

Maquila Solidarity Network

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INTRODUCTION

In February 2017, a highly anticipated Constitutional Reform to Mexico's labour justice system became law. The reform was the product of many years of public advocacy and lobbying efforts by Mexican and international trade union organizations and other labour rights advocates. However, questions remain about whether proposals for the all-important implementing legislation, which has not yet seen the light of day, will open the door to more democratic industrial relations and greater respect for workers' associational and collective bargaining rights, or undermine the spirit and intent of the reforms.

This briefing paper provides an overview of the process leading to the constitutional reform, an analysis of its content and possible implications, and an assessment of the issues surrounding the coming implementing legislation. The analysis is based on research and an in-depth consultation process carried out by the Maquila Solidarity Network (MSN) between February and May. That process included interviews with 16 Mexican and international labour rights experts from academia, the legal sector, trade unions, and civil society organizations, as well as other sectors.

We hope this paper will contribute to discussion and debate among stakeholders and other civil society actors on the implications of the much-needed reforms to Mexico's labour justice system.

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The Maquila Solidarity Network (MSN) is a labour and women's rights organization based in Toronto, Canada that supports the efforts of workers in global supply chains to win improved wages and working conditions and greater respect for their rights. For more information on MSN's work on freedom of association in Mexico, including our work with the Mexico Committee, visit: <http://www.maquilasolidarity.org/supporting-freedom-association-foa-mexico>.

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BACKGROUND AND AIMS OF THE REFORM



Freedom of association and the right to bargain collectively are bedrock rights for workers.

When workers are able to organize into the unions of their choice, and negotiate the terms and conditions of their jobs with their employers, they are more likely to enjoy their other fundamental labour rights, specifically the right to a workplace free of forced labour, child labour, and gender and other forms of discrimination.

Workers' right to organize together and democratically negotiate collective bargaining agreements (CBAs) are limited in Mexico. It is common practice, for example, for employers to sign Collective Bargaining Agreements (CBAs) with unions without the workers' knowledge or consent, and sometimes even before a business begins operations and any worker has been hired. These agreements are known in Mexico as "employer protection contracts," and the unions that profit from them by selling 'protection' to employers are called "protection unions." The contracts are registered at Local or Federal Conciliation and Arbitration Boards (labour boards), and are a key contributor to Mexico's high levels of inequality, poverty and injustice, and low levels of productivity. Prior to a 2012 reform of the Federal Labour Law, Mexican academics estimated that 80-90% of the 600,000 CBAs that are registered across the country are protection contracts.¹ One interviewee made the claim that the number of protection contracts registered since 2012 has increased.²

On 28 April 2016, President Enrique Peña Nieto delivered an ambitious 'labour justice' reform to Congress, aimed at modernising the labour justice system. This followed years of intense pressure from independent unions and labour rights advocates at home, and the international community,³ to address the lack of impartiality and transparency of the labour boards, as well as the problem of protection unionism.

The reform was one of nine "everyday justice" reforms whose text included provisions that responded to long-term demands from Mexico's independent union movement and was developed on the basis of a broad study of the

impartation of justice in Mexico, conducted by the prestigious Centre for Economic Research and Training (CIDE) and the Institute for Legal Research at the National Autonomous University of Mexico (UNAM), aiming to:

[D]o away with the excessive formality of justice and create a form of justice close to people, to which society can have access [...] in a prompt, thorough, impartial way.⁴

In particular, the labour justice reform explicitly aimed to deliver prompt and expeditious labour justice. To do that, it would need to:

[R]eview the functioning of the conciliation and arbitration boards to professionalize the administration of labour justice, strengthen reconciliation mechanisms, and streamline procedures, while making them more transparent.⁵

If successful, the reform will promote greater respect for trade union independence and the right to freedom of association and address the problem of protection contracts.

While the President submitted to Congress both a Constitutional and a Labour Law⁶ reform to achieve these ends, thus far only the Constitutional Reform has been debated and approved.⁷

This is the most significant reform in a century to Articles 107 and 123 relating to labour in the Constitution, a reform which elevates to the constitutional level the right for workers to be represented by the union of their free choice for the purpose of collectively bargaining their salaries and working conditions. To achieve this, the reform eliminates the tripartite conciliation and arbitration boards that administer labour justice for private sector workers and in turn replaces the possibility of arbitral awards for workers with legally mandated sentences for employers.⁸ The reform doesn't dismantle tripartism in labour justice for public sector workers or remove tripartism from the determination of minimum legal salaries, workers' compensation or productivity bonuses in all sectors. It also doesn't afford trade union rights to workers at worksites where there are less than twenty employees, unless those workers decide to form a local section of an industrial trade union or trade union in a national industry.⁹

By reforming Articles 107 and 123, the Mexican government moves actively toward honouring its commitment to workers, business and the international community to provide an impartial, unbiased, independent, and transparent labour justice system. If the reform and its implementing legislation bring all of the necessary safeguards into effect to address the problem of employer protection contracts, including the right for all union members to freely elect their leaders and to receive a hard copy of and vote on their collective bargaining agreements, they could bring Mexico's legal framework more into compliance with the International Labour Organization's (ILOs) fundamental Conventions 87¹⁰ and 98¹¹ on freedom of association and the right to collectively bargain.

Despite some ongoing risks and unanswered questions (outlined below), the global labour movement has released the following statements about the Constitutional Reform:

The reforms "address the fundamental criticisms that Mexico's independent unions and the global trade union movement have been making for more than two decades."

– International Trade Union Confederation (ITUC)¹²

The reforms "could begin to offer remedy to the deeply ingrained structural obstacles to freedom of association in Mexico."

– IndustriALL¹³

WHAT IS BEING REFORMED

The reform begins to address key long-standing criticisms of the Mexican legal framework that have been raised by independent unions, labour lawyers, academics and the global trade union movement. These include:

- Conciliation and Arbitration Boards – are politically motivated as part of the Executive Branch, and their tripartite structure allows representatives of corporatist unions and employers to influence decisions.
- Protection contracts – workers are rarely given copies of their contracts and do not have the legally mandated right to vote on contract ratification.
- Representation elections – procedural delays that sometimes last for years prevent workers from being able to vote for the union they want to represent them. Interference, intimidation, unjust firings, and fraud in such elections are common.¹⁴

The December 2012 reform to the Federal Labour Law inherited by incoming President Peña Nieto removed some obstacles to freedom of association, for example outlawing the union practice of ‘excluding’ discontented workers from membership and effectively having them fired,¹⁵ obliging the labour boards to publish information on the unions, by-laws¹⁶ and collective bargaining agreements that they registered,¹⁷ giving workers the right to request access to union accounts,¹⁸ and requiring employers to post and disseminate collective bargaining agreements in their workplaces.¹⁹

These labour law obligations are reinforced by Article 78 of the General Law on Transparency and Access to Public Information, which was instituted in May 2015, obliging the labour authorities to publish union registration information (including membership rolls and affiliation to trade union centrals), by-laws and collective bargaining agreements. It is important to note, however, that as of April 2015 only 7% of publically registered unions had updated their registration, leadership information and membership roll, as mandated by the reformed Federal Labour Law.²⁰

Despite these changes, the major structural obstacles that prevent workers from exercising their trade union rights in Mexico remained firmly in place. Addressing this, in June 2015, the ILO’s Committee on the Application of Standards (CAS) requested the Mexican government to take legislative and practical measures to find effective solutions to the obstacles to freedom of association posed by protection unions and protection contracts, and specified that legislative reforms should prevent the registration of unions that can’t demonstrate the support of the majority of the workers that they claim to represent.²¹

In June 2016, the CAS provided more detail and requested the Mexican government to:²²

- (i) fulfill its legal obligation that all labour boards publish the registration of all trade unions;²³
- (ii) engage in social dialogue to enact the pertinent Constitutional and Labour Law reforms as soon as possible; and
- (iii) ensure that trade unions are able to exercise their right to freedom of association.

These requests were repeated in February 2017 by the ILO’s Committee of Experts on the Application of Conventions and Recommendations in its annual report,²⁴ which was approved in June 2017 by the International Labour Conference.

CONTENT OF THE CONSTITUTIONAL REFORM

The Bill to reform Articles 107 and 123 of the Political Constitution was approved by the Senate on 13 October 2016, with 98 of 128 votes. It went on to be approved by the House of Deputies in November 2016 and by a majority of State congresses on 12 January 2017. It was published in the *Official Gazette of the Federation (Diario Oficial de la Federación)*²⁵ on 24 February 2017, at which time it became law.

When the Senate approved the Constitutional Reform in October 2016, it was hailed as being able to provide greater access to labour justice because it separates two distinct functions formerly carried out by Conciliation and Arbitration Boards -- conciliation to find solutions to disagreements between workers and management and rendering judgements in cases of labour conflicts. It also brings labour justice out from under the total control of the executive branch of government and into the jurisdiction of the more independent judicial branch. In order for this to happen, the Federal and Local Conciliation and Arbitration Boards will be dissolved.

Replacing the existing Conciliation and Arbitration Boards

- **Labour justice** will be rendered by federal and local level labour courts, empowered to deliver sentences. These courts will operate under the principles of “legality, impartiality, transparency, autonomy and independence” (Article 123. A. XX).
- **Labour conciliation** will be carried out by “specialised and impartial” federal and local level conciliation centres that have full technical, operational, budgetary, decision-making and administrative autonomy. They will operate under the principles of “certainty, independence, legality, impartiality, trust, efficiency, objectivity, professionalism, and transparency” and will be regulated by local laws (Article 123. A. XX). At the federal level, conciliation will be the responsibility of a new decentralised agency (see below). All labour conflicts will be subject to one expeditious mandatory conciliation hearing before proceeding to the labour courts (Article 123. A. XX).

Concerning the **registration** of all unions and CBAs:

- A new federal level institution will be established for the registration of all unions and CBAs. It will also be responsible for labour conciliation at the federal level, and all related administrative processes.
- This institution will be a “decentralized agency.”
- It will have full technical, operational, budgetary, decision-making and administrative autonomy. It will operate under the principles of “certainty, independence, legality, impartiality, trust, efficiency, objectivity, professionalism, and transparency” and will be regulated by the Statutory Law of Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*) (Article 123. A. XX).
- Its leadership will be approved by the Senate from a shortlist of three candidates presented by the President, unless consensus is not reached, in which case, the President will make the final decision. That person must have experience in labour relations, must not have had a role in a political party or stood for political office within the previous three years, must have a good reputation and not have a criminal record. The leadership period will be for six years, with the possibility of a second mandate.

With respect to **freedom of association** and **collective bargaining**:

- **Elections** to determine the outcomes of conflicts between unions, the election of union leaders, and requests for bargaining, will be “personal, free, universal and secret” (Article 123. B. XXII Bis.).

- **Principles for bargaining** and enjoying a CBA will include trade union representivity and certainty in the signing, filing and registration of the CBA (Article 123. B. XXII Bis.). The union must demonstrate that it represents workers at the workplace if it has filed a strike notice in order to oblige the employer to bargain (Article 123. A. XVIII).
- **Salaries** codified in CBAs that are not considered “appropriate”²⁶ by the labour courts will be adjusted by the labour courts (this was previously a function of the labour boards, but was little used by workers who would have had little protection from being fired should they have initiated a complaint).

RELATED INITIATIVES

The Mexican government indicated to the ILO in June 2016²⁷ that it is taking measures, even before the implementation of the reforms, to deal with the issue of protection unions and protection contracts, with the labour ministry and the labour boards.

Prior to the Constitutional Reform, the federal labour board adopted a uniform criterion for election (*recuento*) procedures and vote counting to determine the representative nature of collective bargaining agreements,²⁸ which includes:

- (i) establishing a complete updated list of workers entitled to vote, and their full identification;
- (ii) ensuring rapid, orderly and peaceful votes that are secure, free and secret;
- (iii) calculating vote totals transparently and in public; and
- (iv) holding speedy and effective hearings in case of objections.

In February 2016 the government also adopted a labour inspection protocol on the freedom to conclude collective bargaining agreements to enforce the 2012 requirement that employers post and disseminate collective bargaining agreements in the workplace. The protocol prioritizes enforcement of this requirement and establishes inspection procedures for inspectors to assess compliance, including interviewing workers to ascertain that they know the trade unions that represent them and the terms of the collective bargaining agreements applicable to them. It should be noted, however, that there is a lack of publically available official data on the number of inspections taking place and their results.



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WHAT COMES NEXT IN THE LEGISLATIVE PROCESS

Constitutional Reform

The Constitutional Reform is now law. While the labour courts, conciliation centres and the decentralised agency are being established, the existing conciliation and arbitration boards and Labour Ministry will continue to hear cases and register unions and CBAs, and the Federal Collegiate Circuit Court will continue to hear appeals against decisions reached by the labour boards.

The Federal Government (Executive Branch) will nominate a Director for the decentralized agency to the Senate.

Once these new institutions are established, the conciliation and arbitration boards and other relevant authorities will transfer their procedures, files and documentation to the labour courts, conciliation centres, and decentralized agency.

Following protests by staff of the conciliation and arbitration boards alarmed at their possible loss of employment as a result of the Constitutional Reform, they were assured by Secretary of Labour Navarrete Prida that their “rights will be respected.”²⁹ It is unknown at this point whether some staff will be transferred to jobs at the new institutions. It is also unknown how or from where judges with expertise in labour law will be recruited and/or trained for the new labour courts. Some will most likely be recruited from the Federal Collegiate Circuit Courts, but that in turn may leave vacancies that will be urgent to fill.

Implementing Legislation

The Federal and State congresses have until February 2018 to reform the relevant ‘implementing laws’, including at the federal level, the Federal Labour Law (*Ley Federal de Trabajo*); the Statutory Law for the Judicial Branch (*Ley Orgánica del Poder Judicial de la Federación*); the Law to Protect Constitutional Rights (*Ley de Amparo*); the Statutory Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*); as well as statutory state laws for the judicial branch (*Leyes Organicas de los Poderes Judiciales de las Entidades Federativas*).

As yet, there has been no public debate regarding reform of the Federal Labour Law. A proposal submitted to Congress by President Peña Nieto in April 2016 as part of the everyday justice reform package,³⁰ which has not yet reached the floor, would reinforce the spirit and intent of the Constitutional Reform, in the area of union representation elections (*recuentos*) and collective bargaining agreement registration. Specifically, the proposed reforms would revise *recuento* procedures to expedite the process and prevent long delays in the union representation vote (to be held within 5-10 days of the parties being notified) and revise procedures to register collective bargaining agreements, aiming to ensure trade union representivity in the context of the initial registration of CBAs and limit the signing of protection contracts, through measures such as:

- (i) verification of the existence of an operational workplace prior to registration of a CBA;
- (ii) dissemination of hard copies of union registration documents, by-laws and CBAs to covered workers; and
- (iii) verification of support by at least 30% of covered workers of the union holding title to the CBA

Timeframe

Many observers, including most of the experts consulted, expect that steps to create the institutions called for by the Constitutional Reform will move ahead this year and that the implementing legislation that will determine the details of how the institutions carry out their functions will be approved between September and November 2017. However, those consulted by MSN also pointed to the possibility that the reforms will be either delayed or sped up, as part of the political play of having them considered in a year of elections in some key states and a year preceding Presidential elections. Regardless, constitutional law holds that the implementing legislation should be approved within a year of the publication of the reform in the *Official Gazette*. This presented a one-year window of opportunity for the government to ensure the intent and spirit of the reform is reflected in the secondary legislation and the implementation of the new labour justice institutions. A realistic timeframe for adoption of the full package of reforms is less certain, with those consulted concerned that it could take years for the impact of the reforms to be felt by most workers.

Risks

In October 2016, it came to light that a 'competing' proposal to reform the Federal Labour Law had also been submitted to Congress, apparently from COPARMEX (Mexican Employers' Association), but as with the President's April 2016 labour law reform proposal, had not reached the floor for debate. The October proposal was seen by experts interviewed as an attempt to preserve some elements of protection unionism, since it would reinforce a regressive interpretation of the Constitutional Reform by allowing an employer to voluntarily sign a protection contract in cases where they weren't coerced to do so by the threat of a strike. However, if such language were included in the implementing legislation, it is likely that it would be judged to be unconstitutional.

There is still a risk, however, that unrepresentative unions, COPARMEX, and others may try to undermine the reform through the implementing legislation, by delaying or obstructing the approval of implementing legislation, and/or by non-compliance once the implementing bills are signed into law. Mexico, after all, continues to be a country that is governed opaquely, where corruption is widespread, and where the rule of law is limited. The reforms tackle these issues in the labour environment, but the general situation of impunity and insecurity could make it difficult to ensure implementation of secondary legislation as it begins to roll out.

New labour justice institutions will be created, but it is not yet clear how they will be structured, staffed, and financed or what procedures will be established for their operation. There is concern in some sectors that staff from the labour boards may be shifted into the new institutions, taking with them their old institutional cultures and practices. It is also not certain, until all proposals for the implementing laws are drafted, debated and final versions approved, whether or how these proposals will ensure and verify that workers ratify CBAs and that workers vote in union representation elections free from coercion. If the final language does not ensure that workers can freely vote for or against their collective bargaining agreements when they are first registered, and upon successive negotiations for revisions to the CBA, protection contracts will likely still be registered and persist. There is also ambiguity in the interpretation of the articles on principles for bargaining, regarding whether unions will be obliged to demonstrate representivity when they sign a CBA without filing a strike notice because the employer voluntarily agrees to bargain. Unless this ambiguity is resolved satisfactorily in the implementation legislation, the possibility remains that protection contracts may still be signed.

The decentralised agency that will conciliate in federally regulated industries, and register all trade unions, will be directed by a person nominated, or decided upon, by the President of the Republic. This risks partiality in both the registration of unions, and the federal conciliation function. At the state level, conciliation will be regulated by local laws, invoking the

risk that they will not advance the values of independence, impartiality, and transparency as established by the reformed Constitution for labour conciliation. A state-by-state process could also potentially add more divergence into the interpretation and implementation of the reform.

While it would be difficult to undermine the spirit and intention of the Constitutional Reform by drafting contradictory text for the implementing laws, there are concerns that other tactics may be used to achieve the same end. At the time of writing, there is speculation that regressive implementing legislation is indeed being drafted behind closed doors. While information is scarce, some of those MSN consulted believe it could imply, for example, imposition of a tripartite structure on the decentralized agency for the registration of unions and CBAs, which would likely replicate in the new agency the shortcomings of the tripartite labour boards, including bias and lack of independence and transparency, thereby also undermining the capacity of the agency to effectively combat employer protection contracts and, more generally, advance freedom of association.

The lack of official communiqués thus far from the Government, including since the Constitutional Reform was signed into law, keeps those consulted by MSN concerned about a possible retreat or volte-face from the aims of the reform.³¹ In order to mitigate these risks domestic and international pressure on the Mexican government to keep advancing should be maintained. Stakeholder debate could focus around the many unanswered questions that will ultimately be decided in the implementing laws.

Unanswered Questions

In addition to the uncertainty about whether the implementing laws will signify a reversal of the spirit and intent of the Constitutional Reform, there is further uncertainty regarding many important operational details that the Constitutional Reform leave to the secondary legislation to resolve. For example:

- Who will the federal government nominate to be the Director of the new decentralized agency that registers unions and CBAs?
- What requirements will be established for registering unions and CBAs? Will it be possible to register at the state level, or will union representatives be obliged to travel to Mexico City to do so? Will registration be transparent and speedy?
- How will workers be consulted the first time a new CBA is to be signed? Will criteria be loosened if the employer voluntarily agrees to sign (i.e. without a strike notice being filed)? Will workers have the right to ratify the CBA, and if so, what percentage of workers will need to be in favour of the contract for it to be signed? Will employers be mandated to give a copy of the CBA to each worker? Will the new rules apply only to new CBAs, to all CBAs when they are renegotiated, or to all CBAs?
- Will union representation elections be held expeditiously? Will objections be attended to before or after the vote? How will employer and political neutrality be ensured?
- Will labour trials be oral and adversarial, in line with other judicial reforms currently taking place in Mexico? With what resources will new labour judges be trained? What safeguards will be put in place to ensure trials are impartial? How will the courts deal with the backlog of cases?
- What will be the process of mandatory conciliation?

Ultimately, the resolution of these issues will determine whether the Constitutional Reform is successful in its stated aims or becomes another “simulation” or cosmetic reform designed more to appease international detractors than transform labour justice and advance worker’s rights in Mexico.

LACK OF ACTION AND PUBLIC DISCUSSION

Since the adoption of the Constitutional Reform, there has been very little public discussion regarding its implementation, and, as mentioned above, no debate in Congress yet on the proposed implementing legislation. Debate regarding the content of the implementing legislation appears to be taking place behind closed doors within executive branch institutions.

While it is hoped that the implementing legislation will be adopted in a timely manner and will advance workers’ rights, including by improving the procedures for union elections and guaranteeing the conditions necessary for effective ratification by workers of their CBAs, there is no guarantee that deals will not be made with the political representatives of the corporatist unions and certain employer organizations to ensure that industrial relations are not democratized. It is worth noting that these changes were proposed by Mexico’s independent unions and presented to Congress by the Partido de la Revolución Democrática (PRD) but were rejected when previous reforms were debated in 2012.³²

To date, the Mexican government has not sought the resolution of outstanding conflicts around freedom of association and collective bargaining, raising some concerns about the political will to implement the Constitutional Reform according to its underlying intent and spirit to advance workers’ rights. At PKC, for example, an autoparts company in Ciudad Acuña, Coahuila, workers are still waiting for a bargaining rights election more than four years after filing for it in November 2012, and worker leaders fired in December 2012 have yet to be reinstated.³³ In addition, new employer protection contracts continue to be signed behind workers’ backs, such as those at the BMW plant in San Luis Potosí.³⁴ The economic and political interests behind these contracts are the same ones that stand to lose if the Constitutional Reform is fully and faithfully implemented.

In 2014, the ILO’s Committee on Freedom of Association and in 2015, its Committee for the Application of Standards requested that the Mexican government consult with its social partners to continue adopting necessary legislation and practical measures to find solutions to the issue of protection unions and protection contracts.³⁵

There are a number of previous obligations based on the 2012 reforms to the Federal Labour Law and recommendations from the ILO that have still not been complied with. For example, not all labour boards have published information on the unions and public versions of the CBAs that they have registered. The federal government still hasn’t entered into social dialogue with the independent unions that are complainants on case 2694 before the ILO, as was requested by the ILO Committee on the Application of Standards in 2016 and 2017.

LEVERAGING REFORM

Beyond the implementing legislation for the Constitutional Reform, all of the experts consulted believe that workers will need to continue to leverage other mechanisms in order to guarantee their access to labour justice and their right to freedom of association and collective bargaining in Mexico.

With the demise of the Trans Pacific Partnership (TPP), which was expected to have substituted NAFTA's out-dated and largely ineffective labour side agreement with an enhanced labour chapter that included core international labour standards, Mexico, Canada and the United States are now looking to renegotiate NAFTA. The Mexican government, as recently as March 2017, stated that it cannot continue to base its competitiveness on low salaries,³⁶ and that it aims to incorporate the TPP labour provisions into a renegotiated NAFTA.³⁷ A draft letter from the Acting United States Trade Representative to the US Congress from March 2017 indicates the same intention.³⁸ On 5 April 2017, the Union Nacional de Trabajadores (UNT) and the AFL-CIO agreed to update their bilateral agreement on joint priorities, prioritizing participation in social dialogue with the aim of strengthening labour protections in the renegotiated NAFTA.³⁹

At a May 26-27 Encounter of Social Organizations of Canada, United States and Mexico, the delegates unanimously adopted a Political Declaration that, among other demands, called for the inclusion in the text of a renegotiated NAFTA "clear and effective, time-bound, binding and enforceable labor and environmental rules that meet and exceed international standards." The Declaration also calls for "measures in law and practice that raise wages and increase access to decent work in all three countries, promoting trade union democracy, freedom of association, and transnational collective bargaining in cases where an employer operates in two or more countries."⁴⁰

Public statements by US government representatives indicate their reluctance to make the signing of NAFTA conditional on the progress of the Mexican government in implementing the Constitutional Reform, but leave the door open to the possible inclusion of a stronger and more enforceable labour clause in a renegotiated agreement. At a June 22 hearing of the Ways and Means Committee of the US Congress, Trade Representative Robert Lighthizer stated that the Trump administration does not believe that Mexico must implement labour justice reforms before the US Congress votes to approve a renegotiated NAFTA. However, Lighthizer also stated, "we believe you have to have basic [ILO] core standards and we believe they have to be enforceable..."⁴¹



Photo: <https://en.wikipedia.org/wiki/Maquiladora#/media/File:Maquiladora.JPG>

Representatives of global and North American unions, likewise, see an opportunity for labour rights to be addressed in the renewed free trade agreement between Mexico and the European Union⁴² the updated content for which will be negotiated beginning in November 2017. The current proposal by the EU for the chapter on trade and sustainable development evokes the ILO's Fundamental Principles and Rights at Work and decent work agenda as well as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.⁴³ While the labour related complaint and dispute mechanisms in the proposal are considered weak by some observers, impact statements on non-tariff barriers to trade (including labour concerns) and stakeholder consultations in Mexico will be carried out as part of the process to reach agreement on content. These may also provide an opportunity for strengthening its labour rights provisions.

Lastly, Mexico's independent unions and their legal counsel, as well as global and North American trade unions, continue to encourage the Mexican government to ratify ILO Convention 98 on collective bargaining, which it has delayed despite removing the main obstacle to compliance in the 2012 Labour Law Reform, the exclusion clause for dismissal. Even though the government has committed to comply with the principles of the Convention under the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, by ratifying the Convention, the government would bind itself to uphold the rights established therein and subject itself to the Convention's oversight and reporting procedures, sending a strong message to its social partners regarding its intention to guarantee collective bargaining. According to those consulted by MSN, ratification would also contribute to ensuring that the new institutions that are established as a result of the Constitutional Reform are, in law and practice, independent, transparent, objective and impartial, with workers having recourse to the ILO's oversight bodies to complain of any failure.

THE BUILDING BLOCKS FOR REFORM

- Mexico's Constitution was reformed in June 2011 to elevate human rights protections that are established in international treaties ratified by Mexico – including those related to economic and labour rights – to constitutional level. The relatively more detailed language of specific international treaties, for example on freedom of association (compared to the more general language of the Constitution), provides more assurances for workers' rights.
- The government has had a legal obligation to publish information on the registrations of all trade unions, as well as on all union by-laws and “public versions” of CBAs, since 2012 (Articles 365 bis, 391 bis, 424 bis of the LFT). These labour law obligations are reinforced by Article 78 of the General Law on Transparency and Access to Public Information, which was instituted in May 2015.
- The principles established in this Constitutional Reform cannot be over-ridden in the implementing legislation. Any attempt to do so would be unconstitutional. Also, given the nature of the principles established in the Constitutional Reform, workers could win a Supreme Court case to protect their constitutional rights against protection unionism even before the implementing laws are drafted, debated and approved. The signing of protection contracts contravenes the intention and spirit of Mexico's recently reformed Political Constitution.

CONCLUSION

Despite the fact that the text of the Constitutional Reform is publicly available, there appears to be very little awareness among workers, employers and other stakeholders of its content and potential implications. Given its minimal media coverage and the fact that the implementing legislation has yet to be voted on by Congress, employers and workers seem to be unprepared for the coming changes that are expected to prohibit certain labour practices and may open up opportunities for democratized industrial relations. Each sector of society has an important role to play to prepare for, comply with, and monitor implementation of the reforms. Multi-sector discussion and debate would also be useful to educate workers and employers on their new rights and obligations and to ensure momentum is maintained during the current transitional period.

Employers will need to revise their freedom of association policies and practices to ensure that workers are informed of their rights under the new legislation, and that their procedures to guarantee that those rights are complied with at their workplaces. They should also be made aware of their current obligations with respect to the 2012 reforms to the Federal Labour Law and reinforced by the 2016 Inspection Protocol, which include ensuring that the CBA is posted and disseminated in the workplace, and of the principles and procedures set out by the 2015 uniform criterion on *recuentos*, which includes providing a complete and updated voter list.

While the reform process is still underway, international brands, employers, trade unions, worker support groups, human rights organizations and the international community can continue to support the process by acknowledging progress so far and encouraging the Mexican government to approve implementing legislation that is true to the underlying spirit and intent of the Constitutional Reform and avoids the pitfalls described above. Pressure can be brought to bear to ensure the expeditious roll-out of the implementing legislation and to ensure that justice is brought to those who violate the laws in the future. They can also encourage the government to resolve outstanding conflicts, to cease registering newly signed employer protection contracts, and to ratify ILO Convention 98. Cross-sector outreach and coordination would be particularly helpful in advancing this work.

The ILO has consistently requested that the Mexican government formally seek its assistance in coming into compliance with Conventions 87 and 98. In February 2017 that request was reiterated with respect to making progress in the implementation of the Constitutional Labour Justice Reform. While the government has indicated its intention to seek technical assistance, it continues to delay in filing a formal request, without which, the ILO cannot act. As with ratification of ILO convention 98, it would also be helpful to encourage the government to expeditiously request ILO assistance.

Regardless of whether the ILO ultimately provides technical assistance to the Mexican government, workers, employers and brand buyers alike will need to monitor and report on the implementation of the Constitutional Reform, and the secondary legislation, at the worksite level. Testing the new labour justice system with individual and collective cases, should they arise, will be crucial to determining whether the new system is functional and serves its intended aims. Documentation in cases where justice falls short, and reporting to the ILO through its various mechanisms (the Committee on Freedom of Association, CFA; Committee on the Application of Standards, CAS; and the Committee of Experts on the Application of Conventions and Recommendations, CEAR) will be crucial to holding the government accountable.

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