as state productive enterprises, they both have their own legal personality and assets, as well as technical, operative, management and budgetary autonomy (Government of Mexico, 2014<sub>[291]</sub>; Government of Mexico, 2014<sub>[292]</sub>).<sup>157</sup> PEMEX’s and CFE’s autonomy renders the integration of a coordinated and coherent RBC approach in Mexico’s main SOEs challenging.

**Integrating an RBC approach in Mexico’s main SOEs**

In accordance with their stated purpose, PEMEX and CFE integrate RBC considerations in their policies and management systems. The purpose of both companies is to generate economic value for the Mexican State, through the maximisation of oil revenues for PEMEX,<sup>158</sup> and by improving productivity with sustainability to reduce the electricity industry’s costs for CFE.<sup>159</sup> In both cases, the ultimate goal is to contribute to Mexico’s development, while acting in a transparent, honest and efficient way, with a sense of fairness and social and environmental responsibility (Government of Mexico, 2014<sub>[291]</sub>; PEMEX, 2019, p. 10<sub>[280]</sub>; Government of Mexico, 2014<sub>[292]</sub>; CFE, 2020<sub>[283]</sub>).

Social and environmental aspects are therefore present in PEMEX’s and CFE’s business purpose. PEMEX’s 2019-2023 business plan refers to social responsibility as one of the company’s strategic objectives and defines it as “promoting favourable social environments that allow it to develop its operations

in conditions of security, stability and continuity [...]” (PEMEX, 2019, p. 46<sup>[280]</sup>). Similarly, CFE’s 2018-2022 business plan indicates that its strategic ambition is to be a sustainable energy company responsible with the environment and that its fundamental priority is to operate safely and continuously, with the minimum environmental impact possible, and preserving workers’ and people’s life and health (CFE, 2017, p. 9<sup>[293]</sup>). One of the transversal pillars supporting this ambition is the development of a social role based on a social responsibility model (CFE, 2017, p. 49<sup>[293]</sup>).

Social responsibility is further included in PEMEX’s policies and guidelines for the management of the social license to operate (*Políticas y lineamientos para la gestión de la licencia social para operar*), which define it as the “commitment to handle and undertake economic, social and environmental actions in favour of the communities in which [it] carries out activities” (PEMEX, 2017, p. 26<sup>[294]</sup>). According to these policies and guidelines, the social license to operate aims at improving PEMEX’s relationships with local communities through business responsibility strategies in order to avoid social conflicts. However, the first three stated goals of the license to operate are not to avoid and address adverse impacts, but to contribute to value creation for PEMEX, ensure the continuity of its operations, and help the development of its projects, plans and deals (PEMEX, 2017, p. 6<sup>[294]</sup>). Implementing social responsibility actions and raising its staff’s awareness on the issue only come as the fourth and sixth objectives of PEMEX’s social license to operate (PEMEX, 2017, p. 6<sup>[294]</sup>). This is in line with the fact that, where a risk of social conflict is identified through a social impact assessment, the policies and guidelines provide that prevention and outreach actions should be put in place primarily in order to maintain business continuity (PEMEX, 2017, p. 7<sup>[294]</sup>). These actions are limited to a number of fields<sup>160</sup> and must be carried out through specific tools: cash donations, in-kind donations, support programmes for the communities and the environment, mutual benefit infrastructure works, and finally social responsibility contractual mechanisms aimed at dealing with adverse impacts on local communities and the environment (PEMEX, 2017, pp. 8, 22-23<sup>[294]</sup>). The rationale behind PEMEX’s approach of social responsibility therefore seems in general closer to philanthropy than to RBC, since its policies and guidelines for the management of the social license to operate do not appear to primarily seek to contribute to sustainable development and to avoid and address adverse impacts on people, the planet and society.

As to CFE, social responsibility also features amongst the core principles of actions of its Code of Ethics (CFE, 2019<sup>[295]</sup>). It is defined, in accordance with the ISO 26000 Guidance on social responsibility, as the “obligation of an organisation with respect to the impacts that its decisions and activities cause on society and the environment, through an ethical and transparent conduct that: i) contributes to sustainable development [...]; ii) takes into consideration stakeholders’ expectations; iii) complies with relevant legislation [...]; and iv) is integrated in all the organisation and implemented in its relationships” (CFE, 2019, p. 24<sup>[295]</sup>). Under this principle, CFE commits to comply with the internationally recognised standards of social responsibility and sustainability and to identify and address the social and environmental impacts of its operations (CFE, 2019, p. 14<sup>[295]</sup>). To this effect, the Code of Ethics sets out several guidelines. These guidelines urge CFE’s staff, among others, to maintain safe environments, avoiding any conduct that would violate human rights, to identify, control and mitigate its activities’ social and environmental impacts, and to contribute to the development of local communities (CFE, 2019, p. 15<sup>[295]</sup>). The rationale behind CFE’s approach of social responsibility therefore seems closer to RBC than that of PEMEX’s approach, as the guidelines on social responsibility of its Code of Ethics primarily appear to seek to avoid and address adverse impacts, as well as to contribute to local communities’ sustainable development.

Notwithstanding the above, social responsibility does not seem to be the basis of PEMEX’s and CFE’s approaches on RBC issues. As the main RBC-related requirement contained in PEMEX’s Law (*Ley de Petróleos Mexicanos*) and CFE’s Law (*Ley de la Comisión Federal de Electricidad*) is that their boards adopt codes of ethics, the integration of RBC considerations in their policies and management systems rather appear to have been driven by the development and implementation of such codes (see Box 4.4).<sup>161</sup>

## Box 4.4. Mexico's main SOEs' Codes of Ethics and Conduct

### PEMEX's Codes of Ethics and Conduct

PEMEX's Code of Ethics, which dates from 2019, establishes its commitment to promote a culture of ethics through the following principles: respect, equality and non-discrimination, effectiveness, honesty, loyalty, responsibility, legality, fairness and integrity.<sup>1</sup> It also contains corporate ethics guidelines on a wide array of topics, such as information disclosure, competition, anti-corruption, conflicts of interest, third-party relationships, personal relationships, community and environment, and human rights.<sup>2</sup> The Code of Ethics is of mandatory application for all of PEMEX's employees, as well as for any person related to PEMEX, whose actions can prejudice the company's reputation,<sup>3</sup> which includes its suppliers and co-contractors.<sup>4</sup>

To implement this Code, PEMEX also adopted a Code of Conduct in 2019, which defines, in accordance with the Code of Ethics' principles, the behaviour expected from and forbidden for PEMEX's employees with respect to several issues, such as gifts and entertainment, conflicts of interest, bribery and corruption, harassment, etc.<sup>5</sup> The Code is mandatory for PEMEX's staff, as well as for any person or company acting in the name or representation of PEMEX,<sup>6</sup> which also covers its suppliers and co-contractors.<sup>7</sup> An Ethics Committee is in charge of promoting and overseeing the implementation and compliance with both Codes.<sup>8</sup> Non-compliance can be reported through an Ethics Hotline (*Línea Ética*), which also provides guidance related to ethics and integrity.<sup>9</sup>

### CFE's Codes of Ethics and Conduct

CFE's Code of Ethics, which was last updated in 2019, sets out its institutional values, the principles of action that its staff must follow on transparency, honesty, efficiency, equity, and social responsibility, as well as, for each principle, the corresponding ethics' guidelines.<sup>10</sup> It is of mandatory application for all of CFE's staff and any third party that provides services in CFE's name, as well as for the members of its board.<sup>11</sup> To promote its implementation, CFE adopted complementary documents, namely a guide to identify, prevent and report on conducts that can constitute conflicts of interest, a policy on gifts and recognitions, guidelines on relationships with governments, and a Code of Conduct.<sup>12</sup>

The Code of Conduct establishes CFE's institutional values (integrity, productivity and responsibility) and the conduct expected from its staff, as well as the staff of its subsidiaries and affiliated companies.<sup>13</sup> An Ethics and Integrity Commission is in charge of promoting the Codes of Ethics and Conduct and ensuring compliance with their principles and guidelines.<sup>14</sup> Non-compliance can be reported through an Ethics Hotline (*Línea Ética*).<sup>15</sup> Each year, the Ethics and Integrity Commission measures the Codes' uptake based on a series of goals and indicators and reports on its activities and the functioning of the Ethics Hotline.<sup>16</sup>

Notes:

1. PEMEX (2019), Code of Ethics, p. 6, [https://www.pemex.com/etica\\_y\\_transparencia/etica/Documents/codigo\\_de\\_etica\\_122019-EN.pdf](https://www.pemex.com/etica_y_transparencia/etica/Documents/codigo_de_etica_122019-EN.pdf).

2. Ibid., pp. 11-13.

3. Ibid., p. 4.

4. PEMEX (2019), Informe de sustentabilidad 2018, p. 4, [https://www.pemex.com/etica\\_y\\_transparencia/transparencia/informes/Documents/inf\\_sustentabilidad\\_2018\\_esp.pdf](https://www.pemex.com/etica_y_transparencia/transparencia/informes/Documents/inf_sustentabilidad_2018_esp.pdf).

5. PEMEX (2019), Code of Conduct, pp. 8-16, [https://www.pemex.com/acerca/marco\\_normativo/Documents/codigos/codigo\\_de\\_conducta\\_2019-EN.pdf](https://www.pemex.com/acerca/marco_normativo/Documents/codigos/codigo_de_conducta_2019-EN.pdf).

6. Ibid, p. 4.

7. PEMEX (2019), Informe de sustentabilidad 2018, p. 4, [https://www.pemex.com/etica\\_y\\_transparencia/transparencia/informes/Documents/inf\\_sustentabilidad\\_2018\\_esp.pdf](https://www.pemex.com/etica_y_transparencia/transparencia/informes/Documents/inf_sustentabilidad_2018_esp.pdf).
8. PEMEX (2019), Code of Conduct, p. 15, [https://www.pemex.com/acerca/marco\\_normativo/Documents/codigos/codigo\\_de\\_conducta\\_2019-EN.pdf](https://www.pemex.com/acerca/marco_normativo/Documents/codigos/codigo_de_conducta_2019-EN.pdf).
9. PEMEX (2021), Website: Línea Ética, <https://www.pemex.com/lineaetica/Paginas/default.aspx>.
10. CFE, Código de Ética, p. 2, [https://www.cfe.mx/transparencia\\_etica/etica/Documents/Codigo%20de%20Etica.pdf](https://www.cfe.mx/transparencia_etica/etica/Documents/Codigo%20de%20Etica.pdf).
11. Ibid., p. 7.
12. Ibid., p. 17.
13. CFE (2019), Código de Conducta, pp. 5, 7, 10, 11, 13, [https://www.cfe.mx/transparencia\\_etica/etica/Documents/Codigo%20Conducta%20CFE.pdf](https://www.cfe.mx/transparencia_etica/etica/Documents/Codigo%20Conducta%20CFE.pdf).
14. CFE, Código de Ética, p. 19, [https://www.cfe.mx/transparencia\\_etica/etica/Documents/Codigo%20de%20Etica.pdf](https://www.cfe.mx/transparencia_etica/etica/Documents/Codigo%20de%20Etica.pdf).
15. Ibid., p. 15.
16. CFE (2019), Comisión de Ética Corporativa e Integridad Pública - Resultados de indicadores 2019, [https://www.cfe.mx/transparencia\\_etica/etica/Documents/Comisi%C3%B3n%20de%20C3%89tica%20Corporativa/Resultados%20anuales%20de%20indicadores%20de%20C3%89tica%20Corporativa.pdf](https://www.cfe.mx/transparencia_etica/etica/Documents/Comisi%C3%B3n%20de%20C3%89tica%20Corporativa/Resultados%20anuales%20de%20indicadores%20de%20C3%89tica%20Corporativa.pdf).

As a result, although PEMEX and CFE have taken action to address RBC concerns in several areas of the OECD MNEs Guidelines, these actions have mainly been built around the concept of corporate ethics, instead of CSR or RBC, and more efforts have thus been dedicated to anti-corruption and integrity. In fact, this is the only area for which a formal due diligence process has been put in place, and yet only by PEMEX.

Besides its Code of Ethics, and as a result of its reform to fight corruption, PEMEX also developed anti-corruption policies and guidelines (PEMEX, 2019, p. 4<sup>[296]</sup>; PEMEX, 2019, p. 1<sup>[297]</sup>). These policies and guidelines establish actions to help PEMEX's staff identify, deal with, and combat corruption acts, notably through due diligence (PEMEX, 2017, pp. 7, 25-26<sup>[298]</sup>). The objectives of due diligence, and the way in which it should be carried out, are defined in specific policies and guidelines on due diligence in the field of corporate ethics and integrity, which are mandatory for all of PEMEX's employees and companies involved in due diligence prior to the conclusion of agreements with third parties (PEMEX, 2018, p. 6<sup>[299]</sup>). These policies and guidelines aim, among others, at evaluating and mitigating risks, which could affect PEMEX's business because of corruption acts, lack of ethics or corporate integrity, or involvement in any type of illicit conduct (PEMEX, 2018, p. 6<sup>[299]</sup>). They contain detailed guidance to carry out corruption-related due diligence on third parties, but also to answer due diligence requests from third parties, as well as internal and external due diligence questionnaires, a list to check red flags, a catalogue of risk mitigation measures, etc. However, whereas PEMEX's web page on best practices in the field of ethics contain a mention and a link towards the OECD Due Diligence Guidance for RBC (PEMEX, 2021<sup>[300]</sup>), its policies and guidelines on due diligence do not include any reference to such Guidance (PEMEX, 2018<sup>[299]</sup>).

As to CFE, its Codes of Ethics and Conduct include a zero tolerance policy for corruption pursuant to which CFE commits to take measures to prevent, detect and combat corrupt acts and establish preventive strategies, such as whistle-blowing and internal control mechanisms (CFE, 2019, pp. 7-8<sup>[295]</sup>; CFE, 2019, p. 16<sup>[301]</sup>). However, contrary to PEMEX, CFE has not developed a formal due diligence process to address corruption risks.

Beyond anti-corruption and integrity, PEMEX and CFE have undertaken commitments and adopted measures to address RBC concerns and risks of adverse impacts in other areas of the OECD MNEs Guidelines, but without putting in place formal due diligence processes.

For instance, with respect to the environment, in its Code of Ethics, PEMEX commits to have safe facilities and processes to avoid accidents, risks and impacts on the environment, and to preserve it through measures aimed at protecting ecosystems (PEMEX, 2019, p. 13<sup>[302]</sup>). In line with this commitment, the

tenth strategic objective of its 2019-2023 business plan consists in “minimiz[ing] environmental impact and improv[ing] energy efficiency” (PEMEX, 2019, pp. 132-136<sub>[280]</sub>). To this effect, it includes several projects to enhance PEMEX’s water management, reduce its CO<sub>2</sub> emissions and environmental liabilities, develop its mitigation and adaptation actions, and improve its energy performance (PEMEX, 2019, pp. 134-136<sub>[280]</sub>).

Pursuant to CFE’s 2019-2023 business plan, the minimisation of environmental impacts is one of the operational objectives of several of the companies’ business activities (CFE, 2017, pp. 53-55<sub>[293]</sub>). This is in line with the commitment enshrined in CFE’s Code of Ethics to identify and address the environmental impacts of its activities (CFE, 2019, p. 14<sub>[295]</sub>). For this purpose, and in accordance with Mexican environmental law, CFE carries out EIAs of its new projects of installations that it submits to the SEMARNAT, as well as studies pertaining to land use change on forest lands and pollutant dispersion (CFE, 2019, p. 80<sub>[303]</sub>). In 2019, CFE carried out 24 social and environmental impact assessments, two studies pertaining to land use change on forest lands, and five studies on pollutant dispersion (CFE, 2019, p. 81<sub>[303]</sub>). In addition, CFE reportedly participates in the PNAA (see Section 3.3) and is in the process of obtaining certificates for 55.8% of its installations (CFE, 2019, p. 80<sub>[303]</sub>).<sup>162</sup>

As regards human rights, in addition to its Codes of Ethics and Conduct’s commitments,<sup>163</sup> PEMEX recently adopted a Declaration to promote, respect, protect and guarantee the human rights (*Declaración de PEMEX para promover, respetar, proteger y garantizar los Derechos Humanos*) of its staff, suppliers, investors, business partners, communities, and society in general (PEMEX, 2019<sub>[304]</sub>). In this Declaration, PEMEX commits to comply with national and international human rights norms and to promote their application with its workers, third parties, and in the communities where it operates (PEMEX, 2019<sub>[304]</sub>). In this respect, it undertakes to raise the awareness of its staff and co-contractors so that they adopt measures to prevent, mitigate and remedy adverse impacts on the human rights of such communities caused by its activities (PEMEX, 2019<sub>[304]</sub>). Although PEMEX does not seem to have established any specific human rights due diligence process, a series of mechanisms indirectly contribute to human rights protection. For instance, in accordance with the Hydrocarbons Law, PEMEX must carry out social impact assessments to obtain a permit or an authorisation to develop new projects. This requires identifying and evaluating the impacts on local communities, but also foreseeing mitigation measures and related social management plans (Government of Mexico, 2014<sub>[305]</sub>; Government of Mexico, 2014<sub>[306]</sub>).<sup>164</sup> In addition, PEMEX has reportedly put in place practices to ensure that its suppliers respect human rights. For example, when registering in PEMEX’s registry of suppliers, suppliers must answer some questions on CSR, which include human rights aspects (PEMEX, 2019, p. 93<sub>[296]</sub>). They must also adhere to PEMEX’s Codes of Ethics and Conduct, which both contain human rights commitments (PEMEX, 2019, p. 93<sub>[296]</sub>). Beyond this, in the framework of its Suppliers’ Evaluation and Responsibility Programme (*Programa de Evaluación y Responsabilidad de Proveedores*), PEMEX also reportedly verifies its suppliers’ labour and human rights practices through on-site verifications (PEMEX, 2019, p. 93<sub>[296]</sub>).

As to CFE, in its Code of Ethics, it commits to respect all human rights recognised in the Mexican Constitution and urges its staff to maintain safe environments, avoiding conducts that could constitute human rights violations (CFE, 2019, pp. 14-15<sub>[295]</sub>). It also requires its staff to respect the environment, culture, as well as the political and religious preferences of the communities in which it operates, and to identify, control and mitigate the social and environmental impacts of its activities on them (CFE, 2019, p. 15<sub>[295]</sub>). However, CFE does not seem to have developed any due diligence process or operational guidance for its staff on the implementation of these requirements in practice.

Finally, in relation to labour rights, in its Code of Ethics, PEMEX commits to reject slavery and child labour, to provide decent, safe and healthy working conditions, and to promote equality and non-discrimination (PEMEX, 2019, pp. 12-13<sub>[302]</sub>). In addition, it recently issued an Institutional Declaration of Equality in the Labour Market and Non-discrimination (*Declaración institucional de igualdad laboral y no discriminación*)<sup>165</sup> and a “Strategy of Institutional Social Inclusion (*Estrategia de Inclusión Social Institucional*)” to address acts of discrimination, mobbing, harassment and sexual harassment (PEMEX, 2021<sub>[307]</sub>).<sup>166</sup>

CFE, for its part, commits in its Code of Ethics to promote gender equality and decent work, and in its Policy on Equality at Work and Non-discrimination (*Política de igualdad laboral y no discriminación*) to promote equal opportunities and prohibit harassment, segregation or violence (CFE, 2019, p. 14<sup>[295]</sup>; CFE, 2021<sup>[308]</sup>). For this purpose, CFE recently created a gender and inclusion unit (CFE, 2019, p. 157<sup>[303]</sup>) and developed a gender equality and inclusion programme<sup>167</sup> for 2020-2024 (CFE, 2021<sup>[309]</sup>).<sup>168</sup>

The above shows that PEMEX and CFE have integrated RBC considerations in their policies and management systems and sought to prevent and address adverse impacts. However, they have not yet adopted a structured and comprehensive approach on RBC. PEMEX and CFE have developed a range of different policies, programmes and tools to implement the principles and values of their respective Codes of Ethics. Nevertheless, these instruments only apply to a given area of the OECD MNEs Guidelines and do not cover several RBC issues in a transversal and integrated manner. PEMEX and CFE's approach to RBC issues is piecemeal. In addition, they do not have a common overarching and consistent strategy to continuously prevent, avoid and mitigate all the adverse impacts of their activities, supply chains or business relationships through the conduct of due diligence in the different areas of the OECD MNEs Guidelines.

***Considering that the OECD MNEs Guidelines apply to SOEs, Mexico should therefore develop an overarching framework to promote the integration of a coherent and coordinated RBC approach, including the conduct of due diligence, in its main SOEs.***

To promote the observance of high standards of RBC by their SOEs, governments should disclose their expectations in this regard in a clear and transparent manner. Developing and adopting an overarching framework can serve to communicate with clarity the government's expectations regarding the adoption of an RBC approach by the country's SOEs. By detailing the RBC principles and standards that SOEs should observe and providing guidance on how they should design and put in place their RBC approaches, such framework can help them build structured and comprehensive strategies encompassing all the areas of the OECD MNEs Guidelines in an integrated manner. It can also contribute to create coherence between the measures taken by the different SOEs to adopt RBC practices and reinforce the example they give in this regard.

Due to the highly decentralised system of SOE ownership, regulation and governance currently in place in Mexico, no such overarching framework on RBC exists. Even PEMEX and CFE, which are subject to a similar legal framework, have adopted different approaches on RBC issues. Mexico could therefore develop an overarching framework to promote the integration of a coherent and coordinated RBC approach in its SOEs. This framework could eventually apply to all SOEs, but could first concern only PEMEX and CFE. It could be used to communicate clearly that an RBC approach has two complementary aspects and clarify that SOEs should not only lead by example as regards their contribution to sustainable development, but also with respect to the measures taken to identify and address the adverse impacts that their activities, supply chains or business relationships may have on people, the planet and society. In this regard, the framework should emphasise the importance of adopting a structured and comprehensive RBC approach based on all the recommendations contained in the OECD MNEs Guidelines. It should also require that SOEs design and implement broad due diligence processes and give them specific guidance in this regard on the basis of the OECD Due Diligence Guidance. Moreover, it should reaffirm the importance that SOEs observe high standards of transparency and urge them to disclose relevant non-financial information, including human rights, labour, environment, corruption and tax-related risks and the measures taken to manage such risks. Finally, to promote implementation, the framework could foresee RBC-related incentives for SOEs' boards of directors and managers designed to encourage them to adopt and put in practice an RBC approach. The example of Norway is illustrative of how such an overarching framework can be put in place (see Box 4.5).



### Box 4.5. Examples of government efforts to integrate RBC in SOEs' policies and management systems

#### The case of the Norwegian state ownership policy

RBC is at the centre of the recent Norwegian state ownership policy, which communicates clear expectations in this regard. In addition to being sustainable and contributing to long-term value creation, SOEs are expected to: (i) lead by example on RBC; (ii) work to protect human rights and labour rights, reduce their climate and environmental footprint and prevent economic crime, including corruption and money laundering; (iii) adopt a justified tax policy that is publicly available; (iv) conduct due diligence for RBC based on recognised methods; and (v) be transparent about material areas, goals and measures relating to their work on RBC.<sup>1</sup>

This entails that Norwegian SOEs identify and manage the risks their operations and supply chains pose to society, people and the environment and follow internationally recognised RBC principles and standards, such as the OECD MNEs Guidelines and the UNGPs. SOEs' work on RBC must be supported by their boards and incorporated in their goals, strategy and guidelines.<sup>2</sup> It also implies that SOEs conduct due diligence to identify, manage, report and assess risks and have systems in place for remedying any adverse impact.<sup>3</sup> To this effect, SOEs are referred to the OECD Due Diligence Guidance for RBC and the different steps of the due diligence process detailed therein.<sup>4</sup>

Finally, to lead by example on RBC, SOEs must be transparent and provide information to customers and stakeholders on how they manage material risks and what is their basis for future value creation.<sup>5</sup>

#### Notes:

1. Government of Norway (2019), 2019-2020 Report to the Storting – The State's direct ownership of companies – Sustainable value creation, pp. 63, 88.

2. Ibid., p. 88.

3. Ibid., p. 90.

4. Ibid., p. 91.

5. Ibid., p. 90.

#### Sources:

OECD (2020), OECD Business and Finance Outlook 2020: Sustainable and Resilient Finance, OECD Publishing, Paris, p. 157, <https://doi.org/10.1787/eb61fd29-en>.

Government of Norway (2019), 2019-2020 Report to the Storting – The State's direct ownership of companies – Sustainable value creation, pp. 63, 88-90, <https://www.regjeringen.no/contentassets/44ee372146f44a3eb70fc0872a5e395c/en-gb/pdfs/stm201920200008000engpdfs.pdf>.

With these different elements, the overarching framework could help reducing the divergences between PEMEX's and CFE's approaches on RBC issues and strengthen their alignment with the OECD MNEs Guidelines. In particular, it could support CFE in the development of a broad due diligence process and help it implement its various commitments to prevent and address adverse impacts. It could also support PEMEX in strengthening and extending its already existing due diligence process in the field of ethics and integrity to other RBC areas, such as the environment and human and labour rights. The COVID-19 crisis has shown that implementing due diligence processes that cover human and labour rights is particularly important to identify, prevent and mitigate the risks of adverse impacts on workers' health and labour rights triggered by a crisis such as the pandemic and the corresponding legal risks (OECD, 2020, pp. 8-11<sup>[310]</sup>). Lastly, by strengthening the disclosure requirements applicable to SOEs, the framework could also incentivise them to abide by international and national standards in this regard. This could prove particularly relevant for PEMEX, which after having adhered to the UN Global Compact in 2006, did not submit a

Communication on Progress for 2019 and was delisted in 2019 due to its non-responsiveness (UN Global Compact, 2020<sup>[311]</sup>).

It should be noted that the above-mentioned measures would also contribute to implement the first and second recommendations addressed to PEMEX and CFE by the CNDH in the context of its Recommendation No. 37 on business and human rights (CNDH, 2019<sup>[60]</sup>). In said Recommendation, the CNDH urged the directors of PEMEX and CFE to take measures to issue a public declaration of corporate commitment for the respect of human rights and to develop and implement a corporate due diligence plan (CNDH, 2019, p. 245<sup>[60]</sup>). The overarching framework would give clear indications to PEMEX and CFE's executives and incentivise them to take actions to this effect.

The development of the overarching framework would as well be relevant for the implementation of several of the actions foreseen under priority strategy No. 3.6 of the PNDH, which aims at diminishing the negative impacts of the activities of private companies, but also of SOEs, and joint enterprises. It would notably contribute to the implementation of action No. 3.6.2 aimed at enhancing the incorporation of the UNGPs and the OECD MNEs Guidelines in the activities of the companies of the private, public and social sectors.<sup>169</sup> It would also directly respond to action No. 3.6.3 that seeks to promote the harmonization of the legal framework that regulates the activities of private companies, joint enterprises and SOEs in accordance with national and international human rights standards.<sup>170</sup> Finally, developing such framework would be relevant for the implementation of action No. 3.6.5, whose goal is to drive the creation of human rights due diligence instruments to identify, prevent, mitigate and remediate adverse impacts caused by the activities of companies in the private, public and social sectors and to foster transparency and accountability in value chains.<sup>171</sup>

### **Training the officials of Mexico's main SOEs on RBC**

The officials of Mexico's main SOEs – PEMEX and CFE – receive training on a series of RBC issues, ranging from integrity to gender equality and human rights. For instance, to promote the uptake of its Codes of Conduct and Ethics amongst staff, PEMEX has put in place various capacity-building programs and awareness raising initiatives (PEMEX, 2019, pp. 95-96<sup>[296]</sup>). Likewise, CFE's Ethics and Integrity Commission is in charge of promoting the Codes of Ethics and Conduct through awareness-raising and capacity-building activities (CFE, 2019, p. 19<sup>[295]</sup>). Besides this, in the framework of its Strategy of Institutional Social Inclusion (*Estrategia de Inclusión Social Institucional*), PEMEX has developed information campaigns and training programs to address potential acts of discrimination, mobbing, and harassment (PEMEX, 2021<sup>[307]</sup>). In this context, it rose awareness of more than 55 thousand persons from its staff and their families on inclusion, equality and non-discrimination matters (PEMEX, 2021<sup>[307]</sup>; PEMEX, 2021<sup>[312]</sup>). Similarly, CFE's gender equality and inclusion programme for 2020-2024 is complemented by training courses on several issues pertaining to gender equality (CFE, 2021<sup>[313]</sup>). In addition, PEMEX has developed capacity-building courses on human rights for its staff in charge of security issues (PEMEX, 2019, p. 93<sup>[296]</sup>). However, neither PEMEX nor CFE seem to have developed specific courses on RBC or due diligence.

***Mexico could therefore raise the awareness of its main SOEs' officials about the importance of observing RBC principles and standards and build their capacity and knowledge to do so, as well as to conduct due diligence, with the support of the NCP.***

Developing an overarching framework to promote the integration of an RBC approach is not sufficient to guarantee that SOEs effectively observe RBC principles and standards and lead by example on RBC. To ensure this, it is fundamental that SOE officials be made aware of the importance that SOEs observe such principles and standards and acquire knowledge and capacity to implement them. As regards anti-corruption and integrity, an OECD survey of SOEs in Latin American and OECD countries found that 64% of Latin American SOEs considered that a "lack of awareness among employees of the need for, or priority placed on, integrity" was an obstacle to integrity (OECD, 2017, p. 17<sup>[314]</sup>). Special attention should hence

be paid to awareness raising and capacity building of SOE officials on RBC in general as well as on due diligence.

Mexico could therefore develop a capacity-building and training programme aimed at enhancing SOEs' officials' awareness and understanding of RBC and of its benefits. The programme could notably highlight that RBC can help SOEs maximise their positive contributions to society and improve their stakeholder relationships, but also protect their reputation and create more value (by, among others, identifying opportunities to reduce costs, strengthening the management of company-specific business and operational risks, decreasing exposure to systemic risks, etc.) (OECD, 2018, p. 16<sup>[99]</sup>). It could also focus on the two complementary aspects of RBC and the fact that RBC aims not only at fostering SOEs' contribution to sustainable development, but also at identifying, preventing and mitigating the potential and real adverse impacts that their activities, supply chains or business relationships may have on people, the planet and society. On this last point, the programme could include specific modules on the importance of due diligence and its implementation in practice. These modules could be developed in collaboration with businesses operating in similar sectors than that of SOEs and which have gained experience in designing and implementing effective due diligence processes. They could also build on PEMEX's own experience on due diligence in the field of corporate ethics and integrity and integrate training activities organised by the NCP on the OECD Due Diligence Guidance for RBC, the relevant OECD Sector-specific Due Diligence Guidance, as well as on the OECD SOE Guidelines and the OECD ACI Guidelines.

It is worth noting that the development of such a capacity-building and training programme would contribute to implement action No. 3.6.8 of priority strategy No. 3.6 of the PNDH, which aims at training public officials on human rights obligations in the context of business activities.

## Policy recommendations

**20. Considering that the OECD MNEs Guidelines apply to SOEs, develop an overarching framework to promote the integration of a coherent and coordinated RBC approach, including the conduct of due diligence, in the main Mexican SOEs.**

**21. Raise the awareness of the officials of the main Mexican SOEs about the importance of observing RBC principles and standards and build their capacity and knowledge to do so, as well as to conduct due diligence, with the support of the National Contact Point for RBC.**

### 4.2. Including RBC considerations in Mexico's economic policies that shape business conduct

Beyond leading by example when acting as economic actors, governments can promote and enable responsible business practices by integrating RBC considerations in their economic policies that contribute to shape business conduct. By doing so, governments communicate their RBC expectations to businesses and pinpoint the RBC principles and standards they should observe. Through these policies, Governments can also create incentives for businesses to abide by such principles and standards, thereby encouraging them to adopt responsible business practices. The Mexican Government could have resort to some of its economic policies to leverage and incentivise RBC by integrating considerations of relevance to RBC in its trade and investment promotion and facilitation policies, as well as in its trade and investment agreements.

#### 4.2.1. Integrating RBC in Mexico's trade and investment promotion and facilitation policies

Governments can build an enabling environment for RBC through their trade and investment policies. The inclusion of considerations that promote and enable RBC in trade and investment promotion and facilitation policies can contribute to incentivise responsible business practices, both from domestic companies wishing to export abroad, as well as from investors seeking to invest in the country.

##### *RBC in Mexico's trade promotion policies*

Governments can promote trade and exports in many different ways. They can provide financial support to national exporters competing in international markets through Export Credit Agencies (ECAs). They can organise trade missions, which allow representatives of domestic firms wishing to export to travel overseas with government officials to promote their businesses. They can also carry out capacity building activities and enhance access to information and networks through embassies (OECD, 2018, p. 55<sup>[315]</sup>). These different types of support that governments bring to exporters can constitute avenues to incentivise businesses to abide by RBC principles and standards and promote access to information on RBC (OECD, 2018, p. 56<sup>[315]</sup>).

ECAs, for instance, are often called to support exports related to large-scale projects and business opportunities in developing countries, which may come with risks of social and environmental adverse impacts (OECD, 2016, p. 20<sup>[316]</sup>). In order to mitigate these risks, the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the OECD Common Approaches) encourages its Adherents to promote the OECD MNEs Guidelines via their ECAs and consider the outcomes of NCP cases when undertaking project reviews (OECD, 2016<sup>[317]</sup>).

As an OECD member and Adherent to the OECD Common Approaches, Mexico implemented this Recommendation by developing within its ECA – Bancomext – an Environmental and Social Risk Management System (*Sistema de Gestión de Riesgos Ambientales y Sociales*, SARAS) and creating an Environmental and Social Management Unit (*Unidad de Gestión Ambiental y Social*, UGAS). The SARAS provides tools to identify, monitor and manage Bancomext's exposure to potential environmental and social adverse impacts within the credit process. Among these tools, the SARAS establishes a list of excluded activities that Bancomext will not finance, which includes *inter alia* activities in lands owned by indigenous communities without their consent or activities involving ozone-depleting substances (Bancomext, 2020<sup>[318]</sup>). Moreover, the SARAS categorises each project on the basis of its potential risk. If the risk is high and the financing is over USD 10 million, the UGAS requires the project to not only comply with domestic social and environmental laws but also to provide an environmental and social due diligence study (Bancomext, 2020<sup>[319]</sup>). According to the UGAS' guidelines (Bancomext, 2020<sup>[320]</sup>), this study must be completed on the basis of the Equator Principles, a framework adopted by financial institutions to identify, assess and manage environmental and social risks when financing projects (Equator Principles Association, 2020<sup>[321]</sup>). These Principles require, among others, to: undertake an environmental and social assessment, proposing measures to minimise and mitigate adverse impacts; provide remedy, where appropriate, to affected communities and the environment; and establish effective grievance mechanisms regarding a project's environmental and social performance. While the Equator Principles provide a basis to carry out due diligence in the environmental and social fields, they do not have a broad encompassing approach like the OECD MNEs Guidelines and the related OECD Due Diligence Guidance. In addition, as the Mexican NCP has not dealt with any case for several years, the SARAS has not been in a position to take into consideration any NCP statements or reports for some time. In fact, Bancomext indicated in response to the 2018 edition of the Environmental and Social Due Diligence Survey carried out by the OECD in relation to the implementation of the OECD Common Approaches<sup>172</sup> that it does not have any contact with the Mexican NCP.<sup>173</sup> This is most likely a result of the situation of the NCP and of its lack of visibility and overall activity.

Beyond the OECD Common Approaches, Bancomext has also implemented the OECD Recommendation of the Council on Bribery and Officially Supported Export Credits aimed to combat bribery in export transactions (OECD, 2019<sup>[322]</sup>). Before granting a credit, Bancomext conducts due diligence to prevent corrupt practices, bribery and extortion both in relation to the beneficiary of the credit and in relation to third parties (Bancomext, 2020<sup>[323]</sup>). Moreover, Bancomext's agreements with debtors include specific anti-corruption and anti-bribery clauses preventing debtors from engaging in any act of bribery or corruption during the term of the credit. Should the debtor fail to comply with these obligations, it can result in the early termination of the agreement.

Non-financial support granted by governments in trade promotion can also be used to promote RBC principles and standards with domestic businesses wishing to export abroad and encourage them to adopt responsible businesses practices.

Mexico's trade (and investment) promotion policies are currently the subject of significant changes introduced by the administration that took office in December 2018. ProMéxico, the entity in charge of exports promotion, FDI attraction and the internationalisation of Mexican companies, ceased to exist in May 2019. Trade (and investment) promotion are now under the shared responsibility of the SE and the Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*, SRE),<sup>174</sup> which signed an agreement to collaborate in the field of export promotion and investment attraction (Government of Mexico, 2019<sup>[324]</sup>). The SE created the Global Economic Intelligence Unit (*Unidad de Inteligencia Económica Global*, UIEG), which – beyond providing economic intelligence to the SE, other government entities, and the private sector – is in charge of export promotion and investment attraction,<sup>175</sup> and the SRE is meant to establish a unit dedicated to export and investment promotion. The UIEG's actions to promote exports are framed by the priority strategies of the SE's Economic Sector Programme for 2020-2024, which seek, among others, to increase the productivity of Mexican companies, promote their insertion in GVCs, and diversify the markets to which Mexican exports are sent in order to reduce vulnerabilities and seize new trading opportunities (Government of Mexico, 2020<sup>[325]</sup>; Government of Mexico, 2020<sup>[326]</sup>).<sup>176</sup> However, these priorities do not seem to include considerations that can promote and enable RBC, except for an in passing reference to the fight against corruption. As to the SRE, at the time of writing, its internal regulation has not been approved yet. This implies that the entity in charge of export (and investment) promotion has not been officially created, its functions have not been determined and it has not yet been able to define its priority strategies for trade (and investment) promotion. As a result, there is no clarity at this stage on whether considerations of relevance to RBC will be included in Mexico's trade (and investment) promotion and facilitation efforts led by the SRE and, particularly, if such considerations will be taken into account when selecting the companies that may benefit from non-financial support from the Government to export.

### *RBC in Mexico's investment promotion and facilitation policies*

Investment promotion and facilitation are two means to attract investment, but they encompass distinct types of activities (OECD, 2015, p. 39<sup>[1]</sup>). Whereas investment promotion consists in marketing a country or a region as an investment destination, investment facilitation is about making it easy for investors to establish, operate, or expand their investments (OECD, 2018, p. 3<sup>[327]</sup>). Investment can be promoted by directing foreign investors to profitable investment opportunities or helping them identify any potential local partners (OECD, 2015, p. 39<sup>[1]</sup>).<sup>177</sup> In turn, investment can be facilitated through a transparent, predictable and efficient regulatory and administrative framework for investment and by reducing the number of obstacles faced by investors that decide to invest in the country (OECD, 2015, p. 39<sup>[1]</sup>; OECD, 2018, p. 3<sup>[327]</sup>).<sup>178</sup> The different services provided to investors at all stages of investment can be used to encourage their adoption of responsible business practices and thereby promote responsible investments (OECD, 2015, p. 18<sup>[1]</sup>; OECD, 2018, pp. 2-3<sup>[327]</sup>).

The PFI indicates in this regard that RBC is central to a good investment climate and that considerations that can promote and enable RBC should be included in investment policies (OECD, 2015, pp. 18, 75<sup>[1]</sup>).

It specifies that the adoption of responsible business practices is not only relevant for investors concerned about their reputation but that it has become key for all businesses participating in GVCs (OECD, 2015, p. 18<sub>[1]</sub>). As a result, according to the PFI, “an investment climate that does not include respect for certain rules of RBC, including relating to accepted international labour and environmental standards, risks being shunned by international investors and by foreign customers” (OECD, 2015, p. 18<sub>[1]</sub>).

As mentioned above, Mexico’s (trade and) investment promotion and facilitation policies and institutional framework are currently in the process of being reformed. Consequently, there is not yet a complete vision on how such policies will unfold or on the strategic orientations on which they will build, in particular for the efforts to be led by the SRE. As regards the SE, the UIEG’s actions to promote and facilitate investment are framed by the priority strategies of the SE’s Economic Sector Programme for 2020-2024, which aim to attract investment contributing to technological innovation and transfer and the creation of quality jobs, as well as to diversify the destination of investment in all regions so as to reduce economic inequalities (Government of Mexico, 2020<sub>[325]</sub>; Government of Mexico, 2020<sub>[326]</sub>).<sup>179</sup> However, the actions contemplated under these priority strategies do not appear to integrate considerations of relevance to RBC, except for the promotion of investment in the mining sector, which should be accompanied by measures aimed at fostering regional sustainable development that favour the mitigation and compensation of externalities (Government of Mexico, 2020<sub>[325]</sub>).<sup>180</sup>

The absence of a consolidated RBC approach in Mexico’s investment promotion and facilitation policies is reflected in the initiatives that Mexico recently launched to promote and facilitate investment. In particular, Bancomext and the SRE agreed to work together to promote and attract FDI that generates quality jobs and benefits Mexico’s economy but their cooperation agreement does not include a reference to RBC (Government of Mexico, 2019<sub>[328]</sub>). The same is true of the Mexico Projects Hub – an initiative operated by the National Bank of Public Works and Services (*Banco Nacional de Obras y Servicios Públicos*, Banobras) –, which consolidates all infrastructure and energy projects sponsored by the Government in need of private investment to promote them as opportunities for domestic and foreign investors. The platform includes information on the sustainability of the projects but it is only aimed to help investors looking for projects on the basis of this criterion (Mexico Projects Hub, 2020<sub>[329]</sub>). The analysis of the sustainability of a project is carried out by Banobras on the basis of the “Attributes and Framework for Sustainable Infrastructure” methodology, developed by the Inter-American Development Bank (IADB), for the purposes of classifying, in a datasheet, the information related to sustainability practices in an infrastructure or energy project throughout its life cycle (Mexico Projects Hub, 2020<sub>[329]</sub>). Beyond references to sustainability aimed at attracting investment, the initiative does not seem to seek to promote responsible business practices from the investors that invest in the projects of the Hub. Likewise, the 2019 Handbook of procedures for investing in Mexico prepared by the UIEG does not mention any specific requirement related to RBC (Government of Mexico, 2019<sub>[330]</sub>).

*Further integrating RBC considerations in Mexico’s trade and investment promotion and facilitation policies as a way to promote RBC*

Although Mexico has taken some steps to include considerations that can promote and enable RBC in its trade and investment promotion and facilitation policies, they do not currently play a key role in such policies. In fact, the recent dismantlement of ProMéxico and the nascent arrangements for trade and investment promotion and facilitation may make the adoption of coherent policies that support RBC more difficult, as competencies in these fields are now shared between the SE and the SRE.

***Mexico could therefore consider developing an overarching strategy to put RBC considerations at the centre of its forthcoming trade and investment promotion and facilitation policies in a coherent fashion. In particular, Mexico could contemplate using the support granted to domestic exporters and foreign investors in Mexico to raise awareness about RBC principles and standards, as well***



***as linking such support to the observance of these principles and standards, in cooperation with the NCP.***

With respect to trade promotion, Mexico could seek to further use the financial and non-financial support given to exporters to incentivise them to abide by RBC principles and standards.

Although RBC considerations are already included in the framework of the financial support brought to exporters by Bancomext through its SARAS, this could be further reinforced. The SARAS could be used to bring exporters' attention to the OECD MNEs Guidelines and encourage them to observe its recommendations. It could also serve to raise their awareness about the OECD Due Diligence Guidance for RBC and the OECD Sector-specific Due Diligence Guidance. In addition, the UGAS could start working in cooperation with the NCP in order to take into consideration any relevant information the NCP may have regarding companies or projects. In this regard, if the Mexican NCP is significantly strengthened and becomes fully functioning (see Section 5), Mexico could build on the example of the ECAs of other countries that maintain regular contacts with their respective NCPs to exchange information about on-going projects (OECD, 2017, p. 20<sup>[331]</sup>). Mexico could also encourage Bancomext to follow the example of some ECAs, which have established formal processes to consider statements or reports from their NCP in order to implement the OECD Common Approaches (OECD, 2017, p. 8<sup>[331]</sup>).

Mexico could also start using the non-financial support it gives to companies wishing to export as a conduit to incentivise RBC. This would entail, for example reserving trade missions, or the access to information and/or networks, to companies that have adopted responsible business practices. Information provided by the NCP – as well as the results of any relevant NCP specific instance – could also be taken into consideration in the selection process of the companies that benefit from this non-financial support. A number of countries already do so and Mexico could follow their examples, provided the Mexican NCP is reinforced (see Section 5). For instance, in 2019, 12 Adherents to the OECD MNEs Guidelines reported having communicated about NCP specific instances received in 2018 to officials responsible for trade missions (OECD, 2019, p. 76<sup>[332]</sup>). Another relevant example is that of Austria, whose new foreign trade strategy, adopted in 2018, stresses the importance of RBC in foreign trade. This new strategy notably makes express references to the OECD MNEs Guidelines and underlines the importance of the NCP. One of its objectives is to reinforce the role of the Austrian NCP so that it becomes a “One-Stop-Shop” to strengthen RBC and provide support to Austrian companies in this regard (Government of Austria, 2018, p. 12<sup>[333]</sup>; OECD, 2019, p. 76<sup>[332]</sup>). The new strategy also highlights the importance for companies to carry out risk-based due diligence to identify and prevent adverse impacts in their operations (Government of Austria, 2018<sup>[333]</sup>).

As regards investment promotion and facilitation, Mexico could have recourse to the services it brings to investors to encourage them to observe RBC principles and standards.

This is, in general, easier to achieve when such services are coordinated by an investment promotion agency (IPA). IPAs can have a mandate to attract and prioritise responsible investments and, for that purpose, they can include considerations that promote and enable RBC in the different services, tools and mechanisms they provide to investors at all stages of investment (OECD, 2018, p. 5<sup>[327]</sup>; OECD, 2018, p. 102<sup>[334]</sup>). They can also play an important role to promote dialogue on investment, not only between the public and private sectors, but also with stakeholders, including local communities (OECD, 2018, pp. 89, 94-95<sup>[334]</sup>). In addition, IPAs can contribute to prevent disputes linked to investments, as they often include, as part of their aftercare services, dispute resolution mechanisms, such as structured trouble-shooting with individual investors, conflicts mitigation or ombudsman intervention, applicable to disputes between investors and authorities, but also between investors and local communities (OECD, 2018, p. 45<sup>[334]</sup>). Although Mexico no longer has an IPA, it could benefit from the experience of other OECD countries' IPAs and take steps to incorporate progressively RBC considerations in its forthcoming investment promotion and facilitation policies.

To start with, Mexico could consider including considerations of relevance to RBC in already existing initiatives. For instance, the Handbook of procedures for investing in Mexico prepared by the UIEG could include an express reference to the OECD MNEs Guidelines as an indication of the Government's expectation that any company investing in Mexico should follow their recommendations. Moreover, the Mexico Projects Hub could be used as a platform to promote the OECD MNEs Guidelines and the related OECD Due Diligence Guidance, and the observance of the OECD MNEs Guidelines' recommendations could be set as a condition to invest in the projects put forward by the Hub.

In a second step, Mexico could contemplate going beyond the inclusion of RBC considerations in specific initiatives and giving the UEIG and the entity that will be in charge of promoting and facilitating investment in the SRE a mandate to attract and prioritise responsible investments at all stages of investment. This could imply, at the pre-establishment phase, excluding from their support investors that are known to have irresponsible business practices, as done by certain OECD countries' IPAs (OECD, 2018, pp. 65-66<sup>[334]</sup>). It could also entail, at the post-establishment phase, using aftercare activities to promote RBC and encourage established investors to observe the OECD MNEs Guidelines' recommendations and carry out due diligence in accordance with the related Due Diligence Guidance. In this regard, Mexico could build on the example of Sweden's IPA, which requires the investors with which it interacts to follow the OECD MNEs Guidelines and the UNGPs (Business Sweden, 2019, p. 20<sup>[335]</sup>). Another possibility would be to focus aftercare activities, and the services aimed at retaining investments and/or encouraging their expansion, on investors that have adopted responsible business practices. Additionally, Mexico could consider taking action when becoming aware that established investors do not abide by RBC principles and standards, as currently done by a large number of OECD IPAs (OECD, 2018, p. 82<sup>[334]</sup>). Such actions could involve withdrawing support to the investors at stake and/or initiating legal action (OECD, 2018, p. 82<sup>[334]</sup>).

Mexico could seize the opportunity presented by the current reform of its trade and investment promotion and facilitation policies to incentivise RBC. Integrating considerations that can promote and enable RBC at the core of these policies could bring several benefits. On the one hand, it could encourage Mexican companies to adopt responsible business practices, thereby contributing to the country's reputation as a reliable place to source from and facilitating their insertion in GVCs. On the other, it could contribute to attract high quality and responsible investors, thereby minimising the risks of investments' adverse impacts and ensuring broader value creation and sustainable development. All of this is in line with Mexico's objective to promote sustainable development and with the priority strategies of the SE's Economic Sector Programme for 2020-2024 (Government of Mexico, 2020, pp. 14-15<sup>[325]</sup>).<sup>181</sup>

## Policy recommendation

**22. Develop an overarching strategy to put RBC considerations at the centre of Mexico's forthcoming trade and investment promotion and facilitation policies in a coherent fashion, using the support granted to domestic exporters and foreign investors to raise awareness about RBC principles and standards, and linking such support to the observance of these principles and standards, in cooperation with the National Contact Point for RBC.**

### 4.2.2. Integrating RBC in Mexico's trade and investment agreements

Trade agreements and investment treaties are another part of trade and investment policies through which governments can further build an enabling environment for RBC and incentivise businesses to adopt responsible business practices.

These economic instruments increasingly include considerations of relevance to RBC through different kinds of provisions. The first kind are provisions that deal, directly or indirectly, with areas covered by the OECD MNEs Guidelines, such as the respect for human rights, the promotion of labour standards, the protection of the environment, or the fight against corruption, and which reflect the signatories' commitments in relation thereto (hereinafter called sustainability provisions). The second kind are clauses through which the signatories commit to encourage businesses to observe internationally recognised RBC principles and standards (hereinafter called RBC clauses). These provisions and clauses can have various effects that contribute to enabling and promoting RBC.<sup>182</sup>

First, sustainability provisions have the potential to support and reinforce governments' policies and legal frameworks in areas covered by the OECD MNEs Guidelines by buttressing the adoption of domestic laws and regulations in the human rights, labour, environmental or anti-corruption fields and their enforcement (Gaukrodger, 2021, pp. 10, 84, 86-94<sub>[336]</sub>). In this way, they contribute to the development of a legal and regulatory framework that promotes and enables RBC. This is notably the case of provisions through which the signatories commit to incorporate and disseminate in their domestic legal frameworks internationally recognised principles and standards in these fields and/or to enforce related domestic laws and regulations. This is also the case of the provisions that seek to preserve the signatories' right to regulate in areas covered by the OECD MNEs Guidelines and which protect their policy space by allowing them to adopt new laws, regulations and policies aimed at pursuing public interest objectives without legal risks (Gaukrodger, 2021, pp. 84, 96-100<sub>[336]</sub>). Provisions that prohibit the signatories from lowering or weakening their laws and regulations in the same areas to attract trade and investment also help prevent backsliding in these fields.

Second, RBC clauses can directly promote the observance of RBC principles and standards and the adoption of responsible business practices by "speaking to business" (Gaukrodger, 2021, pp. 84, 102-108<sub>[336]</sub>). These clauses contribute to communicate and clarify the governments' expectations that businesses adopt responsible business practices. They also often pinpoint the specific internationally-recognised RBC principles and standards that the latter should observe in general, but also sometimes in relation to due diligence.

Finally, sustainability provisions can facilitate access to remedy for victims of business-related adverse impacts. By promoting regulatory cooperation and/or intergovernmental consultations on matters arising in areas covered by the OECD MNEs Guidelines upon public submissions, they can lead to resolve RBC issues and contribute to remedy such impacts. Likewise, the possibility that governments may have under some investment treaties to bring actions against investors, when the conditions to bring such counterclaims under the applicable rules are met, constitute another avenue through which remedies can possibly be obtained in case of harms linked to investors' operations.

In light of the reliance of the Mexican economy on exports and FDI and its integration into GVCs, the above is of particular importance for the country's economic growth. In a world where supply chains have been severely disrupted by the crisis triggered by the COVID-19 pandemic and in which RBC-related issues are increasingly being taken into consideration by its trade and investment partners, Mexico has a strong interest in positioning itself as a safe place to source imports from and a reliable investment destination. For this purpose, building an enabling environment for RBC is key and the inclusion of considerations of relevance to RBC in Mexico's trade agreements and investment treaties<sup>183</sup> can contribute to it.

#### *RBC in Mexico's trade agreements*<sup>184</sup>

To date, Mexico has concluded approximately 30 trade agreements, with numerous countries from distinct parts of the world (Government of Mexico, 2020<sub>[337]</sub>).<sup>185</sup> Following a pattern similar to that of other countries (Gaukrodger, 2021, pp. 85-94<sub>[336]</sub>), the integration of sustainability provisions and RBC clauses in Mexico's network of trade agreements has fluctuated over time (see Box 4.6) and differs between agreements in terms of nature, scope, and binding effects.

Nevertheless, Mexico's trade agreements network is different from that of other countries because one of its very first trade agreements already contained several sustainability provisions: the North American Free Trade Agreement (NAFTA),<sup>186</sup> concluded in 1992 with Canada and the United States, Mexico's top export partners (Observatory of Economic Complexity, 2021<sub>[338]</sub>).<sup>187</sup>

#### **Box 4.6. Evolution over time of the inclusion of considerations relevant to RBC in Mexico's trade agreements**

The very first trade agreements concluded by Mexico already included provisions relevant to RBC. In addition to the 1966 Mexico-Korea and the 1973 Mexico-China trade agreements, which both contained provisions preserving the signatories' policy space to adopt public welfare measures,<sup>1</sup> the 1992 NAFTA integrated several sustainability provisions,<sup>2</sup> as well as side agreements on labour and environmental cooperation.<sup>3</sup>

This early inclusion of sustainability provisions in the NAFTA and its parallel agreements, however, did not have an impact over Mexico's subsequent trade agreements. Most agreements concluded by Mexico after the NAFTA contain no or only a few sustainability provisions and none of them include RBC clauses.<sup>4</sup> It is only with the conclusion of multilateral comprehensive trade agreements over recent years that detailed sustainability provisions appeared in Mexico's trade agreements network and that RBC clauses were inserted for the first time in that network.<sup>5</sup>

Notes:

1. 1966 Mexico-Korea Trade Agreement, Article VII; 1973 Mexico-China trade agreement, Article IX.
2. See, for instance, 1992 NAFTA, Preamble; Articles 104 (Relation to Environmental and Conservation Agreements), 1018 (Exceptions), 2015 (Scientific Review Boards), 2101 (General Exceptions).
3. 1992 North American Agreement on Labour Cooperation (NAALC); 1992 North American Agreement on Environmental Cooperation (NAELC).
4. See, for instance, 1998 Mexico-Turkey Trade and Economic Cooperation Agreement; 2000 Mexico-Cuba Economic Complementation Agreement (ECA); 2002 Mexico-MERCOSUR ECA.
5. 2016 Trans-Pacific Partnership (TPP); 2018 (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) CPTPP; 2018 United States-Mexico-Canada Agreement (USMCA).

#### **The NAFTA and its side agreements**

Although the NAFTA is remarkable because it is one of the first trade agreements<sup>188</sup> to incorporate several sustainability provisions, these provisions were not very detailed.<sup>189</sup> The most noteworthy provisions are the ones featuring in the NAFTA's side agreements on labour and environmental cooperation: the North American Agreement on Labour Cooperation (NAALC), which was adopted to improve working conditions and living standards in Canada, Mexico and the United States (Government of the United States, 2005<sub>[339]</sub>), and the North American Agreement on Environmental Cooperation (NAAEC), whose aim was to encourage sustainable development, promote pollution prevention, and increase compliance with environmental legislation in the three countries (Government of Canada, 2020<sub>[340]</sub>). The NAALC and the NAAEC both had different effects that contributed to promoting and enabling RBC.

Their sustainability provisions contributed to reinforce the policies and domestic legal frameworks of the NAFTA partners and hence to the development of legal frameworks that enable RBC in two areas of the OECD MNEs Guidelines. This was notably the case of the articles in which the signatories – while recognising their right to adopt or modify their labour and environmental legislations – committed to ensure that such legislations provide for high labour standards and levels of environmental protection.<sup>190</sup> This was also the case of the provisions in which they undertook to comply with, and effectively enforce, their labour and environmental laws and regulations.<sup>191</sup> The same occurred with the provisions that encouraged

regulatory cooperation and intergovernmental consultations on labour and environmental matters among the three countries.<sup>192</sup> This could also have been true of the provisions that established state-to-state dispute resolution mechanisms for persistent failures of the signatories to effectively enforce certain aspects of their respective labour and environmental legislations.<sup>193</sup> However, they were never used (ILO, 2019, p. 34<sub>[341]</sub>; Khan, 2017, p. 3<sub>[342]</sub>).

Additionally, the NAALC and the NAAEC contributed to facilitate access to remedy for victims of business-related adverse impacts. Through their provisions on private access to remedies, the NAFTA partners committed to ensure access to fair, open and equitable administrative, judicial or quasi-judicial proceedings for labour and environmental matters.<sup>194</sup> Beyond these articles aimed at facilitating access to remedy in domestic jurisdictions, the NAALC and the NAAEC also created a new way to access remedy by allowing public communications or submissions on enforcement matters (Government of Canada, 2020<sub>[340]</sub>).<sup>195</sup> As a result, in the last decades, several CSOs and trade unions filed submissions before the NAFTA partners' respective National Administrative Office (NAO) in charge of implementing the NAALC and before the Commission for Environmental Cooperation (CEC) (Government of the United States, 2021<sub>[343]</sub>; Commission for Environmental Cooperation, 2021<sub>[344]</sub>). By doing so, they triggered intergovernmental consultations and regulatory cooperation, which led to resolve RBC-related matters in several cases (see Box 4.7).

#### **Box 4.7. RBC-related complaints under Mexico's trade agreements**

When available, public submissions under trade agreements – which may be triggered by irresponsible business practices – can lead to intergovernmental consultations and regulatory cooperation that have the potential to resolve RBC-related issues. The public submissions filed on the basis of the NAALC and the NAAEC demonstrate how trade agreements can contribute to facilitate access to remedy for victims of business-related adverse impacts.

Under the NAALC, any CSO, union or individual could submit a public communication before the NAO of a signatory in relation to labour law matters arising in the territory of another signatory.<sup>1</sup> Out of the around 40 public communications reportedly submitted in the last decades, 25 led to the issuance of a public report by a NAO.<sup>2</sup> The purpose of such reports was to address the issues raised in the public communications through dialogue and cooperative consultations, first at the NAOs' level and, if the issues could not be resolved, then at ministerial level.<sup>3</sup> Public communications under the NAALC sometimes even resulted in joint ministerial commitments undertaken by the NAFTA partners to address labour issues, as in the case of the garment factories in Puebla (Mexico).

In 2003, two CSOs submitted public communications to the NAOs of Canada and the United States in relation to alleged violations of workers' rights under the NAALC at two garment factories in Puebla.<sup>4</sup> After examining the communications, both NAOs recommended consultations at the ministerial level to solve the matter.<sup>4</sup> Mexico agreed to hold ministerial consultations and, in April 2008, the ministers of the three countries signed a joint declaration. In this declaration, the NAFTA partners agreed to a set of activities to address the issues raised in the communications and promote collaboration.<sup>6</sup>

Pursuant to the NAAEC, any CSO or individual could file a submission on enforcement matters (SEM) before the Secretariat of the CEC about an alleged failure by a NAFTA partner to effectively enforce its environmental laws.<sup>7</sup> Upon receipt of a SEM, the Secretariat of the CEC analysed the submission and decided whether the issue should be addressed in a factual record aimed at providing an objective presentation of the matter. Out of the 96 public submissions filed to date, 24 have resulted in the issuance of a factual record.<sup>8</sup> Although they do not contain any conclusions on the alleged failures or recommendations,<sup>9</sup> the factual records constitute a tool for submitters, governments and the public in

general to follow up on the matters in question.<sup>10</sup> The use made following its publication of the factual record in the case of the Sumidero Canyon National Park in Chiapas (Mexico) is a telling example.

In this case, the submitter asserted that Mexico was failing to effectively enforce its environmental laws regarding the operation of a rock quarry, which was allegedly harming the local community's health and the environment.<sup>11</sup> The factual record notably reported on the impact of the quarry's air emissions on public health and on the flora and fauna located in the Sumidero Canyon National Park. After its publication by the CEC, the factual record was used by a CSO, which presented it to the CNDH. The CNDH found a violation of the right to a healthy environment and recommended that the PROFEPA take the necessary measures to put an end to the environmental and health harm caused by the operations of the rock quarry.<sup>12</sup> On the basis of this recommendation, PROFEPA ordered the closure of the site, leading to its permanent closure in December 2019.<sup>13</sup>

Notes:

1. NAALC, Part Three (Commission for Labour Cooperation), Article 16(3). Although the NAALC has been terminated, public submissions on labour issues are still available under Article 23.11 of the USMCA.
2. See Cimino-Isaacs (2020), *Labour Enforcement Issues in U.S. FTAs*, Congressional Research Service, p. 2; ILO (2019), *Labour provisions in G7 trade agreements: A comparative perspective*, Appendix III, p. 55.
3. U.S. Department of Labour (2005), Website: North American Agreement on Labour Cooperation: A Guide, <https://www.dol.gov/agencies/ilab/trade/agreements/naalcgq>.
4. Labour Program (2005), Review of Public Communication CAN 2003-1, p. 6-1, [https://www.dol.gov/sites/dolgov/files/ILAB/reports/can\\_2003-1\\_puebla\\_report.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/reports/can_2003-1_puebla_report.pdf); ILAB (2004), Report of Review of U.S. NAO Submission No. 2003-01, p. 88, <https://www.dol.gov/sites/dolgov/files/ILAB/reports/Sub2003-01.pdf>.
5. These activities included the preparation by the Secretariat of the Commission for Labour Cooperation and the NAOs of a background report and a guide describing labour laws, regulations and procedures, and best practices in implementation regarding workers' complaints. See Ministerial Consultations Joint Declaration Resolving Issues Raised in U.S. NAO Public Communication US 2003-01 and Canadian NAO Public Communication CAN 2003-1 dated 24 April 2008, p. 1, [https://www.dol.gov/sites/dolgov/files/ILAB/submissions/us\\_2003-1\\_puebla\\_agreement.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/submissions/us_2003-1_puebla_agreement.pdf).
6. Ministerial Consultations Joint Declaration Resolving Issues Raised in U.S. NAO Public Communication US 2003-01 and Canadian NAO Public Communication CAN 2003-1 dated 24 April 2008, p. 2, [https://www.dol.gov/sites/dolgov/files/ILAB/submissions/us\\_2003-1\\_puebla\\_agreement.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/submissions/us_2003-1_puebla_agreement.pdf).
7. NAAEC, Part Three (CEC), Article 14. Although the NAAEC has been superseded by the Agreement on Environmental Cooperation among the Governments of Canada, the United Mexican States and the United States of America (AEC), the SEM are still available under Article 24.27 of the USMCA.
8. See CEC (2021), Website: Registry of Submissions, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/>.
9. Under the USMCA, the Environmental Committee – composed of senior government representatives of each signatory – may now provide recommendations on whether the matter raised in the factual record may benefit from cooperation activities between States. See USMCA, Chapter 24 (Environment), Article 24.28 (Factual Records and Related Cooperation).
10. CEC (2015), "Sumidero Canyon II, Factual Record regarding Submission SEM-11-002", Montreal, Canada (Sumidero II Factual Record), para. 155, [http://www.cec.org/wp-content/uploads/wpallimport/files/11-2-ffr\\_en.pdf](http://www.cec.org/wp-content/uploads/wpallimport/files/11-2-ffr_en.pdf).
11. Sumidero II Factual Record, para 2.
12. CNDH (2019), Press release DGC/160/19: "Dirige CNDH recomendación a SEMARNAT y Gobierno de Chiapas por incumplimiento de una conciliación para garantizar la protección y preservación del Parque Nacional 'Cañón del Sumidero' en Chiapa de Corzo", [https://www.cndh.org.mx/sites/default/files/documentos/2019-04/Com\\_2019\\_160.pdf](https://www.cndh.org.mx/sites/default/files/documentos/2019-04/Com_2019_160.pdf).
13. CEC (2021), Website: Submission Success Stories, <http://www.cec.org/submissions-on-enforcement/>.

### Post-NAFTA trade agreements

In contrast to the NAFTA, the vast majority of the trade agreements concluded subsequently by Mexico only contain a few sustainability provisions, which are not very detailed and merely pertain to a limited number of the areas covered by the OECD MNEs Guidelines. It is particularly striking to note that, beyond preamble aspirational declarations, only two of the agreements concluded by Mexico between 1992 and



2016 include provisions that mention labour issues, and only in passing.<sup>196</sup> The same occurs with anti-corruption and integrity.<sup>197</sup>

In fact, most of the sustainability provisions included in the more than twenty agreements concluded by Mexico during these two decades pertain to the environment and/or human rights through concerns for the protection of health and life, consumers' rights, or personal data. They mainly take the form of: preamble aspirational declarations;<sup>198</sup> provisions through which the signatories commit to maintain and strengthen the levels of safety and of protection of human, animal or plant life or health, as well as of the environment and of consumers;<sup>199</sup> and/or provisions seeking to preserve the signatories' right to regulate in the public interest<sup>200</sup> by allowing them, through general or specific exceptions, to take measures to ensure *inter alia* the protection of human, animal, or plant life or health or of the environment, the conservation of exhaustible natural resources, the sustainable use of biodiversity, and the protection of personal data.<sup>201</sup>

### **The recent multilateral comprehensive trade agreements**

The most comprehensive agreements of Mexico's trade agreements network in terms of inclusion of considerations relevant to RBC are the multilateral trade agreements concluded as of 2016: the 2016 Trans-Pacific Partnership (TPP), the 2018 CPTPP (which integrates the substantive provisions of the TPP),<sup>202</sup> and the USMCA, signed in 2018 and subsequently amended in 2019 by a Protocol of Amendment.<sup>203</sup> They all include detailed sustainability chapters on several areas covered by the OECD MNEs Guidelines, as well as specific RBC clauses that can have several potential effects that contribute to promoting and enabling RBC.

The chapters dedicated to anti-corruption,<sup>204</sup> the environment,<sup>205</sup> and labour<sup>206</sup> can all contribute to reinforce the policies and the domestic legal frameworks of the signatories in areas covered by the OECD MNEs Guidelines and hence contribute to the development of legal and regulatory frameworks that enable RBC.

The anti-corruption chapters,<sup>207</sup> for instance, contain provisions in which the signatories commit to adopt and maintain measures to combat and sanction corruption,<sup>208</sup> but also to enforce such measures.<sup>209</sup> They also include undertakings regarding the promotion of public officials' integrity,<sup>210</sup> whistle-blowers' protection,<sup>211</sup> and the participation of the private sector and civil society in the fight against corruption.<sup>212</sup> In addition, the 2019 USMCA<sup>213</sup> contains a provision in which the signatories reaffirm their adherence, among others, to the OECD Anti-Bribery Convention and encourage private sector's awareness of anticorruption compliance guidance.<sup>214</sup> It also includes an article through which the signatories *inter alia* recognise the importance of international cooperation on anti-corruption and specifically mention the work of the OECD Working Group on Bribery in International Business Transactions in this regard.<sup>215</sup> What is particularly noteworthy is that – with the exception of the provisions pertaining to the application and enforcement of anti-corruption laws and the cooperation provision of the USMCA – these provisions are subject to the general dispute settlement mechanisms of the three agreements, allowing for the imposition of trade sanctions in case of violations.<sup>216</sup>

Likewise, the environment chapters<sup>217</sup> contain provisions through which the signatories commit to maintain high levels of environmental protection and to strive to improve such levels.<sup>218</sup> These provisions also prohibit the weakening or reduction of the protection afforded in the signatories' environmental legislations to attract trade or investment<sup>219</sup> and reaffirm their right to regulate for environmental protection purposes.<sup>220</sup> In addition, under the USMCA, the signatories undertake not to fail to enforce their environmental laws and to implement the multilateral environmental agreements to which they are party.<sup>221</sup> They also commit to maintain procedures for assessing the environmental impacts of certain projects that may cause significant impacts on the environment in order to avoid, minimise and mitigate such impacts.<sup>222</sup> The cooperation mechanisms established by the three chapters,<sup>223</sup> as well as under the Agreement on Environmental Cooperation concluded by Canada, Mexico and the United States in parallel to the USMCA (AEC)<sup>224</sup> (which superseded the NAAEC),<sup>225</sup> can also have a reinforcing effect on the signatories'

environmental domestic frameworks, as they aim to promote implementation and enhance their capacities to protect the environment.<sup>226</sup> The same is true of the articles providing that matters arising under the chapters are subject to multi-tier consultations<sup>227</sup> and dispute settlement if they cannot be resolved through consultations,<sup>228</sup> as they also contribute to incentivise implementation.

Similarly, the labour chapters<sup>229</sup> contain several provisions in which the signatories commit to maintain in their legislations a series of labour rights enshrined in the ILO Declaration on Fundamental Principles and Rights at Work, as well as legislation regarding minimum wages, hours of work, and occupational safety and health.<sup>230</sup> They also prohibit the signatories from weakening or reducing labour protections to encourage trade or investment,<sup>231</sup> and provide that they shall not fail to effectively enforce their labour laws and shall promote compliance with such laws through appropriate government action.<sup>232</sup> Another noteworthy provision is the article of the USMCA through which the signatories commit to prohibit the importation of goods produced in whole or in part by forced or compulsory labour, including child labour.<sup>233</sup> The potential reinforcing effect of these different provisions is enhanced by the fact that they are subject to cooperative labour dialogue,<sup>234</sup> multi-tier consultations,<sup>235</sup> and the general dispute settlement mechanisms of the agreements in case a labour matter cannot be resolved through consultations.<sup>236</sup>

Additionally, the environment and labour chapters of the three agreements can facilitate access to remedy for victims of business-related adverse impacts. The environment chapters, on the one hand, provide procedural guarantees for environmental matters,<sup>237</sup> which facilitate access to remedy in the signatories' respective domestic jurisdictions. On the other, they create a new avenue for accessing remedy by allowing citizens to file public submissions in relation to the implementation or the enforcement by the signatories of their environmental laws.<sup>238</sup>

In a similar way, the labour chapters establish procedural guarantees for labour issues that facilitate access to remedy in the three countries' jurisdictions,<sup>239</sup> but also allow the filing of public submissions on labour matters that each signatory shall consider and respond to.<sup>240</sup> Moreover, the USMCA innovates by including a specific mechanism that allows public submissions to be brought before the NAOs of the three USMCA partners in case there are reasons to believe that workers employed at certain facilities are being denied the rights of freedom of association and collective bargaining.<sup>241</sup> This Facility-Specific Rapid Response Labour Mechanism is expressly aimed at ensuring remediation of the violation of such rights and ensuring that RBC principles and standards on labour matters can be enforced at firm's level (see Box 4.8).<sup>242</sup> By entitling the signatories to impose trade sanctions on the facilities' goods and/or services and to only lift them after remediation has been established, the Mechanism can also facilitate access to remedy for victims of adverse impacts. Not only does it offer a new avenue to obtain a remedy, it also creates the possibility of accessing it rather rapidly.

#### **Box 4.8. RBC-related enforcement mechanisms under Mexico's trade agreements**

##### **The USMCA's Facility-Specific Rapid Response Labour Mechanism**

Trade agreements can play a role in strengthening government policies that promote and enable RBC. Through regulatory cooperation and/or intergovernmental consultations, they generally have the potential to reinforce domestic frameworks in areas covered by the OECD MNEs Guidelines and can hence contribute to the development of legal and regulatory frameworks that enable RBC. The 2019 USMCA innovates further. By foreseeing a cutting-edge mechanism that renders labour principles and standards fully enforceable at firm level, it can directly incentivise businesses to adopt RBC practices in this field.

The Facility-Specific Rapid Response Labour Mechanism (Rapid Response Mechanism) is an expedited dispute resolution process created under the dispute settlement chapter of the 2019 USMCA. It is applicable to cases of alleged breaches of workers' rights of free association and collective

bargaining (i.e. a Denial of Rights)<sup>1</sup> at so-called “Covered Facilities”.<sup>2</sup> The Mechanism can be triggered by a public submission before one of the NAOs of the three USMCA partners.<sup>3</sup> Following its review of the submission, the relevant NAO determines whether it considers in good faith that there is a Denial of Rights. If so, it can request the respondent signatory to conduct its own review of the matter.<sup>4</sup> If the latter decides to conduct a review, it must report within 45 days whether it has found a Denial of Rights.<sup>5</sup> The complainant signatory may, in the meantime, delay the payment of customs accounts related to entries of goods produced by the Covered Facility at issue.<sup>6</sup> If the respondent signatory finds that there has been a Denial of Rights, both signatories shall try to agree on appropriate remedies.<sup>7</sup> Should they fail to do so, or if the respondent signatory chooses not to conduct its own review or finds that there has not been a Denial of Rights, the complainant signatory can bring the dispute before a Rapid Response Labour Panel (Panel).<sup>8</sup> If the Panel determines that there is a Denial of Rights, the complainant signatory can impose commercial sanctions to ensure remediation.<sup>9</sup> In case of multiple violations by a same Covered Facility, its goods may be denied entry into the territory of the complainant signatory.<sup>10</sup> The sanctions can only be lifted after the signatories agree that the Denial of Rights has been remediated.<sup>11</sup>

Although it still had to be implemented at the time of writing, the Rapid Response Mechanism is groundbreaking in terms of directly promoting RBC with businesses. By targeting companies’ specific facilities, it can directly incentivise businesses to implement RBC practices and, in particular, ensure they respect their workers’ collective rights. In this regard, it is noteworthy that Mexico has already developed tools allowing Covered Facilities to self-evaluate whether they may be responsible of a Denial of Rights.<sup>12</sup>

Notes:

1. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.2; Article 31-B.2.
2. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.15 and Article 31-B.15. “Covered facilities” are facilities in priority sectors that manufacture goods or supply services, either traded between the signatories or competing in the territory of a signatory with goods or services of another signatory. A priority sector is defined as “a sector that produces manufactured goods, supplies services, or involves mining.” Manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminium, glass, pottery, plastic, forgings, and cement.
3. See Government of Mexico (2021), T-MEC y su mecanismo laboral de respuesta rápida: Una guía de acción para México, Mexico, p. 4, [https://www.gob.mx/cms/uploads/attachment/file/607972/T-MEC\\_Y\\_SU\\_MECANISMO\\_LABORAL\\_5\\_DE\\_ENERO\\_V2\\_1\\_.pdf](https://www.gob.mx/cms/uploads/attachment/file/607972/T-MEC_Y_SU_MECANISMO_LABORAL_5_DE_ENERO_V2_1_.pdf); Government of Canada (2020), Guidelines for Denial of Rights claims under the Canada-Mexico Facility-Specific Rapid Response Labour Mechanism, <https://www.canada.ca/en/employment-social-development/services/labour-relations/international/agreements/guidelines-denial-rights-claims.html>; Government of the United States (2020), Interagency Labour Committee for Monitoring and Enforcement Procedural Guidelines for Petitions Pursuant to the USMCA – Annex, <https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-14086.pdf>.
4. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.4(2) and Article 31-B.4(2).
5. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.4(2) and Article 31-B.4(2).
6. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.4(3) and Article 31-B.4(3).
7. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.4(6) and Article 31-B.4(6).
8. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.4(2) and Article 31-B.4(2) ; Article 31-A.4(5) and Article 31-B.4(5).
9. These sanctions include the suspension of preferential tariff treatment or the imposition of penalties on goods manufactured at, or services provided by, the Covered Facility. See 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.10(2); Article 31-B.10(2).
10. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.10(4); Article 31-B.10(4).
11. 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.10(5); Article 31-B.10(5).
12. Consejo Coordinador Empresarial (2020), Cuestionario T-MEC MLRR, <https://www.ccetmec.mx/wp-content/uploads/2020/08/Cuestionario-T-MEC-MLRR-FINAL-03082020.pdf>.

Finally, the environment and labour chapters of the 2016 TPP, the 2018 CPTPP and the 2019 USMCA can directly incentivise businesses to adopt responsible business practices.

The environment chapters of the three agreements include RBC clauses through which the signatories undertake to encourage businesses to observe internationally recognised RBC principles and standards related to the environment (but with no explicit reference to the OECD MNEs Guidelines).<sup>243</sup> The 2016 TPP and the 2018 CPTTP also include in their labour chapter an RBC clause through which the signatories commit to encourage the observance of RBC principles and standards by businesses in relation to labour issues.<sup>244</sup> The potential effect of these RBC clauses is reinforced by the fact that they are subject to the general dispute resolution mechanisms of the agreements.<sup>245</sup>

### **The draft Mexico-EU trade agreement**

Another noteworthy agreement in Mexico's trade agreements network is the trade part of the Mexico-EU Global Agreement, that is currently under finalisation (European Commission, 2018<sub>[345]</sub>). The draft texts of the agreement in principle include provisions on anti-corruption and a chapter on trade and sustainable development (TSD Chapter), which will have different effects that could contribute to promoting and enabling RBC, if the agreement is ratified.

The anti-corruption provisions – the first of the kind negotiated by the EU (European Commission, 2018, p. 17<sub>[346]</sub>) – and the TSD Chapter could notably reinforce the signatories' policies and domestic legal frameworks in several areas of the OECD MNEs Guidelines and thereby contribute to the development of legal and regulatory frameworks that enable RBC.

According to the draft text of the anti-corruption provisions, the signatories will reaffirm their commitments to adopt and maintain anti-corruption measures in the private and public sectors,<sup>246</sup> including measures to protect reporting persons.<sup>247</sup> With respect to the private sector, the signatories will recognise in an RBC clause the importance of RBC to avoid corruption and recall their support to the OECD MNEs Guidelines in relation to anti-corruption.<sup>248</sup> In addition, they will acknowledge the importance of enhancing accounting and auditing standards to prevent corruption and will undertake to take measures in this regard,<sup>249</sup> as well as to promote transparency.<sup>250</sup> The signatories will also recognise the importance of civil society participation and reaffirm their commitment to promote it.<sup>251</sup> A notable feature of these anti-corruption provisions is that they will be subject to a specific procedure for dispute resolution.<sup>252</sup> This will include consultations within a sub-committee on anti-corruption and the possibility to seek assistance of a group of experts that will be entitled to issue an opinion with a proposal on how to solve the matter if no mutually agreed solution is reached through consultations.<sup>253</sup>

As to the TSD Chapter, it contains several sustainability provisions including a series of commitments to protect workers' rights and the environment. The signatories will notably commit to effectively implement the fundamental rights at work, as well as the ILO Conventions and Protocols they have ratified, and to promote decent work.<sup>254</sup> They will also undertake to effectively implement the multilateral environmental agreements to which they are parties (in particular, the United Nations Framework Convention on Climate Change and the Paris Agreement), and effective measures to, among others, combat illegal wildlife trade and logging, and conserve biological diversity.<sup>255</sup> In addition, the signatories will commit to ensure that their laws provide for high levels of environmental and labour protection.<sup>256</sup> They will also undertake not to weaken, waive or derogate from such levels of protection, nor to fail to effectively enforce their environment or labour legislations, to attract trade and investment.<sup>257</sup> Beyond this, the signatories will commit to cooperate on an important number of labour and environment related topics.<sup>258</sup> The potential reinforcing effect of these provisions on the signatories' domestic legal frameworks is heightened by the fact that they are subject to multi-tier consultations and a specific dispute resolution process before a panel of experts if the matter cannot be resolved through consultations. Additionally, in the cases in which the panel of experts will issue a report and recommendations, a sub-committee on trade and sustainable development will be in charge of monitoring the follow-up to such report and recommendations, with the participation of civil society.

Furthermore, the TSD Chapter can also contribute to directly incentivising businesses to adopt responsible practices. The draft text of the Chapter includes an RBC clause through which the signatories will recognise the importance of responsible management of supply chains through RBC. Most importantly, they will also commit, not only to promote the uptake of RBC practices by businesses, but also to support the dissemination and use of relevant international instruments, such as the OECD MNEs Guidelines, which are expressly mentioned.<sup>259</sup> What is particularly noteworthy is that the clause also contains an express reference to the OECD Sector-specific Due Diligence Guidance, which are mentioned in general terms, and a commitment of the signatories to promote joint work regarding their uptake.<sup>260</sup>

#### *RBC in Mexico's investment chapters of trade agreements and investment treaties*<sup>261</sup>

Over the last three decades, Mexico has concluded almost 50 investment treaties, over two-thirds of which are bilateral investment treaties (BITs) and the remaining third are investment chapters contained in comprehensive trade agreements.<sup>262</sup> As for most countries (Gordon, Pohl and Bouchard, 2014, pp. 10-19<sub>[347]</sub>; Gaukrodger, 2021, pp. 85-94<sub>[336]</sub>), the inclusion of sustainability provisions and RBC clauses in Mexico's investment treaties has varied in time as well as in terms of nature, scope, and binding character.

However, a striking feature of Mexico's network of investment treaties is that the inclusion of sustainability provisions and RBC clauses does not seem to have increased much with the passing of years. Rather, it appears to vary depending on another factor: the type of agreement concluded, Mexico's BITs being much less prone to contain such provisions and clauses than the investment chapters of its trade agreements (see Box 4.9).

#### **Box 4.9. Evolution over time of the inclusion of considerations relevant to RBC in Mexico's investment treaties**

The first investment treaties concluded by Mexico correspond to the investment chapters of the 1992 NAFTA, the 1994 Colombia-Mexico FTA, and the 1994 Mexico-Bolivia FTA.<sup>1</sup> As the incorporation of sustainability provisions in trade agreements generally started earlier than in BITs,<sup>2</sup> the early conclusion by Mexico of trade agreements with investment chapters makes its investment treaty network unique in terms of inclusion of considerations relevant to RBC. Whereas most countries only started generalising the inclusion of sustainability provisions in the 2000s,<sup>3</sup> the first three investment treaties concluded by Mexico between 1992 and 1994 already included them.<sup>4</sup>

This state of affairs also had an impact on the inclusion of considerations relevant to RBC in the rest of Mexico's investment treaty network. While countries have increasingly started to integrate these considerations in their investment treaties in the course of time,<sup>5</sup> their inclusion in Mexico's treaties has not significantly increased over the years. Instead, it fluctuates depending on the type of agreement concluded. While trade agreements with an investment chapter tend to include sustainability provisions, this is generally not the case for BITs, even recent ones.<sup>6</sup> In fact, only a few BITs concluded by Mexico to date contain such provisions.<sup>7</sup> On the contrary, almost all the investment chapters of its trade agreements do so. This is particularly the case of the investment chapters contained in the last four comprehensive multilateral trade agreements concluded by Mexico in recent years, which also all contain RBC clauses.<sup>8</sup>

Notes:

1. 1992 NAFTA, Chapter 11 (Investment); 1994 Colombia-Mexico FTA, Chapter 17 (Investment); 1994 Mexico-Bolivia FTA, Chapter 15 (Investment).

2. Gaukrodger, D. (2021), "Business responsibilities and investment treaties", OECD Working Papers on International Investment, No. 2021/02, OECD Publishing, Paris, <https://doi.org/10.1787/4a6f4f17-en>.

3. Gordon, K., J. Pohl and M. Bouchard (2014), "Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey", OECD Working Papers on International Investment, No. 2014/1, OECD Publishing, Paris, pp. 10-15.
4. See, for instance, 1992 NAFTA, Chapter 11 (Investment), Article 1114 (Environmental Measures); 1994 Colombia-Mexico FTA, Chapter 17 (Investment), Article 17-13 (Measures relating to the Environment); 1994 Mexico-Bolivia FTA, Chapter 15 (Investment), Article 15-14 (Measures relating to the Environment, Health and Safety).
5. Gordon, K., J. Pohl and M. Bouchard (2014), "Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey", OECD Working Papers on International Investment, No. 2014/1, OECD Publishing, Paris, pp. 10-15.
6. See, for instance, 2016 Mexico-United Arab Emirates BIT.
7. 1995 Mexico-Switzerland BIT; 2001 Mexico-Cuba BIT; 2006 Mexico-United Kingdom BIT; 2006 Mexico-Trinidad and Tobago BIT; 2013 Mexico-Turkey BIT; 2015 Mexico-Brazil Cooperation and Facilitation Investment Agreement.
8. 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.30 (Social Responsibility Policies), 2016 TPP, Chapter 9 (Investment), Article 9.17 (Corporate Social Responsibility); 2018 CPTPP, Chapter 9 (Investment), Article 9.17 (Corporate Social Responsibility); 2019 USMCA, Chapter 14 (Investment), Article 14.17 (Corporate Social Responsibility).

The majority of the sustainability provisions contained in Mexico's investment treaties, including the recent ones, are not very detailed and only cover a few areas of the OECD MNEs Guidelines. They relate almost exclusively to the environment. Human rights are covered by some of these provisions, but only by extension, through health and safety concerns. Labour rights and anti-corruption are not addressed, except for a passing reference in the RBC clauses of the investment chapters of two recently concluded multilateral trade agreements.<sup>263</sup>

Until 2011, the different types of sustainability provisions integrated into Mexico's investment treaties almost all had the same potential effect, i.e. to reinforce the signatories' policies and domestic legal frameworks in some of the areas covered by the OECD MNEs Guidelines by preserving their policy space.

The first type are provisions included in eleven of Mexico's pre-2011 investment treaties<sup>264</sup> that prohibit the signatories from relaxing or weakening environmental and/or health and safety domestic measures to attract and/or retain investment and which are subject to government consultations.<sup>265</sup> The second type, which are present in four of Mexico's pre-2011 investment treaties,<sup>266</sup> provide that nothing should prevent the signatories from adopting or enforcing measures, otherwise consistent with the treaty, aimed at ensuring that investment activities are undertaken in accordance with their environmental, health and/or safety legislations and/or concerns.<sup>267</sup> The third type can be found in five of Mexico's pre-2011 investment treaties<sup>268</sup> and are provisions that also aim to preserve the signatories' policy space, but in relation to the general prohibition to impose performance requirements on investments.<sup>269</sup> They specify that, despite this prohibition, nothing should prevent the signatories from adopting or maintaining measures necessary to protect human, animal or plant life or health or for the conservation of exhaustible natural resources.<sup>270</sup>

Finally, the last type of sustainability provision included in five of Mexico's pre-2011 investment treaties<sup>271</sup> has a different kind of effect. These provisions foresee the possibility for arbitral tribunals to have recourse to experts for environmental and/or health and safety matters and therefore provide procedural safeguards for matters that can potentially involve RBC-related issues.

As of 2011, a new type of sustainability provisions started to appear in Mexico's investment treaty network, but still with the same potential reinforcing effect on the signatories' policies and domestic legal frameworks. These new provisions specify that non-discriminatory regulatory actions adopted to protect public interest objectives are not tantamount to expropriation. It is worth noting that the absence of such a provision in the 1995 Mexico-Spain BIT was clearly noted by the arbitral tribunal in the *Técnicas Medioambientales Tecmed S. A. v United Mexican States* case and may have prompted it to develop a specific test to take into account the public interests at stake.<sup>272</sup> The award rendered in this case is indeed the first to apply a "proportionality test" to balance the investor's rights with domestic environmental and health concerns in order to decide whether a regulatory action should be considered expropriatory (see Box 4.10). The new type of sustainability provisions inserted in Mexico's post-2011 investment treaties clarify in this regard that arbitral tribunals shall not consider non-discriminatory measures taken to protect



the environment and/or human health as tantamount to expropriation. By doing so, they entitle the signatories to take such measures without legal risks and thereby contribute to preserve their right to regulate in the public interest. The 2011 Mexico-Peru FTA, the 2011 Mexico-Central America FTA, the 2013 Mexico-Turkey BIT, and the 2014 Mexico-Panama FTA all include articles and/or annexes with this clarification.<sup>273</sup>

#### **Box 4.10. RBC-related issues under Mexico's investment treaties: the *Tecmed v. Mexico* case**

Over recent years, interpretations of investment treaties by arbitral tribunals have been criticised for limiting governments' right to regulate. The *Tecmed v. Mexico*<sup>1</sup> case is noteworthy in this regard as it illustrates how a non-discriminatory regulatory measure aimed to respond to health and environmental concerns may be considered as tantamount to expropriation and in violation of the fair and equitable treatment standard.

The dispute arose out of Técnicas Medioambientales Tecmed S.A. (Tecmed)'s investment in a landfill of hazardous industrial waste located in Hermosillo, acquired through its Mexican subsidiaries in 1996.<sup>2</sup> Shortly after the acquisition, Tecmed's subsidiary operating the landfill, Cytrar, was fined due to irregularities in the discharge of waste posing a risk to the environment and human health.<sup>3</sup> Community groups also started opposing the landfill due to its close proximity to the urban centre of Hermosillo.<sup>4</sup> A social conflict ensued, resulting in local communities' members and organisations requesting that the permit to operate the landfill be cancelled.<sup>5</sup> In November 1998, the National Ecology Institute (*Instituto Nacional de Ecología*, INE) issued a resolution denying the renewal of the license to operate the landfill and ordering its closure (the Resolution).<sup>6</sup> The grounds for such a decision were, among others, that the waste in the landfill exceeded the authorised limits and that Cytrar had not relocated the landfill further away from Hermosillo's urban centre.<sup>7</sup> Following the issuance of the Resolution, Tecmed initiated arbitration on the basis of the 1995 Mexico-Spain BIT.

In its award, the tribunal – in addition to finding a breach of the fair and equitable treatment standard – rejected Mexico's allegations that the Resolution was a legitimate action aimed to protect the environment and public health which could not amount to an expropriation under international law.<sup>8</sup> The tribunal determined that the Resolution was expropriatory by applying a "proportionality" test, weighing the economic impact of the Resolution for Tecmed and the public interests that it was presumably protecting.<sup>9</sup> After noting that the Resolution did not "specify any reasons of public interest, public use or public emergency that may justify it",<sup>10</sup> the tribunal found that it was the social and political circumstances, as well as the community pressure, that had motivated the Resolution.<sup>11</sup> As the community opposition was not deemed to lead to a serious emergency situation, social crisis or public unrest, the Resolution was not considered to be proportional to the deprivation of the economic value of Tecmed's investment.<sup>12</sup> In other words, there were no health, environmental or socio-political concerns weighty enough to justify the Resolution. On this basis, the Resolution and its effects were considered to amount to expropriation, for which compensation was owed to Tecmed.<sup>13</sup>

This award, and the finding of indirect expropriation, is particularly noteworthy, as the tribunal relied partly on the absence of sustainability provisions in the treaty to support its reasoning. In its reading of the provisions on expropriation, the tribunal noted that the 1995-Mexico Spain BIT did not include an express statement that non-discriminatory regulatory actions to protect health, safety and/or the environment shall not be considered as tantamount to expropriation. As this type of actions were not expressly excluded from the scope of expropriatory acts for which compensation was owed,<sup>14</sup> the tribunal found that the Resolution could amount to an expropriation.

This reasoning shows the importance of interpretative guidance aimed at preserving policy space for public interest measures. In the absence of such guidance, tribunals may resort to developing their own



tests to determine whether such measures amount to expropriation. In other NAFTA arbitrations against Mexico, some tribunals used a “sole effects” test and analysed solely the economic effects of the measure on the investment without considering its underlying public interest purpose.<sup>15</sup> The *Tecmed v. Mexico* tribunal was the first to take into account public interests and apply a “proportionality” test to balance them against the investor’s rights in order to determine whether there had been a breach of the expropriation provision.<sup>16</sup>

Notes:

1. *Técnicas Medioambientales Tecmed S. A. v United Mexican States*, ICSID Case No. ARB(AF)/00/2.
2. *Técnicas Medioambientales Tecmed S. A. v United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 23 May 2003 (Tecmed v. Mexico Award), para. 35, [http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3785/DC4872\\_En.pdf](http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3785/DC4872_En.pdf).
3. Tecmed v. Mexico Award, para. 107.
4. Tecmed v. Mexico Award, para. 108.
5. Tecmed v. Mexico Award, para. 108.
6. Tecmed v. Mexico Award, para. 39.
7. Tecmed v. Mexico Award, para. 99.
8. Tecmed v. Mexico Award, para. 97.
9. Tecmed v. Mexico Award, para. 122.
10. Tecmed v. Mexico Award, para. 125.
11. Tecmed v. Mexico Award, paras. 133, 145.
12. Tecmed v. Mexico Award, paras. 133, 137, 139, 144, 147, 149.
13. Tecmed v. Mexico Award, para. 151.
14. Tecmed v. Mexico Award, para. 121.
15. Bernasconi-Osterwalder N.; Johnson L. (2011), *International Investment Law and Sustainable Development: Key cases from 2000-2010*, International Institute for Sustainable Development (IISD), p. 143.
16. *Ibid.*, p. 143.

It is only post-2014, with the conclusion of multilateral comprehensive trade agreements including investment chapters, that RBC clauses made their appearance in Mexico’s investment treaties. The investment chapters of the 2014 Pacific Alliance Additional Protocol,<sup>274</sup> the 2016 TPP,<sup>275</sup> the 2018 CPTPP<sup>276</sup> and the 2019 USMCA,<sup>277</sup> as well as the 2015 Mexico-Brazil Cooperation and Facilitation Investment Agreement (CFIA),<sup>278</sup> all contain clauses of the kind. However, they vary in terms of scope and binding nature.

The RBC clause included in the investment chapter of the TPP, and subsequently by reference in the CPTPP, is general and merely reaffirms the signatories’ undertaking to encourage businesses to incorporate in their internal policies internationally recognised RBC principles and standards (but with no express mention of the OECD MNEs Guidelines).<sup>279</sup> This is also the case of the RBC clause contained in the investment chapter of the USMCA. In fact, both clauses are almost identical, the only difference being that the RBC clause of the USMCA includes an express reference to the OECD MNEs Guidelines and specifies that RBC standards may cover several areas.<sup>280</sup> Another common feature of these RBC clauses is that they are subject to the general dispute resolution mechanisms of the agreements.

By contrast, the RBC clauses included in the investment chapter of the 2014 Pacific Alliance Additional Protocol and in the 2015 Mexico-Brazil CFIA are broader and more detailed.<sup>281</sup> Through the RBC clause of the Pacific Alliance Additional Protocol, the signatories first acknowledge the importance that businesses apply sustainability and social responsibility policies and promote the host country’s development.<sup>282</sup> They then undertake to promote that such enterprises integrate in their policies internationally recognised RBC principles and standards, including in the different areas covered by the OECD MNEs Guidelines (i.e. human rights, labour rights, environment, anti-corruption, consumers’ interests, science and technology,

competition and taxation), which are expressly mentioned.<sup>283</sup> Finally, the signatories commit to identify and share best practices to implement the OECD MNEs Guidelines and promote enterprises' contribution to sustainable development.<sup>284</sup> However, this RBC clause is contained in a section of the investment chapter that arbitral tribunals are prevented from taking into consideration when rendering a decision in an investment arbitration (and which is also excluded from the general dispute resolution mechanism of the FTA).<sup>285</sup>

As to the RBC clause of the 2015 Mexico-Brazil CFIA, it first affirms that investors and their investments shall make their best efforts to maximize their contribution to the sustainable development of the host state and the local communities by adopting a high level of socially responsible practices.<sup>286</sup> It then lists the RBC principles and standards that they should strive to comply with to this effect.<sup>287</sup> This includes, among others: promoting economic, social and environmental progress in order to achieve sustainable development; respecting the human rights of the persons involved in the company's activity; strengthening local capacity building through close cooperation with local communities; adopting and implementing good corporate governance practices; encouraging, when possible, business partners, including direct providers and subcontractors, to apply RBC principles; etc.<sup>288</sup> This RBC clause is subject to the general state-to-state dispute resolution mechanism foreseen under the CFIA, which contains no provisions for investor-state dispute settlement (ISDS).

Lastly, it is worth noting that the investment chapter of the TPP and the CPTPP also contain a provision that can contribute to facilitate access to remedy for victims of adverse impacts. Article 9.19 of said chapter expressly authorises counterclaims,<sup>289</sup> which gives the possibility to States, albeit under very restrictive conditions, to bring an action against an investor in relation to the adverse impacts caused by its operations.

*Harmonising the integration of considerations relevant to RBC in Mexico's trade and investment agreements as a means to promote RBC*

As a signatory of the 1992 NAFTA, the 2018 CPTTP, the 2019 USMCA, and potentially of the Mexico-EU trade agreement, and their respective investment chapters, Mexico is party to some of the most advanced trade and investment agreements in terms of the inclusion of considerations relevant to RBC. Even the very first trade and investment agreements concluded by Mexico in the 1990s contain a number of sustainability provisions. However, this is not true of all its subsequent trade and investment agreements. In fact, the inclusion of considerations relevant to RBC in Mexico's trade and investment agreements network has not evolved gradually with the passing of years. Rather, it has fluctuated depending on the type of agreements concluded and on the signatories of the agreements. Thus, whereas the multilateral comprehensive trade agreements, and the investment chapters contained therein, concluded by Mexico as of 2014 all contain several sustainability provisions and RBC clauses, this is not the case of many of the bilateral trade agreements and BITs it concluded previously. In fact, none of these earlier agreements contain RBC clauses and, with the exception of the 1992 NAFTA's parallel agreements on labour and environmental cooperation, the vast majority do not contain detailed sustainability provisions.

This state of affairs is most likely linked to the general evolution of the treaty practice in terms of inclusion of considerations relevant to RBC and to the fact that such inclusion generally started earlier in trade agreements than in BITs. However, it also suggests that Mexico has not developed its own policy in this regard and rather has adopted the practice of its trade and investment partners, such as the U.S., Canada and the EU. This finding is corroborated by the fact that, to date, Mexico does not seem to have developed a model FTA or BIT incorporating sustainability provisions or RBC clauses. Adopting the practice of different partners allows to get first-hand exposure to distinct approaches and different drafting styles, and to better understand the rationale behind each of them. Nevertheless, accepting and incorporating in one's network provisions and clauses crafted by various partners impedes developing a coherent and uniform approach and also triggers legal uncertainty and related risks for both the government and businesses.

***Mexico could hence consider developing, clarifying and publicising its own strategy regarding the integration of considerations that contribute to promoting and enabling RBC in its trade and investment policies, including in its trade and investment agreements, and seeking to build a coherent and uniform approach across its treaty network in this regard. More specifically, Mexico could draw inspiration from the proactive approaches adopted by other countries in trade and investment negotiations, with the aim to more systematically include sustainability provisions and RBC-clauses mentioning the OECD instruments on RBC in its trade and investment agreements (including renegotiated ones), with the support of the NCP.***

The inclusion of considerations relevant to RBC in trade and investment agreements is key to build an enabling environment for responsible business practices, as sustainability provisions and RBC clauses can have different effects that contribute to promoting and enabling RBC. Harmonising their integration in Mexico's trade and investment agreements can, for instance, strengthen the country's policies and domestic legal frameworks in areas covered by the OECD MNEs Guidelines, thereby contributing to the development of a legal and regulatory framework that enables RBC. It can also help leverage RBC and incentivise responsible business practices by clarifying the Government's expectations vis-à-vis RBC and signalling to Mexican businesses, as well as to businesses trading with or investing in Mexico, the RBC principles and standards they should adopt and implement. In addition, it can facilitate access to remedy for victims of business-related adverse impacts, either by developing procedural safeguards for RBC-related matters or by creating new avenues to access remedy. More generally, sustainability provisions and RBC clauses can serve as a lever to draw public officials', businesses' and other stakeholders' attention to the importance of responsible business practices in trade and investment and raise their awareness about internationally-recognised RBC principles and standards.

A strategy regarding the integration of considerations relevant to RBC in trade and investment could be a component of a broader policy of the Mexican Government to build an enabling environment for RBC. It could consider RBC as one of the key aspects to be addressed in Mexico's future negotiations, with the objective of consistently seeking to integrate considerations relevant to RBC in its trade and investment agreements. When engaging in such negotiations with other Adherents to the Declaration on International Investment and Multinational Enterprises, but also with non-adherents, Mexico could more specifically suggest to integrate references to the OECD's instruments on RBC, as done in the RBC clauses inserted in the 2019 USMCA's investment chapter<sup>290</sup> and in the draft text of the TSD Chapter of the future trade agreement with the EU.<sup>291</sup> To develop this strategy, Mexico could first define its general approach regarding the incorporation of considerations relevant to RBC in trade and investment agreements and, on this basis, determine the type of sustainability provisions and RBC clauses it would seek to integrate in such agreements. A further step would then be to draft model of these provisions and clauses. Additionally, Mexico could seek to identify the potential obstacles to the inclusion of considerations relevant to RBC in its upcoming trade and investment negotiations and try to address them. Provided it is reinforced (see Section 5), the NCP could play a key role in this respect and position itself as an information hub regarding the sustainability provisions and RBC clauses incorporated in Mexico's trade and investment agreements. It could also raise awareness and train public officials, businesses and civil society on such provisions and clauses and, in particular, on the objectives of their incorporation in trade and investment agreements and their implications. When designing this strategy and implementing it in the framework of specific negotiations, Mexico should seek to engage and consult with different stakeholders. Such engagement and consultation during the different stages of the process is fundamental to ensure effective and adequate trade and investment policymaking (OECD, 2019<sup>[348]</sup>).

It is worth highlighting that harmonising the integration of considerations that contribute to promoting and enabling RBC in Mexico's trade and investment policies would help implementing the PNDH's priority strategy No. 3.6. The objective of this priority strategy is to incentivise policies aimed at diminishing business activities' adverse impacts. A strategy on the incorporation of considerations relevant to RBC in Mexico's trade and investment policies would precisely aim and contribute to this objective. More

specifically, generalising the inclusion of sustainability provisions and RBC clauses in trade and investment agreements would respond to action No. 3.6.2, which seeks to enhance the incorporation of the UNGPs and the OECD MNEs Guidelines in business activities.<sup>292</sup> It would also contribute to implement action No. 3.6.3, whose objective is to promote the harmonization of the legal framework that regulates business activities in accordance with national and international human rights standards.<sup>293</sup> Finally, it would also be relevant for action No. 3.6.6, which is aimed at strengthening the mechanisms allowing citizens to report on cases of human rights violations and irresponsible business practices.<sup>294</sup>

## Policy recommendations

- 23. More broadly, develop, clarify and publicise own strategy regarding the integration of considerations that contribute to promoting and enabling RBC in trade and investment policies, including trade and investment agreements, and seek to build a coherent and uniform approach across Mexico's treaty network in this regard.**
- 24. Take a proactive approach in trade and investment negotiations, with the aim to more systematically include sustainability provisions and RBC clauses mentioning the OECD instruments on RBC in Mexico's trade and investment agreements (including renegotiated ones), with the support of the National Contact Point for RBC.**

## **5** The role of the Mexican NCP to promote policy coherence for Responsible Business Conduct

Regulating business conduct in areas covered by the OECD MNEs Guidelines and ensuring compliance with regulations and policies enacted in these areas is key to design and implement an enabling environment for RBC (see Section 3). Enacting policies and regulations that facilitate or incentivise business compliance with the OECD MNEs Guidelines through the integration of RBC considerations in policy areas that have a bearing on businesses such as public procurement, SOEs and trade and investment policies, is also fundamental in this regard (see Section 4). To support Mexico in the design and implementation of an enabling environment for responsible business practices, this RBC Policy Review formulates a number of policy recommendations in both areas. Many of these recommendations are addressed to the NCP directly, or will require the active involvement of the NCP to be implemented. This is in line with the role that NCPs can play as agents to advance policy coherence and as promoters of RBC across government.

Based on their dual mandate to promote the OECD MNEs Guidelines and act as a non-judicial grievance mechanism, NCPs can play an active role in promoting RBC across government agencies and seeking policy coherence. As part of their promotional activities and expertise on the OECD MNEs Guidelines and the related OECD Due Diligence Guidance, NCPs are uniquely placed to give advice on RBC-related policies within government. Many NCPs already actively engage on this by: participating in inter-departmental committees dealing with sustainability issues or business responsibility; engaging bilaterally with other government agencies in charge of relevant topics (e.g. environment, labour, trade, investment etc.); providing input into RBC-related policy processes to ensure alignment with the recommendations of the OECD MNEs Guidelines; and participating in multilateral processes to ensure RBC issues feature in international commitments.<sup>295</sup> NCPs can also promote policy coherence on RBC within government through their remedy role, by informing other government agencies of the findings from their statements when relevant to these agencies' policies and programmes, as encouraged by the OECD MNEs Guidelines.<sup>296</sup> A number of NCPs for example report outcomes of NCP cases to their export credits or public procurement agencies, or in the context of the preparation of trade missions, to ensure that companies that do not engage in good faith with the NCP process do not have access to government support, funding or contacts (OECD, 2018<sup>[315]</sup>; OECD, 2019<sup>[332]</sup>; OECD, 2020<sup>[349]</sup>).

NCPs are also increasingly contributing to policy coherence government-wide through NAPs. By providing an overarching policy framework for RBC, NAPs may strengthen coordination and coherence within the government among all policies relevant for RBC (including investment, procurement, and export credits, among others). To date, all 22 NAPs adopted by Adherents reference the NCP in some role or function and many recognise it as a key mechanism in promoting access to remedy. Beyond this, many NCPs have taken part in the respective design and development of NAPs.<sup>297</sup>

In light of this, the present RBC Policy Review highlights a number of policy areas and concrete actions where the Mexican NCP could play a role to promote policy coherence and coordinate on RBC across government. The recommendations from Sections 3 and 4 in this regard are summarised here to provide a complete overview of the actions to be undertaken. They are illustrated by specific good practice examples from NCPs in other countries.

## Human Rights

- ***Mexico is encouraged to take measures to implement the PNDH and start the process to develop a NAP, following a defined timeline and with adequate financial and human resources. For this purpose, Mexico should work on building trust between the different stakeholders and the Government through transparency and meaningful engagement, and seek to enhance coordination and cooperation among government entities. Moreover, the NAP elaboration process should build on Mexico's adherence to the OECD MNEs Guidelines and recognise the role of the NCP in the promotion of RBC and as a non-judicial grievance mechanism for corporate human rights violations.***

All NAPs from countries adhering to the OECD MNEs Guidelines reference the NCP. These references are generally of the following types:

- Many NAPs contain a commitment to strengthen the NCP and add details as to reforms envisaged (addition of an advisory body, creation of an inter-ministerial committee, commitment to do a peer review, etc.). For examples, the NAP of Chile and Sweden contain this type of commitment.
- In all NAPs, the role of the NCP to promote the OECD MNEs Guidelines with enterprises and stakeholders, and to provide access to remedy in relation to the implementation of the OECD MNEs Guidelines is restated.
- Some NAPs task the NCP to play a role regarding policy coherence, by creating structural links with other government agencies working on RBC-related issues (such as the NAPs of Luxembourg and Norway), or by mandating the NCP to promote RBC and circulate its statements on the outcome of NCP cases with other government agencies (such as the NAP of Belgium).
- Some NAPs also require other government agencies to raise awareness about the NCP with their stakeholders (such as the Danish NAP), or to consider the statements of the NCP on the outcome of its cases in their activities. For example, the NAPs of the UK and Germany require their ECAs to consider NCP statements when making export credit decisions.
- ***Mexico is encouraged to reinforce the collaboration between the Government and the CNDH to strengthen policy coherence on RBC, considering the CNDH's long-standing experience and expertise. Besides, in addition to effectively involving it in the eventual NAP elaboration process, Mexico should provide enough resources to the NCP to reinforce its role as a state-based non-judicial remedy mechanism for business-related impacts and facilitate access to remedy for victims of such impacts.***

In Chile, both the NHRI and the NCP collaborated in the development of the NAP. In December 2017, as mandated by the Chilean NAP itself, the NCP and the NHRI signed a Memorandum of Understanding, which provides that the NHRI will provide advice on the human rights aspects of specific instances and be represented on the advisory board of the NCP (Government of Chile, 2017<sup>[350]</sup>).

Additionally, in 2020, the OECD and the Danish Institute for Human Rights, together with the Global Network of National Human Rights Institutions (GANHRI), published a brochure,<sup>298</sup> also available in

Spanish,<sup>299</sup> to help NCPs and NHRIs identify synergies and opportunities for promoting business respect and support for human rights in line with OECD and UN guidance.

- ***Mexico is encouraged to adopt a legislative framework permitting the meaningful consultation of indigenous and Afro-Mexican peoples regarding potential business-related impacts on their rights, in particular in the context of public and/or private large-scale projects. In doing so, it should address the already identified flaws in the application of FPIC in the country to reinforce it in practice in accordance with international standards. The NCP should play a role in this regard, improving its visibility and accessibility to handle cases submitted by indigenous and Afro-Mexican peoples.***

Specific instances involving indigenous peoples have become more frequent in recent years, particularly in relation to large-scale infrastructure projects. As a result, NCPs have been stepping up their engagement with representatives of indigenous peoples.

For example, in June 2019, the Norwegian NCP and NHRI organised jointly a seminar on natural resource development, business and the rights of indigenous peoples. The seminar was held in Karasjok, which is the seat of the Sámi parliament in Norway (Government of Norway, 2019<sub>[351]</sub>). It gathered representatives from businesses, Sami communities, local governments and other stakeholders who discussed concrete cases, including the case relating to Statkrafts' construction of wind parks in the Sámi village of Jijnjevaerie in Sweden, handled by the Swedish and Norwegian NCPs. Challenges and best practices related to RBC and consultation processes with indigenous peoples on mitigation measures were also discussed. Additionally, during the seminar, the Norwegian NCP launched the Norwegian and Sámi language versions of the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (Government of Norway, 2019<sub>[351]</sub>).

- ***Mexico should seek to prevent social conflicts arising from business-related activities, and in particular large-scale projects, which often increase the risks of human rights violations and/or tend to create situations prone to such risks. It should actively encourage all companies, independently of their size and nature, to conduct due diligence on the basis of the OECD Due Diligence Guidance to identify, prevent and mitigate adverse impacts on human rights and carry out meaningful stakeholder engagement. It should also ensure that the NCP participates in these efforts and receives sufficient resources to prioritise the promotion of due diligence among businesses, particularly those engaging in large-scale projects.***

The mandate of NCPs includes promoting the OECD MNEs Guidelines and the related OECD Due Diligence Guidance. Many NCPs think strategically about this promotion and target particularly their activities and promotional documents to key sectors present or prone to causing adverse impacts in their country or abroad.

For example, the Moroccan NCP organised in 2020 a training on due diligence in the garment and footwear sector (Government of Morocco, 2020<sub>[352]</sub>). The garment sector is of strategic importance to the Moroccan economy, as it represents 27% of jobs and 7% of the industrial added value. Moreover, the sector is highly dependent on exports to countries like France or Spain, where companies increasingly require suppliers to conduct due diligence.<sup>300</sup> Therefore, the seminar targeted professionals from the sector to provide an in-depth understanding of the notion of due diligence within the framework of the OECD MNEs Guidelines, and to reflect in small groups around real-life scenarios involving due diligence issues (Government of Morocco, 2020<sub>[352]</sub>).

## Public Procurement

- ***Mexico could take advantage of the transfer of public procurement responsibilities from the SFP to the SHCP to enhance public procurement policy-makers' and practitioners'***



***awareness of the importance of using public procurement as a strategic tool to promote RBC, as well as their knowledge, capacity and practical ability to implement RBC considerations in public procurement, with the support of the NCP.***

NCPs can support the inclusion of RBC considerations in public procurement and contribute to public procurement policy-makers' and practitioners' training and capacity building on RBC, in particular, on the OECD MNEs Guidelines and the related OECD Due Diligence guidance.

For example, the Danish NCP not only supports the inclusion of RBC considerations in public procurement by training public procurement practitioners on the OECD MNEs Guidelines' recommendations, it also contributes to the development of guidance material on RBC issues that can be used by them as resource documents. Thus, in 2019, the Danish Institute for Human Rights published, on behalf of Denmark's NCP, a report on how municipalities and other procuring entities can ensure that human rights are respected in public procurement (Danish Institute for Human Rights, 2019<sup>[353]</sup>; Danish Institute for Human Rights, 2020, p. 56<sup>[354]</sup>). The objective of the report is to provide insights into the way in which public procurement practitioners can integrate human rights considerations in the different phases of the procurement cycle and build their knowledge in this respect (Danish Institute for Human Rights, 2019, p. 1<sup>[353]</sup>).

### Trade and Investment

- ***Mexico could therefore consider developing an overarching strategy to put RBC considerations at the centre of its forthcoming trade and investment promotion and facilitation policies in a coherent fashion. In particular, Mexico could contemplate using the support granted to domestic exporters and foreign investors in Mexico to raise awareness about RBC principles and standards, as well as linking such support to the observance of these principles and standards, in cooperation with the NCP.***

For example, Austria's 2018 National Strategy on Foreign Trade includes a dedicated chapter on RBC, as well as references to RBC in other chapters. In addition, the Austrian NCP regularly informs officials responsible for trade missions, the Austrian Export Credit Agency and the Austrian Development Bank, about NCP activities and specific instances (Government of Austria, 2018<sup>[355]</sup>). In the same vein, Germany adopted a new procedure in July 2018 for organising trade missions pursuant to which all German businesses that want to join trade missions are now required to sign a statement on RBC which refers to the OECD MNEs Guidelines and the specific instances handled by the NCP (Council of Europe, 2018<sup>[356]</sup>; OECD, 2019<sup>[332]</sup>). Likewise, in Canada, if a company does not participate in good faith in a specific instance, the Canadian NCP will recommend denial or withdrawal of the government's trade advocacy support and will mention it in the final statement on the outcome of the NCP case (Government of Canada, 2017<sup>[357]</sup>).

- ***Mexico could consider developing, clarifying and publicising its own strategy regarding the integration of considerations that contribute to promoting and enabling RBC in its trade and investment policies, including in its trade and investment agreements, and seeking to build a coherent and uniform approach across its treaty network in this regard. More specifically, Mexico could draw inspiration from the proactive approaches adopted by other countries in trade and investment negotiations, with the aim to more systematically include sustainability provisions and RBC-clauses mentioning the OECD instruments on RBC in its trade and investment agreements (including renegotiated ones), with the support of the NCP.***

For example, Costa Rica seeks to integrate considerations of relevance to RBC in its trade and investment policies.<sup>301</sup> To this effect, the NCP of Costa Rica, which is located in the Ministry of Foreign Trade (COMEX), has developed a strategy of creating liaisons between the NCP and the other teams of the Ministry (OECD, 2020, pp. 89-90<sup>[358]</sup>), and in particular those in charge of negotiating and implementing sustainability provisions and RBC clauses in trade and investment agreements. As a result, the NCP

officials are consulted by the negotiating teams and provide input on any draft text to ensure that it is consistent with Costa Rica's commitment to implement the OECD MNEs Guidelines. Likewise, the NCP assists with the implementation of these provisions and clauses, for example providing advice in relation thereto in the context of dispute settlement.

The RBC Policy Review has however also highlighted that, currently, the Mexican NCP is facing a number of challenges that hamper its ability to adequately play this role and reduce its visibility, accessibility, access to necessary expertise, and the confidence of stakeholders (see Section 2.3). These challenges relate to its resources, structure, and location.

On **resources**, the Mexican NCP is one of the least well-resourced NCPs of the network, going from four staff members, including one full time staff member, to just one part-time staff member in the last five years. This level of resources does not allow the NCP to actively promote the OECD MNEs Guidelines with stakeholders or other government officials, thereby limiting its visibility. Illustrative of this is the fact that the NCP has not received a single case in over 13 years, and has organised just one promotional event per year on average in the last five years (OECD, n.d.<sup>[359]</sup>; Government of Mexico, 2018<sup>[360]</sup>). Business and government officials are therefore unlikely to identify the NCP as a resource on RBC to orient their policies and practices, and the NCP itself does not have the capacity to proactively reach out to them to offer its input and advice. By comparison, in 2020, the average number of full time staff at G20 country NCPs was 1.6 and the average number of part-time staff was 2 (OECD, 2019, p. 16<sup>[361]</sup>).

On **structure**, the Mexican NCP does not currently have a clearly identifiable structure. Its functions are exercised on a part-time basis by a senior official in the General Directorate of Foreign Investment of the SE, with occasional support from other members of the Directorate. The NCP does not have an advisory body including other government officials and/or stakeholders (Government of Mexico, 2018<sup>[360]</sup>). Coupled with the issue of resources, this single agency set up limits the visibility and the overall activity of the NCP. It also limits the NCP's accessibility and the confidence of stakeholders, who do not have an entry point within the NCP and a dedicated space to provide input, voice concerns or seek advice. Finally, it limits the expertise available to the NCP, as the NCP does not have a readily available network of experts able to advise on the various themes covered by the OECD MNEs Guidelines. By comparison, the Mexican NCP is one of only two NCPs from G20 countries that does not include representatives of either other ministries or stakeholders in its structure (OECD, 2019, p. 15<sup>[361]</sup>).

On **location**, the Mexican NCP is currently attached to the General Directorate of Foreign Investment of the SE (Government of Mexico, 2019<sup>[362]</sup>; Government of Mexico, 2021<sup>[363]</sup>). While this may present opportunities to include RBC considerations in some of the government's economic policies handled by the Directorate, it may also diminish the confidence of stakeholders and their perception of the impartiality of the NCP, as well as the ability of the NCP to push RBC against other issues or interests (e.g. investment promotion). It is therefore important that measures be taken to ensure that the location of the NCP does not create perceptions of partiality or risks of conflict of interest.

In the framework of the RBC-LAC Project, in 2020, the NCP together with the OECD Secretariat have developed a roadmap identifying concrete actions to strengthen its functioning. These actions partly address the challenges identified above by seeking to build capacity and substantive expertise at the Mexican NCP, but measures from the Government to increase resources, revise the NCP structure, and reassess the implications of its location would require additional actions from the Government. Doing so would not only be in line with the Government's commitment under the Council Decision on the OECD MNEs Guidelines to establish a functioning NCP, but also be particularly timely and contribute to the implementation of the recently adopted PNDH for 2020-2024. The PNDH indeed envisages the "promotion of policies aimed at reducing the negative impacts of business activity" (Government of Mexico, 2020<sup>[32]</sup>),<sup>302</sup> which are explicitly expected to "promote the incorporation of the UNGPs and the OECD MNEs Guidelines in the activities of the companies from the public, private and social sectors" (see action No. 3.6.2 (Government of Mexico, 2020<sup>[32]</sup>).<sup>303</sup>

*In light of the foregoing, Mexico is encouraged to increase the resources available to the NCP to at least one full-time staff, to revise its structure to ensure involvement from other government officials and stakeholders, and to take measures to ensure that the location of the NCP is conducive to a perception of impartiality and evacuates risks of conflicts of interests.*

## Policy recommendation

- 25. Increase the resources available to the National Contact Point for RBC (NCP) to at least one full-time staff, revise its structure to ensure involvement from other government officials and stakeholders, and take measures to ensure that its location is conducive to a perception of impartiality and evacuates risks of conflicts of interests.**

## **6** Moving towards an enabling environment for Responsible Business Conduct in Mexico

Building an enabling environment for RBC in Mexico can help the country recover from the COVID-19 crisis in a responsible and sustainable way and keep building on its openness to trade and investment as a strategy for economic growth in the aftermath of the crisis. Multinational enterprises are expected to observe RBC principles and standards and carry out due diligence to analyse country and supplier risks and prevent the adverse impacts that their operations, supply chains, and/or business relationships may cause on people, the planet, and society. As a result, companies operating globally increasingly decide to do business in countries that present lower risks of adverse impacts and/or with suppliers that abide by internationally recognised environmental and social standards (OECD, 2016<sup>[2]</sup>). Similarly, investors generally base their decisions to invest on countries' domestic legal and regulatory frameworks and whether they incorporate internationally recognised RBC principles and standards (OECD, 2016<sup>[2]</sup>). These considerations have become even more important in the context of the COVID-19 pandemic. Not only has it severely disrupted the global economy and triggered serious challenges for businesses causing increased risks of adverse impacts, it has also revealed vulnerabilities in companies' operations and supply chains (OECD, 2020<sup>[310]</sup>). The COVID-19 crisis thus acts as a catalyst for RBC, with an important number of public and private actors calling to build back better, more responsibly and sustainably, and to adopt responsible business practices going forward, including during crises.

In light of the impact of the COVID-19 crisis on the Mexican economy and its reliance on trade and investment for growth, building an enabling environment for RBC will be key for Mexico's economic outcomes in the recovery. On the one hand, it can help reinforce the country's image as a reliable and safe place to source from, trade with, and/or invest in, thereby allowing it to consolidate its comparative advantages. This is of particular importance for Mexico considering the increased attention paid by its main trade and investment partners to RBC issues. On the other, it will encourage Mexican businesses to observe RBC principles and standards, which can increase their opportunities to engage in business with multinational enterprises, reinforce their access to export markets, and further advance their integration into GVCs, by contributing to diminish their operational, reputational, legal and financial risks. The adoption of responsible business practices by companies operating in or from Mexico will also contribute to improve their ability to face the challenges brought about by any future crises through enhanced resilience and the creation of more long-term value.

Beyond this, the construction of an enabling environment for RBC in Mexico can also underpin the Government's well-being and sustainability objectives. As reflected in the PND for 2019-2024, ethics, integrity, transparency, accountability, and inclusiveness are key concepts for well-being and sustainability, and this is even more acute in the current context. The COVID-19 crisis has severe social consequences, causing a serious impact on people's lives and societies, and threatening to aggravate inequalities and poverty. The contribution of the private sector to address such consequences is indispensable. As

acknowledged by the 2030 Agenda, businesses have a role to play in sustainable development and they should participate in the implementation of the SDGs. However, in the last years, it has become apparent that businesses' contribution to solve sustainable development challenges needs to be enhanced.

By encouraging businesses to contribute to sustainable development, the construction of an enabling environment for RBC can help mobilise and direct private resources in Mexico towards the achievement of the SDGs. It can also reduce human and labour rights' infringements, as well as risks of environmental contamination or corruption in the country by incentivising businesses to observe RBC principles and standards and conduct due diligence. Additionally, it can support the development of a culture of ethics, integrity, transparency and accountability among Mexican businesses, promote stakeholders' engagement and empowerment, and facilitate access to remedy in Mexico. Finally, it can help ensure that the decisions taken by businesses operating in or from Mexico in the aftermath of the COVID-19 crisis will not exacerbate its social consequences. These are all key factors for improving the wellbeing of Mexico's citizens in the years to come.

## 6.1. Seizing the opportunities and addressing the challenges to build an enabling environment for RBC

Over the last years, efforts have been made to promote and enable responsible business practices in Mexico, where businesses and, in particular, large companies have a certain degree of awareness and understanding of RBC. The country is a party to the main international instruments of relevance to RBC and, as an OECD Member, has adhered to the OECD MNEs Guidelines and the related OECD Due Diligence Guidance. It has also enacted legislation and regulations to govern business conduct and prevent the occurrence of RBC issues in several areas of the OECD MNEs Guidelines. In addition, recent government policies and initiatives have been developed specifically to encourage responsible business practices. The inclusion in the PNDH for 2020-2024 of a priority strategy on business and human rights provides a key opportunity in this regard. Priority strategy No. 3.6 aims to promote policies that reduce business activities' adverse impacts and foresees several actions to this effect, including the development of a NAP (Government of Mexico, 2020<sub>[32]</sub>).<sup>304</sup> As such, it provides the foundation for building an enabling environment for RBC through an overarching policy. Likewise, the elaboration of the BHR Programme in 2018 and the issuance of Recommendation General No. 37 on business and human rights in 2019 by the CNDH are significant developments. They both aim at developing a culture of respect for human rights in business-related activities, with a view to mainstreaming such culture across government policies and regulation (CNDH, 2019<sub>[60]</sub>; CNDH, 2020<sub>[61]</sub>). Besides these domestic policies and initiatives, Mexico's strong linkages with trade and investment partners that pay increased attention to RBC issues also constitutes a driving force for the promotion of RBC in the country. The recent reform of the Mexican labour law in the framework of the negotiations and signing of the USMCA is a clear manifestation of this.

Notwithstanding the above, major challenges persist for the construction of an enabling environment for RBC in Mexico. Although legislation and regulations governing business conduct in several areas of the OECD MNEs Guidelines exist, certain gaps remain. For instance, the absence of legislation on FPIC has raised RBC issues of concern, in particular in the framework of large-scale projects affecting indigenous peoples' rights. One of the main challenges is of institutional nature and derives from a lack of intra-governmental coordination and knowledge of RBC among public officials. This is particularly acute for RBC, which is a transversal subject that touches upon many different policy areas. Intra-governmental coordination and cooperation need to be strengthened to allow the mainstreaming of RBC in all the areas covered by the OECD MNEs Guidelines and across relevant economic policy areas that have a bearing on business conduct. Additionally, there is a clear need to build knowledge and capacity beyond the SEGOB and the SRE, and notably in various parts of the SE, on the concept of RBC and its relevance for different policy areas. Another significant challenge is Mexico's business fabric and, more specifically, the high level of informality and the prevalence of SMEs. Informality constitutes a hindrance for RBC because

informal companies are outside the remit of legal and regulatory frameworks and they can cause or contribute to adverse impacts. In addition, workers in the informal sector often have no legal protection and are hence prone to suffer adverse impacts on their rights. As to SMEs, they are generally less prone to observe RBC principles and standards and conduct due diligence than larger companies because of a lack of resources, capacity or simply knowledge, as confirmed by the results of the 2020 OECD Business Survey on RBC in LAC. A third challenge relates to the weak engagement of the Government with businesses and other stakeholders. In the framework of the preparation of the present RBC Policy Review, representatives of business associations, trade unions, CSOs, and indigenous peoples reported having difficulties in engaging with the Government on issues related to RBC.

## **6.2. Taking steps towards the construction of an enabling environment for RBC**

Building an enabling policy and regulatory environment for RBC requires aligning different policies so that they all contribute to promote and enable responsible business practices. It is about creating policy coherence between the different areas covered by the OECD MNEs Guidelines, but also between other relevant policies through which the Government can leverage and incentivise RBC. It demands coordination and cooperation across multiple ministries and government agencies in order to create synergies and mainstream RBC principles and standards in the various legislations, regulations, policies and initiatives that can shape business conduct.

Developing a NAP, as contemplated in the PNDH for 2020-2024, would constitute a significant step towards achieving policy coherence on the human rights related aspects of RBC. An overarching government policy presents an excellent opportunity to align and promote coherence between the legislations, regulations, policies and initiatives of the different ministries and government agencies responsible for the various policy areas of relevance to RBC. This includes, among others, corporate governance, human rights, labour rights, environment, corruption, consumer interests, science and technology, competition, taxation, but also public procurement, State-Owned enterprises, and trade and investment.

Building an enabling environment for RBC can only be achieved with meaningful involvement of businesses and other stakeholders through effective engagement, social dialogue, consultation and cooperation. This is particularly important for any future NAP or RBC policy development process. Engaging with businesses, trade unions, CSOs, representatives of indigenous peoples, as well as with the academia, is key to better understand issues, gaps and needs and, on this basis, design and/or review policies to ensure that they respond to such issues, gaps and needs and have the necessary buy-in. The Government has an important convening role to play and it should communicate and interact on a constant basis with stakeholders in order to take their views and concerns on RBC into consideration. In this role, it can also promote and facilitate collective initiatives from the private sector, trade unions and civil society aimed at encouraging businesses to adopt responsible practices and monitoring the implementation of such practices.

Lastly, the construction of an enabling environment for RBC also implies strengthening the Mexican NCP so that it can contribute to, and support, government action on RBC. If endowed with a strong mandate, adequate resources and capacity, NCPs have an important role to play in promoting policy coherence for RBC across government. As experts in the field with in-depth knowledge of the OECD MNEs Guidelines and the related OECD Due Diligence Guidance, they can train and build public officials' capacity on the various aspects of RBC, the different RBC instruments, and the importance of integrating RBC considerations in their work areas. Most importantly, they can act as counsellor to the different ministries and government agencies seeking to mainstream RBC in their respective legislations, regulations, policies and initiatives, and provide advice on their design, revision and/or implementation. As such, NCPs can



serve as agents to advance policy coherence and guarantee alignment between the actions taken across government to promote and enable RBC.

### 6.3. Policy recommendations to build an enabling environment for RBC

Beyond these general considerations, the construction of an enabling policy and regulatory environment to drive, support and promote responsible business practices in Mexico can concretely be achieved through two main policy orientations:

- On the one hand, it is essential that the Government regulate business conduct and prevent the occurrence of RBC issues in the areas covered by the OECD MNEs Guidelines through adequate legislations, regulations and policies, and that it ensure their enforcement.
- On the other, it is equally important that the Government leverage RBC and incentivise the observance of RBC principles and standards by businesses, either by leading by example in its role as economic actor or by including RBC considerations in other relevant policy areas that can shape business conduct.

The present RBC Policy Review formulates a series of concrete and actionable recommendations aimed at providing support to the Mexican Government in the progressive implementation of these two policy orientations. Building an enabling environment for RBC in Mexico would also require having a functional NCP, which can act as an agent to promote policy coherence across government. For this reason, a number of the recommendations refer to the NCP as a support for implementation.

It should be noted that, by following the recommendations formulated in the present RBC Policy Review, Mexico would be taking steps to implement several of its international and national undertakings. Some recommendations are aligned with the RBC-related commitments assumed by Mexico under recent trade agreements, such as the USMCA or the future trade agreement with the EU. Various others recommendations underpin the implementation of the different actions foreseen under priority strategy No. 3.6 of the PNDH on business activities' adverse impacts. All are relevant and constitute inputs to be taken into consideration should Mexico decide to move forward with the development of a NAP.

## Regulating and enforcing in support of RBC

### Human Rights

1. Materialise the Government's commitment, enshrined in the National Human Rights Programme (*Programa Nacional de Derechos Humanos*) for 2020-2024, to develop a National Action Plan on Business and Human Rights (NAP) and ensure a transparent and balanced participation of all relevant actors in the development process of such NAP, including relevant ministries and government agencies, the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH), CSOs, trade unions, indigenous peoples, human rights defenders, women and businesses. Give an active role to the National Contact Point for RBC (NCP) in the development process of the NAP to help bring together the different governmental actors involved in the RBC / business and human rights agenda and promote coherence and alignment of existing policies with the NAP.
2. Ensure that laws protecting human rights, including through prevention and mitigation, are effectively enforced, and that remedies are available when violations caused by businesses occur.
3. Encourage all companies, independently of their size and nature, to conduct due diligence on the basis of the OECD Due Diligence Guidance in order to identify and assess actual and potential



adverse human rights impacts, cease, prevent and mitigate such impacts, and carry out meaningful stakeholder engagement.

4. Ensure the protection of vulnerable groups through enhanced cooperation between the Ministry of Interior (*Secretaría de Gobernación*) and the CNDH to coherently promote the respect of their human rights in the context of business activities, particularly the development of large-scale projects.

## Labour Rights

5. Ensure that sufficient human and financial resources are dedicated to the implementation of the recent labour reforms and accelerate the institutional adaptation to such reforms, especially with regard to trade unions' rights and workers' access to judicial and non-judicial remedy mechanisms for labour matters.
6. Building on existing policy advice on formalisation and relevant experiences from other countries, design and adopt a comprehensive strategy integrating several policy actions to tackle informality and promote businesses' respect for labour rights, by ensuring that companies operating in Mexico are not only formally incorporated but also comply with their contractual and social security obligations with respect to workers.

## Environment

7. Incentivise the participation of businesses in the National Environmental Audit Programme (*Programa Nacional de Auditoría Ambiental*) and the Environmental Leadership Programme for Competitiveness (*Programa Liderazgo Ambiental para la Competitividad*).
8. Embed the OECD MNEs Guidelines and the related OECD Due Diligence Guidance as key tools to support the private sector, including investors, in mainstreaming biodiversity considerations as part of their risk management processes.
9. Draw on the OECD's RBC instruments, including the OECD Sector-specific Due Diligence Guidance, to further embed environmental considerations into industry-led risk management practices for the extractive and agricultural sectors, as well as sustainable development policy objectives, in order to enhance the identification, prevention and mitigation of environmental impacts.
10. Engage the private sector in protecting environmental and human rights defenders as part of their RBC and due diligence processes.
11. Incentivise businesses to mainstream climate change mitigation and adaptation needs as part of their risk management processes, including across supply chains and in alignment with the OECD Due Diligence Guidance.
12. Implement the Recommendation addressed by the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*) to the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*), together with a requirement of alignment with the OECD MNEs Guidelines (in particular, the chapter on the environment) and the related OECD Due Diligence Guidance with respect to both environmental and human rights matters.

## Anti-corruption and Integrity

13. Involve more formally the private sector, including SMEs, in the functioning of the National Anti-corruption System (*Sistema Nacional Anticorrupción*), through for instance enhanced engagement of the national Citizen Participation Committee (*Comité de Participación Ciudadana*, CPC) and the 32 CPCs created at the state level with business associations and representatives.

14. Grant businesses that register in the Business Integrity Registry (*Padrón de Integridad Empresarial*) and obtain the Business Integrity Label (*Distintivo de Integridad Empresarial*) a series of positive incentives in various policy areas in order to encourage different kinds of businesses to adopt and implement integrity programmes.
15. Use the framework of the Business Integrity Registry (*Padrón de Integridad Empresarial*) and its digital platform to promote RBC and incentivise responsible business practices in other areas covered by the OECD MNEs Guidelines beyond anti-corruption.
16. Develop a framework to ensure that easily accessible channels are in place for the reporting by corporate employees to the competent authorities of suspected acts of corruption committed by other corporate employees, companies, and/or subcontractors, and that comprehensive protection from all kinds of retaliation is granted to corporate employees who report such misconduct in good faith and on reasonable grounds.

## Leveraging and incentivising RBC

### Public Procurement

17. Strengthen the use of public procurement as a strategic tool to promote RBC through the adoption of an overarching strategic approach to integrate more systematically and comprehensively RBC considerations into public procurement, by extending their number and scope, and including a risk-based due diligence approach to prevent, mitigate and address the risks of adverse impacts that may be associated to purchasing decisions.
18. Take steps to enhance the monitoring and follow-up of the inclusion of RBC considerations in Mexico's public procurement policies and processes during the different phases of the procurement cycle to promote their uptake, ensure impact, and measure progress.
19. Take advantage of the transfer of public procurement responsibilities from the Ministry of Public Administration (*Secretaría de la Función Pública*) to the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) to enhance public procurement policy-makers' and practitioners' awareness of the importance of using public procurement as a strategic tool to promote RBC, as well as their knowledge, capacity and practical ability to implement RBC considerations in public procurement, with the support of the National Contact Point for RBC.

### State-Owned Enterprises

20. Considering that the OECD MNEs Guidelines apply to SOEs, develop an overarching framework to promote the integration of a coherent and coordinated RBC approach, including the conduct of due diligence, in the main Mexican SOEs.
21. Raise the awareness of the officials of the main Mexican SOEs about the importance of observing RBC principles and standards and build their capacity and knowledge to do so, as well as to conduct due diligence, with the support of the National Contact Point for RBC.

### Trade and Investment

22. Develop an overarching strategy to put RBC considerations at the centre of Mexico's forthcoming trade and investment promotion and facilitation policies in a coherent fashion, using the support granted to domestic exporters and foreign investors to raise awareness about RBC principles and standards, and linking such support to the observance of these principles and standards, in cooperation with the National Contact Point for RBC.

23. More broadly, develop, clarify and publicise own strategy regarding the integration of considerations that contribute to promoting and enabling RBC in trade and investment policies, including trade and investment agreements, and seek to build a coherent and uniform approach across Mexico's treaty network in this regard.
24. Take a proactive approach in trade and investment negotiations, with the aim to more systematically include sustainability provisions and RBC clauses mentioning the OECD instruments on RBC in Mexico's trade and investment agreements (including renegotiated ones), with the support of the National Contact Point for RBC.

## **Strengthening the National Contact Point for RBC**

25. Increase the resources available to the National Contact Point for RBC (NCP) to at least one full-time staff, revise its structure to ensure involvement from other government officials and stakeholders, and take measures to ensure that its location is conducive to a perception of impartiality and evacuates risks of conflicts of interests.

## Annex A. Virtual meetings with government entities, business associations and stakeholders

During the virtual fact-finding mission for the preparation of the RBC Policy Review, the OECD met with representatives of the following government entities, business associations and stakeholders:

### GOVERNMENT OF MEXICO

Federal Attorney's Office for the Protection of the Environment (*Procuraduría Federal de Protección al Ambiente*)

Ministry of Agriculture and Rural Development (*Secretaría de Agricultura y Desarrollo Rural*)

Ministry of Communications and Transport (*Secretaría de Comunicaciones y Transportes*)

Ministry of Economy (*Secretaría de Economía*)

Ministry of Energy (*Secretaría de Energía*)

Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*)

Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*)

Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*)

Ministry of Interior (*Secretaría de Gobernación*)

Ministry of Labour and Social Affairs (*Secretaría del Trabajo y Previsión Social*)

Ministry of Public Administration (*Secretaría de la Función Pública*)

Ministry of Well-being (*Secretaría de Bienestar*)

National Human Rights Commission (*Comisión Nacional de Derechos Humanos*)

National Contact Point (*Punto Nacional de Contacto*)

National Institute of Indigenous Peoples (*Instituto Nacional de los Pueblos Indígenas*)

National Institute of Transparency, Access to Information and Personal Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*)

### BUSINESS ASSOCIATIONS

Business Coordination Council (*Consejo Coordinador Empresarial – CCE*)

Commission of Private Sector Studies for Sustainable Development (*Comisión de Estudios del Sector Privado para el Desarrollo Sustentable – CESPEDES*)

Confederation of Industrial Chambers (*Confederación de Cámaras Industriales – CONCAMIN*)

Confederation of National Chambers of Business, Services and Tourism (*Confederación de Cámaras Nacionales de Comercio, Servicios y Turismo – CONCANACO SERVYTUR*)

Mexican Association of Insurance Institutions (*Asociación Mexicana de Instituciones de Seguros – AMIS*)

Mexican Association of Pharmaceutical Research Industry (*Asociación Mexicana de Industrias de Investigación Farmacéutica, A.C. – AMIIF*)

Mexican Association of Stock Market Institutions (*Asociación Mexicana de Instituciones Bursátiles – AMIB*)

Mexican Association of Wind Energy (*Asociación Mexicana de Energía Eólica – AMDEE*)

Mexican Business Council (*Consejo Mexicano de Negocios – CMN*)

Mexican Business Council for Foreign Trade, Investment and Technology (*Consejo Empresarial Mexicano de Comercio Exterior, Inversión y Tecnología, A.C. – COMCE*)

Mexico City's Chamber of Commerce (*Cámara de Comercio de la Ciudad de México – CANACO CDMX*)

Mexico's Confederation of Employers (*Confederación Patronal de la República Mexicana – COPARMEX*)

Mexico's Mining Chamber (*Cámara Minera de México – CAMIMEX*)

National Agricultural Council (*Consejo Nacional Agropecuario – CNA*)

National Association of Self-Service and Department Stores (*Asociación Nacional de Tiendas de Autoservicio y Departamentales, A.C. – ANTAD*)

National Chamber of the Processing Industry (*Cámara Nacional de la Industria de Transformación – CANACINTRA*)

National Council of the Maquiladora and Manufacturing Export Industry (*Consejo Nacional de la Industria Maquiladora y Manufacturera de Exportación, A.C. – INDEX*)

Observatory of the Construction Industry (*Observatorio de la Industria de la Construcción*)

#### TRADE UNIONS

Mexican Regional Confederation of Workers (*Confederación Regional Obrera Mexicana – CROM*)

Mexico's Confederation of Workers (*Confederación de Trabajadores de México – CTM*)

Mexico's Trade Union of Pilots (*Asociación Sindical de Pilotos Aviadores de México – ASPA*)

National Workers' Union (*Unión Nacional de Trabajadores – UNT*)

Revolutionary Confederation of Workers and Farmers (*Confederación Revolucionaria de Obreros y Campesinos – CROC*)

#### CIVIL SOCIETY ORGANISATIONS

Business and Human Rights Resource Centre (BHRRRC)

Centre for Labour Reflection and Action (*Centro de Reflexión y Acción Laboral – CERREAL*)

Foundation Heinrich Böll

Institute for Human Rights and Business of the University of Monterrey (*Instituto de Derechos Humanos y Empresas de la Universidad de Monterrey – IDHE*)

Mexican Centre for Philanthropy (*Centro Mexicano para la Filantropía A.C. – CEMEFI*)

Mexico's Climate Initiative (*Iniciativa Climática de México – ICM*)

Mexico's National Network of Day Laborers (*Red Nacional de Jornaleras y Jornaleros de México*)

OXFAM Mexico

Project on Economic, Social and Cultural Rights (*Proyecto de Derechos Económicos, Sociales y Culturales, A.C. – ProDESC*)

Project on Organization, Development, Education and Research (*Proyecto sobre Organización, Desarrollo, Educación e Investigación – PODER*)

**INDIGENOUS PEOPLES' ORGANISATIONS**

Cooperativa de Bienes y Servicios Turísticos Iguana Cabañas S.C. DE R.L. DE C.V.

Expediciones Sierra Norte Pueblos Mancomunados

Servicios Ecoturísticos de Kikil S.C. DE R.L. DE C.V

Sociedad Cooperativa Canan K'ax S.C. DE R.L. DE C.V.

Sociedad Cooperativa de Bienes y Servicios Turísticos de Isla de Pájaros S.C. DE R.L. DE C.V.

Sociedad Cooperativa de Servicios Turísticos Rancho Tangolunda

Sociedad de Producción Rural "Masehual Siuat Xochitajkitinij" S.C. DE R.L.

Tierra que Emergió Del Agua S.C DE R.L. DE C.V.

U Ka'ax Manati S.C. DE R.L.

Zempoal Tekitini S.S.S

## Annex B. Methodology and sample of the OECD 2020 Business Survey on Responsible Business Conduct in Latin America and the Caribbean

The OECD conducted the 2020 Business Survey on RBC in LAC from November 2020 to January 2021 in the framework of the RBC-LAC Project.

The objective of the Survey was to obtain information on RBC practices and challenges of businesses operating in or from LAC countries, in particular from the nine countries covered by the RBC-LAC Project: Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru.

The Survey included 31 questions, divided into five sections: general information; RBC policies and communications; risk-based due diligence; impact of the COVID-19 crisis; and future needs. It was developed on the basis of previous surveys run by the OECD Centre for RBC and in cooperation with the LAC NCPs. It was disseminated online in English, Spanish and Portuguese.

In total, 501 companies responded to the Survey covering business practices in the nine countries and the four target sectors of the RBC-LAC Project (extractives/minerals, agriculture, garment and financial sector). Responses were received from companies of different sizes, including large enterprises, medium-sized enterprises, small enterprises and micro-enterprises, and of different types, i.e. private enterprises, publicly listed and stated owned companies.

The Survey's findings provides a basis to support businesses and governments in the development and implementation of RBC policies and practices, which can contribute to greater resilience and sustainable development in LAC and beyond.

These findings however, have limits in terms of representativeness, mostly due to the variation and the number of responses, the geographic distribution of the supply chain actors, and their share of national/regional production across different economic sectors. Moreover, the Survey's data is based on self-reporting, which is a factor to be taken into account when interpreting findings.



## Annex C. Acronyms and abbreviations

AliaRSE	Alliance for Corporate Social Responsibility ( <i>Alianza por la Responsabilidad Social Empresarial</i> )
AS/COA	Americas Society / Council of the Americas
ASEA	Agency for Security, Energy and the Environment ( <i>Agencia de Seguridad, Energía y Ambiente</i> )
ASF	Supreme Audit Institution ( <i>Auditoría Superior de la Federación</i> )
Banobras	National Bank of Public Works and Services ( <i>Banco Nacional de Obras y Servicios Públicos</i> )
BHRRC	Business and Human Rights Resource Centre
BIT	Bilateral Investment Treaty
CC	Coordination Committee of the National Anti-corruption System ( <i>Comité Coordinador del Sistema Nacional Anticorrupción</i> )
CCE	Business Coordination Council ( <i>Consejo Coordinador Empresarial</i> )
CDB	Convention on Biological Diversity
CEAV	Executive Committee for Victims Assistance ( <i>Comisión Ejecutiva de Atención a Víctimas</i> )
CEC	Commission for Environmental Cooperation
CEDAC	Centre for Complaint and Citizen Attention ( <i>Centro de Denuncia y Atención Ciudadana</i> )
CEMEFI	Mexican Centre for Philanthropy ( <i>Centro Mexicano para la Filantropía</i> )
CFCRL	Federal Centre for Labour Conciliation and Registration ( <i>Centro Federal de Conciliación y Registro Laboral</i> )
CFE	Federal Electricity Commission ( <i>Comisión Federal de Electricidad</i> )
CFIA	Cooperation and Facilitation Investment Agreement
CMN	Mexican Business Council ( <i>Consejo Mexicano de Negocios</i> )
CMIC	Mexican Chamber of the Construction Industry ( <i>Cámara Mexicana de la Industria de la Construcción</i> )
CNBV	National Banking and Securities Commission ( <i>Comisión Nacional Bancaria y de Valores</i> )
CNDH	National Human Rights Commission ( <i>Comisión Nacional de Derechos Humanos</i> )
CNPP	Code of Criminal Proceedings ( <i>Código Nacional de Procedimientos Penales</i> )
COMEX	Costa Rica's Ministry of Foreign Trade
CONAGO	National Conference of Governors ( <i>Conferencia Nacional de Gobernadores</i> )
CONAGUA	National Water Commission ( <i>Comisión Nacional del Agua</i> )
CONABIO	National Commission for Natural Protected Areas ( <i>Comisión Nacional de Áreas Naturales Protegidas</i> )
CONAPRED	National Council for the Prevention of Discrimination ( <i>Consejo Nacional para Prevenir la Discriminación</i> )
CONASETRA	National Conference of Labour Secretaries ( <i>Conferencia Nacional de Secretarios del Trabajo</i> )
CONATRI	National Commission of Higher Courts of Justice ( <i>Comisión Nacional de Tribunales Superiores de Justicia</i> )
CONCAMIN	Confederation of Industrial Chambers of Mexico ( <i>Confederación de Cámaras Industriales de los Estados Unidos Mexicanos</i> )
CONEVAL	National Council for the Evaluation of the Social Development Policy ( <i>Consejo Nacional de</i>

*Evaluación de la Política de Desarrollo Social)*

COPARMEX	Confederation of Employers of the Mexican Republic ( <i>Confederación Patronal de la República Mexicana</i> )
CPC	Citizen Participation Committee of the National Anti-corruption System ( <i>Comité de Participación Ciudadana del Sistema Nacional Anticorrupción</i> )
CPF	Federal Criminal Code ( <i>Código Penal Federal</i> )
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CROC	Revolutionary Confederation of Workers and Peasants ( <i>Confederación Revolucionaria de Obreros y Campesinos</i> )
CROM	Mexican Regional Confederation of Workers ( <i>Confederación Regional Obrera Mexicana</i> )
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DOL	U.S. Department of Labour
ECA	Export Credit Agency
EIA	Environmental Impact Assessment ( <i>Evaluación de Impacto Ambiental</i> )
ENOE	National Survey of Occupation and Employment ( <i>Encuesta Nacional de Ocupación y Empleo</i> )
Escazú Agreement	Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean
ESR	Socially Responsible Company ( <i>Empresa Socialmente Responsable</i> )
EU	European Union
FDI	Foreign Direct Investment
FECC	Specialised Anti-corruption Prosecutor ( <i>Fiscal Especializado en Combate a la Corrupción</i> )
FGR	Attorney's General office ( <i>Fiscalía General de la República</i> )
FIDO	Belgium's Federal Institute for Sustainable Development
FPIC	Free Prior and Informed Consent
FTA	Free Trade Agreement
GANHRI	Global Network of National Human Rights Institutions
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GISAMAC	Inter-ministerial Group of Health, Food, Environment and Competitiveness ( <i>Grupo Intersecretarial de Salud, Alimentación, Medio Ambiente y Competitividad</i> )
GTE	Business Working Group ( <i>Grupo de Trabajo Empresarial</i> )
GVC	Global Value Chain
IADB	Inter-American Development Bank
IEDH	Human Rights and Business Initiative ( <i>Iniciativa de Empresas y Derechos Humanos</i> )
IFC	International Finance Corporation
ILO	International Labour Organization
ILO 1998 Declaration	ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up
ILO CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
ILO Convention No. 169	ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)
ILO MNE Declaration	Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
IMSS	Mexican Institute of Social Security ( <i>Instituto Mexicano del Seguro Social</i> )
INAI	National Institute of Transparency, Access to Information and Personal Data Protection ( <i>Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales</i> )
INALI	National Institute of Indigenous Languages ( <i>Instituto Nacional de Lenguas Indígenas</i> )
INE	National Ecology Institute ( <i>Instituto Nacional de Ecología</i> )

INEGI	National Institute for Statistics and Geography ( <i>Instituto Nacional de Estadística y Geografía</i> )
INPI	National Institute for Indigenous Peoples ( <i>Instituto Nacional de los Pueblos Indígenas</i> )
INSC	National Inventory of Contaminated Sites ( <i>Inventario Nacional de Sitios Contaminados</i> )
IPA	Investment Promotion Agency
ISDS	Investor-State Dispute Settlement
ISO	International Organization for Standardization
ITUC	International Trade Union Confederation
KNB	Germany's Competence Centre for Sustainable Procurement
LAASSP	Law on Public Sector Acquisitions, Leases and Services ( <i>Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público</i> )
LAC	Latin America and the Caribbean
LFRCF	Law of Auditing and Accountability ( <i>Ley de Fiscalización y Rendición de Cuentas de la Federación</i> )
LGCC	General Law on Climate Change ( <i>Ley General de Cambio Climático</i> )
LGDNNA	General Law on the Rights of Girls, Boys and Adolescents ( <i>Ley General de los Derechos de Niñas, Niños y Adolescentes</i> )
LGEEPA	General Law on Ecological Equilibrium and Environmental Protection ( <i>Ley General de Equilibrio Ecológico y Protección al Ambiente</i> )
LGRA	General Law of Administrative Responsibilities ( <i>Ley General de Responsabilidades Administrativas</i> )
LGSNA	General Law of the National Anti-corruption System ( <i>Ley General del Sistema Nacional Anticorrupción</i> )
LOPSRM	Law on Public Works and Related Services ( <i>Ley de Obras Públicas y Servicios Relacionados con las Mismas</i> )
MSMEs	Micro, Small and Medium-sized Enterprises
MTI	Child Labour Module ( <i>Módulo de Trabajo Infantil</i> )
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Agreement
NAO	National Administrative Office in charge of implementing the NAALC
NAP	National Action Plan on Business and Human Rights
NBA	National Baseline Assessment
NCP	National Contact Point for Responsible Business Conduct
NDC	Nationally Determined Contribution
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OCMAL	Observatory of Mining Conflicts of Latin America
OECD	Organisation for Economic Co-operation and Development
OECD Anti-Bribery Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
OECD Common Approaches	OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence
OECD Due Diligence Guidance	OECD Due Diligence Guidance for Responsible Business Conduct OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector OECD-FAO Guidance for Responsible Agricultural Supply Chains OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and

	Footwear Sector
OECD Due Diligence Guidance for RBC	OECD Due Diligence Guidance for Responsible Business Conduct
OECD MNEs Guidelines	OECD Guidelines for Multinational Enterprises
OECD Sector-specific Due Diligence Guidance	OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
	OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector
	OECD-FAO Guidance for Responsible Agricultural Supply Chains
	OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
OECD SOE Guidelines	OECD Guidelines on Corporate Governance of State-Owned Enterprises
OECD ACI Guidelines	OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises
PEMEX	Mexican Petroleum ( <i>Petróleos Mexicanos</i> )
PFI	OECD Policy Framework for Investment
PIE	Business Integrity Registry ( <i>Padrón de Integridad Empresarial</i> )
PLAC	Environmental Leadership Programme for Competitiveness ( <i>Programa Liderazgo Ambiental para la Competitividad</i> )
PNAA	National Environmental Audit Programme ( <i>Programa Nacional de Auditoría Ambiental</i> )
PND	National Development Plan ( <i>Plan Nacional de Desarrollo</i> )
PNDH	National Human Rights Programme ( <i>Programa Nacional de Derechos Humanos</i> )
PROFEDET	Federal Office for the Defense of Labour ( <i>Procuraduría Federal para la Defensa del Trabajo</i> )
PROFEPA	Federal Attorney's Office for the Protection of the Environment ( <i>Procuraduría Federal de Protección al Ambiente</i> )
PRONAPINNA	National Programme for the Protection of Girls, Boys and Adolescents ( <i>Programa Nacional de Protección de Niñas, Niños y Adolescentes</i> )
PSPC	Public Services and Procurement Canada
PTL	Clean Transport Programme ( <i>Programa de Transporte Limpio</i> )
RBC	Responsible Business Conduct
RBCLAC	Responsible Business Conduct in Latin America and the Caribbean
SARAS	Environmental and Social Risk Management System ( <i>Sistema de Gestión de Riesgos Ambientales y Sociales</i> )
SDGs	Sustainable Development Goals
SE	Ministry of Economy ( <i>Secretaría de Economía</i> )
SEAs	Strategic Environmental Assessments
SEGOB	Ministry of Interior ( <i>Secretaría de Gobernación</i> )
SEM	Submission on Enforcement Matters under the NAAEC
SEMARNAT	Ministry of Environment and Natural Resources ( <i>Secretaría de Medio Ambiente y Recursos Naturales</i> )
SENER	Ministry of Energy ( <i>Secretaría de Energía</i> )
SFP	Ministry of Public Administration ( <i>Secretaría de la Función Pública</i> )
SHCP	Ministry of Finance and Public Credit ( <i>Secretaría de Hacienda y Crédito Público</i> )
SIDEC	Comprehensive System of Citizen Complaints ( <i>Sistema Integral de Denuncia Ciudadana</i> )
SMEs	Small and Medium-sized Enterprises
SNA	National Anti-corruption System ( <i>Sistema Nacional Anticorrupción</i> )
SOEs	State-Owned Enterprises
SRE	Ministry of Foreign Affairs ( <i>Secretaría de Relaciones Exteriores</i> )
STPS	Ministry of Labour and Social Affairs ( <i>Secretaría del Trabajo y Previsión Social</i> )

TFJA	Federal Court of Administrative Justice ( <i>Tribunal Federal de Justicia Administrativa</i> )
The 2030 Agenda	The 2030 Agenda for Sustainable Development
TPP	Trans-Pacific Partnership
TSD	Trade and Sustainable Development
U.S.	United States
UGAS	Bancomex's Environmental and Social Management Unit ( <i>Unidad de Gestión Ambiental y Social de Bancomex</i> )
UIEG	Global Economic Intelligence Unit of the SE ( <i>Unidad de Inteligencia Económica Global de la Secretaría de Economía</i> )
UN	United Nations
UN ECLAC	United Nations Economic Commission for Latin America and the Caribbean
UN Global Compact	United Nations Global Compact
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNICEF	United Nations Children's Fund
UNOHCHR	Office of the United Nations High Commissioner for Human Rights
UNWG	United Nations Working Group on Business and Human Rights
UPR	Universal Periodic Review
USD	United States Dollars
USMCA	United States-Mexico-Canada Agreement
WEF	World Economic Forum

## Notes

<sup>1</sup> United Nations (2015), Transforming our world: the 2030 Agenda for Sustainable Development, paras. 39, 60, 67, <https://sdgs.un.org/2030agenda>.

<sup>2</sup> See, for instance, Sustainable Development Goals (SDGs) No. 8 “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”, No. 12 “Ensure sustainable consumption and production patterns”, or No. 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. See United Nations (2015), Transforming our world: the 2030 Agenda for Sustainable Development.

<sup>3</sup> United Nations (2015), Transforming our world: the 2030 Agenda for Sustainable Development, paras. 41, 67, <https://sdgs.un.org/2030agenda>.

<sup>4</sup> The text of the OECD Policy Framework for Investment (PFI) is available in English and Spanish on the OECD’s website at: <http://www.oecd.org/investment/pfi.htm>.

<sup>5</sup> OECD (2015), Policy Framework for Investment 2015 Edition, Chapter 7, <http://dx.doi.org/10.1787/9789264208667-en>.

<sup>6</sup> More information on the RBC-LAC Project is available on the OECD’s website at: <https://mneguidelines.oecd.org/rbclac.htm>.

<sup>7</sup> The activities of the OECD pertaining to the NCPs under the RBC-LAC Project consist in providing tailored capacity-building to the seven NCPs in the LAC region. In this context, the OECD Secretariat and the Government of Mexico have defined a roadmap of actions aimed at strengthening the Mexican NCP. The implementation of this roadmap and of the recommendations contained in the present RBC Policy Review are complementary and both aim to strengthen the NCP so that it can perform its functions and serve as an agent to advance policy coherence on RBC.

<sup>8</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos 2020-2024, priority strategy No. 3.6, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>9</sup> Delegations from the following European Union (EU) and OECD Members participated in the consultation meeting held virtually on 16 October 2020: Colombia, France, Germany, Romania, Slovakia, Spain, Sweden, and Switzerland.

<sup>10</sup> On the business associations’ side, the draft of the Review was reviewed by the Business Coordination Council (*Consejo Coordinador Empresarial*, CCE), which is the main business association in the country and is comprised of 12 business organisations that gather more than 2000 associations and represent approximately 80% of Mexico’s GDP, as well as the Confederation of Employers of the Mexican Republic (*Confederación Patronal de la República Mexicana*, COPARMEX), which represents around 40,000 businesses from all size and sectors, and CESPEDS.

On the stakeholders’ side, the following organisations provided comments on the Review: the Project on Organization, Development, Education and Research (*Proyecto sobre Organización, Desarrollo, Educación e Investigación*, PODER), which coordinates the Civil Society Focal Group on Business and Human Rights (*Grupo Focal de Sociedad Civil sobre Empresas y Derechos Humanos*) that gathers various CSOs, as well as the Centre for Intercultural Legal and Environmental Investigations (*Centro de Investigaciones Jurídicas y Ambientales*, CIIJA).

<sup>11</sup> The OECD Guidelines for Multinational Enterprises (the OECD MNEs Guidelines) are part of the OECD Declaration on International Investment and Multinational Enterprises [[OECD/LEGAL/144](https://www.oecd.org/LEGAL/144)]. The



text of the Declaration, including the OECD MNEs Guidelines, is available on the OECD's website at <http://mneguidelines.oecd.org/mneguidelines/>.

<sup>12</sup> The 50 Adherents to the OECD MNEs Guidelines are: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, the United States and Uruguay.

<sup>13</sup> In 2015, the PFI became the subject of an OECD Council Recommendation [OECD/LEGAL/0412], which recommends that OECD Members and non-Members adhering to the Recommendation use, as appropriate, the PFI, in particular to facilitate coherence at all levels of government for better policy formulation and implementation. The text of the OECD Council Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0412) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0412>.

<sup>14</sup> According to the Ministry of Economy (*Secretaría de Economía, SE*), Mexico's top exports in 2019 were: machines and means of transportation, in particular, motor cars and other vehicles (USD 46.9 billion); data processing machines (USD 30.7 billion); and parts of motor vehicles (USD 27.2 billion). Mexico's top imports in the same year were: parts of motor vehicles (USD 27.2 billion); electronic integrated circuits (USD 21.4 billion); and telephones (USD 13.6 billion). See Government of Mexico (2021), Website: Mexico: Economy. <https://datamexico.org/en/profile/geo/mexico#economia>.

<sup>15</sup> Informal work refers to different kinds of working arrangements in Mexico. The 2019 OECD Economic Survey of Mexico differentiates between three types of work in this regard: formally contracted and regulated work; informal work that does not comply with labour regulations and tax obligations and is therefore illegal; and informal work that is legal, i.e. self-employed work or work within a type of contract which exempts regulatory obligations. See OECD (2019), Economic Surveys: Mexico 2019, p. 96, <https://doi.org/10.1787/a536d00e-en>.

<sup>16</sup> Mexico adhered to the OECD Council Recommendation on the OECD Due Diligence Guidance for RBC [OECD/LEGAL/0433] in 2018. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0443) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0443>.

<sup>17</sup> Mexico adhered to the OECD Council Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [OECD/LEGAL/0386] in 2011. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0386) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0386>.

<sup>18</sup> Mexico adhered to the OECD Council Recommendation on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector [OECD/LEGAL/0427] in 2016. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0427) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0427>.

<sup>19</sup> Mexico adhered to the OECD Council Recommendation on the OECD-FAO Guidance for Responsible Agricultural Supply Chains [OECD/LEGAL/04278] in 2016. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0428) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0428>.

<sup>20</sup> Mexico adhered to the OECD Council Recommendation on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [OECD/LEGAL/0437] in 2017. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0437) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0437>.

<sup>21</sup> See, for instance, the Law to Promote the Sustained Increase of Productivity and Competitiveness of the National Economy, the National Development Financing Programme for 2020-2024, and the National Policy for Financial Inclusion. See Government of Mexico (2015), Ley para impulsar el incremento sostenido de la productividad y la competitividad de la economía nacional, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LIISPCEN\\_170517.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LIISPCEN_170517.pdf); Government of Mexico (2019), Programa Nacional de Financiamiento del Desarrollo 2019-2024 [www.finanzaspublicas.hacienda.gob.mx/work/models/Finanzas\\_Publicas/docs/pronafide/pronafide2020](http://www.finanzaspublicas.hacienda.gob.mx/work/models/Finanzas_Publicas/docs/pronafide/pronafide2020).



[pdf](#); and Government of Mexico (2020), Política Nacional de Inclusión Financiera, [https://www.gob.mx/cms/uploads/attachment/file/557108/PNIF\\_2020.pdf](https://www.gob.mx/cms/uploads/attachment/file/557108/PNIF_2020.pdf).

<sup>22</sup> These strategies deal, among others with the following topics: the protection of journalists and human rights defenders; the promotion of economic, social and environmental rights; gender equality; migration, children's rights; and the rights of indigenous and Afro-Mexican peoples.

<sup>23</sup> See priority strategy No. 3.6 of the National Human Rights Programme for 2020-2024 (*Programa Nacional de Derechos Humanos 2020-2024*, PNDH) regarding the “promotion of policies aimed at reducing the negative impacts of business activity”. See Government of Mexico (2020), Programa Nacional de Derechos Humanos, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>24</sup> See strategy No. 2.2. of the CCE's “Objectives, Strategies and Coordinated Actions in the Business and Human Rights Field”, which aims at “promoting that Mexican companies and their subsidiaries establish a human rights due diligence mechanism conforming with the law applicable to them”. See CCE (n.d.), Objetivos, estrategias y acciones coordinadas en materia de derechos humanos y empresas, [https://www.derechoshumanoseconomicos.com/images/Coparmex/CCE\\_Presentacion\\_Objeticos\\_Estrategias\\_en\\_materia\\_de\\_DH\\_y\\_Empresas-SEGOB.pdf](https://www.derechoshumanoseconomicos.com/images/Coparmex/CCE_Presentacion_Objeticos_Estrategias_en_materia_de_DH_y_Empresas-SEGOB.pdf).

<sup>25</sup> The forum was organised by the Business and Human Rights Resource Centre (BHRRRC), Oxfam México, PODER, the Institute of Human Rights and Business of the University of Monterrey, and the Civil Society Focal Group on Business and Human Rights, with the support of the EU, the OECD, and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Mexico.

<sup>26</sup> The Civil Society Focal Group on Business and Human Rights (*Grupo Focal de Sociedad Civil sobre Empresas y Derechos Humanos*) is comprised of the following CSOs: *Centro de Información sobre Empresas y Derechos Humanos* (CIEDH); *Centro Mexicano de Derecho Ambiental* (CEMDA); *Comité de Defensa Integral de Derechos Humanos Gobixha* (Código DH); Oxfam México; *PODER*; *Proyecto de Derechos Económicos, Sociales y Culturales* (ProDESC); *Red en Defensa de los Derechos Digitales* (R3D); y *Servicios y Asesoría para la Paz* (Serapaz). It is coordinated by PODER, accompanied by *Brigadas Internacionales de Paz* (PBI) and the *Asociación Interamericana para la Defensa del Ambiente* (AIDA) observes its activities.

<sup>27</sup> The website of the Mexican NCP is available at: <https://www.gob.mx/se/acciones-y-programas/responsabilidad-social-empresarial>.

<sup>28</sup> The United Nations Guiding Principles on Business and Human Rights (UNGPs) are a set of 31 principles for States and businesses to prevent, address and remedy business-related human rights abuses. They are built upon three pillars: (i) the State responsibility to protect human rights against violations by business; (ii) the responsibility of businesses to respect human rights; and (iii) access to remedy for violations of human rights by businesses. They were endorsed in 2011 by the United Nations Human Rights Council. See United Nations (2011), United Nations Guiding Principles on Business and Human Rights, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>29</sup> More information about Mexico's ratification status of the nine-core international human rights instruments and seven optional protocols, is available on the United Nations Treaty Database at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx). Article 133 of the Mexican Constitution provides that international treaties are an integral part of national law and establishes that, together with federal laws, they constitute Mexico's supreme law. See Government of Mexico (1917), Constitución política de los Estados Unidos Mexicanos, Article 133, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_280521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_280521.pdf).

<sup>30</sup> The human rights instruments of the Inter-American Human Rights System include the declarations, conventions, and protocols that define the mandate and functions of its two organs, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (Inter-American Court), which monitors compliance of the Member States of the Organization of American States (OAS) with their obligations in the human rights field. More information about the Inter-American human rights instruments is available on the IACHR's Database at: [http://www.oas.org/en/iachr/mandate/basic\\_documents.asp](http://www.oas.org/en/iachr/mandate/basic_documents.asp).

- <sup>31</sup> More information on the Mexican legal framework on human rights is available at: [https://www.gob.mx/cms/uploads/attachment/file/281967/Marco\\_Normativo\\_en\\_materia\\_de\\_Derechos\\_Humanos.pdf](https://www.gob.mx/cms/uploads/attachment/file/281967/Marco_Normativo_en_materia_de_Derechos_Humanos.pdf).
- <sup>32</sup> Government of Mexico (2003), Ley Federal para Prevenir y Eliminar la Discriminación, [http://www.diputados.gob.mx/LeyesBiblio/pdf/262\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/262_200521.pdf).
- <sup>33</sup> Government of Mexico (2011), Ley de Migración, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_200521.pdf).
- <sup>34</sup> Government of Mexico (2012), Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPSEDMTP\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPSEDMTP_200521.pdf).
- <sup>35</sup> The Ministry of Interior (*Secretaría de Gobernación*, SEGOB)'s Under-Secretariat for Human Rights, Population and Migration (*Subsecretaría de derechos humanos, población y migración*), through the General Directorate for Human Rights Public Policy (*Dirección general de política pública de derechos humanos*), started working on the PNDH for 2020-2024 in June 2019, with the support of an advisory council comprised of experts and human rights defenders. The PNDH was developed in two phases, namely: (i) a consultation phase during which 14 thematic forums were organised in 11 states, with the participation of 2383 people from the different levels of government, as well as representatives of CSOs, academia and human rights experts; and (ii) a technical phase during which 31 technical roundtables organised at SEGOB's facilities gathered 656 attendees. See Government of Mexico (2019), Programa Nacional de Derechos Humanos 2019-2024 – Memoria Estadística, [https://www.gob.mx/cms/uploads/attachment/file/498647/PRESENTACION\\_FOROS\\_PRIMERA\\_ETAPA.pdf](https://www.gob.mx/cms/uploads/attachment/file/498647/PRESENTACION_FOROS_PRIMERA_ETAPA.pdf).
- <sup>36</sup> The Universal Periodic Review is a “unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations”. See United Nations Human Rights Council (n.d.), Basic facts about the Universal Periodic Review, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.
- <sup>37</sup> The Mexican Government accepted 262 recommendations and took note of two other recommendations. See UN Human Rights Council (2019), Report of the Working Group on the Universal Periodic Review (UPR) – Mexico, para. 132, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/99/PDF/G1844699.pdf?OpenElement>.
- <sup>38</sup> This specific recommendation was made by the Delegations from Cameroon, Chile, Colombia, Congo, the State of Palestine, Thailand and Turkmenistan. See UN Human Rights Council (2019), Report of the Working Group on the Universal Periodic Review (UPR) – Mexico, paras. 132.38; 132.39; 132.40, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/99/PDF/G1844699.pdf?OpenElement>.
- <sup>39</sup> See UN Human Rights Council (2019), Report of the Working Group on the Universal Periodic Review (UPR) – Mexico, paras. 132.26; 132.32, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/99/PDF/G1844699.pdf?OpenElement>.
- <sup>40</sup> The “writ of Amparo” is established in Articles 103 and 107 of the Mexican Constitution. See Government of Mexico (1917), Constitución política de los Estados Unidos Mexicanos, Articles 103 and 107, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_280521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_280521.pdf).
- <sup>41</sup> The Organic Law of the Federal Judicial Power (*Ley Orgánica del Poder Judicial de la Federación*) and the Law on the Judicial Career of the Federal Judicial Power (*Ley de Carrera del Poder Judicial de la Federación*) were both published in June 2021. Overall, these laws amend, add and repeal various constitutional provisions relating to the public officials of the justice system contained in Articles 103, 105, 107 and 123 of the Mexican Constitution. See Government of Mexico (2021), Ley Orgánica del Poder Judicial de la Federación, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LOPJF\\_070621.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LOPJF_070621.pdf); Government of Mexico (2021), Ley de Carrera del Poder Judicial de la Federación, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LCJPJF\\_070621.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LCJPJF_070621.pdf).

<sup>42</sup> UN Human Rights Council (2019), Report of the Working Group on the Universal Periodic Review (UPR) – Mexico, paras. 132.239; 132.255, 132.260, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/99/PDF/G1844699.pdf?OpenElement>.

<sup>43</sup> More information on the Human Rights Commissions of the different Mexican states is available at: <https://www.cndh.org.mx/derechos-humanos/otros-organismos>.

<sup>44</sup> More information on the cases handled by the CNDH is available in the CNDH's study "Businesses, Human Rights and the Role of the NHRIs". See CNDH (2019), Estudio empresas, derechos humanos, y el rol de las INDH, <https://www.cndh.org.mx/documento/estudio-empresas-derechos-humanos-y-el-rol-de-las-indh>.

<sup>45</sup> Since its creation in 1990, the CNDH has been dealing with allegations of human rights violations related to the activities of both private and public companies. In 1991, it issued its first Recommendation addressed to a private company and in 1995 the first Recommendation addressed to a State-Owned Enterprise (SOE). See CNDH (n.d.), Website: Recomendaciones sobre empresas, <https://empresasdh.cndh.org.mx/Recomendaciones/Empresas>.

<sup>46</sup> More information on the CNDH's Business and Human Rights Programme is available at: <https://empresasdh.cndh.org.mx/inicio/index>.

<sup>47</sup> OECD MNEs Guidelines, Commentary to Chapter IV (Human Rights), para. 40.

<sup>48</sup> The Escazú Agreement was ratified by Mexico in November 2020. See United Nations Mexico (2020), Press release: ONU-DH y CEPAL celebran la ratificación del Senado mexicano referente al Acuerdo de Escazú, <https://www.onu.org.mx/onu-dh-y-cepal-celebran-la-ratificacion-del-senado-mexicano-referente-al-acuerdo-de-escazu/>.

<sup>49</sup> With a fertility rate of 77 births for every thousand adolescents between 15 and 19 years of age. See Government of Mexico (2021), Estrategia nacional para la prevención del embarazo en adolescentes, <https://www.gob.mx/inmujeres/acciones-y-programas/estrategia-nacional-para-la-prevencion-del-embarazo-en-adolescentes-33454#:~:text=junio%20de%202020-.El%20embarazo%20en%20adolescentes%20es%20un%20fen%C3%B3meno%20que%20ha%20cobrado,de%2015%20a%2019%20a%C3>.

<sup>50</sup> A "maquila" is a factory or manufacturing operation in Mexico run by a foreign company and exporting its products to the country of that company. These factories import certain raw materials on a duty-free and tariff-free basis for manufacturing and then export the manufactured goods back to the country of the company that produces the manufactured goods (often the United States or Canada). See North American Production Sharing, Inc. (2016), Website: What are Maquiladoras in Mexico and How do They Work?, <https://napsintl.com/mexico-manufacturing-news/what-are-maquiladoras/>.

<sup>51</sup> The Mexican Norm, abbreviated NXM, is the name of official voluntary standards and regulations in Mexico, which are not mandatory.

<sup>52</sup> More information on good practices related to the Mexican Norm NMX-R-025-SCFI-2015 on Labour Equality and Non-Discrimination is available at: [https://eurosocial.eu/wp-content/uploads/2020/01/Herramientas\\_18.pdf](https://eurosocial.eu/wp-content/uploads/2020/01/Herramientas_18.pdf).

<sup>53</sup> More information on certified companies and work centres is available at: <https://www.gob.mx/inmujeres/documentos/padron-nacional-de-centros-de-trabajo-certificados-en-la-norma-mexicana-en-igualdad-laboral-y-no-discriminacion>.

<sup>54</sup> OECD (2011), Guidelines for Multinational Enterprises, Chapter II, para. A.10, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>55</sup> OECD (2011), Guidelines for Multinational Enterprises, Chapter IV, para. 5, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>56</sup> In preparation for this visit, more than 100 CSOs submitted to the UNWG a report documenting cases of abuse and/or adverse impacts caused by businesses, summarising over 68 specific cases of alleged business-related human rights violations in different regions of Mexico. A recurrent concern raised was the State capture by corporate interests and the lack of implementation of policy frameworks and commitments in practice. Likewise, the report mentions the absence of prior, free and informed

consultation (FPIC) of indigenous peoples and due diligence in the framework of large-scale projects. See Coalición de Organizaciones de la Sociedad Civil (2016), Compendio de información que presentan la Coalición de Organizaciones de la Sociedad Civil al Grupo de Trabajo sobre Empresas y Derechos Humanos de la ONU, [https://aida-americas.org/sites/default/files/informe\\_mx\\_empresas\\_ddhh\\_68.pdf](https://aida-americas.org/sites/default/files/informe_mx_empresas_ddhh_68.pdf).

<sup>57</sup> More information on conflicts related to the mining sector in Mexico is available at: [https://mapa.conflictosmineros.net/ocmal\\_db-v2/conflicto/lista/02024200](https://mapa.conflictosmineros.net/ocmal_db-v2/conflicto/lista/02024200).

<sup>58</sup> The ratification process consists of the approval by the Senate, followed by the deposit of the ratification instrument before the ILO.

<sup>59</sup> Government of Mexico (1917), Constitución Política de los Estados Unidos Mexicanos, Title VI, Article 134, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_280521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_280521.pdf).

<sup>60</sup> The Federal Labour Law was enacted in 1970 and its last reform dates from 2021. See Government of Mexico (1970), Ley Federal del Trabajo, [http://www.diputados.gob.mx/LeyesBiblio/pdf/125\\_230421.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/125_230421.pdf).

<sup>61</sup> Chapter 3: normative basis for developing the Programme of the 2020-2024 Sectoral Programme for Labour and Social Security (*Programa Sectorial de Trabajo y Previsión Social 2020-2024*). See Government of Mexico (2020), Programa Sectorial de Trabajo y Previsión Social 2020-2024, [https://www.gob.mx/cms/uploads/attachment/file/561747/Plan\\_Sectorial\\_de\\_Trabajo\\_y\\_Previsi\\_n\\_Social\\_2020-2024.pdf](https://www.gob.mx/cms/uploads/attachment/file/561747/Plan_Sectorial_de_Trabajo_y_Previsi_n_Social_2020-2024.pdf).

<sup>62</sup> More information on Mexico's freedom of association cases is available at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:20060::FIND:NO>.

<sup>63</sup> More information on the alleged violations of other ILO Conventions is available on Mexico's country profile page on ILO's website at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110\\_COUNTRY\\_ID:102764](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110_COUNTRY_ID:102764).

<sup>64</sup> More information on the specific instances brought before the Mexican NCP is available at [https://mneguidelines.oecd.org/database/searchresults/?q=\(NCP:\(Mexico\)\)](https://mneguidelines.oecd.org/database/searchresults/?q=(NCP:(Mexico))).

<sup>65</sup> The Ministry of Labour and Social Welfare (*Secretaría del Trabajo y la Previsión Social*, STPS)'s competencies are defined in the Organic Law of the Federal Public Administration. See Government of Mexico (1976), Ley Orgánica de la Administración Pública Federal, Article 40, [http://www.diputados.gob.mx/LeyesBiblio/pdf/153\\_110121.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/153_110121.pdf).

<sup>66</sup> Government of Mexico (1970), Ley Federal del Trabajo, Title VII on Collective labour relations, Chapter II on Trade unions, federations and confederations, [http://www.diputados.gob.mx/LeyesBiblio/pdf/125\\_230421.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/125_230421.pdf).

<sup>67</sup> The collective bargaining coverage rate reflects the number of employees whose pay and/or conditions of employment are determined by one or more collective agreement(s) as a percentage of the total number of employees. See ILO (2020), Statistics on collective bargaining, <https://ilostat.ilo.org/topics/collective-bargaining/>.

<sup>68</sup> Workers in countries that have obtained the rating "4" have reported systematic alleged violations of their labour rights. This implies that the government and/or companies' decisions have serious adverse impacts on the workers' ability to use their collective voice, which in turn put their fundamental labour rights at risk.

<sup>69</sup> Government of Mexico (1970), Ley Federal del Trabajo, Article 174, [http://www.diputados.gob.mx/LeyesBiblio/pdf/125\\_230421.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/125_230421.pdf).

<sup>70</sup> The international instruments signed by Mexico cover a wide range of topics, such as: biodiversity and nature protection; climate change; protection of the ozone layer; desertification; management of chemicals and waste; transboundary water and air pollution; environmental governance (including impact assessments, access to information and public participation); industrial accidents; maritime and river protection; and environmental liability.

<sup>71</sup> United States-Canada-Mexico Agreement (USMCA), Chapter 24 (Environment).

<sup>72</sup> Government of Mexico (1988), Ley General del Equilibrio Ecológico y la Protección al Ambiente, Article 11, [http://www.diputados.gob.mx/LeyesBiblio/pdf/148\\_180121.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/148_180121.pdf).



<sup>74</sup> Government of Mexico (2016), Ley General del Sistema Nacional Anticorrupción, Article 6, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf).

<sup>75</sup> Government of Mexico (2016), Ley General del Sistema Nacional Anticorrupción, Article 6, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf).

<sup>76</sup> Government of Mexico (2016), Ley General del Sistema Nacional Anticorrupción, Articles 7-36, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf).

<sup>77</sup> The Supreme Audit Institution (*Auditoría Superior de la Federación*, ASF) is a technical body in charge of supervising the use of federal public resources by the executive, legislative and judiciary powers. It publishes audit reports evaluating how federal public resources have been managed and used. See Government of Mexico (n.d.), Website: Auditoría Superior de la Federación – ¿Quiénes somos?, [https://www.asf.gob.mx/Section/51\\_Quienes\\_somos](https://www.asf.gob.mx/Section/51_Quienes_somos).

<sup>78</sup> The Specialised Anti-corruption Prosecutor (*Fiscal Especializado en Combate a la Corrupción*, FECC) is in charge of investigating, preventing and prosecuting corruption related crimes committed by both public officials and individuals. See U4 Anti-Corruption Helpdesk (2019), Overview of corruption and anti-corruption efforts in Mexico, p. 20; <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-efforts-in-mexico.pdf>.

<sup>79</sup> The Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) is the ministry in charge of the national policy aimed at promoting honesty, efficiency and transparency in the federal public administration. It implements specific actions to combat corruption and impunity. See U4 Anti-Corruption Helpdesk (2019), Overview of corruption and anti-corruption efforts in Mexico, pp. 19-20; <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-efforts-in-mexico.pdf>.

<sup>80</sup> The Federal Court of Administrative Justice (*Tribunal Federal de Justicia Administrativa*, TFJA) adjudicates, among others, administrative cases related to corruption and may impose administrative liability on public officials, individuals and legal entities that committed serious corruption acts. See Government of Mexico (n.d.), Website: Tribunal Federal de Justicia Administrativa – ¿Quiénes Somos?, <https://www.tfja.gob.mx/tribunal/atribuciones/#>.

<sup>81</sup> The National Institute for Transparency, Access to Information and Protection of Personal Data (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, INAI) is an autonomous entity that contributes to the fight against corruption by guaranteeing access to public information. It requires government entities, autonomous entities, political parties, public trust funds and any natural or legal person who receives public resources or performs acts of authority to submit public information. See Government of Mexico (n.d.), Website: INAI – ¿Qué es el INAI?, [https://home.inai.org.mx/?page\\_id=1626](https://home.inai.org.mx/?page_id=1626).

<sup>82</sup> The Federal Judicial Council (*Consejo de la Judicatura Federal*) is in charge of investigating and sanctioning judicial officials. It is notably responsible for the enforcement of the standards of conduct contained in the National Law on Public Security (*Ley General del Sistema Nacional de Seguridad Pública*). See U4 Anti-Corruption Helpdesk (2019), Overview of corruption and anti-corruption efforts in Mexico, p. 23; <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-efforts-in-mexico.pdf>.

<sup>83</sup> Government of Mexico (2016), Ley General del Sistema Nacional Anticorrupción, Article 10, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf).

<sup>84</sup> The first FECC was appointed in early 2019 and in its first year of function it had received 699 complaints relating to alleged corruption cases. See Government of Mexico (2020, Boletín No. 3084 de la Cámara de Diputados: La Comisión Permanente recibe de la FGR informe anual de actividades, <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2020/Enero/22/3084-La-Comision-Permanente-recibe-de-la-FGR-informe-anual-de-actividades>; U4 Anti-Corruption Helpdesk (2019), Overview of corruption and anti-corruption efforts in Mexico, p. 20, <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-efforts-in-mexico>. It is worth noting that the complaints were filed both by individuals and public officials: 37.7% of the cases were filed by individuals, 10.48% by officials of the SFP, 8.89% by officials of the Promotion and Guarantee

Fund for Workers' Consumption (*Fondo de fomento y garantía para el consumo de los trabajadores*, INFONACOT), 4.24% by officials of the ASF, and 3.18% by officials of the Financial Intelligence Unit (*Unidad de Inteligencia Financiera*, UIF). See Government of Mexico (2020), Boletín No. 3084 de la Cámara de Diputados: La Comisión Permanente recibe de la FGR informe anual de actividades, <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2020/Enero/22/3084-La-Comision-Permanente-recibe-de-la-FGR-informe-anual-de-actividades>.

<sup>85</sup> Government of Mexico (2016), Ley General del Sistema Nacional Anticorrupción, Article 16, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf).

<sup>86</sup> See Comité de Participación Ciudadana (2020), Press release: CPC y MCCI consiguen nombramiento de la Comisión de Selección del Sistema Nacional Anticorrupción, <https://cpc.org.mx/?p=16527>.

<sup>87</sup> Government of Mexico (2016), Ley General del Sistema Nacional Anticorrupción, Article 21, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf).

<sup>88</sup> In 2018, the Citizen Participation Committee (*Comité de Participación Ciudadana*, CPC) for instance started legal proceedings against the Senate and the Permanent Commission of the Congress in relation to their failure to confirm the appointment of several anti-corruption magistrates of the TFJA, which impeded it to exercise its investigation and sanctioning functions. See Comité de Participación Ciudadana (2018), Escrito de demanda del amparo D.589-2018 presentado en relación con la omisión en el cumplimiento de la obligación constitucional de ratificar a los magistrados anticorrupción del Tribunal Federal de Justicia Administrativa, <https://cpc.org.mx/wp-content/uploads/2019/07/Escrito-demanda-589-2018.-Magistrados-anticorrupci%C3%B3n.pdf>; U4 Anti-Corruption Helpdesk (2019), Overview of corruption and anti-corruption efforts in Mexico, p. 22, <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-efforts-in-mexico>.

<sup>89</sup> The OECD MNEs Guidelines recall in this regard the role of the business community, non-governmental organisations, governments and inter-governmental organisations to all co-operate in order to strengthen public support for anti-corruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. See OECD (2011), Guidelines for Multinational Enterprises, para. 75, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>90</sup> To this effect, the National Programme to Fight Corruption and Impunity and to improve Public Administration (*Programa Nacional de Combate a la Corrupción y a la Impunidad, y de Mejora de la Gestión Pública*) lists a series of actions involving the private sector, such as the promotion of internal control mechanisms and integrity programmes (action No. 1.1.2), the creation of spaces for dialogue and articulation between public, social and private actors (action No. 1.1.5), the promotion of transparency and reporting in the private sector (action No. 1.6.4), and the creation of mechanisms to detect corruption practices in public procurement and public-private partnerships (action No. 2.4.5). See Government of Mexico (2019), Programa Nacional de Combate a la Corrupción y a la Impunidad, y de Mejora de la Gestión Pública 2019-2024, pp. 14, 19, 23, and 28, <https://sidof.segob.gob.mx/notas/5570984>.

<sup>91</sup> 2018 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Chapter 26 (Transparency and Anti-Corruption); 2019 USMCA, Chapter 27 (Anti-corruption).

<sup>92</sup> 2018 CPTPP, Chapter 26 (Transparency and Anti-corruption), Article 26.10 (Participation of Private Sector and Society); 2019 USMCA, Chapter 27 (Anti-corruption), Article 27.5 (Participation of Private Sector and Society).

<sup>93</sup> 2018 CPTPP, Chapter 26 (Transparency and Anti-corruption), Article 26.10 (Participation of Private Sector and Society), para. 1; 2019 USMCA, Chapter 27 (Anti-corruption), Article 27.5 (Participation of Private Sector and Society), para. 1.

<sup>94</sup> Government of Mexico (1931), Código Penal Federal, Article 11 bis, para. A(V), [http://www.diputados.gob.mx/LeyesBiblio/pdf/9\\_010621.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/9_010621.pdf). It should be noted that, in its Phase 4 Report of Mexico, the Working Group on Bribery recommended, in relation to Article 11 of the Federal Criminal Code (*Código Penal Federal*, CPF) and Article 421 of the National Code of Criminal Proceedings (*Código Nacional de Procedimientos Penales*, CNPP), that Mexico “[c]onsolidate and harmonise Article 11 CPF and Article 421 CNPP regarding the criteria for triggering the liability of legal persons for foreign bribery, and clarify that the consolidated provision is the basis for the criminal liability of legal persons for foreign bribery”. See OECD (2018), Implementing the OECD Anti-bribery convention.

Phase 4 Report: México, Recommendation 4(b), p. 59, <https://www.oecd.org/corruption/anti-bribery/OECD-Mexico-Phase-4-Report-ENG.pdf>.

In its Phase 4 Two-Year Follow-Up Report, the Working Group on Bribery found this Recommendation 4(b) to be “not implemented” and expressed “concerns that th[e] application [of Article 11 CPF and Article 421 CNPP] could result in different outcomes for the same case”. See OECD (2021), Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report, Mexico, p. 8, <https://www.oecd.org/daf/anti-bribery/mexico-phase-4-follow-up-report.pdf>.

<sup>95</sup> Government of Mexico (2014), Código Nacional de Procedimientos Penales, Article 421, [http://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP\\_190221.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP_190221.pdf). It should be noted that, in its Phase 4 Report of Mexico, the Working Group on Bribery recommended, in relation to Article 421 of the CNPP, that Mexico “[f]ind a way that is appropriate and feasible in its legal system to clarify that the standards regarding internal controls and compliance programmes in Article 25 of GLAR apply when proving that a legal person failed to exercise or comply with due controls within its organisation under Article 421 CNPP, and raise awareness of these standards among the private sector, including business associations that represent SMEs.” See OECD (2018), Implementing the OECD Anti-bribery convention. Phase 4 Report: México, Recommendation 4(a), p. 59, <https://www.oecd.org/corruption/anti-bribery/OECD-Mexico-Phase-4-Report-ENG.pdf>.

In its Phase 4 Two-Year Follow-Up Report, the Working Group on Bribery found this Recommendation 4(a) to be “not implemented” and noted that “Mexico has taken no concrete measures to clarify which standards apply when corporate criminal liability is imposed for failure to comply with internal controls”. See OECD (2021), Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report, Mexico, p. 8, <https://www.oecd.org/daf/anti-bribery/mexico-phase-4-follow-up-report.pdf>.

<sup>96</sup> Pursuant to Article 212 of the CPF, a “public official” is any individual who is employed or holds any position or charge of any nature in: (i) the central Federal Public Administration or in the Federal District’s Public Administration; (ii) decentralised organisms; (iii) majority SOEs; (iv) organisations or entities that have been assimilated to majority SOEs; (v) public trusts; (vi) the State’s productive enterprises; (vii) autonomous constitutional bodies; (viii) federal Congress; (ix) federal judiciary; or (x) entities that manage federal economic resources. See Government of Mexico (1931), Código Penal Federal, Article 212.

<sup>97</sup> Government of Mexico (1931), Código Penal Federal, Article 222, para. II, [http://www.diputados.gob.mx/LeyesBiblio/pdf/9\\_010621.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/9_010621.pdf).

<sup>98</sup> Pursuant to Article 222 bis of the CPF, a “foreign public official” is: (i) any individual who is employed or holds any position or charge in the legislative, executive or judiciary branch or in an autonomous public body at any level of government of a foreign State, either appointed or elected; (ii) any individual exercising functions for an authority, organism or SOE of a foreign State; or (iii) any official or agent of a public international organism or organisation. See Government of Mexico (1931), Código Penal Federal, Article 222 bis, [http://www.diputados.gob.mx/LeyesBiblio/pdf/9\\_010621.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/9_010621.pdf).

<sup>99</sup> Government of Mexico (1931), Código Penal Federal, Article 222 bis, [http://www.diputados.gob.mx/LeyesBiblio/pdf/9\\_010621.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/9_010621.pdf).

<sup>100</sup> Government of Mexico (1931), Código Penal Federal, Articles 222 and 222 bis, [http://www.diputados.gob.mx/LeyesBiblio/pdf/9\\_010621.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/9_010621.pdf).

<sup>101</sup> Government of Mexico (2020), Ley General de Responsabilidades Administrativas, Articles 24 and 66, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_200521.pdf).

<sup>102</sup> Pursuant to Article 25 of the LGRA, an integrity programme should at least include the following elements: (i) a clear and complete organisational manual; (ii) a code of conduct that is published and communicated to every person in the organisation; (iii) adequate and effective controls, monitoring and auditing systems; (iv) adequate whistleblowing systems for internal reports and for allowing reporting to authorities, as well as a disciplinary process for those who violate the company’s whistleblowing policies; (v) adequate training and capacity-building on ethics; (vi) human resources policies to avoid hiring employees who pose a risk to the integrity of the company; and (vii) mechanisms to ensure transparency and the disclosure of conflicts of interest. See Government of Mexico (2020), Ley General de



Responsabilidades Administrativas, Article 25, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_200521.pdf).

<sup>103</sup> Government of Mexico (2020), Ley General de Responsabilidades Administrativas, Article 81, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_200521.pdf).

<sup>104</sup> Government of Mexico (2020), Ley General de Responsabilidades Administrativas, Article 21, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_200521.pdf).

<sup>105</sup> These tools consist in a glossary of terms related to the fight against corruption and integrity, a compendium of good practices, a model code of conduct and its implementation handbook, a risk-assessment protocol and a self-assessment tool. See Government of Mexico (2018), Acompañamiento y Fortalecimiento del Programa de Integridad Empresarial de la SFP, <https://www.gob.mx/tuempresa/es/articulos/acompanamiento-y-fortalecimiento-del-programa-de-integridad-empresarial-de-la-sfp?idiom=es>.

<sup>106</sup> According to information provided by the SFP, the following business associations and industrial organisations took part in the elaboration of the Business Integrity Registry (*Padrón de Integridad Empresarial*, PIE): *Asociación Mexicana de Mujeres Jefas de Empresa* (AMMJE); *Cámara Mexicana de la Industria de la Construcción* (CMIC); American Chamber of Commerce of Mexico (AMCHAM); *Cámara Nacional de la Industria Editorial Mexicana* (CANIEM); *Asociación Mexicana de Industrias de Investigación Farmacéutica* (AMIIF); *Confederación de Cámaras Nacionales de Comercio, Servicios y Turismo* (CONCANACO); *Confederación de Cámaras Industriales de los Estados Unidos Mexicanos* (CONCAMIN); *Cámara Nacional de la Industria Farmacéutica* (CANIFARMA); and the CCE.

<sup>107</sup> USMCA, Chapter 27 (Anti-corruption), Article 27.5 (Participation of Private Sector and Society), para. 4.

<sup>108</sup> 2018 CPTPP, Chapter 26 (Transparency and Anti-corruption), Article 26.10 (Participation of Private Sector and Society), para. 2; USMCA, Chapter 27 (Anti-corruption), Article 27.5 (Participation of Private Sector and Society), para. 2.

<sup>109</sup> Government of Mexico (2021), *¿Qué es el Padrón de Integridad Empresarial?*, <https://integridadempresarial.funcionpublica.gob.mx/#que-es>.

<sup>110</sup> Pursuant to Article 25 of the LGRA, an integrity programme should at least include the following elements: (i) a clear and complete organisational manual; (ii) a code of conduct that is published and communicated to every person in the organisation; (iii) adequate and effective controls, monitoring and auditing systems; (iv) adequate whistleblowing systems for internal reports and for allowing reporting to authorities, as well as a disciplinary process for those who violate the company's whistleblowing policies; (v) adequate training and capacity-building on ethics; (vi) human resources policies to avoid hiring employees who pose a risk to the integrity of the company; and (vii) mechanisms to ensure transparency and the disclosure of conflicts of interest. See Government of Mexico (2020), Ley General de Responsabilidades Administrativas, Article 25, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_200521.pdf).

<sup>111</sup> Government of Mexico (2019), Lineamientos para la Promoción y Operación del Sistema de Ciudadanos Alertadores Internos y Externos de la Corrupción, Section IV (Protection measures for the whistle-blower), <https://storage.apps.funcionpublica.gob.mx/descarga/Lineamientos-Alertadores.odt>.

<sup>112</sup> Government of Mexico (2020), Protocolo de Protección para Personas Alertadoras de la Corrupción, Article II, Section VIII (Proceedings), <https://sidofga.segob.gob.mx/notas/5603032>.

<sup>113</sup> It should be noted that this issue has been highlighted by the Working Group on Bribery since the Phase 3 Report of Mexico dated October 2011. See OECD (2011), Implementing the OECD Anti-bribery convention. Phase 3 Report: México, pp. 34, 40 <https://www.oecd.org/daf/anti-bribery/Mexicophase3reportEN.pdf>. In March 2021, the Working Group on Bribery concluded in its Phase 4 Two-Year Follow-Up Report that, despite important developments, Mexico has yet to adopt specific legislation on the matter. See OECD (2021), Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report, Mexico, p. 6, <https://www.oecd.org/daf/anti-bribery/mexico-phase-4-follow-up-report.pdf>.

<sup>114</sup> The absence of a specific framework for private sector whistleblowing in Mexico is reflected in the latest anti-corruption policy. Whistleblowing is part of the 2019-2024 National Programme to Fight Corruption and Impunity, and to improve Public Administration. In fact, one of the priority strategies of the Programme is to launch and operate the “System of Citizens Reporting on Corruption” and a series of action is foreseen for this purpose. However, these actions focus on the reporting of corruption acts in the government. None of them mention private sector whistleblowing, which does not seem to be encompassed by the Programme. See Government of Mexico (2019), Programa Nacional de Combate a la Corrupción y a la Impunidad, y de Mejora de la Gestión Pública 2019-2024, pp. 5, 9, 17-18, <https://sidof.segob.gob.mx/notas/5570984>.

<sup>115</sup> OECD (2011), Guidelines for Multinational Enterprises, Chapter VII (Combating Bribery, Bribe Solicitation and Extortion), para. 2, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>116</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.6, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>117</sup> 2018 CPTPP Chapter 26 (Transparency and Anti-corruption), Article 26.7 (Measures to Combat Corruption), para. 6; Article 2019 USMCA, Chapter 27 (Anti-corruption), Article 27.3 (Measures to Combat Corruption), para. 7.

<sup>118</sup> “Broader policy objectives” refers to a variety of objectives such as sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives that governments increasingly pursue through use of procurement as a policy lever, in addition to the primary procurement objective, which is achieving value-for-money.

<sup>119</sup> The pre-tender phase corresponds to the preparation of the tender during which the procuring needs are assessed, the procuring strategy is designed, and the requirements and criteria to be included in the tender documents are defined.

<sup>120</sup> The tender phase covers the publication of the tender documents, the submission of proposals by bidders, the evaluation of the bids, and the award of the contract.

<sup>121</sup> The post-tender phase corresponds to the implementation of the contract by the supplier or contractor and the management of the relationship with the latter.

<sup>122</sup> The state system consists of the public procurement done by the different state governments when using state budget. The legal and regulatory framework of each state applies to such procurement.

<sup>123</sup> The municipal system corresponds to the municipalities’ public procurement when the funds spent belong to the municipalities’ budget. Here, the rules of the state to which the municipality belongs apply, as well as specific administrative provisions of each municipality.

<sup>124</sup> Specific laws and regulations apply to the procurement of the two State productive enterprises.

<sup>125</sup> Government of Mexico (1917), Constitución Política de los Estados Unidos Mexicanos, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_280521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_280521.pdf).

<sup>126</sup> More specifically, the Law on Public Sector Acquisitions, Leases and Services (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) provides that environmental sustainability aspects shall be included in the policies, tendering procedures, and guidelines for acquisitions, leases and services in order to use public funds in a sustainable way and reduce financial and environmental costs. See Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title I (General provisions) Article 22, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf).

<sup>127</sup> Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting procedures), Article 26, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf).

<sup>128</sup> Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting procedures), Article 26, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf).

<sup>129</sup> Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting procedures), Article 26, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf).

<sup>130</sup> Decree establishing Several Measures for the Purchase and Use of Paper and Forests' Sustainable Management Certification by the Federal Public Administration dated 5 September 2007 (*Decreto por el que se establecen diversas medidas en materia de adquisiciones, uso de papel y de la certificación de manejo sustentable de bosques por la administración pública federal*); Notice containing the General Guidelines regarding the Environmental Sustainability Aspects for the Acquisitions, Leases and Services of the Public Sector dated 31 October 2007 (*Circular que contiene los Lineamientos generales relativos a los aspectos de sustentabilidad ambiental para las adquisiciones, arrendamientos y servicios del sector público*); and Notice containing the Guidelines for the Purchase of Office Paper by the Entities of the Federal Public Administration dated 2 October 2009 (*Circular que contiene los Lineamientos para las adquisiciones de papel para uso de oficina por parte de las dependencias y entidades de la Administración Pública Federal*). See Government of Mexico (2007), Decreto por el que se establecen diversas medidas en materia de adquisiciones, uso de papel y de la certificación de manejo sustentable de bosques por la administración pública federal, <https://sidof.segob.gob.mx/notas/4999881>; Government of Mexico (2007), Circular que contiene los Lineamientos generales relativos a los aspectos de sustentabilidad ambiental para las adquisiciones, arrendamientos y servicios del sector público, [http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEMARNAT/Circulares/31102007\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEMARNAT/Circulares/31102007(1).pdf); and Government of Mexico (2009), Circular que contiene los Lineamientos para las adquisiciones de papel para uso de oficina por parte de las dependencias y entidades de la Administración Pública Federal, <https://sidof.segob.gob.mx/notas/5112581>.

<sup>131</sup> The SEMARNAT's Guidelines specify that, during the tender phase, public procurement practitioners should require bidders to present documents demonstrating that their products, goods or services comply with the environmental requirements of the official Mexican norms (NOMs), the Mexican norms (NMXs), as well as with international standards. It is worth noting that the Guidelines do not specify the types of documents that should be submitted nor does it mention precisely the criteria that are to be taken into account to determine if the bidder's product, good or service complies with the mentioned norms and standards. See Government of Mexico (2007), Circular que contiene los Lineamientos generales relativos a los aspectos de sustentabilidad ambiental para las adquisiciones, arrendamientos y servicios del sector público, [http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEMARNAT/Circulares/31102007\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEMARNAT/Circulares/31102007(1).pdf).

<sup>132</sup> Government of Mexico (2007), Circular que contiene los Lineamientos generales relativos a los aspectos de sustentabilidad ambiental para las adquisiciones, arrendamientos y servicios del sector público, [http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEMARNAT/Circulares/31102007\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEMARNAT/Circulares/31102007(1).pdf). Likewise, the SFP's Guidelines regarding the procurement of office paper indicate how procuring entities shall proceed concretely to ensure that the composition of the office paper they purchase complies with the LAASSP's requirements, notably by verifying the compliance of the paper with two official Mexican Norms. The official Mexican Norms are the Norm NOM-050-SCFI-2004 "Commercial information – General labelling of products" (*Información comercial-etiquetado general de productos*) and Norm NMX-AA-144-SCFI-2008 "Characteristics and technical specifications regarding the content of recycled fibre and chlorine for the fabrication of paper for the printers and photocopiers bought by the dependencies and entities of the Federal Public Administration" (*Características y especificaciones técnicas del contenido de fibra de material reciclable y cloro para la fabricación de papel para impresoras y fotocopiadoras que sea adquirido por las dependencias y entidades de la Administración Pública Federal*). See Government of Mexico (2007), Circular que contiene los Lineamientos para las adquisiciones de papel para uso de oficina por parte de las dependencias y entidades de la Administración Pública Federal, <http://uncp.funcionpublica.gob.mx/doctos/adquisiciones/dof091002.pdf>.

<sup>133</sup> Government of Mexico (2000), Ley de Obras Públicas y Servicios Relacionados con las Mismas, Title I (General provisions) Article 20, [http://www.diputados.gob.mx/LeyesBiblio/pdf/56\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/56_200521.pdf).

<sup>134</sup> Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title I (General provisions) Article 14, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf).

<sup>135</sup> Government of Mexico (2000), Ley de Obras Públicas y Servicios Relacionados con las Mismas, Title II (Contracting procedures) Article 38, [http://www.diputados.gob.mx/LeyesBiblio/pdf/56\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/56_200521.pdf).

<sup>136</sup> Bidders must present documents justifying that their disabled workers are registered with the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*, IMSS) and that they are considered disabled persons according to the General Law of Disabled Persons (*Ley General de las Personas con*

*Discapacidad*). See Government of Mexico (2010), Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting Procedures) Article 39, para. VI g), [http://www.diputados.gob.mx/LeyesBiblio/regley/Reg\\_LAASSP\\_140621.pdf](http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LAASSP_140621.pdf).

<sup>137</sup> Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting procedures), Article 29, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf); Government of Mexico (2000), Ley de Obras Públicas y Servicios Relacionados con las Mismas, Title II (Contracting procedures) Article 31 (XXXII), [http://www.diputados.gob.mx/LeyesBiblio/pdf/56\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/56_200521.pdf).

<sup>138</sup> The LAASSP and the LOPSRM detail the situations that can give rise to a conflict of interest or can constitute an impediment to enter into a contract and in which the procuring entities shall refrain from receiving proposals or awarding contracts. See Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title III (Contracts), Article 50, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf); Government of Mexico (2000), Ley de Obras Públicas y Servicios Relacionados con las Mismas, Title III (Contracts) Article 51, [http://www.diputados.gob.mx/LeyesBiblio/pdf/56\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/56_200521.pdf).

<sup>139</sup> Government of Mexico (2018), Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Orgánica de la Administración Pública Federal, Article 31(XXV), <https://sidof.segob.gob.mx/notas/5545331>. See Also Government of Mexico (2021), Ley Orgánica de la Administración Pública Federal, Article 31(XXV), [http://www.diputados.gob.mx/LeyesBiblio/pdf/153\\_110121.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/153_110121.pdf).

<sup>140</sup> Government of Mexico (2018), Ley Orgánica de la Administración Pública Federal, Article 37, para. XXI, [http://www.diputados.gob.mx/LeyesBiblio/pdf/153\\_110121.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/153_110121.pdf).

<sup>141</sup> Government of Mexico (2019), Press release “Función Pública y Oficialía Mayor de Hacienda trabajan juntas para prevenir corrupción en compras públicas”, <https://www.gob.mx/sfp/articulos/funcion-publica-y-oficialia-mayor-de-hacienda-trabajan-juntas-para-prevenir-corrupcion-en-compras-publicas>.

<sup>142</sup> Government of Mexico (2019), Press release “Función Pública y Oficialía Mayor de Hacienda trabajan juntas para prevenir corrupción en compras públicas”, <https://www.gob.mx/sfp/articulos/funcion-publica-y-oficialia-mayor-de-hacienda-trabajan-juntas-para-prevenir-corrupcion-en-compras-publicas>.

<sup>143</sup> See Government of Mexico (2020), Cámara de Diputados – Iniciativas presentadas en la LXIV Legislatura turnadas a Comisión, [http://sitl.diputados.gob.mx/LXIV\\_leg/iniciativaslxiv.php?comt=48&tipo\\_turnot=1&edot=P](http://sitl.diputados.gob.mx/LXIV_leg/iniciativaslxiv.php?comt=48&tipo_turnot=1&edot=P).

<sup>144</sup> It should be noted that the bill does not specify what constitutes “a state of vulnerability” nor how such state should be established. See Government of Mexico (2020), Gaceta Parlamentaria, Year XXII, Number 5497-I, 14 April 2020, <http://gaceta.diputados.gob.mx/Gaceta/64/2020/abr/20200414-1.html#Iniciativa1>. See also Government of Mexico (2020), Cámara de Diputados – Análisis técnico preliminar de la Iniciativa que reforma, adiciona y deroga diversas disposiciones de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, No. Expediente: 1152-2PO2-20, 14 April 2020, pp. 18-20, [http://sitl.diputados.gob.mx/LXIV\\_leg/cuadros\\_comparativos/2PO2/1152-2PO2-20.pdf](http://sitl.diputados.gob.mx/LXIV_leg/cuadros_comparativos/2PO2/1152-2PO2-20.pdf).

<sup>145</sup> Government of Mexico (2019), Press release “Función pública lanza Padrón de Integridad Empresarial”, <https://www.gob.mx/sfp/articulos/funcion-publica-lanza-padron-de-integridad-empresarial>.

<sup>146</sup> Government of Mexico (2020), Decreto por el que se adiciona un párrafo quinto al artículo 1 de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Official Journal, 11 August 2020, [http://www.diputados.gob.mx/LeyesBiblio/ref/laassp/LAASSP\\_ref15\\_11ago20.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/laassp/LAASSP_ref15_11ago20.pdf).

<sup>147</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.9, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>148</sup> Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting procedures), Article 26, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf).

<sup>149</sup> Government of Mexico (2010), Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting Procedures) Article 39, para. VI g), [http://www.diputados.gob.mx/LeyesBiblio/regley/Reg\\_LAASSP\\_140621.pdf](http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LAASSP_140621.pdf).



<sup>150</sup> Government of Mexico (2000), Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II (Contracting procedures), Article 29, [http://www.diputados.gob.mx/LeyesBiblio/pdf/14\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf); Government of Mexico (2000), Ley de Obras Públicas y Servicios Relacionados con las Mismas, Title II (Contracting procedures) Article 31 (XXXII), [http://www.diputados.gob.mx/LeyesBiblio/pdf/56\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/56_200521.pdf).

<sup>151</sup> This is also the case of the UNGPs, which provide that “States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.” See United Nations (2011), United Nations Guiding Principles on Business and Human Rights, Principle 4, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>152</sup> The list of Adherents to the OECD Declaration on International Investment and Multinational Enterprises [OECD/LEGAL/144] – of which the OECD MNEs Guidelines are part – is available on the OECD’s website at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0307#adherents>.

<sup>153</sup> It should be noted that this section does not attempt to assess Mexico’s implementation of the OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOE Guidelines) or of the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (OECD ACI Guidelines), which are subject to separate OECD review processes, but seeks to highlight the relevance of their recommendations with respect to achieving RBC objectives.

<sup>154</sup> This includes information on any material foreseeable risks incurred in their operations, in particular financial and operational risks, but also human rights, labour, environment, corruption and tax-related risks, as well as the measures taken to manage such risks.

<sup>155</sup> The OECD ACI Guidelines recommend, to this effect, that governments ensure clarity in the legal and regulatory framework regarding the operation and accountability of SOEs and in their expectations for anti-corruption and integrity. They also recommend that governments encourage SOEs to develop a risk management system and integrity mechanisms – that is, internal controls and ethics and compliance measures – to prevent, detect and mitigate corruption-related risks. These integrity mechanisms should work to ensure that SOEs cannot seek or accept exemptions, not previously contemplated, related to human rights, environment, health, safety, labour, taxation and financial incentives. Moreover, they recommend that governments establish accountability and review mechanisms for SOEs and actively seek to improve public knowledge about SOEs. See OECD (2019), OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises, pp. 20, 22, 24, 27, 29, <https://www.oecd.org/daf/ca/Guidelines-Anti-Corruption-Integrity-State-Owned-Enterprises.pdf>.

<sup>156</sup> Government of Mexico (2014), Ley de Petróleos Mexicanos, Article 15, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM_110814.pdf); Government of Mexico (2014), Ley de la Comisión Federal de Electricidad, Article 14, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE_110814.pdf).

<sup>157</sup> Government of Mexico (2014), Ley de Petróleos Mexicanos, Articles 2 and 100, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM_110814.pdf); Government of Mexico (2014), Ley de la Comisión Federal de Electricidad, Article 2 and 102, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE_110814.pdf).

<sup>158</sup> Government of Mexico (2014), Ley de Petróleos Mexicanos, Article 4, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM_110814.pdf).

<sup>159</sup> Government of Mexico (2014), Ley de la Comisión Federal de Electricidad, Article 2, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE_110814.pdf).

<sup>160</sup> These fields are: education and sport, infrastructure, health, productive projects, gender equity, environmental protection, and public security and civil protection.

<sup>161</sup> Government of Mexico (2014), Ley de Petróleos Mexicanos, Article 95, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LPM_110814.pdf); Government of Mexico (2014), Ley de la Comisión Federal de Electricidad, Article 97, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LCFE_110814.pdf).

<sup>162</sup> CFE has also developed an Institutional Programme for the Protection of the Environment (*Programa Institucional de Protección al Ambiente*) through which it gathers, monitors and follows-up on the information contained in the environmental programs of its different sites and installations. See CFE (2019), Informe anual 2019, p. 80, <https://www.cfe.mx/finanzas/reportes-financieros/Reportes%20Anuales%20Documentos/Informe%20Anual%202019.pdf?csf=1&e=t8GHzG>.

<sup>163</sup> In its Code of Ethics, PEMEX states that it respects the human rights of all, rejects human trafficking, and recognizes the right to freedom of thought, conscience and religion. See PEMEX (2019), Code of Ethics, p. 12, [https://www.pemex.com/etica\\_y\\_transparencia/etica/Documents/codigo\\_de\\_etica\\_122019-EN.pdf](https://www.pemex.com/etica_y_transparencia/etica/Documents/codigo_de_etica_122019-EN.pdf). The Code of Conduct, for its part, urges PEMEX's staff to respect human rights and, in particular, to respect, support and promote human rights of local communities. See PEMEX (2019), Code of conduct, pp. 8, 12, [https://www.pemex.com/acerca/marco\\_normativo/Documents/codigos/codigo\\_de\\_conducta\\_2019-EN.pdf](https://www.pemex.com/acerca/marco_normativo/Documents/codigos/codigo_de_conducta_2019-EN.pdf).

<sup>164</sup> Government of Mexico (2014), Ley de Hidrocarburos, Article 121, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LHidro\\_200521.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LHidro_200521.pdf); Government of Mexico (2014), Reglamento de la Ley de Hidrocarburos, Article 81, [http://www.diputados.gob.mx/LeyesBiblio/regley/Reg\\_LHidro.pdf](http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LHidro.pdf).

<sup>165</sup> PEMEX's Institutional Declaration of equality in the labour market and non-discrimination affirms that all of PEMEX's staff is committed to maintain a work environment characterised by equality and non-discrimination.

<sup>166</sup> As a result of these actions, PEMEX obtained various labels and certifications, including the labels "Inclusive Company" (*Distintivo Empresa Incluyente*) and "Family-Friendly Company" (*Distintivo Empresa Familiarmente Responsable*), granted by the STPS to companies that include persons from traditionally discriminated groups in their workforce and that implement good practices for work-life balance, as well as the certification based on the Mexican Norm for Labour Equality and Non-Discrimination (*Norma Mexicana en Igualdad Laboral y No Discriminación*), granted to companies with good practices in the field of labour market inclusion. See PEMEX (2021), Website: Certificaciones y distintivos, [https://www.pemex.com/etica\\_y\\_transparencia/etica/inclusion/Paginas/certificaciones-y-distintivos.aspx](https://www.pemex.com/etica_y_transparencia/etica/inclusion/Paginas/certificaciones-y-distintivos.aspx).

<sup>167</sup> This programme contains four thematic core concepts (gender and electricity; institutional culture of gender equality; prevention and assistance in case of sexual harassment; and women in CFE) and corresponding actions all aimed at making CFE a workplace free from gender violence, which promotes gender equality and work-life balance. See CFE (2021), Programa de Igualdad de Género e Inclusión, [https://www.cfe.mx/unidaddegenero/pages/programa\\_igualdad.aspx](https://www.cfe.mx/unidaddegenero/pages/programa_igualdad.aspx). It is complemented by a manual for the prevention, assistance in case of, and sanction of sexual harassment within CFE. See CFE (2020), Manual para la prevención, atención y sanción del hostigamiento sexual y acoso sexual en la Comisión Federal de Electricidad, <https://www.cfe.mx/unidaddegenero/Normatividad/Manual01.pdf>.

<sup>168</sup> As a result of these actions, twenty establishments of CFE have been certified in accordance with the Mexican Norm for Labour Equality and Non-Discrimination (*Norma Mexicana en Igualdad Laboral y No Discriminación*). See CFE (2021), Política de igualdad laboral y no discriminación, [https://www.cfe.mx/transparencia\\_etica/etica/Documents/Equidad%20de%20genero/Principales%20logros%20en%20igualdad.pdf](https://www.cfe.mx/transparencia_etica/etica/Documents/Equidad%20de%20genero/Principales%20logros%20en%20igualdad.pdf).

<sup>169</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.2, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>170</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.3, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>171</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.5, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>172</sup> OECD (2018), Export Credits: Environmental and Social Survey [TAD/ECG(2018)10], [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg\(2018\)10&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg(2018)10&doclanguage=en). See, in particular, question No. 14: "Do you have policies and procedures in place for considering, where appropriate, any statements or reports from your National Contact Point (NCP)?"



<sup>173</sup> The responses of the members of the OECD Export Credit Group to the 2018 edition of the Environmental and Social Due Diligence Survey are not publicly available yet. Once available, they will be published on the OECD's website at: <http://www.oecd.org/trade/topics/export-credits/environmental-and-social-due-diligence/>.

<sup>174</sup> Government of Mexico (2020), Ley Orgánica de la Administración Pública Federal, Article 34.IV, [http://www.diputados.gob.mx/LeyesBiblio/pdf/153\\_110121.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/153_110121.pdf).

<sup>175</sup> Government of Mexico (2019), Reglamento Interior de la Secretaría de Economía, Article 26, <https://sidof.segob.gob.mx/notas/5575714>; Government of Mexico (2021), Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento Interior de la Secretaría de Economía, <https://sidof.segob.gob.mx/notas/5615588>.

<sup>176</sup> Government of Mexico (2020), Programa Sectorial de Economía 2020-2024, priority strategy No. 4.2, [https://www.gob.mx/cms/uploads/attachment/file/559457/Programa\\_Sectorial-ECONOM\\_A\\_final\\_validada.pdf](https://www.gob.mx/cms/uploads/attachment/file/559457/Programa_Sectorial-ECONOM_A_final_validada.pdf).

<sup>177</sup> Investment promotion includes activities such as image building, which aims at promoting the positive representation of a country and branding it as a profitable investment destination, and investment generation, which consists in marketing techniques aimed at specific industries, activities and markets. See OECD (2018), Investment Insights - Towards an International Framework for Investment Facilitation, p. 3, <https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf>.

<sup>178</sup> Investment facilitation includes activities such as investor servicing, which aims at providing support to prospective investors in order to facilitate their establishment, but also aftercare, which consists in assisting established investors with post-establishment challenges so as to retain them and encourage their expansion. See OECD (2018), Investment Insights - Towards an International Framework for Investment Facilitation, pp. 3-4, <https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf>.

<sup>179</sup> Government of Mexico (2020), Programa Sectorial de Economía 2020-2024, priority strategy No. 4.1, [https://www.gob.mx/cms/uploads/attachment/file/559457/Programa\\_Sectorial-ECONOM\\_A\\_final\\_validada.pdf](https://www.gob.mx/cms/uploads/attachment/file/559457/Programa_Sectorial-ECONOM_A_final_validada.pdf).

<sup>180</sup> Government of Mexico (2020), Programa Sectorial de Economía 2020-2024, priority strategy No. 4, Action 4.1.5, [https://www.gob.mx/cms/uploads/attachment/file/559457/Programa\\_Sectorial-ECONOM\\_A\\_final\\_validada.pdf](https://www.gob.mx/cms/uploads/attachment/file/559457/Programa_Sectorial-ECONOM_A_final_validada.pdf).

<sup>181</sup> Government of Mexico (2020), Programa Sectorial de Economía 2020-2024, priority strategies Nos. 4.1 and 4.2, [https://www.gob.mx/cms/uploads/attachment/file/559457/Programa\\_Sectorial-ECONOM\\_A\\_final\\_validada.pdf](https://www.gob.mx/cms/uploads/attachment/file/559457/Programa_Sectorial-ECONOM_A_final_validada.pdf).

<sup>182</sup> It should be noted that, as far as investment treaties are concerned, other kinds of provisions can also potentially have a bearing on RBC. This is, in particular, the case of provisions requiring that investments be made in accordance with domestic law in order to benefit from treaty coverage. General protections, such as provisions on granting “fair and equitable treatment” to covered foreign investors, can affect policy space to regulate business. However, as these provisions do not expressly refer to sustainability issues, such as the respect for human rights, the promotion of labour standards, the protection of the environment, or the fight against corruption, or contain an express mention of RBC or CSR, they are not included in the present analysis. For a discussion of these provisions, see Gaukrodger, D. (2021), “Business responsibilities and investment treaties”, OECD Working Papers on International Investment, No. 2021/02, OECD Publishing, Paris, <https://doi.org/10.1787/4a6f4f17-en>; Gaukrodger, D. (2017), Addressing the balance of interests in investment treaties: The limitation of fair and equitable treatment provisions to the minimum standard of treatment under customary international law, OECD Working Papers on International Investment, 2017/03, <https://www.oecd-ilibrary.org/docserver/0a62034b-en.pdf?expires=1614962636&id=id&accname=ocid84004878&checksum=99194E7B92808FC3B402529A24670527>. See also Pohl, J. (2018), Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence, OECD Working Papers on International Investment, No. 2018/01, OECD Publishing, Paris, <https://doi.org/10.1787/e5f85c3d-en>; Dolzer, R. (2005), The Impact of International Investment Treaties on Domestic Administrative Law, New York University Journal of International Law and Policy 37, No. 4, pp. 953-971, <https://www.iilj.org/wp->

[content/uploads/2016/08/Dolzer-The-Impact-of-International-Investment-Treaties-on-Domestic-Administrative-Law-2005.pdf](https://www.oecd.org/content/uploads/2016/08/Dolzer-The-Impact-of-International-Investment-Treaties-on-Domestic-Administrative-Law-2005.pdf).

<sup>183</sup> The present Review will first consider Mexico's trade agreements in general, and then their investment chapters, together with stand-alone investment treaties.

<sup>184</sup> The expression "trade agreements" in the present Review covers bilateral and regional trade agreements of different types, including customs unions, economic partnerships agreements, and comprehensive trade agreements with investment chapters. However, for the purposes of the present analysis, the provisions of these investment chapters are analysed in the following subsection.

<sup>185</sup> Government of Mexico (2020), Sistema de Información de Tratados Comerciales Internacionales, <http://www.economia-snci.gob.mx/sicait/5.0/>.

<sup>186</sup> 1992 North American Free Trade Agreement (NAFTA).

<sup>187</sup> The United States are Mexico's first trading partner and Canada is Mexico's fifth trading partner. The United States are Mexico's top export and import partner, and Canada is Mexico's second export partner and sixth import partner. See Government of Mexico (2019), Press release: "TLCAN: Inicia el año 26 de su entrada en vigor", <https://www.gob.mx/se/prensa/tlcan-inicia-el-ano-26-de-su-entrada-en-vigor>.

<sup>188</sup> The NAFTA entered into force on 1 June 1994 and was superseded by the United States-Canada-Mexico Agreement (USMCA), which entered into force on 1 July 2020. See Protocol replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada dated 30 November 2018, [https://www.gob.mx/cms/uploads/attachment/file/465881/T-MEC\\_Protocolo.pdf](https://www.gob.mx/cms/uploads/attachment/file/465881/T-MEC_Protocolo.pdf).

<sup>189</sup> Beyond various aspirational declarations in its preamble, the body of the NAFTA included provisions aimed, among others, at preserving the signatories' right to adopt public welfare measures to protect human, animal or plant life or health and/or the environment, establishing procedural safeguards for disputes involving health, safety and/or environmental issues, and reaffirming the signatories' rights and obligations under environmental and conservation agreements. See 1992 NAFTA, Preamble, Article 1018 (Exceptions), Article 2101 (General Exceptions), Article 2015 (Scientific Review Boards), Article 903 (Affirmation of Agreement on Technical Barriers to Trade and Other Agreements).

<sup>190</sup> 1992 North American Agreement on Labour Cooperation (NAALC), Article 2 (Levels of Protection); North American Agreement on Environmental Cooperation (NAAEC), Article 3 (Levels of Protection).

<sup>191</sup> NAALC, Article 3 (Government Enforcement Action); NAAEC, Article 5 (Government Enforcement Action). The government actions mentioned in the two articles include: appointing and training inspectors; requiring record keeping and reporting; monitoring compliance and investigating suspected violations; seeking assurance of voluntary compliance; providing or encouraging mediation or arbitration services; initiating, in a timely manner, judicial, quasi-judicial or administrative proceedings to seek appropriate sanctions or remedies for violations; etc.

<sup>192</sup> NAALC, Parts 4 (Cooperative Consultations and Evaluations) and 5 (Resolution of Disputes); NAAEC, Parts 4 (Cooperation and Provision of Information) and 5 (Consultation and Resolution of Disputes). With the creation of the Commission for Labour Cooperation (CLC) and the Commission for Environmental Cooperation (CEC), the NAALC and the NAAEC launched several cooperative activities programmes, which have had positive consequences on the NAFTA partners' policies. See NAALC, Part 3 (Commission for Labour Cooperation); NAAEC, Part 3 (Commission for Environmental Cooperation); Government of the United States (2005), North American Agreement on Labor Cooperation: A Guide, <https://www.dol.gov/agencies/ilab/trade/agreements/naalcgd>; Commission for Environment Cooperation (2019), Our Impact - We Turned 25 in 2019!, <http://www.cec.org/about/our-impact/>.

<sup>193</sup> NAALC, Part 5 (Resolution of Disputes); NAAEC, Part 5 (Consultation and Resolution of Disputes).

<sup>194</sup> More precisely, the NAFTA partners committed to ensure that any person with a legally recognised interest could have access to administrative, quasi-judicial or judicial proceedings for matters related to the enforcement of labour and environmental legislations. See NAALC, Article 4 (Private Action); NAAEC, Article 6 (Private Access to Remedies). They also undertook that such proceedings be *inter alia* fair, open and equitable, and conducted in accordance with due process of law. See NAALC, Article 5 (Procedural Guarantees); NAAEC, Article 7 (Procedural Guarantees).

<sup>195</sup> NAALC, Article 16(3); NAAEC, Article 14 (Submission on Enforcement Matters).

<sup>196</sup> See 2000 Mexico-EFTA Free Trade Agreement (FTA), Article 44 (Exceptions), para. 4: “Nothing in Sections I, II and III shall prevent a Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions, and establishment of natural persons provided that, in so doing, it does not apply them in a manner as to nullify or impair the benefits accruing to another Party under the terms of a specific provision of Sections I, II and III”; Decision No 2/2001 of the EU-Mexico Joint Council, Article 27, para. 4: “Nothing in this Title shall prevent a Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions and establishment of natural persons provided that, in so doing, it does not apply them in a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific provision of this Title.”

<sup>197</sup> Except for two provisions included in the 2011 Mexico-Central America FTA and the 2014 Pacific Alliance Additional Protocol pertaining to integrity practices in public procurement, none of the agreements concluded by Mexico before 2016 contain provisions on anti-corruption and integrity. See 2011 Mexico-Central America FTA, Article 10.16 (Guarantee of Integrity in Procurement Practices); 2014 Pacific Alliance Additional Protocol, Article 8.15 (Integrity in Public Procurement Practices).

<sup>198</sup> See, for instance, 1994 Mexico-Bolivia FTA, Preamble; 1997 Mexico-Nicaragua FTA, Preamble; 1998 Mexico-Chile FTA, Preamble; 2000 Mexico-EFTA FTA, Preamble; 2011 Mexico-Central America FTA, Preamble; 2014 Pacific Alliance Additional Protocol, Preamble.

<sup>199</sup> See, for instance, 1994 Mexico-Colombia FTA, Article 14.05 (Rights and Obligations of the Parties); 2003 Mexico-Uruguay FTA, Article 9-04 (Rights and Obligations of the Parties); 2006 Mexico-Argentina Economic Complementation Agreement (ECA), Article 29; 2010 Mexico-Bolivia ECA, Article (Compatibility and Equivalence).

<sup>200</sup> See, for instance, 1994 Mexico-Bolivia FTA, Article 20-01 (General Exceptions); 1997 Mexico-Nicaragua FTA, Article 21-01 (General Exceptions); 1998 Mexico-Chile FTA, Article 7-03 (Rights of the Parties); 2000 Mexico-EFTA FTA, Article 44 (General Exceptions); 2004 Mexico-Japan EPA, Article 168 (General Exceptions); 2011 Mexico-Central America FTA, Articles 10.11 (Technical Specifications), 20.2 (General Exceptions); 2014 Mexico-Panama FTA, Articles 15.3 (General Provisions), 19.2 (General Exceptions).

<sup>201</sup> Out of the more than twenty agreements concluded over this period, only the 1994 Mexico-Bolivia FTA, the 1997 Mexico-Nicaragua FTA and the 2010 Mexico-Bolivia ECA include provisions specifying that the signatories shall apply the international environmental agreements to which they are parties. See 1994 Mexico-Bolivia FTA, Article 13-12 (Environmental Protection and Management of Harmful Substances and Hazardous Waste); 1997 Mexico-Nicaragua FTA, Article 14-14 (Environmental Protection and Management of Harmful Substances and Hazardous Waste); 2010 Mexico-Bolivia ECA, Article 9-12 (Environmental Protection and Management of Harmful Substances and Hazardous Waste).

Likewise, the 1998 Mexico-Chile FTA and the 2004 Mexico-Japan Economic Partnership Agreement (EPA) are the sole agreements that respectively include procedural safeguards for health and environmental matters and a provision on environmental cooperation. See 1998 Mexico-Chile FTA, Article 18.12 (Scientific Review Committees); 2004 Mexico-Japan EPA, Article 147 (Environmental Cooperation).

As to the 2014 Pacific Alliance Additional Protocol and the 2014 Mexico-Panama FTA, they are the only two pre-2016 agreements to contain a chapter on electronic trade in which the signatories acknowledge the importance of protecting consumers from fraudulent practices. See 2014 Pacific Alliance Additional Protocol, Article 13.6 (Consumers’ Protection); 2014 Mexico-Panama FTA, Article 14.6 (Consumers’ Protection).

<sup>202</sup> 2018 CPTPP, Article 1 (Incorporation of the Trans-Pacific Partnership Agreement).

<sup>203</sup> The USMCA was signed on 30 November 2018. It was subsequently amended by a Protocol of Amendment signed on 10 December 2019. The amended version of the USMCA entered into force on 1 July 2020. See Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Protocol-of-Amendments-to-the-United->

[States-Mexico-Canada-Agreement.pdf](#). See also Congressional Research Service (2020), USMCA: Amendments and Key Changes, <https://crsreports.congress.gov/product/pdf/IF/IF11391>.

<sup>204</sup> 2016 Trans-Pacific Partnership (TPP), Chapter 26 (Transparency and Anti-Corruption); 2018 CPTPP, Chapter 26 (Transparency and Anti-Corruption); 2019 USMCA, Chapter 27 (Anti-corruption).

<sup>205</sup> 2016 TPP, Chapter 20 (Environment); 2018 CPTPP, Chapter 20 (Environment); 2019 USMCA, Chapter 24 (Environment).

<sup>206</sup> 2016 TPP, Chapter 19 (Labour); 2018 CPTPP, Chapter 19 (Labour); 2019 USCMA, Chapter 23 (Labour).

<sup>207</sup> 2016 TPP, Chapter 26 (Transparency and Anti-Corruption); 2018 CPTPP, Chapter 26 (Transparency and Anti-Corruption); 2019 USMCA, Chapter 27 (Anti-corruption).

<sup>208</sup> 2016 TPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.7 (Measures to Combat Corruption); 2018 CPTPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.7 (Measures to Combat Corruption); 2019 USMCA, Chapter 27 (Anticorruption), Article 27.3 (Measures to Combat Corruption).

<sup>209</sup> 2016 TPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.9 (Application and Enforcement of Anti-Corruption Laws); 2018 CPTPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.9 (Application and Enforcement of Anti-Corruption Laws); 2019 USMCA, Chapter 27 (Anticorruption), Article 27.6 (Application and Enforcement of Anticorruption Laws).

<sup>210</sup> 2016 TPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.8 (Promoting Integrity Among Public Officials); 2018 CPTPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.8 (Promoting Integrity Among Public Officials); 2019 USMCA, Chapter 27 (Anticorruption), Article 27.4 (Promoting Integrity among Public Officials).

<sup>211</sup> 2016 TPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.7 (Measures to Combat Corruption), para. 6; 2018 CPTPP, Chapter 26 (Transparency and Anti-Corruption), Article 26.7 (Measures to Combat Corruption), para. 6; 2019 USMCA, Chapter 27 (Anticorruption), Article 27.3 (Measures to Combat Corruption), para. 7.

<sup>212</sup> 2016 TPP, Chapter 26 (Transparency and Anti-corruption), Article 26.10 (Participation of Private Sector and Society); 2018 CPTPP, Chapter 26 (Transparency and Anti-corruption), Article 26.10 (Participation of Private Sector and Society); 2019 USMCA, Chapter 27 (Anticorruption), Article 27.5 (Participation of Private Sector and Society).

<sup>213</sup> All references to the “2019 USMCA” in the present Review refer to the text of the USMCA, as amended by the 2019 Protocol of Amendment, which entered into force on 1 July 2020.

<sup>214</sup> 2019 USMCA, Chapter 27 (Anticorruption), Article 27.2 (Scope).

<sup>215</sup> 2019 USMCA, Chapter 27 (Anticorruption), Article 27.9 (Cooperation).

<sup>216</sup> 2016 TPP, Chapter 26 (Transparency and Anti-corruption), Article 26.12 (Dispute Settlement); 2018 CPTPP, Chapter 26 (Transparency and Anti-corruption), Article 26.12 (Dispute Settlement); 2019 USMCA, Chapter 27 (Anticorruption), Article 27.8 (Dispute Settlement).

<sup>217</sup> 2016 TPP, Chapter 20 (Environment); 2018 CPTPP, Chapter 20 (Environment); 2019 USMCA, Chapter 24 (Environment).

<sup>218</sup> 2016 TPP, Chapter 20 (Environment), Article 20.3 (General Commitments), para. 3; 2018 CPTPP, Chapter 20 (Environment), Article 20.3 (General Commitments), para. 3; 2019 USMCA, Chapter 24 (Environment), Article 24.3 (Levels of Protection), para. 2.

<sup>219</sup> 2016 TPP, Chapter 20 (Environment), Article 20.3 (General Commitments), para. 6; 2018 CPTPP, Chapter 20 (Environment), Article 20.3 (General Commitments), para. 6; 2019 USMCA, Chapter 24 (Environment), Article 24.4 (Enforcement of Environmental Laws), para. 3.

<sup>220</sup> 2016 TPP, Chapter 20 (Environment), Article 20.3 (General Commitments), para. 2; 2018 CPTPP, Chapter 20 (Environment), Article 20.12 (Cooperation Frameworks), para. 2; 2019 USMCA, Chapter 24 (Environment), Article 24.3 (Levels of Protection), para. 1.

<sup>221</sup> 2019 USMCA, Chapter 24 (Environment), Articles 24.4 (Enforcement of Environmental Laws), paras. 1 and 24.8 (Multilateral Environmental Agreements), para. 2.

<sup>222</sup> 2019 USMCA, Chapter 24 (Environment), Article 24.7 (Environmental Impact Assessment).

<sup>223</sup> 2016 TPP, Chapter 20 (Environment), Article 20.12 (Cooperation Frameworks); 2018 CPTPP, Chapter 20 (Environment), Article 20.12 (Cooperation Frameworks); 2019 USMCA, Chapter 24 (Environment), Article 24.25 (Environmental Cooperation).

<sup>224</sup> Agreement on Environmental Cooperation among the Governments of Canada, the United Mexican States, and the United States of America (AEC).

<sup>225</sup> Upon its entry into force the AEC superseded the NAAEC. See AEC, Article 17.

<sup>226</sup> 2016 TPP, Chapter 20 (Environment), Article 20.12 (Cooperation Frameworks), para. 1; 2018 CPTPP, Chapter 20 (Environment), Article 20.12 (Cooperation Frameworks), para. 1; 2019 USMCA, Chapter 24 (Environment), Article 24.25 (Environmental Cooperation), para. 1; AEC, Article 1 (Objectives).

<sup>227</sup> 2016 TPP, Chapter 20 (Environment), Articles 20.20 (Environment Consultations), 20.21 (Senior Representative Consultations), 20.22 (Ministerial Consultations); 2018 CPTPP, Chapter 20 (Environment), Articles 20.20 (Environment Consultations), 20.21 (Senior Representative Consultations), 20.22 (Ministerial Consultations); 2019 USMCA, Chapter 24 (Environment), Articles 24.29 (Environmental Consultations), 24.30 (Senior Representative Consultations), 24.31 (Ministerial Consultations).

<sup>228</sup> 2016 TPP, Chapter 20 (Environment), Article 20.23 (Dispute Resolution); 2018 CPTPP, Chapter 20 (Environment), Article 20.12 (Cooperation Frameworks); 2019 USMCA, Chapter 24 (Environment), Articles 24.32 (Dispute Resolution).

<sup>229</sup> 2016 TPP, Chapter 19 (Labour); 2018 CPTPP, Chapter 19 (Labour); 2019 USMCA, Chapter 23 (Labour).

<sup>230</sup> 2016 TPP, Chapter 19 (Labour), Article 19.3 (Labour Rights); 2018 CPTPP, Chapter 19 (Labour), Article 19.3 (Labour Rights); 2019 USMCA, Chapter 23 (Labour), Article 23.3 (Labour Rights).

<sup>231</sup> 2016 TPP, Chapter 19 (Labour), Article 19.4 (Non Derogation); 2018 CPTPP, Chapter 19 (Labour), Article 19.4 (Non Derogation); 2019 USMCA, Chapter 23 (Labour), Article 23.4 (Non Derogation).

<sup>232</sup> 2016 TPP, Chapter 19 (Labour), Article 19.4 (Non Derogation); 2018 CPTPP, Chapter 19 (Labour), Article 19.5 (Enforcement of labour laws); 2019 USMCA, Chapter 23 (Labour), Article 23.5 (Enforcement of labour laws).

<sup>233</sup> 2019 USMCA, Chapter 23 (Labour), Article 23.6 (Forced or Compulsory Labour).

<sup>234</sup> 2016 TPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations); 2018 CPTPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations); 2019 USMCA, Chapter 23 (Labour), Article 23.13 (Cooperative Labour Dialogue).

<sup>235</sup> 2016 TPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations), para. 12; 2018 CPTPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations), para. 15; 2019 USMCA, Chapter 23 (Labour), Article 23.17 (Labour Consultations).

<sup>236</sup> 2016 TPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations), para. 12; 2018 CPTPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations), para. 15; 2019 USMCA, Chapter 23 (Labour), Article 23.17 (Labour Consultations), para. 13.

<sup>237</sup> 2016 TPP, Chapter 20 (Environment), Article 20.7 (Procedural Matters); 2018 CPTPP, Chapter 20 (Environment), Article 20.7 (Procedural Matters); 2019 USMCA, Chapter 24 (Environment), Article 24.6 (Procedural Matters).

<sup>238</sup> 2016 TPP, Chapter 20 (Environment), Article 20.9 (Public Submissions); 2018 CPTPP, Chapter 20 (Environment), Article 20.9 (Public Submissions); 2019 USMCA, Chapter 24 (Environment), Article 24.27 (Submissions on Enforcement Matters).



<sup>239</sup> 2016 TPP, Chapter 19 (Labour), Article 19.8 (Public Awareness and Procedural Guarantees); 2018 CPTPP, Chapter 19 (Labour), Article 19.8 (Public Awareness and Procedural Guarantees); 2019 USMCA, Chapter 23 (Labour), Article 23.10 (Public Awareness and Procedural Guarantees).

<sup>240</sup> 2016 TPP, Chapter 19 (Labour), Article 19.9 (Public Submissions); 2018 CPTPP, Chapter 19 (Labour), Article 19.9 (Public Submissions); 2019 USMCA, Chapter 23 (Labour), Article 23.11 (Public Submissions).

<sup>241</sup> 2019 USMCA, Chapter 31 (Dispute Resolution), Annexes 31-A (United States-Mexico Facility-Specific Rapid Response Labour Mechanism) and 31-B (Canada-Mexico Facility-Specific Rapid Response Labour Mechanism).

<sup>242</sup> 2019 USMCA, Chapter 31 (Dispute Resolution), Article 31-A.1 (Scope and Purpose), para. 2; Article 31-B.1 (Scope and Purpose), para. 2.

<sup>243</sup> 2016 TPP, Chapter 20 (Environment), Article 20.10 (Corporate Social Responsibility); 2018 CPTPP, Chapter 20 (Environment), Article 20.10 (Corporate Social Responsibility); 2019 USMCA, Chapter 24 (Environment), Article 24.13 (Corporate Social Responsibility and Responsible Business Conduct).

<sup>244</sup> 2016 TPP, Chapter 19 (Labour), Article 19.7 (Corporate Social Responsibility); 2018 CPTPP, Chapter 19 (Labour), Article 19.7 (Corporate Social Responsibility).

<sup>245</sup> 2016 TPP, Chapter 20 (Environment), Article 20.23 (Dispute Resolution); 2018 CPTPP, Chapter 20 (Environment), Article 20.23 (Dispute Resolution); 2019 USMCA, Chapter 24 (Environment), Article 24.32 (Dispute Resolution); 2016 TPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations), para. 12; 2018 CPTPP, Chapter 19 (Labour), Article 19.15 (Labour Consultations), para. 15.

<sup>246</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Sections XX.III (Measures to Combat Corruption); XX.IV (Measures to prevent corruption in the private sector); XX.V (Measures to prevent corruption in the public sector).

<sup>247</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Section XX.V (Measures to prevent corruption in the public sector), Article XX.14 (Protection of Reporting Persons).

<sup>248</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Section XX.IV (Measures to prevent corruption in the private sector), Article XX.7 (Responsible Business Conduct).

<sup>249</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Section XX.IV (Measures to prevent corruption in the private sector), Article XX.8 (Financial and Non-Financial Reporting).

<sup>250</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Section XX.IV (Measures to prevent corruption in the private sector), Article XX.9 (Transparency in the Private Sector).

<sup>251</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Section XX.V (Measures to prevent corruption in the public sector), Article XX.13 (Participation of Civil Society).

<sup>252</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Section XX (Dispute Resolution).

<sup>253</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Provisions on anti-corruption, Section XX (Dispute Resolution), Articles XXXX (Consultations), XX (Expert Assistance), XXX (Experts' Opinion).

<sup>254</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Article 3 (Multilateral Labour Standards and Agreements).

<sup>255</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Articles 4 (Multilateral Environmental Governance and Agreements), 5 (Trade and Climate Change), 6 (Trade and Biological Diversity), and 7 (Trade and Sustainable Management of Forests).



<sup>256</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Article 2 (Right to Regulate and Levels of Protection), para. 2.

<sup>257</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Articles 13 (Working together on trade and sustainable development), 5 (Trade and Climate Change), 6 (Trade and Biological Diversity), 7 (Trade and Sustainable Management of Forests), 8 (Trade and Sustainable Management of Marine Biological Resources and Aquaculture), 10 (Other Trade and Investment Related Initiatives Favouring Sustainable Development).

<sup>258</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Article 2 (Right to Regulate and Levels of Protection), paras. 3-5.

<sup>259</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Article 9 (Trade and Responsible Management of Supply Chains).

<sup>260</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Article 9 (Trade and Responsible Management of Supply Chains).

<sup>261</sup> The expression “investment treaties” in the present Review covers bilateral investment treaties (BITs) and the investment chapters contained in comprehensive trade agreements. For the purposes of the present analysis, the provisions contained in the other chapters of comprehensive trade agreements are analysed in the previous subsection.

<sup>262</sup> Government of Mexico (2018), Qué son los Acuerdos de Promoción y Protección Recíproca de las Inversiones (APPRI), <https://www.gob.mx/se/articulos/que-son-los-acuerdos-de-promocion-y-proteccion-reciproca-de-las-inversiones-appri>. See also Government of Mexico (2015), Comercio Exterior, Países con Tratados y Acuerdos firmados con México, <https://www.gob.mx/se/acciones-y-programas/comercio-exterior-paises-con-tratados-y-acuerdos-firmados-con-mexico?state=published>; Government of Mexico (n.d.), Sistema de Información de Tratados Comerciales Internacionales, <http://www.economia-snci.gob.mx/sicait/5.0/>.

<sup>263</sup> 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.30 (Social Responsibility Policies); 2019 USMCA, Chapter 14 (Investment), Article 14.17 (Corporate Social Responsibility). The 2013 Mexico-Turkey BIT also contains a reference to the “internationally recognised labour rights”, but such reference is included in its preamble. See 2013 Mexico-Turkey BIT, Preamble.

<sup>264</sup> 1992 NAFTA, Chapter 11 (Investment), Article 1114 (Environmental Measures), para. 2; 1994 Colombia-Mexico FTA, Chapter 17 (Investment), Article 17-13 (Measures relating to the Environment), para. 2; 1994 Mexico-Bolivia FTA, Chapter 15 (Investment), Article 15-14 (Measures relating to the Environment, Health and Safety), para. 2; 1995 Mexico-Switzerland BIT, Addendum to Article 3; 1997 Mexico-Nicaragua FTA, Chapter 16 (Investment), Article 16.14 (Measures relating to the Environment), para. 2; 1998 Mexico-Chile FTA, Chapter 9 (Investment), Article 9-15 (Measures relating to the Environment), para. 2; 2004 Mexico-Japan EPA, Chapter 7 (Investment), Article 74 (Environmental Measures); 2006 Mexico-Trinidad and Tobago BIT, Article 31 (Environmental Measures).

<sup>265</sup> This means that, if a signatory considers that another signatory has relaxed or weakened its environmental legislation, the two governments shall engage in consultations to avoid such loosening. These provisions can therefore act as a deterrent and prevent the loosening of legislations in areas covered by the OECD MNEs Guidelines.

<sup>266</sup> 1992 NAFTA, Chapter 11 (Investment), Article 1114 (Environmental Measures), para. 1; 1994 Mexico-Bolivia FTA, Chapter 15 (Investment), Article 15-14 (Measures relating to the Environment, Health and Safety), para. 1; 1997 Mexico-Nicaragua FTA, Chapter 16 (Investment), Article 16.14 (Measures relating to the Environment), para. 1; 1998 Mexico-Chile FTA, Chapter 9 (Investment), Article 9-15 (Measures relating to the Environment), para. 1.

<sup>267</sup> These provisions, albeit in a limited manner, contribute to protect policy space and ensure that new laws, regulations, and policies aimed at pursuing public interest objectives can be adopted by the signatories without legal risks.

<sup>268</sup> 1992 NAFTA, Chapter 11 (Investment), Article 1106 (Performance Requirements), para. 6; 1998 Mexico-Chile FTA, Chapter 9 (Investment), Article 9-07 (Performance Requirements), para. 6; 2001

Mexico-Cuba BIT, Article 5 (Performance Requirements); 2003 Mexico-Uruguay FTA, Chapter 13 (Investment), Article 13-07 (Performance Requirements); 2004 Mexico-Japan EPA, Chapter 7 (Investment), Article 65 (Performance Requirements).

<sup>269</sup> Performance requirements are stipulations, imposed on investors, requiring them to adopt a given conduct or to achieve certain economic or non-economic goals in the country where they invest.

<sup>270</sup> These provisions allow the signatories to adopt stipulations requiring investors to adopt a given conduct or achieve certain goals in relation to public interest objectives.

<sup>271</sup> 1992 NAFTA, Chapter 11 (Investment), Article 1133 (Expert Reports); 1998 Mexico-Chile FTA, Chapter 9 (Investment), Article 9-34 (Expert Reports); 2003 Mexico-Uruguay FTA, Chapter 13 (Investment), Article 13-33 (Expert Reports); 2004 Mexico-Japan EPA, Chapter 7 (Investment), Article 90 (Expert Reports); 2006 Mexico-United Kingdom BIT, Article 20 (Expert Reports).

<sup>272</sup> *Tecnicas Medioambientales Tecmed S. A. v United Mexican States*, ICSID Case No. ARB(AF)/00/2.

<sup>273</sup> 2011 Mexico-Peru FTA, Chapter 11 (Investment), Article 11.12 (Expropriation and Compensation), para. 2(b); 2011 Mexico-Central America FTA, Chapter 11 (Investment), Article 11.11 (Expropriation and Compensation), para. 3(c)(ii); 2013 Mexico-Turkey BIT, Article 8 (Expropriation and Compensation); 2014 Mexico-Panama FTA, Annex 10.11 (Expropriation and Compensation), para. (d).

<sup>274</sup> 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.30 (Social Responsibility Policies).

<sup>275</sup> 2016 TPP, Chapter 9 (Investment), Article 9.17 (Corporate Social Responsibility).

<sup>276</sup> The CPTPP incorporates by reference the provisions of the TPP. Hence, the RBC clause of the CPTPP is the same as that of the TPP, i.e. Article 9.17. See 2018 CPTPP, Article 1 (Incorporation of the Trans-Pacific Partnership Agreement), para. 1.

<sup>277</sup> 2019 USMCA, Chapter 14 (Investment), Article 14.17 (Corporate Social Responsibility).

<sup>278</sup> 2015 Mexico-Brazil Cooperation and Facilitation Investment Agreement (CFIA), Article 13 (Corporate Social Responsibility).

<sup>279</sup> 2016 TPP, Chapter 9 (Investment), Article 9.17 (Corporate Social Responsibility).

<sup>280</sup> These areas are: labour, environment, gender equality, human rights, indigenous and aboriginal peoples' rights, and corruption. See 2019 USMCA, Chapter 14 (Investment), Article 14.17 (Corporate Social Responsibility).

<sup>281</sup> 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.30 (Social Responsibility Policies); 2015 Mexico-Brazil CFIA, Article 13 (Corporate Social Responsibility).

<sup>282</sup> 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.30 (Social Responsibility Policies), para. 1.

<sup>283</sup> 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.30 (Social Responsibility Policies), para. 2.

<sup>284</sup> 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.30 (Social Responsibility Policies), para. 3.

<sup>285</sup> 2014 Pacific Alliance Additional Protocol, Chapter 10 (Investment), Article 10.28 (Relations with other Sections).

<sup>286</sup> 2015 Mexico-Brazil CFIA, Article 13 (Corporate Social Responsibility), para. 1.

<sup>287</sup> 2015 Mexico-Brazil CFIA, Article 13 (Corporate Social Responsibility), para. 2.

<sup>288</sup> 2015 Mexico-Brazil CFIA, Article 13 (Corporate Social Responsibility), para. 2.

<sup>289</sup> 2016 TPP, Chapter 9 (Investment), Article 9.19 (Submission of a claim to arbitration); 2018 CPTPP, Chapter 9 (Investment), Article 9.19 (Submission of a claim to arbitration).

<sup>290</sup> 2019 USMCA, Chapter 14 (Investment), Article 14.17 (Corporate Social Responsibility): "The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to

its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, which may include the OECD Guidelines for Multinational Enterprises. These standards, guidelines, and principles may address areas such as labor, environment, gender equality, human rights, indigenous and aboriginal peoples' rights, and corruption.”

<sup>291</sup> Trade Part of the Mexico-EU Global Agreement, Texts of the Agreement in Principle, Draft Chapter on Trade and Sustainable Development, Article 9 (Trade and Responsible Management of Supply Chains): “1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices, which contribute to an enabling environment, and the role of trade in pursuing the objective of responsible management of supply chains. 2. Pursuant to paragraph 1, each Party shall: (a) promote corporate social responsibility or responsible business conduct, including by encouraging the uptake of relevant practices by businesses; (b) support the dissemination and use of relevant international instruments, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact and the UN Guiding Principles on Business and Human Rights. 3. The Parties recognise the utility and shall promote the uptake of international sector-specific guidelines in the area of corporate social responsibility or responsible business conduct adopted by their Governments, such as the OECD Due Diligence Guidance documents for responsible supply chains, and shall promote joint work in this regard, including with respect to third countries. 4. The Parties shall exchange information as well as best practices and, as appropriate, cooperate with the other Party, regionally and in international fora on issues covered by this article.”

<sup>292</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.2, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>293</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.3, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>294</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.6, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>295</sup> OECD (2019), Action Plan to Strengthen National Contact Points for Responsible Business Conduct 2019 – 2021, Track Four: Promoting Policy Coherence, <http://mneguidelines.oecd.org/Action-Plan-to-Strengthen-National-Contact-Points-for-Responsible-Business-Conduct-2019-2021.pdf>.

<sup>296</sup> See OECD (2011), Guidelines for Multinational Enterprises, Part II “Implementation Procedures of the OECD Guidelines for Multinational Enterprises”, Procedural Guidance, para. 37, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>297</sup> OECD (2020), National Contact Points for Responsible Business Conduct, Providing Access to Remedy – Twenty Years and the Road Ahead, p. 26, <http://mneguidelines.oecd.org/NCPs-for-RBC-providing-access-to-remedy-20-years-and-the-road-ahead.pdf>.

<sup>298</sup> OECD (2020), Working together: National Human Rights Institutions and the OECD Guidelines for Multinational Enterprises, <http://mneguidelines.oecd.org/factsheet-working-together-national-human-rights-institutions-and-OECD-guidelines-for-MNEs.pdf>.

<sup>299</sup> OECD (2020), Trabajando juntas: las Instituciones Nacionales de Derechos Humanos y las Líneas Directrices de la OCDE para Empresas Multinacionales, <http://mneguidelines.oecd.org/factsheet-working-together-national-human-rights-institutions-and-OECD-guidelines-for-MNEs-ESP.pdf>.

<sup>300</sup> See Government of Morocco (n.d.), Website: secteur textile, <http://www.mcinet.gov.ma/en/content/textile>.

<sup>301</sup> See Government of Costa Rica (2017), Política Nacional de Responsabilidad Social 2017-2030, Policy axis No. 2, [https://www.meic.go.cr/meic/documentos/8qt7vsn4p/PN\\_ResponsaSocialCR181217.pdf](https://www.meic.go.cr/meic/documentos/8qt7vsn4p/PN_ResponsaSocialCR181217.pdf).

<sup>302</sup> See priority strategy No. 3.6 of the PNDH regarding the “promotion of policies aimed at reducing the negative impacts of business activity”. See Government of Mexico (2020), Programa Nacional de Derechos Humanos, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>303</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos, Action No. 3.6.2, <https://sidof.segob.gob.mx/notas/5607366>.

<sup>304</sup> Government of Mexico (2020), Programa Nacional de Derechos Humanos 2020-2024, Action No. 3.6.4, <https://sidof.segob.gob.mx/notas/5607366>.

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