

# Will Mexico's Labour Justice Reform Deliver Justice for Workers?

## UPDATE ON RECENT DEVELOPMENTS

Maquila Solidarity Network

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This Update is written at a moment of uncertainty and transition. Labour rights advocates in Mexico are preparing for the February 1 opening of the Senate, when debate on competing bills will define how and to what degree a Constitutional Reform to the country's labour justice system will be implemented. At the same time, difficult negotiations of the North American Free Trade Agreement (NAFTA) are underway, which could affect the labour justice reform process in Mexico. While it is impossible to predict how events will unfold in Mexico or what impact the NAFTA results will have on decisions on labour law reform, we hope this review of developments over the last few months provides a context to better understand the debate and issues at stake.

In February 2017, a Constitutional Reform to Mexico's labour justice system became law, raising hopes in Mexico and internationally that the existing tripartite conciliation and arbitration boards (*juntas de conciliación y arbitraje* or *juntas*) would be replaced by new institutions that are unbiased, independent and transparent.

Controlled by representatives of corporatist unions, executive branches of state and federal governments, and employer organizations, the *juntas* are criticized for blocking the registration of independent unions and registering "employer protection contracts" signed by employers and non-representative unions without the knowledge or consent of the affected workers.

As well as eliminating the *juntas*, the February 2017 Constitutional Reform also offered hope that workers would have the right to choose their union and to vote on their collective bargaining agreement (CBA). However, constitutional language focuses on principles rather than operational details and was therefore not sufficiently precise on how worker support for a CBA or the union that signed it would be determined. Nor was it clear whether workers would

only be able to vote on the initial CBA or also on the content of biannually negotiated revisions to the CBA. These questions were to be resolved by corresponding reforms to the Federal Labour Law and other pieces of implementing legislation.

In July 2017, MSN published a *Briefing Paper* on the labour justice reform, which outlined outstanding questions as well as competing scenarios for how different types of implementing language could be rolled out.<sup>1</sup> In that paper, we noted that when President Peña Nieto submitted to Congress the Constitutional Reform in April 2016, he also submitted a Labour Law reform bill, which largely followed the intention and spirit of the Constitutional Reform bill.<sup>2</sup>

That proposal has languished in Congress, largely ignored, at least in public, by elected representatives, executive branch officials, the private sector, civil society and the media. This is due in part to the veil of secrecy that fell upon congressional debate on this topic. Negotiations around the content of the implementing legislation have been limited to the traditional power brokers, and have happened behind closed doors, and there was no public dialogue with independent trade unions, labour rights experts, or other civil society actors.

On July 28, 14 apparel brands released a joint letter to Mexico's Labour Minister, Jesus Alfonso Navarrete Prida, declaring their support for the Constitutional Reform and their hope that it would pave the way for workers to enjoy their internationally recognized rights to freedom of association and collective bargaining.<sup>3</sup> To date, none of the signatory companies have received a formal reply from the Labour Ministry (STPS).

On November 8, the Americas Group Mexico Committee and MSN co-sponsored a forum in Mexico City entitled "Mexico Labour Justice Reform: Will It Deliver Justice for Workers?", attended by 26 representatives of apparel brands and manufacturers, international labour rights organizations, the US and Canadian embassies, and four labour rights experts from Mexican and international institutions.

Although there was still very little information publicly available at the time of the forum regarding the content of the implementing legislation and the timing of its passage through Congress, the labour rights experts who spoke made a number of observations and predictions that are turning out to be well founded, including:

- Neither the President, nor the Labour Minister, nor the PRI would be submitting a proposal for the secondary legislation. That observation was based on statements by a representative from the Labour Ministry at a meeting the previous day. The fact that no mention was made at that meeting of Peña Nieto's April 2016 labour reform proposal raised concerns that the proposal has been abandoned by the government.
- The business sector was lobbying for unrelated changes to labour law, for example, on subcontracting. Labour rights experts anticipate that business could be bargaining for weakened safeguards on subcontracting as the price for conceding to more associational rights and bargaining protections for workers.
- The juntas will be phased out, regardless of how new institutions will be established, regulated, and staffed. However, the new institution charged with registering unions and CBAs and conducting mandatory conciliation between workers and employers will likely be established on a tripartite model.

<sup>1</sup> [www.maquilasolidarity.org/en/labour-justice-reform-Mexico](http://www.maquilasolidarity.org/en/labour-justice-reform-Mexico)

<sup>2</sup> [www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5\\_INI\\_EF\\_Ley\\_Federal\\_Trabajo.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5_INI_EF_Ley_Federal_Trabajo.pdf)

<sup>3</sup> [www.maquilasolidarity.org/en/joint-letter-14-clothing-brands-supporting-labour-justice-reform-mexico-july-2017](http://www.maquilasolidarity.org/en/joint-letter-14-clothing-brands-supporting-labour-justice-reform-mexico-july-2017)

- Protection contracts can now be found unconstitutional (regardless of the final outcome of the implementing legislation), and workers and their organizations could take cases challenging newly signed CBAs through the legal system to the Supreme Court.
- Any implementing legislation that appears to roll back the Constitutional Reform commitments could result in constitutional appeals to the Supreme Court.

One month after the forum, with no public notice and in the lead up to Congress' winter recess, two PRI Senators, who happen to also be leaders of the two major corporatist union confederations – the CTM and the CROC, submitted a bill for implementing legislation to the Senate. It has been well documented that these leaders have signed numerous protection contracts and have obstructed worker's access to labour justice.<sup>4</sup> Although technically submitted by the two Senators, it is widely believed that the bill was originated by the private sector and is endorsed by the Executive Branch of the Federal Government.<sup>5</sup>

A number of labour rights experts have published critical analyses of the CTM/CROC/PRI bill, including Arturo Alcalde, who spoke at the November 8 forum.<sup>6</sup> What they characterize as a “counter-reform bill” includes numerous regressive proposals that go beyond the issue of labour justice, including a weakening of regulations on outsourcing and union transparency.

The provisions most relevant to the Constitutional Reform reflect concerns highlighted in the November forum:

- Re-establishing tripartism in the new institutions that will register unions and CBAs, with representatives of the official unions sitting on those institutions, just as they had in the *juntas*.
- Failing to mention anything about the right of workers to vote on CBAs, thereby leaving the right to select the union in the hands of the employer, along with the power to retain that union against the wishes of the workers.
- Creating a number of judicial and practical obstacles that would make it extremely difficult, if not impossible, for an independent union to gain recognition or for workers to change unions where a protection union has title to the CBA.
- Allowing employers to dismiss workers without written notice explaining the reasons for dismissal, thereby making it easier to dismiss supporters of independent unions, and more difficult for workers to successfully bring legal cases against their employers for unjust dismissal.

To our knowledge, this bill was not debated prior to the adjournment of Congress in December. However, the bill will be considered in February when Congress reconvenes. All or parts of it could be adopted by the 24th of that month, which marks the one year anniversary of approval of the Constitutional Reform and deadline for approval of implementing legislation.

<sup>4</sup> Tereso Medina is a leader of the CTM in Coahuila State who is known for signing protection contracts and who personally controls over 50 unions. The national leader of the CTM, Carlos Aceves del Olmo, has publicly criticized Medina for putting forward the bill without the CTM's approval. However, his statement focused on the section of the bill that would remove restrictions on outsourcing, rather than those sections that would preserve tripartism and protection contracts.

<sup>5</sup> In a December 27, 2017 correspondence to the ILO, Mexico's Permanent Commission to the UN in Geneva responded to criticisms of the CTM/CROC proposal by the AFL-CIO. The Mexico government's detailed defense of that proposal before it has even been debated in the Senate suggests that it, rather than Peña Nieto's April 2016 proposal, now has the full backing of the government.

<sup>6</sup> See two articles by Arturo Alcalde, both published in *La Jornada*: “The Peña Nieto-Meade Labor Initiative in 10 Points,” January 6, 2018, and “A grotesque labor reform initiative,” December 9, 2017.

Meanwhile, a second bill was submitted to the Senate by a Senator from the Party of the Democratic Revolution (PRD) that was developed by the National Union of Workers (UNT), the country's most important independent union central. Unlike the CTM/CROC/PRI proposed legislation, the UNT/PRD bill includes the following elements:

- New labour tribunals should be led by judges who should have sufficient well-trained staff and resources to be able to resolve individual and collective disputes.
- The requirement for conciliation should be restricted to individual cases, and should not apply to collective disputes, such as over title to the CBA.
- Disputes about which union should hold title to the CBA should be resolved by a personal, free and secret ballot vote.
- An initial CBA does not come into effect unless and until the workers covered by it have voted in favour of its provisions. Once the CBA is approved, however, a vote is not required every two years when revisions are negotiated.
- If an employer refuses to sign the CBA after a majority of workers have voted in favour of its provisions, the union has the right to declare a strike.

Between now and the February 24th deadline, lobbying in Mexico by supporters of the competing CTM/CROC/PRI and UNT/PRD bills is likely to intensify.<sup>7</sup> On December 14, the Labour Justice Reform Observatory, in which MSN participates, issued a public statement addressed to the Federal Executive, Senators and Members of the Chamber of Deputies, the ILO, the Interamerican Commission on Human Rights, the Mexican National Human Rights Commission, and the International Trade Union Organization (ITUC), which includes a detailed list of concerns and proposals regarding the secondary legislation.<sup>8</sup>

The Senate reconvenes on February 1, three weeks prior to the February 24 deadline for passage of implementing legislation. Mexico labour partners anticipate that there will be a great deal of horse-trading over the month among the various political parties and economic and political interests about the content of the bill that is ultimately passed. In other words, we may see aspects of both bills in the final legislation.

The debate on the secondary legislation is taking place against the backdrop of a possible overhaul of NAFTA. This has provided the context for pressure by trade unions in the three NAFTA countries to ensure not only enforceable labour conditionality in the agreement, but also that Mexican law be consistent with ILO norms and standards before the agreement is signed. On January 24, 2018, a letter expressing concerns about the suppression of labour rights and wages in Mexico and a lack of meaningful progress in the labour justice reforms as NAFTA renegotiations are ongoing was signed by 183 Members of the US Congress and delivered to the US Trade Representative. Since the election of President Donald Trump, however, the focus of US trade proposals and demands has shifted from pressuring for improved labour standards, for instance, as a condition of Mexico's accession to the Trans Pacific Partnership (TPP), to demanding trade advantages for the US over Mexico and Canada. As a result, Mexico is feeling less pressure from its major trading partner to fully implement its labour justice reforms.

In contrast, the election of a Liberal government in Canada resulted in a greater emphasis by that government on strengthening labour standards provisions in a re-negotiated NAFTA. It remains to be seen, however, whether or to what extent the Canadian government will maintain its position on labour rights in the face of a potential walk-away from the renegotiations by the US.

<sup>7</sup> While the April 2016 reform proposal presented by President Peña Nieto and still circulating at the Senate seems to have dropped from sight, it is still possible that it will form part of the debate over February.

<sup>8</sup> [www.maquilasolidarity.org/sites/maquilasolidarity.org/files/resource/Observatory\\_Statement\\_Dec\\_14\\_2017.pdf](http://www.maquilasolidarity.org/sites/maquilasolidarity.org/files/resource/Observatory_Statement_Dec_14_2017.pdf)

Despite increased speculation that Trump may invoke Article 2205 of NAFTA to give six months' notice of US withdrawal from the agreement, there are also some new developments that could extend the negotiations and the space to influence the Mexican government on the secondary legislation. For instance, at the sixth round of negotiations in Montreal, Canada presented new proposals for increased North American content in cars and trucks manufactured in and shipped between the three countries and to redefine what processes are included under US content. Those proposals were offered as an alternative to the US proposal for 85% North American content to qualify for duty-free shipment between the three countries and 50% US content for duty-free shipment of vehicles to the US.

Trump has also expressed a willingness to delay conclusion of the negotiations until after the July 1 Mexican election. Of course, it is hard to predict what actions the Trump administration will eventually take or how the US Congress will respond to those actions. It is also important to note that Trump's Trade Promotion

Authority expires in July 2018, and that mid-term elections for the House and Senate may change the balance of forces in Congress.

Whatever the outcome of the NAFTA negotiations, the debate on the Constitutional Reform implementing legislation in the Mexican Senate and Chamber of Deputies, and the upcoming elections in the US and Mexico, we can be certain that there will be ongoing pressure both within Mexico and at the international level for the government to make good on its commitment to make fundamental reforms to its labour justice system. Mexican and global union organizations, for example, are working to make sure that the ILO is fully informed of signs that the Mexican government is backtracking on its commitment to fully implement the Constitutional labour justice reform. Meanwhile, the AFL-CIO and UNT have announced that they are filing a complaint under the existing NAFTA labour side agreement charging that by simply promoting the CTM/CROC bill, the Mexican government is violating its obligations to "provide high labour standards" and "strive to improve those standards".<sup>9</sup>

*MSN will continue to monitor and report on developments on this critically important issue.<sup>10</sup> It is still an outstanding question whether the promise of the February 2017 Constitutional Reform to deliver justice to workers will be realized or the status quo maintained.*

#### RESOURCES:

Links to four excellent short educational videos (in Spanish) from *Reforma Laboral para Todos*:

- ▶ **Arturo Alcalde:** *¿Qué propone la reforma constitucional para la consulta de los trabajadores?*
- ▶ **Carlos de Buen Unna:** *Titularidad del Contrato Colectivo*
- ▶ **Graciela Bensusan:** *Voto libre, secreto y personal de los trabajadores*
- ▶ **Jose Alfonzo Bouzas Ortiz:** *¿Qué es el carácter tutelar del derecho laboral?*

<sup>9</sup> <https://www.reuters.com/article/us-trade-nafta-labor-exclusive/exclusive-u-s-mexican-unions-to-file-nafta-complaint-over-labor-bill-idUSKBN1FE1ZE>

<sup>10</sup> This work is supported in part by a grant from the Labour Program of Employment and Social Development Canada (ESDC).