

**INTERIM REPORT**  
**INDEPENDENT MEXICO LABOR EXPERT BOARD**  
**DECEMBER 15, 2020**

The Independent Mexico Labor Expert Board submits this Interim Report to the Interagency Labor Committee (ILC) and the United States Congress pursuant to Section 734 of the United States-Mexico-Canada Agreement Implementation Act, P.L. 116-113 (Jan. 29, 2020).

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## **I. STATUTORY BASIS FOR THIS REPORT**

In Section 731 of the USMCA Implementation Act,<sup>1</sup> Congress established the Independent Mexico Labor Expert Board (IMLEB), hereinafter “the Board,” comprising 12 members appointed by Congressional leadership and the Labor Advisory Committee, for the purpose of monitoring and evaluating the implementation of Mexico’s labor reform and compliance with its labor obligations. The Board shall also advise the Interagency Labor Committee with respect to capacity building activities needed to support such implementation and compliance.

Section 733 of the Act states that “The United States shall provide necessary funding to support the work of the Board, including with respect to translation services and personnel support.”

Section 734 of the Act provides that “the Board shall submit to appropriate congressional committees and to the Interagency Labor Committee an annual report that—

(1) contains an assessment of—

(A) the efforts of Mexico to implement Mexico’s labor reform<sup>2</sup>; and

(B) the manner and extent to which labor laws are generally enforced in Mexico; and

(2) may include a determination that Mexico is not in compliance with its labor obligations.”

## **II. ACTIVITIES OF THE BOARD**

To date, ten members have been appointed to the Board. Pursuant to Section 732(a)(1) of the USMCA Implementation Act, the Labor Advisory Committee for Trade Negotiations and Trade Policy appointed Benjamin Davis, Owen Herrstadt, Daniel Mauer, and Jason Wade. Pursuant to Section 732(a)(2), the Speaker of the House of Representatives appointed Catherine Feingold and Fred Ross. Pursuant to Section 732(a)(3), the President *pro tempore* of the Senate appointed Timothy Beaty and Sandra Polaski. Pursuant to Section 732(a)(4), the Minority Leader of the House of Representatives appointed Stefan Marculewicz and Philip Miscimarra.

The Board elected Benjamin Davis as Chair, and established ethics and procedure rules. It has held briefings with the Interagency Labor Committee (ILC) established under USMCA and communicated regularly with USTR and DOL officials. The ILC authorized \$250,000 for the Board’s operating expenses. The Board also made several requests for information to the ILC in the course of preparing this report.

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<sup>1</sup> P.L. 116-113, Jan. 29, 2020.

<sup>2</sup> As defined in the statute, “Mexico’s labor reform” means the legislation on labor reform enacted by Mexico on May 1, 2019. P.L. 116-113, §701(3).

The Board provides this Interim report to assist the ILC and the Congress in their assessment of the efforts of Mexico to implement Mexico’s labor reform, and the manner and extent to which labor laws are generally enforced in Mexico. While the first phase of implementation of the new labor institutions established under the 2019 reform was delayed until November 18, 2020 (due to the Covid-19 pandemic), the Board has identified a number of serious concerns with Mexico’s labor law enforcement process that we believe must be addressed promptly. In addition, the Board has identified issues affecting capacity building activities needed to support the implementation of Mexico’s labor reform and compliance with its labor obligations that also require immediate attention.

### **III. MONITORING AND EVALUATING THE IMPLEMENTATION OF MEXICO’S LABOR REFORM AND COMPLIANCE WITH ITS LABOR OBLIGATIONS**

#### **A. The manner and extent to which labor laws are generally enforced in Mexico<sup>3</sup>**

Mexico’s economically active population in the third quarter of 2020 was 53.8 million.<sup>4</sup> Of this population, 35 million are wage workers, but only about 23 million are defined as being in formal employment (i.e. covered by one of the government-run social security funds).<sup>5</sup> Only about 4.4 million workers are unionized (based on the latest reported data from 2018), with about half of these in the private sector.<sup>6</sup>

A large percentage of unionized private sector workers are covered by “protection contracts”<sup>7</sup> – “collective agreements” signed between employers and employer-dominated “protection” unions

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<sup>3</sup> This Interim Report focuses on Mexico’s enforcement of laws protecting freedom of association and collective bargaining, core labor rights which are essential elements of the 2019 labor law reforms. It does not attempt to evaluate the totality of enforcement of Mexican labor legislation.

<sup>4</sup> STPS, Información Laboral, November 2020, available at <http://www.stps.gob.mx/gobmx/estadisticas/pdf/perfiles/perfil%20nacional.pdf>

<sup>5</sup> These include IMSS (covering 19.6 million workers of whom 87% are permanent and 13% temporary), ISSSTE (covering 2.9 million workers), and some smaller funds. See Mexican Institute of Social Security, Puestos de trabajo afiliados al Instituto Mexicano de Seguro Social, June 2020, available at: [http://www.imss.gob.mx/prensa/archivo/202006/391#:~:text=%C2%B7%20Al%2031%20de%20mayo%20de,punto%20tres%20por%20ciento\)%20son](http://www.imss.gob.mx/prensa/archivo/202006/391#:~:text=%C2%B7%20Al%2031%20de%20mayo%20de,punto%20tres%20por%20ciento)%20son); Población derechohabiente del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) en México en 2018, según tipo de derechohabencia, available at: <https://es.statista.com/estadisticas/600239/poblacion-derechohabiente-en-el-issste-por-tipo-mexico/>.

<sup>6</sup> INEGI, Tasa de sindicalización, available at: <https://datos.gob.mx/busca/dataset/tasa-de-sindicalizacion-derechos-sindicales-recepcion-del-derecho>. See Enrique de la Garza, MEXICO: LA POLÉMICA ACERCA DE LA TASA DE AFILIACIÓN SINDICAL REVISADA AL 2010, available at <http://www.relatos.org/documentos/ORGDeLaGarza2.pdf>.

<sup>7</sup> Hasta 85% de los contratos colectivos existentes se firmaron a espaldas de los trabajadores: Alcalde, El Financiero, July 1, 2020, available at: <https://www.elfinanciero.com.mx/economia/hasta-85-de-los-contratos-colectivos-existentes-se-firmaron-a-espaldas-de-los-trabajadores-alcalde>; Gran mayoría de contratos son de protección, dice subsecretario de Trabajo, El Universal, July 24, 2020, available at:

without the involvement or even knowledge of the workers the union purports to represent.<sup>8</sup> In some cases, protection contracts have been signed by employer-dominated unions even before the employer began operation or hired its first worker.<sup>9</sup> The purpose of the protection contract is to lock in low wages and poor conditions and “protect” the employer from having to negotiate with an independent and democratic union, which would insist on better wages and working conditions. Indeed, most protection contracts give employers broad discretion to fix wages, working hours and other conditions of work. This has meant that millions of Mexican workers have worked extremely long hours (the longest among OECD countries)<sup>10</sup> for very low wages (the lowest average wages among OECD countries)<sup>11</sup>, often in hazardous working conditions and with no effective means to vindicate their rights at work.<sup>12</sup> Combined with policies of previous Mexican administrations to keep minimum wages low, the result was that there was no convergence with US wages in traded sectors such as manufacturing (Table 1).<sup>13</sup>

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<https://www.eluniversal.com.mx/nacion/gran-mayoria-de-contratos-son-de-proteccion-dice-subsecretario-de-trabajo>.

<sup>8</sup> See Graciela Bensúsan, Los “contratos de protección” en México, Nexos, 1 junio 1997, available at <https://www.nexos.com.mx/?p=8382>; José Alfonso Bouzas, coord., Contratación Colectiva de Trabajo en México: Informe a la Organización Regional Interamericana de Trabajadores (ORIT) (2007); Carlos de Buen Unna, Los contratos colectivos de trabajo de protección patronal en México (2011); Inés González Nicolás, coord., Auge y Perspectivas de los Contratos de Protección: ¿Corrupción Sindical o Mal Necesario? (2006); María Xelhuantzi López, La Democracia Pendiente: La libertad de asociación sindical y los contratos de protección en México (2000).

<sup>9</sup> See, e.g., David Welch and Nacha Cattán, How Mexico’s Unions Sell Out Autoworkers, *Bloomberg*, May 5, 2017, available at: <https://www.bloomberg.com/news/articles/2017-05-05/how-mexico-s-unions-sell-out-autoworkers>; Mark Stevenson, Mexico-US trade deal unlikely to boost low Mexican wages, Associated Press, Aug. 30, 2018, available at: <https://apnews.com/article/fff256b89fc24e3faee97a5b05f3cca3> (“Goodyear, for example, signed a labor contract with the pro-government CTM union in April 2015, months before its San Luis Potosí plant even opened or the first worker was hired.”).

<sup>10</sup> OECD, Data – Hours Worked, available at: <https://data.oecd.org/emp/hours-worked.htm>

<sup>11</sup> OECD, Data – Average Wages, available at: <https://data.oecd.org/earnwage/average-wages.htm#indicator-chart>

<sup>12</sup> In the absence of democratic unions, employers continue to use illegal practices such as requiring workers to sign a blank resignation letter that can be used against them at any time and blacklisting workers who have been dismissed. See ¿Cómo puedo saber si estoy en el buró laboral?, Factor Capital Humano, Sep. 2, 2019, available at: <https://factorcapitalhumano.com/destacado-home/como-puedo-saber-si-estoy-en-el-buro-laboral/2019/08/>; José Soto Galindo, El gobierno también utiliza listas negras de trabajadores. Comimsa de Conacyt contrató servicios de un buró laboral, *El Economista*, Nov. 25, 2018, available at: <https://www.eleconomista.com.mx/opinion/El-gobierno-tambien-utiliza-listas-negras-de-trabajadores.-Comimsa-de-Conacyt-contrato-servicios-de-un-buro-laboral-20181125-0002.html>; José Soto Galindo, Buró laboral sí existe y es de utilidad, dice Secretaría del Trabajo, *El Economista*, Sep. 2, 2018, available at: <https://www.eleconomista.com.mx/opinion/Buro-laboral-si-existe-y-es-de-utilidad-dice-Secretaria-del-Trabajo-20180902-0017.html>.

<sup>13</sup> The administration of President Andrés Manuel López Obrador raised minimum wages by 16 per cent in 2019 and by 20 per cent in 2020 and has announced plans to increase them again in 2021 by about 15 per cent. See, e.g., Max de Haldevang and Nacha Cattán, Mexico Seeks to Boost 2021 Minimum Wage Far Above Inflation,

TABLE 1

Hourly compensation costs in manufacturing, in US dollars and as a percent of costs in the United States (US =100)

Country	in US dollars			US = 100		
	1997 (2)	2015	2016 (3)	1997 (2)	2015	2016
United States	23.04	37.81	39.03	100	100	100
Canada	18.49	30.74	30.08	80	81	77
Mexico	2.62	4.38	3.91	11	12	10

Source: The Conference Board, International Labor Comparisons program, February 2018, <https://www.conference-board.org/ilcprogram/index.cfm?id=38269#Table1>

While the exact number of protection contracts is unknown,<sup>14</sup> Mexican labor officials have estimated that at least 75 per cent of current collective bargaining agreements (CBAs) are protection contracts.<sup>15</sup> Once a protection contract is registered, it becomes nearly impossible for workers to form an authentic union in the workplace and negotiate and sign a legitimate collective bargaining agreement. In the first place, the workers often do not know that a union

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Bloomberg, Dec. 9, 2020, available at: <https://www.bloomberg.com/news/articles/2020-12-09/mexico-seeks-to-boost-2021-minimum-wage-by-four-times-inflation>; Pedro Villa y Caña y Alberto Morales, Se analiza con sector empresarial aumento al salario mínimo para 2021, asegura AMLO, El Universal, Dec. 9, 2020, available at: <https://www.eluniversal.com.mx/nacion/amlo-se-analiza-con-sector-empresarial-aumento-al-salario-minimo-para-2021>.

<sup>14</sup> There are currently 27,500 collective bargaining agreements registered with the Federal Conciliation and Arbitration Board (CAB), and 532,469 with the Local CABs (not including data for Morelos and Querétaro), for a total of 559,969 agreements. See STPS, Reforma Constitucional en Materia de Justicia Laboral, Anexo 14, *Diagnóstico Situación de los Archivos de las Juntas Locales de Conciliación y Arbitraje*, available at: <https://reformalaboral.stps.gob.mx/Documentos/DSAJLCYA.pdf>

<sup>15</sup> See Secretaría del Trabajo y Previsión Social, PROGRAMA SECTORIAL DERIVADO DEL PLAN NACIONAL DE DESARROLLO 2019-2024, Diario Oficial, June 24, 2020, nn. 14-15, available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5595490&fecha=24/06/2020](http://dof.gob.mx/nota_detalle.php?codigo=5595490&fecha=24/06/2020); Verónica Gascón, Advierten libertad sindical simulada, El Norte, 13 April 2020, available at <https://www.elnorte.com/advierten-libertad-sindical-simulada/ar1921065>; Hasta 85% de los contratos colectivos existentes se firmaron a espaldas de los trabajadores: Alcalde, El Financiero, 7 January 2020, available at <https://www.elfinanciero.com.mx/economia/hasta-85-de-los-contratos-colectivos-existentes-se-firmaron-a-espaldas-de-los-trabajadores-alcalde>.

“represents” them, nor in most cases can they obtain a copy of the collective agreement that governs their workplace.<sup>16</sup> If they are able to obtain this information, they can only challenge the existing union by forming or affiliating to an independent union and filing a demand for collective bargaining (*emplazamiento*),<sup>17</sup> to which the employer responds with the defense that it cannot bargain with the independent union because it is already a party to a collective bargaining agreement (with the protection union). The independent union must then file a demand against the employer-dominated union for control of the collective bargaining agreement (*titularidad*), which is resolved by an election (*recuento*) supervised by the Conciliation and Arbitration Board. In practice, when workers attempt to rid themselves of an employer-dominated union through a *recuento*, the employer, the employer-dominated union and the government have often colluded to intimidate workers through delays, threats and physical violence, and dismissal.<sup>18</sup> In its totality, the protection contract system allows employers to use protection union leaders to suppress the rights of their employees.<sup>19</sup>

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<sup>16</sup> Prior to the 2019 labor law reform, there was no requirement that workers be given a copy of their collective bargaining agreement. In some cases, workers were aware from their pay receipts that they paid dues, and might be able to obtain a copy of the collective bargaining agreement if they were under the jurisdiction of the Federal or Mexico City CABs, which are the only ones that make collective bargaining agreements publicly available online. In other cases, employers did not deduct union dues from workers’ paychecks but simply made a direct payment to the protection union (or its leader), making it effectively impossible for workers to identify their “representative.” While under the 2019 reform all employers are required to provide their workers with copies of the collective bargaining agreement pursuant to the Protocol for Legitimation of Existing Collective Bargaining Agreements, this mandate will not be fully implemented until November 1, 2023.

<sup>17</sup> Technically, an *emplazamiento* is a notification that the union intends to strike the employer on a specific date. In practice, it is the mechanism for initiating contract negotiations which in almost all cases do not result in a strike.

<sup>18</sup> See, e.g., Heather L. Williams. “Of Labor Tragedy and Legal Farce: The Han Young Factory Struggle in Tijuana, Mexico,” *Social Science History*, Vol. 27, No. 4, Special Issue: Labor Internationalism (Winter, 2003), pp. 525-550, available at <http://www.jstor.org/stable/40267825>; Alma Proa, ‘Revientan’ votaciones trabajadores de Arneses, Zócalo, 29 de noviembre de 2018, available at [https://www.zocalo.com.mx/new\\_site/articulo/interviene-fuerza-coahuila-por-disturbio-en-arneses](https://www.zocalo.com.mx/new_site/articulo/interviene-fuerza-coahuila-por-disturbio-en-arneses); Arely Regalado, Denuncia FSSP agresión en votaciones de mineros en Sombrerete, NTR Zacatecas, 27 de noviembre de 2012, available at <http://ntrzacatecas.com/2012/11/17/denuncia-fssp-agresion-en-votaciones-de-mineros-en-sombrerete/>; Rafael de Santiago y Alma Ríos, Agreden a integrantes del Sindicato Nacional Minero durante recuento de votos de mina San Martín, en Sombrerete, La Jornada Zacatecas, 28 de febrero de 2018, available at <http://ljz.mx/2018/02/28/agreden-a-trabajadores-durante-recuento-de-votos-de-mina-san-martin/>.

<sup>19</sup> Mexican labor law does not prohibit an employer from making direct payments to a union official, nor does it bar a union official from accepting such payments. Nor does the labor law require reporting or disclosure of such payments. Legislation has been introduced in the Mexican Congress that would require union leaders to make public financial statements and prohibit personal enrichment through union office. Que reforma y adiciona diversas disposiciones de la Ley Federal del Trabajo, a cargo de la diputada Margarita García García, del Grupo Parlamentario del PT, Gaceta Parlamentaria, año XXIII, número 5455-III, Feb. 11, 2020, available at: <http://gaceta.diputados.gob.mx/Gaceta/64/2020/feb/20200211-III.html#Iniciativa4>. See Pablo Franco Hernández, La libertad y la democracia. Principio y corazón de los sindicatos, p.14, MasReformasMejor Trabajo, Nov. 14, 2020, available at: <https://www.masreformasmejortrabajo.mx/index.php/sociedad/democracia-y-libertad-sindical/item/4284-la-democracia-y-la-libertad-principios-y-corazon-de-los-sindicatos>.

At the state and federal levels, tripartite Conciliation and Arbitration Boards (CABs) registered contracts, including protection contracts, and adjudicated collective labor disputes. In many cases, the leaders of employer-dominated unions holding the protection contracts are also the worker “representatives” serving on the CABs (and not infrequently, political office-holders as well). Together with the employers and government representatives, employer-dominated unions have thwarted the efforts of workers to organize independent unions and to bargain collectively. In turn, such union leaders had little accountability to their members and had the power to have dissident workers dismissed under the “exclusion clauses” embedded in CBAs.

Workers and independent union leaders who challenge this system have repeatedly faced surveillance, harassment, threats, arrest, physical violence, and assassination. On June 8, 2020, the state government in Tamaulipas arrested union leader and attorney Susana Prieto Terrazas, a leader of efforts by maquiladora workers to break away from Confederación de Trabajadores de México (CTM) control and establish independent unions, on charges of “inciting riot, threats and coercion” – an action that USTR Robert Lighthizer called “a bad indicator” in a Congressional hearing. Prieto was released after two weeks in prison, on the condition that she pay fines and restitution, have no contact with the CAB in Tamaulipas, and remain in the state of Chihuahua, where the state government has also brought criminal charges against her relating to worker protests in the maquiladoras. While the Federal Labor Secretary has criticized these actions, President López Obrador has said that because the matter is under state jurisdiction he cannot address it directly.<sup>20</sup>

The protection contract system was criticized by the International Labor Organization (ILO) as a serious violation of the right to freedom of association protected by ILO Convention 87.<sup>21</sup> The ILO Committee on Freedom of Association (CFA) issued several reports in Case No. 2694 that examined the problem of protection contracts in great detail and urged the social partners to identify necessary reforms in law and in practice.<sup>22</sup> The Committee on the Application of Standards reached similar conclusions.<sup>23</sup> The issue of protection contracts as a violation of the

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<sup>20</sup> Daina Beth Solomon, Mexican labor activist's arrest sends 'wrong signal' under North America trade deal, Reuters, June 30, 2020, available at: <https://www.reuters.com/article/us-usa-trade-usmca-mexico-analysis/mexican-labor-activists-arrest-sends-wrong-signal-under-north-america-trade-deal-idUSKBN2413E4>; Mark Stevenson, Crusading Mexican labor lawyer freed, banned from traveling, Associated Press, July 2, 2020, available at <https://apnews.com/article/c0e296a393b6df51f34b2dcb80816f29>.

<sup>21</sup> Mexico ratified Convention 87, Freedom of Association and Protection of the Right to Organize, on April 1, 1950. More recently, Mexico ratified ILO Convention 98 on the Right to Organize and Collective Bargaining on November 23, 2018. See ILO, Ratifications for Mexico, available at: [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).

<sup>22</sup> Other CFA cases concerning protection contracts include CFA Case Nos. 2393, 2478, 2774, 2919, and 3156. See, ILO, Freedom of Association Case (Mexico), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20060:0::NO::P20060\\_COUNTRY\\_ID,P20060\\_COMPLAINT\\_STATU\\_ID:102764,1495812](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20060:0::NO::P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:102764,1495812)

<sup>23</sup> See, e.g., ILO, Committee on the Application of Standards, Convention 87 – Mexico, 104<sup>th</sup> ILC Session (2015), available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3241939](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3241939) (“the Committee requested the Government to...identify, in consultation with the social partners, additional legislative reforms to the 2012 Labour Law necessary to comply with Convention No. 87. This should include



principles of freedom of association and collective bargaining was also central to cases filed under the North American Agreement on Labor Cooperation, the labor side agreement to NAFTA.<sup>24</sup>

## Subcontracting

Subcontracting or “outsourcing” has recently been the focus of intense debate in Mexico. Economic studies indicate that the percentage of the workforce under subcontracting regimes rose from 8.6 per cent in 2004 to 16.6 per cent in 2014.<sup>25</sup> However, in key industrial sectors the percentages are much higher. The percentage of autoparts workers in 2014 who were subcontracted was 24 per cent,<sup>26</sup> while in the aerospace industry in Tijuana it reached nearly 50 per cent.<sup>27</sup> These practices make it increasingly difficult for workers to determine who bears legal responsibility for their wages, benefits and working conditions and to obtain a remedy if their rights are violated.

Subcontracting has a direct impact on the ability to enforce labor law. For example, the mining industry is in Federal jurisdiction, so CBAs must be deposited and disputes resolved the Federal CAB. However, a mining company may subcontract its workforce to a personnel services company which is in the local (State) jurisdiction.<sup>28</sup>

Because none of the local jurisdictions make CBAs public, it is difficult or impossible for workers to get a copy of their CBA or find out what union ‘represents’ them. Also, subcontracting may

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reforms that would prevent the registration of trade unions that cannot demonstrate the support of the majority of the workers they intend to represent, by means of a democratic election process – so-called protection unions”).

<sup>24</sup> See, e.g., Submission 9702 (Han Young) and Submission 9703 (ITAPSA). These cases led to a 2000 Ministerial Agreement between the US and Mexico which in part were meant to help address the problem of protection contracts. Available at: <https://www.dol.gov/sites/dolgov/files/ILAB/reports/minagreement9702-9703.htm>

<sup>25</sup> Landy Sánchez et al., Tendencias de la subcontratación en México, in Graciela Bensusán y Landy Sánchez (coordinadoras), Estudio sobre la Subcontratación en México: tendencias, modalidades y regulación, El Colegio de México (forthcoming), p. 57.

<sup>26</sup> Alex Covarrubias, La automotriz en México: La subcontratación en una industria en auge, in Graciela Bensusán y Landy Sánchez (coordinadoras), Estudio sobre la Subcontratación en México: tendencias, modalidades y regulación, El Colegio de México (forthcoming), p. 125.

<sup>27</sup> Jordy Micheli y Alfredo Hualde, El outsourcing laboral en la industria maquiladora de exportación: los casos de la industria electrónica y aeroespacial en Tijuana, in Graciela Bensusán y Landy Sánchez (coordinadoras), Estudio sobre la Subcontratación en México: tendencias, modalidades y regulación, El Colegio de México (forthcoming), p. 231.

<sup>28</sup> See Complaint Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises Concerning: The Operations of Excellon Resources Inc. at the La Platosa Mine in the Ejido “La Sierrita”, Durango State, México, May 29, 2012, available at: [https://complaints.oecdwatch.org/cases/Case\\_251](https://complaints.oecdwatch.org/cases/Case_251).



be used to shift responsibility for profit sharing payments (*utilidades*) from the parent company (which has profits but no workers) to the contractor (which has workers but no profits).<sup>29</sup>

Last month, Mexican President López Obrador submitted a bill to the Mexican Congress that would sharply limit subcontracting.<sup>30</sup> However, following an outcry from employers, the President signed an agreement with some of the major employer associations and most national labor confederations to postpone the debate on the legislation until 2021.<sup>31</sup>

## **B. Mexico's efforts to implement its Labor Reform**

### **1. Mexico's May 1, 2019 Labor Law Reform**

Mexico's reform of the Federal Labor Law (FLL), enacted on May 1, 2019,<sup>32</sup> implemented reforms to Article 123 of the Constitution effected in 2017<sup>33</sup> and additional provisions to comply with Article 23 and Annex 23-A of the USMCA.<sup>34</sup> The reform legislation addresses a number of long-standing obstacles, including protection contracts, the lack of democratic governance in many labor unions, and the lack of independence of government institutions responsible for labor relations and labor justice.<sup>35</sup> The following are among the key provisions of the legislation:

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<sup>29</sup> Reparto de utilidades es la causa detrás del outsourcing, aseguran expertos, El Financiero, Nov. 26, 2020, available at: <https://www.elfinanciero.com.mx/economia/el-reparto-de-utilidades-incentiva-la-contratacion-por-outsourcing-jorge-sales>.

<sup>30</sup> See, e.g., Daina Beth Solomon, "Mexico president moves against subcontracting, aiming to end labor abuses," Reuters, Nov. 13, 2020," available at: <https://www.reuters.com/article/mexico-labor-idUSL1N2HY1HN>.

<sup>31</sup> Justin Villamil, Mexico's AMLO Delays Ban on Outsourcing Amid Uproar by Business, Bloomberg, Dec. 9, 2020, available at: <https://www.bloomberg.com/news/articles/2020-12-09/mexico-s-amlo-delays-ban-on-outsourcing-amid-uproar-by-business?sref=DoKwwkyq>.

<sup>32</sup> DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de la Defensoría Pública, de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores y de la Ley del Seguro Social, en materia de Justicia Laboral, Libertad Sindical y Negociación Colectiva, May 1, 2019, available at [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5559130&fecha=01/05/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5559130&fecha=01/05/2019)

<sup>33</sup> DECRETO por el que se declaran reformadas y adicionadas diversas disposiciones de los artículos 107 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Justicia Laboral, available at [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5472965&fecha=24/02/2017](http://www.dof.gob.mx/nota_detalle.php?codigo=5472965&fecha=24/02/2017)

<sup>34</sup> See USMCA, Chapter 23, available at <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

<sup>35</sup> These reforms to the FLL apply to workers in the private sector who are covered by Part A of Article 123 of the Mexican Constitution. The May 1, 2019 reform also expanded some rights of public sector workers covered by Part B, who are governed by separate secondary legislation. See Pablo Franco Hernández, La libertad y la democracia. Principio y corazón de los sindicatos, MasReformasMejorTrabajo, Nov. 14, 2020, pp. 15-16,

- Union statutes must provide that officers be elected by personal, free, secret and direct vote of the members and following gender proportionality.<sup>36</sup> These provisions were required to be included in all union statutes within 240 days,<sup>37</sup> but deadlines have been extended due to the pandemic.<sup>38</sup>
- The labor authorities may verify the results of union elections based on a request from the union leadership or 30 per cent of the workers.<sup>39</sup>
- Union statutes must provide for disclosure of financial reports to the members, in writing, every six months.<sup>40</sup>
- Employers must give all workers covered by a collective bargaining agreement a printed copy of that agreement.<sup>41</sup>
- All collective bargaining agreements<sup>42</sup> and union statutes<sup>43</sup> must be made available online.
- All initial collective bargaining agreements and all existing collective bargaining agreements that are renegotiated must be ratified by a personal, free and secret vote of the covered workers.<sup>44</sup>

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available at: <https://www.masreformasmejortrabajo.mx/index.php/sociedad/democracia-y-libertad-sindical/item/4284-la-democracia-y-la-libertad-principios-y-corazon-de-los-sindicatos>

<sup>36</sup> FLL Articles 371.IX and 371.IX Bis. These provisions were upheld in [A.R. 1109/2019](#), p. 40, [A.R. 18/2020](#), p. 40 and [A.R. 28/2020](#), p. 41, [adopted](#) by the Second Chamber of the Supreme Court on Nov. 25, 2020.

<sup>37</sup> FLL Transitional Article 23

<sup>38</sup> The most recent data provided by Mexico indicate that in the Federal jurisdiction 1,754 unions out of 2,033 (86.3%) have revised their statutes to comply with the 2019 Reform, while in the Local (State) jurisdiction 1,370 out of 8,632 unions have done so. Consejo de Coordinación para la Implementación de la Reforma al Sistema de Justicia Laboral, Acta de la Tercera Sesión Ordinaria, 17 de julio de 2020 (PROYECTO).

<sup>39</sup> FLL Article 371 Bis, upheld in [A.R. 1109/2019](#), p. 46, [A.R. 18/2020](#), p. 46 and [A.R. 28/2020](#), p. 47.

<sup>40</sup> FLL Article 373; also Article 358.IV, upheld in [A.R. 30/2020](#), p. 39, [adopted](#) by the Second Chamber of the Supreme Court on Nov. 25, 2020.

<sup>41</sup> FLL Article 132.XXX.

<sup>42</sup> FLL Article 391

<sup>43</sup> FLL Article 365 Bis

<sup>44</sup> FLL Articles 390 Ter and 400 Bis, upheld in [A.R. 1109/2019](#), p. 58, [A.R. 18/2020](#), pp. 55, 58 and [A.R. 28-2020](#), p. 59.

■ All existing collective bargaining agreements must be submitted to a personal, free and secret vote by May 1, 2023.<sup>45</sup>

■ Where a union seeks to represent workers for the first time, it must demonstrate support of at least 30% of the workers in order to negotiate a collective bargaining agreement.<sup>46</sup>

■ New procedures where one union challenges another for control (*titularidad*) of a collective bargaining agreement.<sup>47</sup>

To safeguard these rights, the reform establishes:

■ A new independent Federal Center for Conciliation and Labor Registration (Federal Center),<sup>48</sup> charged with verifying democratic union procedures and where all union statutes and CBAs will be deposited and made publicly accessible online.

■ A new system of labor courts, replacing the tripartite Conciliation and Arbitration Boards (CABs).

## 2. Legal challenges to the reforms

Following the enactment of the labor reform in 2019, a large number of unions filed appeals (amparos) challenging the constitutionality of several provisions of the law.<sup>49</sup> On November 25, 2020, the Second Chamber of the Supreme Court issued four decisions upholding the

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<sup>45</sup> FLL Transitional Article 11, upheld in [A.R. 1109/2019](#), p. 67, [A.R. 18/2020](#), p. 67 and [A.R. 28/2020](#), p. 75).

<sup>46</sup> FLL Article 390 Bis.

<sup>47</sup> FLL Articles 389 and 897 through 897-G.

<sup>48</sup> <https://centrolaboral.gob.mx/>. Currently union registration is still handled by the Labor Secretariat, <https://registrodeasociaciones.stps.gob.mx/>, and CBAs by the Federal and state CABs.

<sup>49</sup> Javier Cerón Espinosa, Más de 400 amparos pendientes por Reformas a la ley laboral, Punto Critico, Jun. 26, 2019, available at: <https://www.elpuntocritico.com/vision-laboral-javier-eron-espinosa/169087-mas-de-400-amparos-pendientes-por-reformas-a-la-ley-laboral-ctm-ct-voto-directo-no-tiene-fundamento-ctm-cuauhtemoc-pri>; Gerardo Santillán, Sindicatos ratificarán amparos contra “excesos” de la Ley Federal del Trabajo, Línea de Contraste, 19 June 2019, available at: <https://www.lineadecontraste.com/sindicatos-ratificaran-amparos-contra-excesos-de-la-ley-federal-del-trabajo/>; María del Pilar Martínez, Arranca la oleada de amparos contra la reforma laboral, El Economista, June 23 2019, available at: <https://www.eleconomista.com.mx/politica/Arranca-la-oleada-de-amparos-contra-la-reforma-laboral-20190623-0001.html>; Estado no puede intervenir en la vida sindical: CTM, Paralelo19MX, 28 June 2019, available at: <https://www.paralelo19.mx/2019/metropolitana/item/3924-estado-no-puede-intervenir-en-la-vida-sindical-ctm>. See International Lawyers Assisting Workers (ILAW) Network, AMICUS BRIEF CONCERNING THE AMPAROS AGAINST MEXICAN LABOR LAW REFORMS, June 23, 2020; Mexican Supreme Court to consider challenges of new labor law, Inside Trade, June 25, 2020, available at: <https://insidetrade.com/daily-news/mexican-supreme-court-consider-challenges-new-labor-law>.

constitutionality of a number of key Articles.<sup>50</sup> The Court withheld judgment on another group of Articles that have been challenged, pending an allegation of actual injury.<sup>51</sup> In no case did the Court find a provision to be unconstitutional.

In upholding the constitutionality of the reforms, the Supreme Court relied extensively on the interpretation of ILO Conventions 87 and 98 by the Committee on Freedom of Association, as well as decisions of the Inter-American Court of Human Rights.

While the 2020 reform now appears to stand on solid constitutional ground, other recent and pending decisions of the Supreme Court appear to threaten workers' exercise of their fundamental rights. In one of the first representation elections (*recuentos*) held under the new law, the Supreme Court reversed the decision of a Collegiate Tribunal that found serious irregularities and awarded control of the CBA to a well-known protection union.<sup>52</sup> In addition, the Court will shortly rule on a case where the employer is arguing that it can end a legal strike by replacing the striking union (and its members) with a union supported by the employer.<sup>53</sup> These developments raise the possibility that worker rights established by Mexico in compliance with the USMCA and international law could be effectively nullified by judicial actions.

### 3. Implementation of union democracy and transparency provisions of the reform

As noted above, many Mexican workers who are covered by collective bargaining agreements are not even aware that these agreements exist. Others know they have union representation but have never seen their CBAs – indeed, in many workplaces asking for a copy of the contract is a clear way to be identified as a troublemaker. Workers in the Federal jurisdiction<sup>54</sup> and in

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<sup>50</sup> SESIÓN PÚBLICA ORDINARIA DE LA SEGUNDA SALA DE LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN, CELEBRADA A DISTANCIA, EL MIÉRCOLES 25 DE NOVIEMBRE DE 2020, available at <https://www.scjn.gob.mx/sites/default/files/versiones-taquigraficas/documento/2020-11-25/ATAQ-25-11-2020.pdf>, affirming [A.R. 1109/2019](#), [A.R. 18/2020](#), [A.R. 28/2020](#), and [A.R. 30/2020](#). The Court upheld the constitutionality of the following Articles: 110.VI, 371, 371-Bis, 390-Ter, 399-Ter, 400 Bis, 11<sup>th</sup> Transitional, 22<sup>nd</sup> Transitional, 23<sup>rd</sup> Transitional.

<sup>51</sup> The Court deferred a decision on the constitutionality of the following Articles: 245 Bis; 360; 364; 369; 373; 590-D; 897 F; 923; 927; 27<sup>th</sup> Transitional.

<sup>52</sup> AMPARO DIRECTO EN REVISIÓN 373/2020, available at: [https://www.scjn.gob.mx/sites/default/files/listas/documento\\_dos/2020-09/373.pdf](https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2020-09/373.pdf)

<sup>53</sup> Recurso de reclamación 351/20, available at : <https://www.supremacorte.gob.mx/sites/default/files/versiones-taquigraficas/documento/2020-08-03/ATAQ-29-07-2020.pdf>.

<sup>54</sup> Article 123.XXX.a of the Mexican Constitution gives the Federal CAB jurisdiction over key industries, including textiles, electricity, movies, rubber, sugar, mining, metal, hydrocarbons, petrochemical, cement, lime, automotive (including autoparts), chemical and pharmaceutical, paper, vegetable oils, food production, bottling, railroads, lumber, glass, tobacco, and banking. All other sectors are handled by the local CABs. However, these distinctions have not been respected. In Matamoros, for example, many maquiladoras producing autoparts have deposited their CBAs in the local CAB. See Exhorta STPS al diálogo para resolver huelga en 45 empresas de Matamoros, *Quadratin*, Jan. 25, 2019, available at: <https://mexico.quadratin.com.mx/exhorta-stps-al-dialogo-para->

Mexico City can obtain their CBAs online, although few know how to do this and most workers only have internet access through their cell phones, and lack easy access to computers and printers. This makes it effectively impossible to read and understand a legal contract that may run a hundred pages or more.<sup>55</sup>

The 2019 reforms address this problem in several ways. First, Article 132.XXX requires that each employer give workers a printed copy of their CBA, but only within 15 days of deposit in the Federal Center. Because the Federal Center did not begin operation until November 18, 2020, new contracts will only be deposited as they are renegotiated, which may take up to two years.

In addition to this requirement, all existing CBAs must be subjected to a legitimation vote by May 1, 2023. The legitimation procedure requires that the employer provide workers with a printed copy of the CBA.<sup>56</sup>

Finally, the law now provides that “Preferably, the full text of the public versions of the collective bargaining agreements must be available free of charge on the Internet site of the Registration Authority” (the Federal Center).<sup>57</sup> Currently, only CBAs for the Federal jurisdiction<sup>58</sup> and Mexico City<sup>59</sup> are available online. In response to an information request from the Board, Mexican officials reported that for six of the states in the first phase of implementation (Campeche, Chiapas, Durango, San Luis Potosí, Tlaxcala and Zacatecas), scanning of CBAs would be completed by November 30, 2020 and cataloging by December 31, 2020.

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[resolver-huelga-en-45-empresas-de-matamoros/](#). In addition, an employer in an industry in the Federal jurisdiction may outsource its workers to a service provider, which then signs a protection contract that is deposited in the local CAB. Because none of the local CABs (except Mexico City) make CBAs public, neither the workers nor the public will know of the existence of such contracts. See Complaint Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises Concerning: The Operations of Excellon Resources Inc. at the La Platosa Mine in the Ejido “La Sierrita”, Durango State, México, May 29, 2012, available at: [https://complaints.oecdwatch.org/cases/Case\\_251](https://complaints.oecdwatch.org/cases/Case_251)

<sup>55</sup> Instituto Federal de Telecomunicaciones, En México hay 80.6 millones de usuarios de internet y 86.5 millones de usuarios de teléfonos celulares: ENDUTIH 2019, Feb. 17, 2020, available at:

[http://www.ift.org.mx/comunicacion-y-medios/comunicados-ift/es/en-mexico-hay-806-millones-de-usuarios-de-internet-y-865-millones-de-usuarios-de-telefonos-celulares#:~:text=En%20M%C3%A9xico%20hay%2080.6%20millones%20de%20usuarios%20de%20internet%20C%20que,2015%20\(57.4%20por%20ciento\).](http://www.ift.org.mx/comunicacion-y-medios/comunicados-ift/es/en-mexico-hay-806-millones-de-usuarios-de-internet-y-865-millones-de-usuarios-de-telefonos-celulares#:~:text=En%20M%C3%A9xico%20hay%2080.6%20millones%20de%20usuarios%20de%20internet%20C%20que,2015%20(57.4%20por%20ciento).)

<sup>56</sup> PROTOCOLO para la legitimación de contratos colectivos de trabajo existentes. Art. 2.4, Jul. 31, 2019, available at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5566910&fecha=31/07/2019](https://dof.gob.mx/nota_detalle.php?codigo=5566910&fecha=31/07/2019).

<sup>57</sup> FLL, Art. 391 Bis.

<sup>58</sup> <http://www.stps.gob.mx/gobmx/jfca/contratoscolectivos.html>.

<sup>59</sup> <http://www.juntalocal.cdmx.gob.mx/contratos-colectivos/>.

While Article 371 sets out detailed requirements for the content of union statutes, there is no requirement that workers be given a copy of these statutes. Article 365 Bis requires that the texts of union registration documents, including statutes, certifications (*toma de nota*), minutes of assemblies and other documents deposited with the Federal Center be provided on its website. Currently this information is on the website of the General Directorate of Registry of Associations of the STPS. However, recent attempts by members of this Board to retrieve files for specific unions have been unsuccessful.

Article 373 requires unions to present a detailed financial report at an assembly every six months, and to provide this report to each member in writing.<sup>60</sup>

#### 4. Transitional mechanisms and experience to date

##### a. Transitional mechanisms

The May 1, 2019 reform of Mexico's federal labor law (FLL) envisions a four-year period to fully install the new labor relations and justice system called for in the law.<sup>61</sup> To this end the law establishes a series of transition deadlines over the four years to May 2023 for implementing the statutory, institutional and operational aspects of the reform. This timeline is consistent with the obligations Mexico assumed under USMCA Annex 23-A, "Worker Representation in Collective Bargaining in Mexico".<sup>62</sup>

The FLL set a 180-day deadline for the Mexican Congress to issue a separate law establishing and defining the functions of a new, independent and impartial institution at the federal level that will be responsible for overseeing the exercise of freedom of association and the right to collective bargaining. The resulting Organic Law of the Federal Center for Conciliation and Labor Registration was adopted by the deadline set out in the labor law and came into effect on January 6, 2020.<sup>63</sup> The FLL transition timetable mandates that the Federal Center must begin its functions regarding the registration of unions and collective bargaining contracts within two years, that is, not later than May 1, 2021. The Federal Center began its initial operations on November 18, 2020. It has headquarters in Mexico City and will also have decentralized

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<sup>60</sup> See also Art. 358.IV, Art. 371 Bis.XIII

<sup>61</sup> Ley Federal del Trabajo, Transitorios. Available at:  
[http://www.diputados.gob.mx/LeyesBiblio/pdf/125\\_020719.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf)

<sup>62</sup> USMCA Chapter 23 Labor and Annex 23-A. Available at:  
<https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

<sup>63</sup> Ley Orgánica del Centro Federal de Conciliación y Registro Laboral. Available at:  
[http://www.diputados.gob.mx/LeyesBiblio/pdf/LOFCRL\\_060120.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LOFCRL_060120.pdf)



branches in all states. In addition to its oversight of union registration and collective bargaining, it will also be responsible for the conciliation of labor disputes that fall within Federal jurisdiction.

Until the Federal Center begins its full scope of operations regarding freedom of association and the right to collective bargaining in May 2021, the FLL assigned certain of its functions to the Mexican Secretary of Labor and Social Welfare (STPS). Notable among these was to begin the process of legitimizing existing collective bargaining agreements by submitting them to a secret ballot vote by the workers they cover. According to the FLL and Mexico's commitments under USMCA Annex 23-A, all existing collective bargaining agreements must be reviewed and voted upon by workers at least once during the four years after the labor reforms went into effect, that is, by May 2023. The FLL instructed STPS to issue a protocol laying out the procedures that would be used to verify workers' support for their CBAs until the Federal Center takes over this responsibility. The FLL set a deadline of three months for the protocol to be issued and STPS did so in a timely fashion on July 31, 2019.<sup>64</sup>

The protocol establishes a procedure by which the union that controls a collective bargaining agreement can legitimize it by scheduling a vote and advising the labor authorities of this vote with at least 10 days' notice through an online platform operated by the STPS.<sup>65</sup> The union decides when to hold the vote, makes the arrangements for the vote and must ask either the STPS or a notary hired by the union to observe that the vote followed stipulated procedures, for example that it was held in a place accessible to the workers and allowed them to cast votes "in a personal, free, secret, direct, peaceful, agile and secure manner, without being able to be coerced in any way." The employer must provide the necessary facilities and give workers a printed copy of the collective bargaining agreement at least three business days before the vote.

After the vote the union must post the results in the workplace and report the result to the STPS. If a majority of eligible workers voted to approve the agreement, STPS will certify that the contract is legitimate unless it sees irregularities or inconsistencies in the data reported to it by the union. If the contract does not have the majority support of the workers it will be considered terminated. However, the law stipulates that if the contract is terminated, any provisions that are superior to the legal minimum must be maintained by the employer for the benefit of the workers.

#### b. Legitimation of existing collective bargaining agreements to date

The STPS established the online platform for unions to use in arranging the legitimation votes, and the first votes were held in September 2019. About 200 votes were completed before the work was suspended in March 2020 due to the spread of the coronavirus. It then resumed in those states that were not at the highest level of risk from the virus. As of December 10, 2020,

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<sup>64</sup> Gobierno de Mexico. "Protocolo para la legitimación de contratos colectivos de trabajo existentes". Available at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5566910&fecha=31/07/2019](https://dof.gob.mx/nota_detalle.php?codigo=5566910&fecha=31/07/2019)

<sup>65</sup> <https://legitimacioncontratoscolectivos.stps.gob.mx/>



279 legitimization votes have been held and another 170 are scheduled.<sup>66</sup> As noted above, there are currently 27,500 CBA's registered with the Federal CAB, and 532,469 with the Local CABs, for a total of 559,969 CBAs.<sup>67</sup> The STPS has estimated that as many as 85 per cent of existing agreements may not be legitimate and that only 10 or 15 per cent of existing contracts will pass the legitimization test, while the protection contracts will simply go away as of the May 2023 deadline because no vote will be organized.<sup>68</sup> In any case, the current pace would not achieve legitimization of even 10 per cent—56,000—of the existing agreements.<sup>69</sup>

The STPS website lists the legitimization votes with the name of the union and employer involved.<sup>70</sup> The website does not share the results of the votes, nor does it link to the CBAs under consideration. Some of the unions list their affiliation to one of the labor confederations. For those that do, most were affiliated to the largest traditional Mexican labor confederation, the Confederación de Trabajadores de México (CTM), followed by two other traditional confederations, the Confederación Revolucionaria de Obreros y Campesinos (CROC) and the Confederación Regional Obrera Mexicana (CROM). The CTM has encouraged its affiliates to conduct the votes, including through a national workshop in November 2020 where the General Director of the new Federal Center was invited to speak.<sup>71</sup> It should be noted that while actively promoting legitimization of its contracts, CTM affiliates filed a large number of legal challenges to the labor law reform, alleging unlawful interference in internal union affairs including through the requirement for worker approval of existing collective bargaining agreements.<sup>72</sup>

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<sup>66</sup> <https://legitimacioncontratoscolectivos.stps.gob.mx/>

<sup>67</sup> STPS, [Diagnóstico Situación de los Archivos de las Juntas Locales de Conciliación y Arbitraje](#). This does not include data for two states, Morelos and Querétaro. *Id.*, p. 4 n.2.

<sup>68</sup> “Mexican official: 80% of labor contracts are pro-company,” Associated Press, Jan. 7, 2020, available at: <https://apnews.com/article/fd72a72e16876163f5eb8c74c29f74e3>; Omar Brito, “Solo 15% de contratos colectivos pasará legitimación de trabajadores: STPS,” Milenio, Oct. 7, 2020, available at: <https://www.milenio.com/politica/15-contratos-colectivos-pasara-legitimacion-trabajadores>; STPS, Boletín 168/2019, “Reforma Laboral atacará contratos de protección en el país: Alfredo Domínguez Marrufo,” available at: <https://www.gob.mx/stps/prensa/reforma-laboral-atacara-contratos-de-proteccion-en-el-pais-alfredo-dominguez-marrufo?idiom=es>

<sup>69</sup> Concerns have been expressed that there is nothing in the current protocol to prevent tens of thousands of contracts being submitted for legitimization on the last possible day of the four-year period.

<sup>70</sup> Gobierno de Mexico. “Consulta del Listado de Legitimaciones”. Available at: [https://legitimacioncontratoscolectivos.stps.gob.mx/Listado\\_Legitimaciones.aspx](https://legitimacioncontratoscolectivos.stps.gob.mx/Listado_Legitimaciones.aspx)

<sup>71</sup> Gobierno de Mexico, Legitimación de contratos y voto personal, libre directo y secreto generan sindicatos fuertes y auténticos, Nov. 15, 2020, available at:

<https://centrolaboral.gob.mx/comunicados/2-legitimacion-de-contratos-y-voto-personal-libre-directo-y-secreto-generan-sindicatos-fuertes-y-autenticos>

<sup>72</sup> U.S. Interagency Labor Committee for Monitoring and Enforcement (2020). Report on Labor Monitoring and Enforcement under USMCA, Jul. 28, 2020.

### c. Assessment of the legitimation process to date

The current contract legitimation process has significant weaknesses. First, the decision to assign to the unions that own the collective bargaining agreements the responsibility for legitimizing them through a vote that they organize raises questions of credibility and potential conflict of interest. During votes held to date there have been anecdotal and press reports of misinformation about the voting process or threats of loss of benefits or employment if an agreement is rejected, although this is explicitly prohibited by the law.<sup>73</sup> None of the votes held to date have been challenged. It may be that in every vote held to date the union holding the contract legitimately represents the workers affiliated to it and the workers have freely expressed their support for the contract. However, there is a long and well-documented history of collusion between some unions and employers and failure to properly represent the workers involved.<sup>74</sup> Since the ownership of all existing collective bargaining agreements was acquired under the old system without need for verification of worker support, allowing the same unions to verify support now raises significant questions of credibility and reliability.

Second, the vote to approve the contract does not have to be supervised by a government labor official. The Protocol allows the incumbent union to choose a notary to attest to the vote. According to STPS, notaries will be relied on to supervise some 20 per cent of all contract legitimation votes.<sup>75</sup> Notaries will be compensated by the incumbent union, creating an inherent conflict of interest. In Mexico, the use of corrupt notaries in labor proceedings is a well-known practice.<sup>76</sup> Notwithstanding these concerns, on September 8, 2020 the Federal Center signed a joint Memorandum of Understanding with the STPS, the National College of Mexican Notaries

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<sup>73</sup> Nacha Cattán, “Nafta Rewrite Runs Into Trouble as Mexican Reform Comes Up Short,” Bloomberg, Nov. 20, 2019, available at: <https://www.bloomberg.com/news/articles/2019-11-20/nafta-rewrite-runs-into-trouble-as-mexican-reform-comes-up-short>

<sup>74</sup> Arturo Alcalde and Graciela Bensusan, “El sistema de justicia laboral en México: situación actual y perspectivas”. Fundación Friedrich Ebert México, 2013, available at: <http://library.fes.de/pdf-files/bueros/mexiko/10311.pdf>; ILO Committee of Experts on the Application of Conventions and Recommendations, “Observation, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Mexico, 2017,” available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3343978](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3343978); U.S. Department of Labor, USMCA Labor Rights Report, 2019, available at: <https://www.dol.gov/agencies/ilab/united-states-mexico-canada-agreement-usmca-labor-rights-report>.

<sup>75</sup> Mexico, Estrategía Nacional para la Implementación del Sistema de Justicia Laboral, Oct. 14, 2019, available at: <https://reformalaboral.stps.gob.mx/Documentos/EstrategiaNacionalReformaLaboral.pdf>

<sup>76</sup> See, e.g., Gardenia Mendoza, Notarios, pieza clave en la corrupción de los gobernadores de México La Opinión, Apr. 17, 2017, available at: <https://laopinion.com/2017/04/17/notarios-pieza-clave-en-la-corrupcion-de-los-gobernadores-de-mexico/>; ALERTAN POR RED QUE OPERA EN NOTARÍAS Y JUZGADOS QUE SE APROPIA DE PREDIOS Y CASAS DE MANERA ILEGAL, Reporte Indigo, Mar. 18, 2019, available at: <https://www.reporteindigo.com/reporte/alertan-por-red-que-opera-en-notarias-y-juzgados-que-se-apropia-de-predios-y-casas-de-manera-ilegal/?fbclid=IwAR37VoNaKAJnEjj6a0n15jGEzpJYEtyrebPAtISvE2mC93cK9rfeBpLhfjU>.

(CNNM), and the United Nations Development Program (UNDP) to train and encourage the participation of notaries in the processes of legitimation of collective contracts.<sup>77</sup> This action reinforces the concerns discussed above, and also raises question as to why the UNDP, which unlike the ILO does not have expertise in the field of labor relations, was chosen for this task.

Third, the Protocol did not establish any mechanism by which workers covered by a CBA could request the assistance of the labor authorities to intervene in a contract legitimation vote if they feel unsure of the purpose, intimidated or otherwise have doubts or fears about the process. While the Protocol calls for observation of the vote by either a representative of the STPS or a notary they were not instructed to investigate or verify whether workers have been given accurate information about the vote and its consequences. According to the STPS website, observers from STPS may not interfere in the procedure or request the union running the election to carry out or refrain from carrying out specific actions or conduct.<sup>78</sup>

Finally, while according to the FLL workers could vote against their contract while retaining any contract terms and conditions that are superior to the legal minimums, many workers are likely to think that a “no” vote means eliminating the incumbent union, the contract and any benefits it includes.

In a partial response to these criticisms the Secretary of Labor announced on December 8, 2020 that STPS would modify the Protocol to cover the period until the Federal Center begins operations.<sup>79</sup> The revised protocol will allow workers to file challenges to legitimation votes for a variety of reasons, creating at least a theoretical avenue for recourse. However, the new protocol does not assign meaningful enforcement roles to the government, leaving it to vulnerable workers to challenge any intimidation, fraud or other misconduct.<sup>80</sup>

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<sup>77</sup> UNDP Mexico, “MOU firmado permitirá capacitar y fomentar la participación de los notarios en los procesos de legitimación de contratos colectivos,” Sep. 8, 2020, available at: <https://www.mx.undp.org/content/mexico/es/home/presscenter/pressreleases/2020/09/mou-firmado-permitira-capacitar-y-fomentar-la-participacion-de-l.html>

<sup>78</sup> Gobierno de Mexico. “Sistema de Registro de eventos para la Legitimación de Contratos Colectivos de Trabajo, Preguntas frecuentes, Pregunta 14,” available at:

<https://legitimacioncontratoscolectivos.stps.gob.mx/Sindicato/PreguntasFrecuentes.aspx>

<sup>79</sup> ACUERDO POR EL QUE SE MODIFICAN Y ADICIONAN DIVERSAS DISPOSICIONES DEL PROTOCOLO PARA LA LEGITIMACIÓN DE CONTRATOS COLECTIVOS DE TRABAJO EXISTENTES, available at: [http://187.191.71.192/portales/resumen/50794?fbclid=IwAR2cGhEcSimeyG2ttDnMFI\\_ZeTcrCgMjuGjaoB2Rbu3c2ct6dqQsp79DWI](http://187.191.71.192/portales/resumen/50794?fbclid=IwAR2cGhEcSimeyG2ttDnMFI_ZeTcrCgMjuGjaoB2Rbu3c2ct6dqQsp79DWI)

<sup>80</sup> Gerardo Hernández, Trabajadores podrán impugnar la legitimación de sus contratos colectivos, *El Economista*, Dec. 9, 2020, Available at: <https://factorcapitalhumano.com/leyes-y-gobierno/trabajadores-podran-impugnar-la-legitimacion-da-sus-contratos-colectivos-stps/2020/12/>; María del Pilar Martínez, Secretaría de Trabajo ajustará reglas para legitimación de contratos colectivos, *El Economista*, Dec., 2020, available at:

The current arrangement under which the STPS is responsible for the legitimation process was authorized by the FLL in its eleventh transitional article, which provides that the Secretary of Labor and Social Welfare will establish the protocol to carry out the legitimation of existing collective bargaining agreements *until* the Federal Center begins functioning. The Protocol issued by STPS and the forthcoming revision acknowledge the transitional nature. The Federal Center thus has the legal authority and responsibility to establish its own protocol and procedures for the legitimation of existing contracts by the time it becomes fully operational, not later than May 2021.

Given the potential for conflict of interest under the transitional arrangement, whereby existing owners of collective bargaining agreements have full control of arranging the vote that will determine whether they continue to own the agreements or not, the Federal Center should establish a new protocol under which *it* organizes and runs the legitimation votes. In addition, this would seem to be a requirement under the USMCA, which specifies responsibility for the implementation of labor law and procedural guarantees under Article 23.10. That provision lays out responsibility for enforcement through judicial bodies (“tribunals”) and then in its paragraph 10 addresses the requirements for non-court proceedings:

Article 23.10 (10). Each Party shall ensure that other types of proceedings within its labor bodies for the implementation of its labor laws:

- (a) are fair and equitable;
- (b) **are conducted by officials who meet appropriate guarantees of impartiality;** (emphasis supplied)
- (c) do not entail unreasonable fees or time limits or unwarranted delay; and
- (d) document and communicate decisions to persons directly affected by these proceedings.<sup>81</sup>

If the Federal Center designs a new protocol under which it takes responsibility for conducting the verification votes, it will need a strategy to accomplish this within the four-year transition period. By way of illustration, one approach would be to organize the votes by sector. The Federal Center could establish a calendar under which each sector would be assigned a month or other time period in the future when all contracts in that sector would be voted. In advance of the vote the Federal Center, supported by STPS, the Federal Prosecutor for the Defense of Labor (PROFEDET) and the State Prosecutor's Offices for the Defense of Labor and perhaps by academia, civil society and media, could provide wide public education for workers in that sector on the nature and purpose of the legitimation process and the range of terms in existing

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<https://www.eleconomista.com.mx/empresas/Secretaria-de-Trabajo-ajustara-reglas-para-legitimacion-de-contratos-colectivos-20201210-0039.html>.

<sup>81</sup> USMCA Chapter 23 Labor Article 23.10, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

contracts within that sector on key issues such as wages and benefits. Perhaps most importantly, the worker education should make very clear that if the vote on the contract is negative, there are options available to the workers: the incumbent union could be sent back to the bargaining table for improvements or an opportunity could be provided for another union to seek the support of the workers. Based on this foundational preparation the workers would be in a position to exercise their vote with full information and thus genuine freedom of association and collective bargaining.

## 5. Progress on Establishment of Federal Level Institutions

There has been substantial progress in transforming the complex set of reforms in the 2019 Labor Reform into concrete institutions, although efforts have been hampered by missed deadlines in the states, conservative forecasts resulting in inadequate resources, and a backloaded rollout of federal and local conciliation centers and labor courts.

The transitional provisions of 2019 Labor Reform mapped out the timing of implementation of the labor reforms and the temporary and permanent institutions that would need to be established to effectively implement them.<sup>82</sup> While most aspects of the reform have proceeded in accordance with the time frame outlined, reforms within the states have been uneven and slow. The Coordination Council for the Implementation of the Reform to the Labor Justice System (Coordination Council), tasked with coordinating the rollout of the reforms, has strategically decided that it would be best to implement the federal and local conciliation centers and labor courts in each state simultaneously,<sup>83</sup> however, states' failure to implement local reforms has, in part, already disrupted the first stage of the labor reform implementation.<sup>84</sup> Continued failure by states to implement the needed reforms will further backload or create a disjointed implementation, leading to confusion among workers and prolonging the time Mexican workers are subjected to the old, failed labor justice system.

Additionally, while the Board lacks the requested data on how personnel decisions have been made regarding the appropriate number federal inspectors and conciliators, the current allocations are inadequate. This appears to be a function of both the Mexican government's reluctance to recognize the appropriate staffing requirements needed to bring Mexican workers reliable and sustained justice, and an inappropriate amount of weight given to self-imposed budgetary constraints. For example, within the Federal Judiciary's Stage 1 Comprehensive Plan,

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<sup>82</sup> Supplemented by the Coordination Council for Implementation of the Reform to the Labor Justice System's "Estrategia Nacional para la Implementación del Sistema de Justicia Laboral," available at: <https://reformalaboral.stps.gob.mx/Documentos/EstrategiaNacionalReformaLaboral.pdf>

<sup>83</sup> See "LINEAMIENTOS para la operación del Consejo de Coordinación para la implementación de la reforma al Sistema de Justicia Laboral," art. 10, sec II, available at [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5565089&fecha=05/07/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5565089&fecha=05/07/2019)

<sup>84</sup> <https://www.milenio.com/policia/judicatura-federal-da-a-conocer-nuevos-jueces-en-materia-de-trabajo>

staffing determination called for starting the collective labor courts with a “minimum staff” to make the allocated budget “more efficient”.<sup>85</sup> Considering the widespread resistance to the labor reforms from opposition parties, corporations and protection unions, the Mexican government must provide robust staffing to the institutions responsible for rooting out the old labor system to provide confidence to workers that the reforms are real.

Finally, while Transitional Article 5 of the 2019 Labor Reform allows for a staged introduction of the conciliation centers and labor courts over three years, there is serious concern over how backloaded the last stage is with export-related manufacturing workers<sup>86</sup> and frequent labor disputes. The first stage of implementation only includes eight states (Campeche, Chiapas, Durango, Hidalgo, Mexico, San Luis Potosi, Tabasco, and Zacatecas). The remaining 23 states and Mexico City are not scheduled to start implementation until the fourth quarter of 2021 and mid-2022. While Annex-23-A of the USMCA doesn’t explicitly bar a staged approach to establishing labor reform institutions, paragraph 3 of the Annex states the expectation that implementation should be substantially and broadly established when the USMCA enters into force.<sup>87</sup>

Given the Mexican government has already shown that the stages of implementation can be amended,<sup>88</sup> the US government should advocate for a reshuffling of the states included in the remaining implementation stages so the revised implementation schedule more closely aligns with the intent of Annex 23-A.

#### a. Federal Center for Labor Conciliation and Registration

In accordance with the requirements established in the 2017 Constitutional reforms, and the 2019 Federal Labor Act, on October 3, 2019, a bill to establish the Federal Center for Conciliation

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<sup>85</sup> Consejo de la Judicatura Federal, “Plan Integral de la Primera Etapa (2020)” p. 46, available at: <https://www.cjf.gob.mx/micrositios/uirmjl/resources/planIntegralImplementacionReformaMateriaJusticiaLaboral.pdf>

<sup>86</sup> Service and mining personnel numbers were not available for analysis on INEGI at the time of this report.

<sup>87</sup> USMCA, Chapter 23, Annex 23-A “Worker Representation in Collective Bargaining in Mexico,” p. 23-A-3, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

<sup>88</sup> Procuraduría Federal de la Defensa del Trabajo, Celebran Tercera Sesión Ordinaria del Consejo de Coordinación para la Implementación de la Reforma al Sistema de Justicia Laboral, Jul. 27, 2020, available at: <https://www.gob.mx/profedet/articulos/celebra-tercera-sesion-ordinaria-del-consejo-de-coordinacion-para-la-implementacion-de-la-reforma-al-sistema-de-justicia-laboral?idiom=es>. Unfortunately, the minutes of this meeting have not yet been made public.



and Labor Registration (Federal Center) was introduced in the Chamber of Deputies.<sup>89</sup> The bill was approved on October 29, and published in the Official Journal on January 6, 2020.<sup>90</sup>

It confirmed the Federal Center as a decentralized public body of the Federal Public Administration with its own legal personality and assets, and with full technical, operational, budgetary, decision-making and management autonomy. The Federal Center will be headquartered in Mexico City, with offices in each state.

The Federal Center's primary purposes are to 1. Establish and operate federal conciliation centers for individual and collective disputes, 2. Register, at a national level, all collective bargaining agreements, trade union organizations, and their internal labor statutes and regulations, and 3. Verify democratic union procedures.

On July 29, 2020 the Senate appointed Alfredo Domínguez Marrufo as the director of the Federal Center.<sup>91</sup> On August 7, 2020, the Federal Center's Governing Board held its inaugural meeting,<sup>92</sup> in which it approved the organic statute of the Federal Center, which sets out its general structure and procedures.<sup>93</sup>

On September 4, 2020, the Federal Center announced its intent, and the procedure to be used, to hire for 142 positions – 50 conciliation officers and 92 other positions - for its offices in

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<sup>89</sup> Que expide la Ley Orgánica del Centro Federal de Conciliación y Registro Laboral, a cargo del diputado Manuel de Jesús Baldenebro Arredondo, del Grupo Parlamentario del PES, Oct. 3, 2019, available at: <http://gaceta.diputados.gob.mx/Gaceta/64/2019/oct/20191003-III.html>.

<sup>90</sup> Mexico Chamber of Deputies, Aprueban expedir la Ley Orgánica del Centro Federal de Conciliación y Registro Laboral, 29 Oct. 2019, available at: <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2019/Octubre/29/3545-Aprueban-expedir-la-Ley-Organica-del-Centro-Federal-de-Conciliacion-y-Registro-Laboral>; DECRETO por el que se expide la Ley Orgánica del Centro Federal de Conciliación y Registro Laboral, Diario Oficial, Jan. 6, 2020, available at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5583502&fecha=06/01/2020](https://dof.gob.mx/nota_detalle.php?codigo=5583502&fecha=06/01/2020)

<sup>91</sup> Senado de la República, Designa Senado a Alfredo Domínguez Marrufo como titular del Centro Federal de Conciliación y Registro Laboral, Jul. 29, 2020, available at: <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/48743-designa-senado-a-alfredo-dominguez-marrufo-como-titular-del-centro-federal-de-conciliacion-y-registro-laboral.html>.

<sup>92</sup> Secretaría del Trabajo y Previsión Social, Centro Federal de Conciliación y Registro Laboral terminará con simulación que perjudica a trabajadores y empleadores: Luisa Alcalde, Aug. 7, 2020, available at: <https://www.gob.mx/stps/prensa/centro-federal-de-conciliacion-y-registro-laboral-terminara-con-simulacion-que-perjudica-a-trabajadores-y-empleadores-luisa-alcalde>.

<sup>93</sup> Acuerdo por el que se aprueba el Estatuto Orgánico del Centro Federal de Conciliación y Registro Laboral, available at [http://www.dof.gob.mx/2020/CFCRL/ESTATUTO\\_ORGANICO\\_CFCRLpdf](http://www.dof.gob.mx/2020/CFCRL/ESTATUTO_ORGANICO_CFCRLpdf)



Campeche, Mexico City, Chiapas, Durango, State of Mexico, Hidalgo, San Luis Potosí, Tabasco and Zacatecas.<sup>94</sup>

The Board has requested the final report and underlying metrics used by the Technical Secretariat of the Coordination Council to “estimate the workload of the conciliations, registrations, and verifications, in order to foresee the required budget for the first year of operation” as discussed in Sec. 2.1 of the National Strategy,<sup>95</sup> to assess whether the Federal Center’s conciliator and substantive staffing levels are adequate, but have yet to receive a response. It is worth noting that in June of 2019 the Federal Conciliation and Arbitration Board had a staff of 2,152, and at the time was requesting 600 more personnel to handle a backlog of 1,700 collective cases and 439,700 individual cases.<sup>96</sup> To build confidence in the new system, reform institutions should be robustly staffed.

Transitional Article 15 of the 2019 Labor Reform required the Federal Center positions to be open to personnel from the Conciliation and Arbitration Boards (CAB). Given the long-standing concerns about corruption and ineffectiveness in the CABs,<sup>97</sup> and the overall weakness of Mexico’s anti-corruption mechanisms noted by international observers,<sup>98</sup> simply transferring staff from the CABs to the Federal Center would raise serious doubts about the integrity of the new institution. The Board requests that the ILC monitor and report on such transfers.

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<sup>94</sup> CONVOCATORIA Pública y Abierta 01-08/2020 del Concurso de Selección para Puestos Sustantivos del Centro Federal de Conciliación y Registro Laboral, Diario Oficial, Sep. 4, 2020, available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5599747&fecha=04/09/2020](http://www.dof.gob.mx/nota_detalle.php?codigo=5599747&fecha=04/09/2020); Secretaría del Trabajo y Previsión Social, Centro Federal de Conciliación y Registro Laboral publica convocatorias para selección de personal, Sep. 7, 2020, available at: <https://www.gob.mx/stps/prensa/centro-federal-de-conciliacion-y-registro-laboral-publica-convocatorias-para-seleccion-de-personal>

<sup>95</sup> “Estrategia Nacional para la Implementación del Sistema de Justicia Laboral,” available at: <https://reforma laboral.stps.gob.mx/Documentos/EstrategiaNacionalReformaLaboral.pdf>.

<sup>96</sup> Se rezaga JFCA con expedientes laborales, El Norte, Aug. 26, 2019, available at: <https://www.elnorte.com/se-rezaga-jfca-con-expedientes-laborales/ar1753923?referer=-7d616165662f3a3a6262623b727a7a7279703b767a783a-->. See National Human Rights Commission (CNDH), General Recommendation 41/2019, Oct. 14, 2019, available at: <https://www.cndh.org.mx/sites/default/files/documentos/2019-10/Rec-41-gral.pdf> (noting that procedural delays violate the Constitutional obligation of the state authorities to promote, respect, protect and guarantee human rights).

<sup>97</sup> Graciela Bensusán and Arturo Alcalde, El sistema de justicia laboral en México: situación actual y perspectivas, Friedrich Ebert Stiftung Mexico, June 2013, available at: <http://library.fes.de/pdf-files/bueros/mexiko/10311.pdf>; Tequila J. Brooks, The Challenge of Corruption in Global Supply Chains: Compliance Risks Posed by Labor Protection Contracts in Mexico, International Law News, Vol. 46 No. 4 (Summer 2018); available at: [https://www.researchgate.net/publication/327405068\\_The\\_Challenge\\_of\\_Corruption\\_in\\_Global\\_Supply\\_Chains\\_Compliance\\_Risks\\_Posed\\_by\\_Labor\\_Protection\\_Contracts\\_in\\_Mexico](https://www.researchgate.net/publication/327405068_The_Challenge_of_Corruption_in_Global_Supply_Chains_Compliance_Risks_Posed_by_Labor_Protection_Contracts_in_Mexico).

<sup>98</sup> See Gina Hinojosa and Maureen Meyer, The Future of Mexico’s National Anti-Corruption System, Washington Office on Latin America, August 2019, available at: <https://www.wola.org/analysis/report-anticorruption-lopez-obrador-mexico/>.

On November 18, 2020, the Federal Center, along with the local conciliation centers and the local and federal labor courts, began operating in seven states: Campeche, Chiapas, Durango, the State of Mexico, San Luis Potosí, Tabasco and Zacatecas. In Hidalgo only the Federal Center and federal labor courts began operation.<sup>99</sup>

#### b. The Need for States to Implement Reforms

Considering the desire to implement the federal and local conciliation centers and labor courts in states simultaneously,<sup>100</sup> states must immediately implement the necessary constitutional, legal, and budgetary reforms to allow for the establishment of local conciliation centers and labor courts. Otherwise, there is a serious risk of further delay in implementation, or a disjointed set of systems across states where federal cases are addressed using conciliation centers and labor courts, and while cases are addressed using the old CAB system.<sup>101</sup>

The Coordination Council for the Implementation of the Reform of the Labor Justice System (Coordination Council) highlighted this need in Action item 1.2 in its National Strategy. The Coordination Council took note of the Second Article of the transitional provisions of the Constitutional Decree of February 24, 2017, which provides:

Second. The Congress of the Union and the legislatures of the federative entities shall carry out the corresponding legislative adjustments to comply with the provisions of this Decree, within the year following its entry into force.

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<sup>99</sup> ACUERDO General del Pleno del Consejo de la Judicatura Federal, que reforma y adiciona diversas disposiciones, en relación con la implementación de la Reforma en Materia de Justicia Laboral, Diario Oficial de la Federación, Nov. 17, 2020, available at:

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5605077&fecha=17/11/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5605077&fecha=17/11/2020)

<sup>100</sup> See Lineamientos para la operación del Consejo de Coordinación para la implementación de la reforma al Sistema de Justicia Laboral, July 5, 2020, Article 10, Sec II, available at :

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5565089&fecha=05/07/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5565089&fecha=05/07/2019).

<sup>101</sup> Unlike in the U.S., where all private sector workers with defined exceptions are covered by federal labor law, in Mexico the federal government has jurisdiction only over private sector workers in specific industries defined in Art. 123.A.XXXI of the Constitution. Because jurisdictional lines are sometimes unclear, it is common for collective bargaining agreements to be registered with both federal and state authorities, which makes worker challenges more difficult. This difficulty is compounded by the use of subcontracting (“outsourcing”) arrangements, which allow manufacturing companies to shift their workforce into the state jurisdiction, which is often less transparent and more lenient.

In May 2019 the Coordination Council interpreted this as a requirement for states to implement the needed reforms by December 2019.<sup>102</sup> Since then the Coordination Council has repeatedly exhorted the states to implement the needed reforms.<sup>103</sup>

By July 2020, there was only spotty adoption of the needed reforms. Draft minutes of the July 17, 2020 Coordination Council meeting<sup>104</sup> outlined the work that still needed to be done:

- State constitutional reform:
  - 6 states' constitutions did not require reform;
  - 14 states had completed the needed constitutional reform;
  - 12 states were in varying stages of introducing the reforms; and
  - Michoacán which appeared to have not started contemplating the needed reforms.
  
- State local judiciary reform:
  - 6 states had already harmonized their organic laws;
  - 6 states the reforms were introduced to local Congress;
  - 19 states had not introduced the reform because it was still being studied; and
  - Michoacán which appeared to have not started contemplating the needed reforms.
  
- State local conciliation center reform:
  - 6 states had already harmonized their organic laws;
  - 7 states had presented reforms to the local Congress; and
  - 19 states had not introduced reforms.<sup>105</sup>

A specific concern, regarding which the Board requested but did not receive information, concerns the establishment of a system of private conciliators as an alternative to the Local Conciliation Centers required by law.<sup>106</sup> It is unclear how this system is being set up, who is

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<sup>102</sup> Estrategia Nacional para la Implementación del Sistema de Justicia Laboral, available at: <https://reformalaboral.stps.gob.mx/Documentos/EstrategiaNacionalReformaLaboral.pdf>

<sup>103</sup> See Acuerdo 15-29/11/2019, available at: <https://reformalaboral.stps.gob.mx/Documentos/Acuerdo-15-29112019.pdf>; Acuerdo 03-17/01/2020, available at: [https://reformalaboral.stps.gob.mx/Documentos/Acuerdo\\_03-17012020.pdf](https://reformalaboral.stps.gob.mx/Documentos/Acuerdo_03-17012020.pdf)

<sup>104</sup> STPS, Celebran Tercera Sesión Ordinaria del Consejo de Coordinación para la Implementación de la Reforma al Sistema de Justicia Laboral, Jul. 27, 2020, available at: <https://www.gob.mx/profedet/articulos/celebra-tercera-sesion-ordinaria-del-consejo-de-coordinacion-para-la-implementacion-de-la-reforma-al-sistema-de-justicia-laboral?idiom=es>

<sup>105</sup> Coordination Council's draft minutes of "Acta De La Tercera Sesión Ordinaria 2020, 17 de Julio de 2020", Page 3.

<sup>106</sup> Conciliadores contribuirán a la estabilidad laboral en las empresas, Edomex Informa, Aug. 31, 2020, available at: <http://edomexinforma.com.mx/2020/08/conciliadores-contribuiran-a-la-estabilidad-laboral-en-las-empresas/>; Presentan programas que impulsan la conciliación y vinculación de empleo, AsíSucede, Oct. 31, 2020, available at: <https://asisucede.com.mx/presentan-programas-que-impulsan-la-conciliacion-y-vinculacion-de-empleo/>

paying for it, how conciliators are being recruited, trained, and paid; and whether workers will be required or pressured to exhaust private conciliation before they can use the Local Conciliation Center.

c. Staged Implementation of Conciliation Centers and Labor Courts

Prior to the creation of the Federal Center, the Coordination Council established that the Federal and local conciliation centers and labor courts will be phased in over a three-year period. At its July 2019 meeting the Coordination Council established three annual stages consisting of ten states in the first stage, eleven in the second, and eleven in the third. Early states were chosen, in part, due to an analysis conducted by the Council of the Federal Judiciary (CFJ). The CFJ had gathered information from the Federal and local CABs regarding the average number of cases each state had received over the previous three years. States with lower case levels were chosen – along with states that volunteered – to make up the first stage.<sup>107</sup> While not provided in the minutes, it appears the staging schedule not only frontloaded initial stages with states having low levels of labor disputes, but backloaded a substantial number of states with high concentrations of manufacturing workers and high rates of labor disputes into the third stage.

Although the Coordination Council has changed the implementation schedule several times over the past 18 months, at the time of this report the implementation schedule was reported to be:

<b>Table 2</b>		
<b>Current Local and Federal Conciliation and Labor Courts Implementation Schedule</b>		
<b>Phase 1 – November 2020</b>	<b>Phase 2 – October 1, 2021</b>	<b>Phase 3 – May 1, 2022</b>
Campeche	Aguascalientes	Chihuahua
Chiapas	Baja California	Ciudad de Mexico
Durango	Baja California Sur	Coahuila
Hidalgo*	Colima	Jalisco
Mexico	Guanajuato	Michoacan
San Luis Potosi	Guerrero	Nayarit
Tabasco	Morelos	Nuevo Leon
Zacatecas	Oaxaca	Sinaloa
	Puebla	Sonora
	Queretaro	Tamaulipas
	Quintana Roo	Yucatan
	Tlaxcala	
	Veracruz	
* Hidalgo only opened Federal conciliation centers and labor courts Source: <a href="https://reformalaboral.stps.gob.mx/index.html#container">https://reformalaboral.stps.gob.mx/index.html#container</a>		

<sup>107</sup> Coordination Council, Acta De La Primera Sesión Ordinaria 2019, Jul. 5, 2019, Page 3, available at: [https://reformalaboral.stps.gob.mx/Documentos/Acta\\_de\\_la\\_Primer\\_a\\_Sesion\\_Ordinaria.pdf](https://reformalaboral.stps.gob.mx/Documentos/Acta_de_la_Primer_a_Sesion_Ordinaria.pdf)

According to data from the National Statistical and Geographical Institute (INEGI), in 2018 Stage 1 states had roughly half the number of labor disputes as Stage 2 states, and less than a third of Stage 3 states. Similarly, Stage 1 states had only 61 percent the number of manufacturing personnel as Stage 2 states, and 31 percent of Stage 3 states.<sup>108</sup>

Not only is the third stage backloaded with manufacturing workers, but specifically manufacturing workers employed in USMCA priority sectors, defined in Annex 31-A of the USMCA as including “aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement.”<sup>109</sup> These industries are captured within the following 3-digit North American Industry Classification System (NAICS) codes:

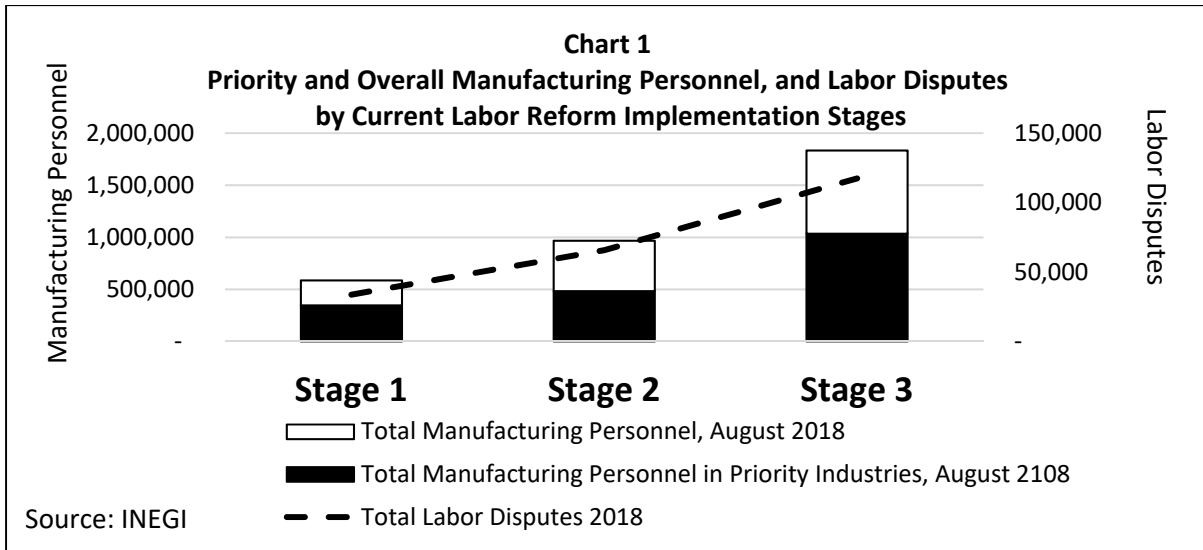
<b>Priority Industry</b>	<b>NAICS Code</b>
Aerospace products and components	336
Auto and auto parts	336
Cosmetic products	325
Industrial baked goods	311
Steel and aluminum	331
Glass, pottery, cement	327
Plastics	326
Forgings	332

According to INEGI’s Monthly Survey of the Manufacturing Industry, in August 2018 (the last high employment summer month available), Stage 1 states only had 345 thousand workers in the NAICS 3-digit sectors which captured the USMCA’s priority manufacturing sectors. Stage 2 states will see a 40 percent increase to 483 thousand workers. Stage 3 however had three times the amount of priority manufacturing workers compared to Stage 1, and with 1.034 million priority manufacturing workers, 25 percent more workers than Stage 1 and 2 combined.<sup>110</sup>

<sup>108</sup> INEGI, Relaciones Laborales de Jurisdicción Local, Sep. 29, 2020, available at: <https://www.inegi.org.mx/programas/rellaborales/>

<sup>109</sup> USMCA, Annex 31-A, p. 9, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31%20Dispute%20Settlement.pdf>. Service and mining personnel numbers were not available for analysis on INEGI at the time of this report.

<sup>110</sup> INEGI, Encuesta Mensual de la Industria Manufacturera, available at: <https://www.inegi.org.mx/programas/emim/2007/>



As noted in Tables 4 and 5, each of the priority sectors saw the same backloading of workers.

Sector	NAICS	Stage 1	Stage 2	Stage 3
Industrial baked goods	311	24%	26%	49%
Cosmetic products	325	21%	28%	52%
Plastics	326	23%	29%	48%
Glass, pottery, cement	327	26%	23%	51%
Steel and aluminum	331	22%	22%	55%
Forgings	332	19%	25%	55%
Auto, auto arts, aerospace products and components	336	14%	25%	61%

As noted above, Annex-23A of the USMCA doesn't explicitly bar a staged approach to establishing labor reform institutions but paragraph 3 of the Annex states the expectation that implementation should be substantially and broadly established when the USMCA enters into force.<sup>111</sup>

<sup>111</sup> USMCA, Chapter 23, Annex 23-A "Worker Representation in Collective Bargaining in Mexico." Page 23-A-3.

Table 5

	State	2018	Total Employed Personnel in Manufacturing by NAICS and States								All Manufacturing 31-33
			August, 2018								
			Priority Manufacturing Sectors (NAICS)								
			Labor Disputes	311	325	326	327	331	332	336	
Stage 1 - November 2020	Campeche	1,465									5,923
	Chiapas	2,654									10,516
	Durango	2,292	3,723		987	1,548		994	26,077	33,329	56,464
	Hidalgo*	1,878	7,396	1,320	2,265	2,782	3,726	766	7,212	25,467	53,582
	Mexico	13,959	52,202	26,849	36,803	14,843	7,522	26,391	50,549	215,159	323,959
	San Luis Potosi	4,194	11,195	1,019	6,215	3,126	6,882	2,171	40,913	71,521	99,039
	Tabasco	6,176									6,761
	Zacatecas	1,076									29,859
	<b>Stage 1 Total</b>	<b>33,694</b>	<b>74,516</b>	<b>29,188</b>	<b>46,270</b>	<b>22,299</b>	<b>18,130</b>	<b>30,322</b>	<b>124,751</b>	<b>345,476</b>	<b>586,103</b>
	Stage 2 - October, 2021	Aguascalientes	3,050	6,069			2,006		1,887	36,371	46,333
Baja California		8,704	5,923	3,743	20,333	6,318	5,178	23,204	29,126	93,825	304,226
Baja California Sur		1,648									3,307
Colima		939									7,270
Guanajuato		16,461	25,589	10,684	16,786	3,477	3,439	6,088	72,637	138,700	207,784
Guerrero		5,211									786
Morelos		4,022									28,818
Oaxaca		1,914									8,994
Puebla		4,629	12,940	5,055	8,478	2,138	1,363	2,104	45,588	77,666	113,520
Queretaro		8,445	8,434	5,983	11,596	3,080		5,762	40,648	75,503	115,971
Quintana Roo		4,514									2,045
Tlaxcala		645									33,617
Veracruz		5,582	22,335	12,828	1,596	2,821	8,394	823	1,907	50,704	61,747
<b>Stage 2 Total</b>	<b>65,764</b>	<b>81,290</b>	<b>38,293</b>	<b>58,789</b>	<b>19,840</b>	<b>18,374</b>	<b>39,868</b>	<b>226,277</b>	<b>482,731</b>	<b>967,513</b>	
Stage 3 - May, 2022	Chihuahua	11,008	11,918	2,584	11,863	4,343	4,081	11,486	156,393	202,668	370,409
	Mexico D.F.	33,842	25,565	26,065	13,739	2,615	1,739	6,802	6,912	83,437	144,273
	Coahuila	10,707	9,344	2,457	10,506	4,632	13,968	11,683	157,197	209,787	279,177
	Jalisco	22,415	46,548	18,608	17,565	3,948	2,569	14,386	25,928	129,552	230,303
	Michoacan	5,304	8,752	2,793	1,251	166			119	13,081	25,507
	Nayarit	1,512									5,538
	Nuevo Leon	18,250	31,331	12,195	22,841	22,812	21,449	27,598	74,603	212,829	335,317
	Sinaloa	5,195									31,070
	Sonora	10,711	14,710		5,048	1,617	1,476	5,602	34,103	62,556	122,466
	Tamaulipas	5,169	3,759	7,026	12,253	3,575		9,627	84,398	120,638	254,801
	Yucatan	4,329									35,518
<b>Stage 3 Total</b>	<b>117,434</b>	<b>151,927</b>	<b>71,728</b>	<b>95,066</b>	<b>43,708</b>	<b>45,282</b>	<b>87,184</b>	<b>539,653</b>	<b>1,034,548</b>	<b>1,834,379</b>	

Sources: INEGI, Encuesta Mensual de la Industria Manufacturera, <https://www.inegi.org.mx/programas/emim/2007/>; INEGI, Relaciones Laborales de Jurisdicción Local, Sep. 29, 2020, <https://www.inegi.org.mx/programas/rellaborales/>



Given that the Mexican government has already shown that the stages of implementation can be amended,<sup>112</sup> the US government should advocate for a reshuffling of the states included in each implementation stage so the revised implementation schedule more closely aligns with the intent of Annex 23-A. Specifically, the states of Nuevo Leon and Tamaulipas should have their implementation date advanced to October, 2021. This would put 15 states in the Stage 2 implementation and would result in the last two stages having greater parity across labor disputes and manufacturing workers (using 2018 baseline numbers):

Reconfigured Stages (in thousands)	Labor Disputes	Priority Mfg Workers	Mfg Workers
Stage 2	116	816	1,558
Stage 3	121	822	1,499

#### d. Federal Labor Courts

On July 8, 2020 the Federal Judicial Council (CJF) adopted a “Comprehensive Plan for the Implementation of the Reform in the Area of Labor Justice (First Stage)” (hereinafter “the Plan”).<sup>113</sup> The Plan assessed the expected workload for the Federal labor courts and made determinations on appropriate staffing levels.

In determining the appropriate amount of staffing the Plan went through a series of estimates and calculations using historical labor dispute data and the Federal judiciary’s other trial experiences.

Throughout the Plan there is a strong belief that technology will shorten processes and make personnel more efficient, thus requiring less staffing. Because the Plan does not provide a baseline against for which these assumed efficiencies are discounted, it is difficult at this time to assess how much these assumptions may result in short staffing the new labor courts. However, if in the initial stages these assumptions of efficiency prove to be incorrect, it could cause delays, and may in fact result in additional costs.

In calculating the expected average length of a labor hearing, the CJF used its experiences in other trial settings (commercial and criminal), triangulating between the two to reach an assumption that the average labor trial would take 4 hours. Assuming courtrooms could be used

<sup>112</sup> Procuraduría Federal de la Defensa del Trabajo, Celebran Tercera Sesión Ordinaria del Consejo de Coordinación para la Implementación de la Reforma al Sistema de Justicia Laboral, Jul. 27, 2020, available at: <https://www.gob.mx/profedet/articulos/celebra-tercera-sesion-ordinaria-del-consejo-de-coordinacion-para-la-implementacion-de-la-reforma-al-sistema-de-justicia-laboral?idiom=es>.

<sup>113</sup> PLAN INTEGRAL DE IMPLEMENTACIÓN DE LA REFORMA EN MATERIA DE JUSTICIA LABORAL (PRIMERA ETAPA), Jul. 8, 2020, available at: <https://www.cjf.gob.mx/micrositios/uirmjl/resources/planIntegralImplementacionReformaMateriaJusticiaLaboral.pdf>

for 10 hours per day, with judges needing to perform trials and desk work, the Plan created the following assumption for courtrooms and judges hearing individual cases during Stage 1:<sup>114</sup>

State	Cases	Cases Minus 15% Conciliation Resolution	Hours	Courtrooms	Calculations Rounded	Judges
Zacatecas	431	366	1,464	0.64	1	2
Durango	496	422	1,688	0.73	1	2
Chiapas	845	718	2,872	1.25	2	3
Campeche	982	835	3,340	1.46	2	3
San Luis Potosi	1,307	1,111	4,444	1.93	2	4
Tlaxcala	1,396	1,187	4,748	2.06	3	5
Hidalgo	1,477	1,255	5,020	2.18	3	5
Estado de Mexico	1,798	1,528	6,112	2.66	4	6
Guanajuato	2,305	1,959	7,836	3.41	4	7
Tabasco	2,982	2,535	10,140	4.41	5	9

Additionally, the Plan assumed the Federal courts would need a maximum number of 10 courtrooms for collective and strike issues. However, the CJF heavily discounted this number for the following reasons:

1. Only states from Stage 1 states will have access to the Federal labor courts for collective issues, the other 23 states will remain under the old labor system;
2. There will be no backlog of cases for the new courts;
3. Only unions which hold a Certification of Representation will have access to the labor courts;
4. The CJF contemplates that some collective cases will still use the conciliation process, although this is not required in most cases.

Based on these assumptions, the CJF instead determined that only the minimum number of 3 courtrooms would be needed for collective issues. Providing a minimum staff would make the budget more “efficient.”<sup>115</sup>

<sup>114</sup> At the time of the assessment Guanajuato and Tlaxcala were still assumed to be part of Stage 1.

<sup>115</sup> PLAN INTEGRAL DE IMPLEMENTACIÓN DE LA REFORMA EN MATERIA DE JUSTICIA LABORAL (PRIMERA ETAPA), Jul. 8, 2020, p. 46, available at: <https://www.cjf.gob.mx/micrositios/uirmjl/resources/planIntegralImplementacionReformaMateriaJusticiaLaboral.pdf>

The CJF assigned a total of 404 personnel across all of the labor courts for individual issues, including 46 judges, 95 secretaries, 39 actuaries, 99 officers and 125 technical and administrative assistants. For all of the collective labor courts, the CJF assigned 5 judges, 31 secretaries, 8 clerks, 23 officers, 21 technical and administrative assistants – totaling 88 personnel.

In the case of judges, the 2,172 individuals applied and on November 9, 2020, 45 judges were hired. The CJF reached its goal of gender parity with 22 judges being male, and 23 female.<sup>116</sup> Eleven Federal labor courts started operation in the eight Stage 1 states on November 18 along with the Federal Center.<sup>117</sup>

### **C. Capacity Building Activities Needed to Support Mexico’s Implementation of its Labor Reform and Compliance with its Labor Obligations**

Mexico’s reform of its labor justice system and expansion of labor rights and workplace democracy is an ambitious and historically significant undertaking that would require enormous effort under any circumstances. Those circumstances have been made even more difficult by the coronavirus pandemic. Despite these challenges, the Mexican government has continued with its efforts to build the institutions required, to reform regulations and practices and to begin to put new and expanded rights into the hands of Mexican workers.

Recognizing the scale of the challenges Mexico faces in this regard, the US Congress appropriated \$180 million in supplemental funds to the Department of Labor (DOL) to support reforms of the labor justice system and labor rights in Mexico through bilateral technical assistance, grants and other arrangements.<sup>118</sup> These funds are available for 2020 and the following three years. Prior to this appropriation, DOL’s Bureau of International Labor Affairs (ILAB) had awarded grants to various organizations to support labor rights in Mexico with funds appropriated for fiscal years 2018 and 2019. These grants totaled about \$41 million, with the majority of the funds for projects to address child labor, forced labor and vulnerable agricultural workers.<sup>119</sup> Most of these grants are ongoing.

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<sup>116</sup> Judicatura Federal da a conocer los nuevos jueces en materia de trabajo, Milenio, Nov. 9, 2020, available at: [www.milenio.com/policia/judicatura-federal-da-a-conocer-nuevos-jueces-en-materia-de-trabajo](http://www.milenio.com/policia/judicatura-federal-da-a-conocer-nuevos-jueces-en-materia-de-trabajo)

<sup>117</sup> ACUERDO General del Pleno del Consejo de la Judicatura Federal, que reforma y adiciona diversas disposiciones, en relación con la implementación de la Reforma en Materia de Justicia Laboral, Nov. 17, 2020, available at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5605077&fecha=17/11/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5605077&fecha=17/11/2020)

<sup>118</sup> United States Public Law No: 116-113 (01/29/2020), Title IX--USMCA Supplemental Appropriations Act, 2019. Available at: <https://www.congress.gov/bill/116th-congress/house-bill/5430/text/pl>

<sup>119</sup> Grants.gov/ILAB/archived. Available at: <https://www.grants.gov/search-grants.html?agencies%3DDOL%7CDDepartment%20of%20Labor?keywords=ilab>

With the new 2020 funds ILAB intends to provide an additional \$20 million to IMPAQ International, adding to the \$10 million awarded to the group with 2018 and 2019 funds. This grant is designed to assist the Mexican Secretary of Labor (STPS) and the new Federal Center in digitizing all collective bargaining agreements and union registration documents, building transparent information and registration systems, training labor officials and developing a multi-faceted approach using data analytics and other tools to help identify and combat law evasion, corruption and inefficiency and to identify inspection units in need of training and capacity building. The grant will also support the new Federal Center in developing a career civil service structure. ILAB has also awarded IMPAQ \$750,000 to assist Mexico with the process of making publicly available documents held in the CABs.

ILAB awarded \$664,660 to the Federal Mediation and Conciliation Service to strengthen the institutional capacity of conciliation bodies, including the Federal Center and the Local Conciliation Centers.

ILAB is also in the process of awarding four additional grants with 2020 funds.<sup>120</sup> One grant for \$3 million will be awarded to a project titled “Engaging Mexico’s Auto Sector Employers in Labor Law Reform Implementation”. A second grant for \$10 million will be awarded for raising awareness of the new labor systems among workers, employers and union leaders. A third grant for \$10 million will fund work to improve workers’ effective access to justice and realization of their labor rights. All told, nearly \$50 million of the \$180 million appropriated by Congress will have been committed by the end of 2020.<sup>121</sup>

The funds already obligated and those to be awarded in 2020 are meant to address significant ongoing problems with labor rights in Mexico. However, there are major and evident challenges that were a focus of the USMCA Annex 23-A that have not yet been addressed by ILAB’s grants. These are directly related to the expansion of union democracy and workers’ rights, reform of labor justice and effective enforcement of labor laws. If DOL and ILAB are to play their intended roles in supporting Mexico’s implementation of its labor reform and compliance with its labor obligations under USMCA, these gaps should be addressed as a priority and with sufficient funding.<sup>122</sup> We address two of these gaps in this interim report.

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<sup>120</sup> ILAB Grants and contracts/current opportunities. Available at: <https://www.dol.gov/agencies/ilab/resources/grants>

<sup>121</sup> US DOL “Current U.S. Department of Labor (DOL)/Bureau of International Labor Affairs (ILAB) Technical Assistance in Mexico,” Sep. 22, 2020, submitted to the Board in response to an information request.

<sup>122</sup> While this report focuses on the funding specifically appropriated in the USMCA Implementation Act, our concerns extend to both current and future funding both from the US Government, including DOS, USAID, NED and IDFC, and through multilateral institutions including the ILO, World Bank and Inter-American Development Bank.

## 1. Support for Mexican workers' rights to organize representative unions and to engage in meaningful collective bargaining

The ability of Mexican workers to organize into unions of their choice and take part in collective bargaining that represents their interests has been severely constrained by the corporatist system, employer resistance and outright fraud through protection contracts, as discussed above. These problems had long been identified, and the key objective of the 2017 Mexican constitutional reform and the 2019 labor law reform was to dismantle that system and reform industrial relations to put power into the hands of workers to improve their wages and working conditions. Mexican President Andrés Manuel López Obrador has pledged to “restore democracy to the trade unions and to achieve true collective bargaining” and positions the reform as a fundamental part of his mandate to carry out the fourth transformation of the Mexican polity.<sup>123</sup> The commitments form part of the obligations that Mexico assumed under the USMCA.

Achieving true freedom for workers to organize into unions and take part in meaningful collective bargaining is a challenge in any country, including the US, because it means that workers will have a real voice in determining the distribution of profits within a firm and ultimately the labor share of a country's income. Redistribution and enhanced workers' say over conditions of work brings resistance. Achieving freedom of association, union democracy and the right to bargain collectively requires clear and fair laws guaranteeing these rights and effective government enforcement of the laws. It also requires serious capacity building for workers to understand and have confidence in these rights and to develop the strategies and tactics that can overcome resistance. Only a very limited portion of the ILAB funding to date has been designed to address these challenges. Unless significant additional resources are devoted to supporting workers to exercise these rights, the historic opportunity presented by the Mexican labor reform is unlikely to achieve its goals.

One promising avenue to build the capacity needed would be for ILAB to call for proposals for cross-border organizing by unions in Mexico and the United States. Within sectors, unions on both sides of the border face similar issues and sometimes the same employers. In this context it is worth recalling that since 1935 it has been the “declared policy” of the United States to “encourage[e] the practice and procedure of collective bargaining and [protect] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection”.<sup>124</sup> As noted above, the Mexican President has committed to equivalent goals for Mexico and the US, Mexico and Canada have obligated themselves to carry

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<sup>123</sup> Letter to Richard Neal, Chairman of the Committee on Ways and Means, US House of Representatives, October 14, 2019. Available at: <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/10.17.19%20AMLO%20Neal%20letter.pdf>

<sup>124</sup> United States National Labor Relations Act, Section 1. Available at: <https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act#:~:text=Congress%20enacted%20the%20National%20Labor,businesses%20and%20the%20U.S.%20economy.>

out this work through Article 23 and Annex 23-A of the USMCA, committing to trade only in goods produced in compliance with labor rights.<sup>125</sup>

An effective way to support the achievement of these goals would be for unions on both sides of the border to share their experience, research and analysis, strategic planning, member resources, and organizer training to build real capacity and provide a foundation for joint organizing and/or bargaining campaigns. Mexican workers who seek to exercise their rights under the new labor law have few options to learn how to implement the new law while constructing more democratic workplace relations. Support is required for capacity-building in which US unions and labor support organizations work together with Mexican labor activists, trade unionists and rank and file workers to advance union democracy and collective bargaining. Fulfilling the promise of the new law requires training on basic concepts of trade unionism such as research, external organizing, democratic and transparent union administration, collective bargaining and negotiation and contract administration. Participation by Canadian unions could also be considered.

To illustrate how ILAB could support this, it could establish an overall pool of funds large enough to have real impact and call for proposals from cross-border union coalitions in several sectors to carry out these activities. By way of illustration, a pool of \$40 million could allow grants of up to \$10 million to be awarded as individual grants to coalitions in a number of sectors. The union coalitions might find it helpful to invite an experienced provider of services to ILAB to assist them with proposal preparation and monitoring. The call for proposals could cover all sectors or focus on the priority sectors such as automobiles and parts, aerospace, telecommunications, electronics, mining and others identified in the USMCA implementing bill and USMCA Annex 31-A.

A recent independent evaluation of past ILAB grants focused on improving labor rights and conditions in trading partners found that those targeting workers, unions and labor federations tended to have greater effectiveness in meeting goals than those targeting government or employers and recommended that ILAB increase the share of its projects with workers, unions or federation as the primary project target.<sup>126</sup> To date only 17 per cent (\$15 million of \$89 million) of ILAB grants awarded in 2018 and 2019 or pending award in 2020 have been targeted to build union capacity. It is worth noting that, in July 2020, members of the US House of Representatives' USMCA working group and all Democratic members of the House Ways and Means Committee wrote to the USTR and Secretary of Labor to express deep concern that the \$180 million supplemental resources provided to implement the USMCA were not being used

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<sup>125</sup> USMCA Article 23 and Annex 23-A. Available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23%20Labor.pdf>

<sup>126</sup> Mathematica (September 2020). "ILAB Synthesis Review Final Report". Available at: [https://www.dol.gov/sites/dolgov/files/ILAB/research\\_file\\_attachment/ILAB\\_synthesis\\_review\\_report\\_public\\_final.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/research_file_attachment/ILAB_synthesis_review_report_public_final.pdf)



as intended to support “desperately needed worker-focused capacity building activities in Mexico”.<sup>127</sup> This is clearly an area that requires increased allocation of funds.

## 2. Technical assistance to build the capacity of Mexican labor inspectors

A second area that requires significant additional support is technical assistance to build the capacity of Mexican labor inspectors to carry out their responsibilities to enforce the new labor rights. Long-standing problems with funding, training, and combating corruption in labor inspection have been constant obstacles to workers’ exercise of their labor rights.<sup>128</sup> Moreover, labor inspectors’ previous training was oriented to the corporatist system and enforcement practices that were substantively different and less demanding than the enforcement that will be required under the new system of labor justice and the expanded rights for workers. As Members of the House of Representatives stated in their July 2020 letter to DOL and USTR, “The current labor system is characterized by widespread suppression of authentic and democratic worker voice by employers, by protection unions paid by employers to control their workforce and by government officials who systematically resist workers’ attempts to create independent and democratic labor organizations.”<sup>129</sup> Under these circumstances a business-as-usual approach to labor inspection will not meet the demands of the labor reform in Mexico.

Article 23.12 of USMCA envisions cooperation between the US, Mexico and Canada to achieve the labor rights goals of the trade agreement, including through “specific exchanges of technical expertise and assistance” (23.12.2.d) and through activities oriented to support “labor inspectorates and inspection systems, including methods and training to improve the level and efficiency of labor law enforcement, strengthen labor inspection systems, and help ensure compliance with labor laws” (23.12.5.h). Specifically, Mexico is creating a corps of “verifiers and inspectors in processes of union democracy.”<sup>130</sup> A very robust program of cooperation between

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<sup>127</sup> Letter to DOL and USTR (July 23, 2020). Available at:

<https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/20200723%20House%20Ltr%20to%20DOL%20and%20USTR%20re%20USMCA%20Funding%20for%20Worker%20Centered%20Programs.pdf>

<sup>128</sup> Christine Murray, Red tape, bad data and bribes endanger Mexico's workers, Reuters, Nov. 24, 2020,

available at: <https://www.reuters.com/article/mexico-government-labor-exclusive-trfn-idUSKBN2861HP>; Silvia Arzate y Gabino Jiménez, Si no se tiene una inspección poderosa no va a funcionar la reforma laboral:

Magistrado Arturo Mercado, MasReformasMejorTrabajo, Jul. 20, 2020, available at:

<https://www.masreformasmejortrabajo.mx/index.php/entorno-laboral/reforma-laboral/item/2628-si-no-se-tiene-una-inspeccion-poderosa-no-va-a-funcionar-la-reforma-laboral-magistrado-arturo-mercado>

<sup>129</sup> Letter to DOL and USTR (July 23, 2020). Available at:

<https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/20200723%20House%20Ltr%20to%20DOL%20and%20USTR%20re%20USMCA%20Funding%20for%20Worker%20Centered%20Programs.pdf>

<sup>130</sup> Programa Nacional de Capacitación en el Sistema de Justicia Laboral, section 3.1.5., available at: [https://reformalaboral.stps.gob.mx/Documentos/PROGRAMA\\_NACIONAL\\_DE\\_CAPACITACION.pdf](https://reformalaboral.stps.gob.mx/Documentos/PROGRAMA_NACIONAL_DE_CAPACITACION.pdf)



DOL and the STPS and Federal Center should be undertaken as soon as possible to take advantage of the transformational moment in STPS and the creation of the new Federal Center. Canadian labor institutions, the ILO's specialized Labor Administration program and strong labor inspectorates from Latin America could also be invited to participate.

DOL has some experience with hands-on training and strategy development with labor inspectorates of other trading partner countries, for example with the Colombian Ministry of Labor in the context of the US-Colombia Free Trade Agreement. The current transformation in Mexico calls for a deeper and more sustained engagement, with on-site and ongoing exchange of knowledge, tools, strategy and techniques.

Effective enforcement of labor laws and labor rights is a challenge in any country, because it requires government intervention on the side of workers when more powerful employers resist their obligations. Over recent decades there have been important breakthroughs in understanding how to enforce labor laws strategically. The important experience gained in the US, the ILO and some Latin American countries should be harnessed to assist Mexico in its unprecedented efforts. Funding will be necessary to pay for travel expenses, salaries for time away from usual assignments and for replacements for inspectors so assigned, development of specialized tools and training material, translation and interpretation, etc. A major commitment of funds by ILAB from the \$180 million supplemental appropriation would be an appropriate way to assist Mexico in its transformation.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

Mexico has made significant progress in the implementation of the May 1, 2019 labor law reform, especially taking into account the impact of the Covid-19 pandemic. The efforts of the López Obrador administration, and especially the leadership of the Secretariat of Labor and Social Welfare and the Federal Center for Conciliation and Contract Registration, deserve recognition.

At the same time, it must be acknowledged that many of the changes promised to improve the lives of workers, in terms of union democracy, freedom of association and collective bargaining, remain to be implemented. Most unionized workers are not yet able to democratically elect their leaders or ratify their collective bargaining agreements. The system of protection contracts, sustained by employer payments to union leaders, remains intact at this time. Covid-19 has caused thousands of deaths and millions of job losses. Workers who attempt to challenge these conditions by demanding union democracy, higher wages, or even protective equipment have been fired, jailed and – in too many cases – murdered.

The Independent Mexico Labor Expert Board is authorized by statute to make “a determination that Mexico is not in compliance with its labor obligations” under the USMCA.<sup>131</sup> Given that Mexico's new labor institutions began operating less than a month ago, we do not make such a

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<sup>131</sup> USMCA Implementation Act, Sec. 734.

determination at this time. We do offer the following recommendations to address the legal, institutional, and political obstacles to the exercise of fundamental worker rights in Mexico that this report identifies.

## RECOMMENDATIONS

### ■ End violence against workers

The ILC and Congress must make every effort to assist Mexico in stopping surveillance, harassment, threats, arrest, physical violence, and assassination of workers exercising their protected rights, at both Federal and state level. Labor law reform efforts are set back every time an incident occurs.

### ■ Promote transparency

As long as workers do not have effective access to the key documents that define their rights – their collective bargaining agreements and the statutes and financial reports of their unions – it will be difficult to establish effective union democracy. Putting these documents on the internet is a step forward, but it does not ensure access. The ILC and Congress should carefully monitor Mexico's implementation of the relevant provisions of the Federal Labor Law,<sup>132</sup> including the reports of labor inspectors, to determine whether the legislation is being complied with and whether workers are able to obtain, read and understand these documents.

### ■ Focus implementation on USMCA priority sectors

Given that the Mexican government has already shown that the stages of implementation can be amended,<sup>133</sup> the US government should advocate for a reshuffling of the states included in each implementation stage so the revised implementation schedule more closely aligns with the intent of Annex 23-A. Specifically, the states of Nuevo Leon and Tamaulipas should have their implementation date advanced to October, 2021.

### ■ Reform the legitimization process

The ILC and Congress should urge Mexico to modify the Protocol for legitimization of existing CBAs to (1) organize legitimization votes by sector, following a schedule determined by the government and providing meaningful education about the process and options to workers in

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<sup>132</sup> Specifically Articles. 132.XXX, 358.IV, 365 Bis, 371 Bis.XIII, and 373.

<sup>133</sup> Procuraduría Federal de la Defensa del Trabajo, Celebran Tercera Sesión Ordinaria del Consejo de Coordinación para la Implementación de la Reforma al Sistema de Justicia Laboral, Jul. 27, 2020, available at: <https://www.gob.mx/profedet/articulos/celebra-tercera-sesion-ordinaria-del-consejo-de-coordinacion-para-la-implementacion-de-la-reforma-al-sistema-de-justicia-laboral?idiom=es>.

that sector in advance; (2) require that legitimation votes be supervised by government representatives with the authority to investigate and correct violations; (3) create a secure procedure for workers to report violations.

■ Strengthen labor inspection

The US should work with Mexico to build a robust and ongoing program of cooperation between labor ministries to strengthen and expand a corps of professional inspectors with the authority and capacity to identify, report and sanction violations of freedom of association and collective bargaining rights.

■ Increase and focus USG funding to build worker capacity

As explained above, institutional reforms to improve the supply of labor justice will have little impact without a commitment to increase demand by enabling workers to effectively exercise their rights to organize and bargain. To this end, ILAB should direct at least \$100 million of the unallocated USMCA funding to building worker capacity for organizing and bargaining, including legal and research support. This funding should be committed within the first six months of the incoming Administration, frontloaded to begin capacity building in the shortest possible time, and should be concentrated in a small number of large, multi-year projects to reduce administrative costs. Congress should consider allocating additional funds as needed.

■ Hold employers accountable

As noted in this report, Mexico's protection contract system is predicated on a system of payments by employers to union leaders, which are not subject to reporting and disclosure requirements as they would be under U.S. law. As long as this system remains in place, real democratization of labor relations will be difficult if not impossible. While it is for Mexico to determine whether to enact additional reforms, the United States is not precluded from addressing these practices through legislation regulating trade, foreign corrupt practices, or both.

■ Message to Mexican workers and employers

The US Government and its representatives in Mexico should send a strong message to companies producing goods and services in Mexico for export to the US market that there will be no more "business as usual" when it comes to respecting workers' rights to organize and bargain. It is perfectly appropriate for our Ambassador to attend the opening of a plant that will bring additional profits to an American company. It is equally appropriate, and necessary, for the Ambassador to publicly assure both Mexican and U.S. workers that these profits will not be based on violations of their rights.