

REPORT
INDEPENDENT MEXICO LABOR EXPERT BOARD
JULY 7, 2021

The Independent Mexico Labor Expert Board submits this 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).

TABLE OF CONTENTS

I. STATUTORY BASIS FOR THIS REPORT

II. ACTIVITIES OF THE BOARD

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

B. Mexico's efforts to implement its labor reform

1. Mexico's May 1, 2019 Labor Law Reform
2. Legal challenges to the reforms
3. Implementation of union democracy and transparency provisions of the reform
4. Transitional mechanisms and experience to date
 - a. Transitional mechanisms
 - b. Legitimation of existing collective bargaining agreements to date
 - c. Assessment of the legitimation process to date
5. Progress on Establishment of Federal Level Institutions
 - a. Federal Center for Labor Conciliation and Registration
 - b. The Need for States to Implement Reforms
 - c. Staged Implementation of Conciliation Centers and Labor Courts
 - d. Federal Labor Courts

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

1. Support for Mexican workers' rights to organize representative unions and to engage in meaningful collective bargaining
2. Technical assistance to build the capacity of Mexican labor inspectors

IV. CONCLUSION AND RECOMMENDATIONS

V. SEPARATE STATEMENT AND DISSENTING VIEWS OF BOARD MEMBERS KYLE FORTSON, STEFAN MARCULEWICZ, PHILIP MISCIMARRA AND CHARLOTTE PONTICELLI

I. STATUTORY BASIS FOR THIS REPORT

In Section 731 of the USMCA Implementation Act,¹ 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 reform²; 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

With the appointment of Kyle Fortson and Charlotte Ponticelli pursuant to Section 732(a)(5) of the USMCA Implementation Act, the Board has its full complement of members.³

In preparing this report, the Board submitted information requests to the Interagency Labor Committee and arranged a briefing with ILC representatives. The Board appreciates the support provided by USTR and DOL officials.

The Board provides this 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.⁴

¹ P.L. 116-113, Jan. 29, 2020.

² 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).

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

⁴ This report incorporates and builds on the Interim Report submitted on December 15, 2020, including its conclusions and recommendations. See letter of February 16, 2021 from Richard A. Neal, Chairman, Committee on Ways and Means, U.S. House of Representatives (“The Committee appreciates the report’s concluding

The Board has identified a number of serious concerns with Mexico's labor law enforcement process and implementation of its labor reform 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 require immediate attention. While the Board has focused much of this review on Mexico's obligations under Annex 23-A, the Board's findings are equally relevant to Mexico's obligations under Chapter 23, which will be addressed in greater detail in subsequent reports.

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 Mexico⁵

Mexico's economically active population in the first quarter of 2021 was 55.4 million.⁶ Of this population, 36.4 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).⁷ 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.⁸

A large percentage of unionized private sector workers are covered by "protection contracts"⁹ – "collective agreements" signed between employers and employer-dominated "protection" unions without the involvement or even knowledge of the workers the union purports to represent.¹⁰ In

recommendations, as they assist with and inform compliance determinations, and are based on the Expert Board's comprehensive assessment.")

⁵ This 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.

⁶ STPS, Información Laboral, June 2021, available at <http://www.stps.gob.mx/gobmx/estadisticas/pdf/perfiles/perfil%20nacional.pdf>

⁷ These include IMSS (covering 20.1 million workers of whom 86% are permanent and 14% temporary), ISSSTE (covering 3.1 million workers), and some smaller funds. See Mexican Institute of Social Security, Puestos de trabajo afiliados al Instituto Mexicano de Seguro Social, no. 242/2021 (May 2021), available at: <http://www.imss.gob.mx/prensa/archivo/202106/242>; ISSSTE, Anuario Estadístico 2020, Ch. 1, available at: <http://www.issste.gob.mx/datosabiertos/anuarios/anuarios2020.html#cap1>

⁸ 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.relats.org/documentos/ORGDeLaGarza2.pdf>.

⁹ 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: <https://www.eluniversal.com.mx/nacion/gran-mayoria-de-contratos-son-de-proteccion-dice-subsecretario-de-trabajo>.

¹⁰ 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

some cases, protection contracts have been signed by employer-dominated unions even before the employer began operation or hired its first worker.¹¹ 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 be likely to 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)¹² for very low wages (the lowest average wages among OECD countries)¹³, often in hazardous working conditions and with no effective means to vindicate their rights at work.¹⁴ 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).¹⁵

López, La Democracia Pendiente: La libertad de asociación sindical y los contratos de protección en México (2000).

¹¹ 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.”).

¹² OECD, Data – Hours Worked, available at: <https://data.oecd.org/emp/hours-worked.htm>

¹³ OECD, Data – Average Wages, available at: <https://data.oecd.org/earnwage/average-wages.htm#indicator-chart>

¹⁴ 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 Buró laboral: preguntas y respuestas con Patricia Kurczyn Villalobos, comisionada del Inai, *El Economista*, Sep. 22, 2019, available at: <https://www.eleconomista.com.mx/empresas/Buro-laboral-preguntas-y-respuestas-con-Patricia-Kurczyn-Villalobos-comisionada-del-Inai-20190922-0003.html>; ¿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>.

¹⁵ The administration of President Andrés Manuel López Obrador raised minimum wages by 16 per cent in 2019, 20 per cent in 2020, and 15% in 2021. Reuters, Mexico to raise workers' daily minimum wage by 15% in 2021, Dec. 16, 2020, available at <https://www.reuters.com/article/mexico-economy-wages-idUSL1N2IX053>. See Comisión Nacional de los Salarios Mínimos, Evolución del Salario Mínimo, Jun. 9, 2021, available at <https://www.gob.mx/conasami/documentos/evolucion-del-salario-minimo?idiom=es>.

TABLE 1

Hourly compensation costs in manufacturing, in US dollars and as a percent of costs in the United States (US =100).¹⁶

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

While the exact number of protection contracts is unknown,¹⁷ Mexican labor officials estimate that at least 75 per cent of current collective bargaining agreements (CBAs) are protection contracts.¹⁸ 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 “represents” them, nor in most cases can they obtain a copy of the collective agreement that governs their workplace.¹⁹ If they are able to obtain this information, they can only challenge the existing

¹⁶ Source: The Conference Board, International Labor Comparisons program, February 2018, <https://www.conference-board.org/ilcprogram/index.cfm?id=38269#Table1>. Regrettably, the Bureau of Labor Statistics discontinued the International Labor Comparisons program in 2013. Some of its work has been carried on by The Conference Board, but these invaluable data on hourly compensation costs in manufacturing are no longer available. The Board urges the Department of Labor to address this critical information gap as part of its commitment to informing American workers.

¹⁷ 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/ri/doc/DSAJLCYA.pdf> The Board requested but did not receive updated figures.

¹⁸ 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; 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>.

¹⁹ 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

union by forming or affiliating to an independent union and filing a demand for collective bargaining (*emplazamiento*),²⁰ 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.²¹ In its totality, the protection contract system allows employers to use protection union leaders to suppress the rights of their employees.²²

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

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.” 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. In addition, as collective bargaining agreements are renegotiated and deposited with the Federal Center for Conciliation and Labor Registration, employers are required to give employees a printed copy of their CBA under Art. 132.XXX of the Federal Labor Law. So far, however, the CFCRL website lists only three CBAs.

https://www.centrolaboral.gob.mx/publicaciones/contratos_colectivos_de_trabajo_juntas/

²⁰ 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.

²¹ 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; 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/>.

²² 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>.

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.²³ Workers who challenge this system have faced surveillance, harassment, threats, arrest, physical violence, and assassination.²⁴

The International Labor Organization (ILO) identified the protection contract system as a serious violation of the right to freedom of association guaranteed by ILO Convention 87.²⁵ 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.²⁶ The Committee on the Application of Standards reached similar conclusions.²⁷

²³ The May 1, 2019 reform of Art. 395 of the Federal Labor Law eliminates the exclusion clause. However, this clause continues to be included in collective bargaining agreements. For example, Article 7 of the industry-wide collective agreement for the wool textile industry, published in the Official Journal on June 18, 2021, states that “The personnel who are hired directly by the company must join the union that administers the industry-wide contract within 8 days. Likewise, if any worker resigns from the Union or if it decides to apply the exclusion clause in accordance with its statutes, for serious reasons, the Employer will be obliged to dismiss (the worker) without liability.” See https://dof.gob.mx/nota_detalle.php?codigo=5621674&fecha=18/06/2021.

²⁴ See, e.g., Dos mineros son asesinados en la canadiense Media Luna; ligan a matones con la CTM de Guerrero, Sin Embargo, Nov. 20, 2017, available at <https://www.sinembargo.mx/20-11-2017/3353822>; Asesinan en Cocula al líder minero Quintín Salgado, Proceso, Jan. 25, 2018, available at <https://www.proceso.com.mx/nacional/estados/2018/1/25/asesinan-en-cocula-al-lider-minero-quintin-salgado-198840.html>; 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>.

²⁵ 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.

²⁶ 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

²⁷ See, e.g., ILO, Committee on the Application of Standards, Convention 87 – Mexico, 104th ILC Session (2015), available at: 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 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”).

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, 2019,²⁸ implemented reforms to Article 123 of the Constitution effected in 2017²⁹ and additional provisions to comply with Article 23 and Annex 23-A of the USMCA.³⁰ 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.³¹ The following are among the key provisions of the legislation:

- Union statutes must provide that officers be elected by personal, free, secret and direct vote of the members and following gender proportionality.³² These provisions were required to be included in all union statutes within 240 days,³³ but deadlines have been extended due to the pandemic.³⁴
- 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.³⁵

²⁸ 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

²⁹ 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

³⁰ See USMCA, Chapter 23, available at <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

³¹ 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, 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>

³² 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.

³³ FLL Transitional Article 23

³⁴ The most recent data provided by Mexico indicate that in the Federal jurisdiction 1,966 unions out of 2,090 (90.4%) have revised their statutes to comply with the 2019 Reform, while in the Local (State) jurisdiction 3,851 out of 10,574 unions have done so. See <https://reformalaboral.stps.gob.mx/> (consulted June 26, 2021).

³⁵ 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.

- Union statutes must provide for disclosure of financial reports to the members, in writing, every six months.³⁶
- Employers must give all workers covered by a collective bargaining agreement a printed copy of that agreement.³⁷
- All collective bargaining agreements³⁸ and union statutes³⁹ 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.⁴⁰
- All existing collective bargaining agreements must be submitted to a personal, free and secret vote by May 1, 2023.⁴¹
- 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.⁴²
- New procedures where one union challenges another for control (*titularidad*) of a collective bargaining agreement.⁴³

To safeguard these rights, the reform establishes a new independent Federal Center for Conciliation and Labor Registration (Federal Center),⁴⁴ charged with verifying democratic union procedures and where all union statutes and CBAs will be deposited and made publicly accessible online; and a new system of labor courts, replacing the tripartite Conciliation and Arbitration Boards (CABs).

³⁶ 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.

³⁷ FLL Article 132.XXX.

³⁸ FLL Article 391

³⁹ FLL Article 365 Bis

⁴⁰ 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.

⁴¹ 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).

⁴² FLL Article 390 Bis.

⁴³ FLL Articles 389 and 897 through 897-G.

⁴⁴ <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.

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.⁴⁵ On November 25, 2020, the Second Chamber of the Supreme Court issued four decisions upholding the constitutionality of a number of key Articles.⁴⁶ The Court withheld judgment on another group of Articles that have been challenged, pending an allegation of actual injury.⁴⁷ In no case did the Court find a provision to be unconstitutional. Another set of decisions In February 2021 upheld additional elements of the reform.⁴⁸ In March 2021, the Supreme Court published 12 theses of jurisprudence that are binding on all lower courts.⁴⁹ 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.⁵⁰

⁴⁵ 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-aron-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.economista.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>.

⁴⁶ 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, 11th Transitional, 22nd Transitional, 23rd Transitional.

⁴⁷ The Court deferred a decision on the constitutionality of the following Articles: 245 Bis; 360; 364; 369; 373; 590-D; 897 F; 923; 927; 27th Transitional.

⁴⁸ SCJN ratifica constitucionalidad de la reforma laboral y da revés a sindicatos, Factor Capital Humano, Feb. 9, 2021.

⁴⁹ GACETA del SEMANARIO JUDICIAL DE LA FEDERACIÓN, Libro 84, Tomo II (marzo 2021), pp. 1457-1865, <https://egaceta.scjn.gob.mx/gaceta-pdf>. See SCJN da espaldarazo a nuevas reglas de democracia sindical, El Economista, Mar. 30, 2021.

⁵⁰ The Supreme Court also recently held that a challenge to union representation cannot proceed while a legal strike is in effect. A contrary ruling would have made it easier for an employer to break a strike by promoting a protection union. Amparo en Revisión No. 118/2020, July 23, 2021, available at https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2021-06/118.pdf

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

Historically, transparency requirements were applied principally to public sector unions whose members were paid with government funds.⁵¹ In the private sector, lack of transparency helped the leadership of protection unions to maintain control over the workers.⁵²

The 2019 reform for the first time requires unions in the private sector to make collective bargaining agreements, union statutes, and financial reports available to their members and, to a large extent, the public.

Article 365 Bis requires that the texts of union registration documents, including statutes,⁵³ certifications (*toma de nota*), minutes of assemblies and other documents deposited with the Federal Center be provided on its website. Currently this information is supposed to be posted on the website of the General Directorate of Registry of Associations of the STPS at <https://registrodeasociaciones.stps.gob.mx/>. 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.⁵⁴

Notwithstanding these reforms, in practice many Mexican workers who are covered by collective bargaining agreements are still 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 jurisdiction⁵⁵ and in Mexico City can obtain their CBAs online, although few know how to do this

⁵¹ Patricia Kurczyn Villalobos, LA TRANSPARENCIA SINDICAL EN EL EJERCICIO DE RECURSOS PÚBLICOS, *Revista Latinoamericana de Derecho Social* 22 (2016), available at: <https://revistas.juridicas.unam.mx/index.php/derecho-social/article/view/9786/11814>

⁵² Arturo Alcalde, *Transparencia Sindical*, in *FUNDAR, Derecho a Saber* (2014), available at <https://www.fundar.org.mx/mexico/pdf/pdfsderechoasaber/sec3%20arturo%20alcalde.pdf>; Arturo Alcalde, *Sindicatos y Transparencia en la Ciudad de México*, Instituto de Acceso a la Información Pública del Distrito Federal.(2010).

⁵³ 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

⁵⁴ See also Art. 358.IV, Art. 371 Bis.XIII

⁵⁵ 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*, *Quadratín*, Jan. 25, 2019, available at: <https://mexico.quadratin.com.mx/exhorta-stps-al-dialogo-para-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

and most workers only have internet access through their cell phones, and lack reliable and affordable 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.⁵⁶ Moreover, the existing databases are not always complete. For example, although contracts for the automotive industry are in the Federal jurisdiction and generally available on line, the contract for the General Motors Silao plant was never included in the online database, and workers had never seen it until just prior to the legitimation vote held there on April 20.

The 2019 reforms sought to 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, which began operation on November 18, 2020. New contracts will only be deposited as they are renegotiated, which may take up to two years. It is difficult to determine if employers are complying with the law, and the Federal Center's website shows only three contracts having been deposited so far.

Second, 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).⁵⁷

Third, all existing CBAs must be subjected to a legitimation vote by May 1, 2023. Both the protocol used by the STPS until May 1, 2021 and the protocol for the Federal Center from May 1, 2021 require that the employer "must" provide workers with a printed copy of the CBA at least 3 business days prior to the vote; if the employer fails to do this the union "may" give the workers copies at the employer's expense. Given the history of collaboration between employers and employer-dominated unions, it would not be surprising if workers in many cases did not receive hard copies of their contracts, especially when compliance with this requirement is being verified by a notary hired by the incumbent union.⁵⁸

Currently, only CBAs for the Federal jurisdiction⁵⁹ and Mexico City⁶⁰ are available online, where they can be searched and downloaded with relative ease.

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

⁵⁶ 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).)

⁵⁷ FLL, Art. 391 Bis.

⁵⁸ 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.

⁵⁹ <http://www.stps.gob.mx/gobmx/jfca/contratoscolectivos.html>.

⁶⁰ <http://www.juntalocal.cdmx.gob.mx/contratos-colectivos/>.

None of the new union democracy-related files (including collective bargaining agreements, internal union statutes, etc.) are immediately and directly publicly accessible from the registration platform once uploaded. Instead, the Federal Center manually uploads such files to the following website: <https://centrolaboral.gob.mx/#publicaciones>. (At this link, they can be located using very basic search terms.) As a result, there is a delay between the time of registration and the time of direct public accessibility of these files, and the information available through the link is not up to date. (For example, there are currently only three collective bargaining agreements accessible through the link, two in their entirety and one as the resolution indicating the contract's registration.)

The collective bargaining agreements that have been legitimated (through the transitional process discussed in section 4 below are) not available through the above link and are currently not directly publicly accessible. The records (*actas*) documenting the official results of legitimation votes are publicly available through the legitimation platform, developed by STPS and transferred to the Federal Center, at: <https://legitimacion.centrolaboral.gob.mx/>. They can be searched by union name.

The historical, digitized union democracy files are currently publicly available through a freedom of information-type request only. Upon receiving such a request, the Federal Center will independently redact any personal identifiers and then produce the files for the requesting party.

In order to make CBAs available to workers – who in most cases will be using a cell phone to access the documents and will have to pay for the data – it is essential to make the access as simple, user-friendly and inexpensive as possible. This is the approach that must be taken for all other CBAs as they come online. To require workers to submit a freedom of information request, and then wait for an indeterminate period while that request is processed, creates a significant interference with freedom of association. Moreover, collective bargaining agreements generally do not include personal identifiers. To the extent that such identifiers must be redacted to comply with privacy laws, this scrub should be performed on all contracts before they are posted online, with the administrative burden borne by the government, not the workers.

Likewise, the legitimation platform must provide for direct public availability of the legitimized contracts, not just the records of the legitimation votes.

4. Transitional mechanisms and experience to date

a. Transitional mechanisms

The May 1, 2019 reform of Mexico's federal labor law (FLL) provided a four-year transition period to fully establish the new labor relations and labor justice system called for in the law.⁶¹ The law

⁶¹ Gobierno de México. Ley Federal del Trabajo, Transitorios, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf

set forth a series of transition deadlines over the four years to May 1, 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”.⁶²

As detailed in the IMLEB Interim report of December 15, 2020, most of the early deadlines were met, including the requirement for the Mexican Congress to issue a separate law establishing a new, independent and impartial institution at the federal level responsible for overseeing the exercise of freedom of association and the right to collective bargaining, as well as conciliating individual labor disputes.⁶³ The Federal Center for Conciliation and Labor Registry (Federal Center) began its initial operations on November 18, 2020 with headquarters in Mexico City and decentralized branches in eight Mexican states. Branches will be established in other states over the next year, as discussed below. The Federal Center began its functions regarding the registration of unions and collective bargaining agreements on May 1, 2021, as required by the FLL.

Prior to May 1, 2021 the FLL transition provisions assigned certain functions regarding freedom of association and the right to collective bargaining to the Mexican Secretary of Labor and Social Welfare (STPS). Notable among these was the process of legitimizing existing collective bargaining agreements (CBAs) 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 CBAs 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 1, 2023.

The STPS issued a protocol on July 31, 2019 laying out the procedures that would be used to verify workers’ support for their CBAs until the Federal Center assumed this responsibility.⁶⁴

The protocol established a procedure by which the union that controls a collective bargaining agreement can legitimize it by scheduling a vote through an online platform operated by the STPS and advising the affected workers of this vote with at least 10 days’ notice.⁶⁵ Under the protocol the incumbent union decides when to hold the vote, makes the arrangements for the vote and must ask either the STPS or a public notary hired and paid by the union to observe that the vote followed procedures stipulated in the protocol, 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 is required to provide the necessary facilities and give workers a printed copy of the collective bargaining agreement at least three business days before the vote.

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

⁶³ Gobierno de México. Ley Orgánica del Centro Federal de Conciliación y Registro Laboral, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LOCFCRL_060120.pdf

⁶⁴ Gobierno de México. 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

⁶⁵ Available at: <https://legitimacioncontratoscolectivos.stps.gob.mx/>

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 then certifies 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.

A number of observers, including the IMLEB in its interim report of December 15, 2020, expressed concerns about the potential conflict of interest inherent in assigning full control of the process for legitimation of collective bargaining agreements to the union that controls and benefits from the CBA through the collection of union dues. In response to such criticisms the STPS modified and added to the protocol on February 4, 2021, making two key changes. First, the STPS gave itself the authority to verify compliance with the requirements for legitimation votes before, during or after the votes, regardless of whether the union chose to have the process overseen by a notary public. Second, it established an online mechanism through which workers could register complaints of non-compliance with regard to a particular legitimation vote process. The revised protocol set out a number of grounds that would constitute non-compliance and assured confidentiality for the complainants. It assigned STPS the responsibility to investigate complaints, including by requesting information from the union or employer involved, and to take the issues raised into account when deciding whether to certify the result of the election.

In anticipation of the transfer of responsibility for the legitimation process from STPS to the Federal Center on May 1, 2021, the Coordination Council for the Implementation of the Reform of the Labor Justice System - the body that governs the Federal Center - agreed on a new protocol for the legitimation process that incorporated the substantive and procedural approaches of the original and amended STPS protocol.⁶⁶ The new protocol also lays out the responsibilities of the government personnel who will verify compliance with the requirements

As of May 1, 2021, the Federal Center assumed responsibility for the CBA legitimation process, as stipulated in the FLL. However, on May 12, 2021 the STPS and Federal Center signed a collaboration agreement under which the STPS agreed to backstop the Federal Center when requested by providing additional personnel for verification votes and related oversight.⁶⁷ The term of the agreement is open-ended and reflects the reality that the Federal Center does not currently have the infrastructure or personnel to manage the process alone.⁶⁸

⁶⁶ Gobierno de México. Extracto del Acuerdo por el que se aprueba el Protocolo para el procedimiento de legitimación de contratos colectivos de trabajo existentes, available at:

<https://legitimacion.centrolaboral.gob.mx/Upload/ProtocoloLegitimacion.pdf>

⁶⁷ Centro Federal de Conciliación y Registro Laboral. Boletín 22/2021 “Inspectores de la STPS apoyarán al Centro Federal Laboral en verificación de procedimientos de democracia sindical”, May 12, 2021, available at: https://centrolaboral.gob.mx/images/prensa/022-12052021_Convenio_STPS-CFCRL.pdf

⁶⁸ El Economista. “They will strengthen inspections in union democracy”, May 12, 2021, available at: <https://www.economista.com.mx/empresas/Autoridad-laboral-fortalece-inspeccion-de-procedimientos-de-democracia-sindical-20210512-0084.html>

b. Legitimation of existing collective bargaining agreements to date

The STPS established the online platform for unions to use in arranging the legitimation votes in August 2019 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 coronavirus pandemic. It then resumed in those states that were not at the highest level of risk from the virus. As of June 21, 2021, the STPS website reported that as a result of legitimation votes (called consultations) 1,297 CBAs had been legitimized and two were rejected.⁶⁹ The website reported that 348,922 workers had been consulted (roughly eight percent of the 4.4 million union members in the country). The consultations to date represent a small fraction of the more than 559,969 CBAs that were registered with either the federal or state level bodies that had previously been responsible for registration.⁷⁰ STPS has estimated that as many as 85 per cent of existing agreements may not be legitimate and that only 80,000 to 100,000 contracts may actually be submitted for legitimation,⁷¹ with the rest simply disappearing.⁷² But to accomplish even this would require conducting some 125 legitimation votes per day, every day, from now until May 2023.

There is a significant doubt whether the existing institutions have the capacity to do this in a way that safeguards the right of the workers to a free and fair vote.⁷³ The STPS and Federal Center websites provide access to the statements that the sponsoring unions are required to file (*actas de resultados*). An analysis by the Maquila Solidarity Network of the *actas* reported through April 2021 found a number of anomalies.⁷⁴ These included 193 *actas* which reported no negative votes and 70 *actas* where 30 percent or more of the eligible voters did not cast votes. In some cases required information is missing, such as the location where the vote took place, the name of the company or workplace or the correct CBA number. During votes held to date there have been anecdotal and press reports of misinformation about the voting process or threats of loss

⁶⁹ Available at: <https://legitimacioncontratoscolectivos.stps.gob.mx/>. Note that the site has been inaccessible in the period between then and the publication of this report.

⁷⁰ A diagnostic performed by the STPS to quantify the universe of collective bargaining agreements found 532,469 CBAs registered with the state Conciliation and Arbitration Boards (not including data for Morelos and Querétaro) and 27,500 CBA's registered with the Federal Conciliation and Arbitration, for a total of 559,969 CBAs. STPS, Reforma Constitucional en Materia de Justicia Laboral, available at: [https://www.gob.mx/cms/uploads/attachment/file/437713/Libro DGAJ 1 .pdf](https://www.gob.mx/cms/uploads/attachment/file/437713/Libro_DGAJ_1.pdf).

⁷¹ 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>; Juan Pablo Sibilla, "Collective contracts will be void if unions do not carry out a legitimation process", XEVT, May 03, 2021, available at: <https://www.xevt.com/tabasco/contratos-colectivos-quedaran-sin-efecto-si-sindicatos-no-realizan-proceso-de-legitimacion/149958>; Associated Press, "Mexican official: 80% of labor contracts are pro-company", Jan. 7, 2020, available at: <https://apnews.com/article/fd72a72e16876163f5eb8c74c29f74e3>

⁷² 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>

⁷³ There is nothing in the current protocol to prevent tens of thousands of contracts being submitted for legitimation on the last possible day of the four-year period. While unions that adopted such a strategy would run a risk of having their contracts nullified, a big enough logjam could create political pressure to waive the legal requirement.

⁷⁴ Maquila Solidarity Network, "Tracking Tool: Mexico's CBA Legitimation Votes, Nov 2019 through April 2021." Forthcoming at <https://www.maquilasolidarity.org/>

of benefits or loss of employment if an agreement is rejected, although this is explicitly prohibited by the law.⁷⁵

On April 22, 2021 a legitimization vote at a General Motors factory in Silao, Guanajuato⁷⁶ was halted by the STPS after it found irregularities in the process, including destroyed ballots and the refusal of the union to provide documentation of the ballots already cast.⁷⁷ The STPS also filed a criminal complaint with the Guanajuato State Attorney General's Office to determine responsibilities. After further review the STPS nullified the vote on May 11, 2021 and ordered a new vote within 30 days.⁷⁸ The decision was based on a finding of serious deficiencies that included a failure by the employer and union to provide workers a printed copy of the CBA in advance of the vote, as required by the law; acts of violence, intimidation or coercion to prevent workers from voting; denial of entry to accredited observers by orders of the union and the company; evidence that people who did not identify themselves were allowed to vote; failure to protect ballots, voting lists and voting records; and irregularities in the place, date and time of the vote.⁷⁹ The STPS declined to investigate allegations by current and dismissed workers from the factory of other irregularities before and during the process, including dismissals, harassment and interference in voting by union leaders and company executives and threats that workers would lose the benefits of the CBA if they voted against the contract. Claims by current and dismissed workers of such violations were widely reported in the media.⁸⁰

On May 12, 2021 the US Trade Representative asked the Mexican government to review whether workers at the General Motors facility are being denied the right of free association and

⁷⁵ 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>

⁷⁶ To avoid any impression of bias, Board member Jason Wade recuses himself from the discussion of the GM Silao legitimization vote.

⁷⁷ Gobierno de México. STPS Information Note 001/2021, April 22, 2021, available at: <https://www.gob.mx/stps/prensa/nota-informativa-001-2021?idiom=es>

⁷⁸ Gobierno de México. STPS Communication 0007/2021, May 11, 2021, available at: <https://www.gob.mx/stps/prensa/comunicado-0007-2021?idiom=es>; Bertha Becerra, "Sindicato de GM en Silao debe volver a votar contrato colectivo tras irregularidades: STPS", *El Sol de México*, May 11, 2021, available at: <https://www.elsoldemexico.com.mx/finanzas/sindicato-de-gm-en-silao-debe-volver-a-votar-contrato-colectivo-tras-irregularidades-stps-6703224.html>

⁷⁹ María Del Pilar Martínez. "CTM union lost vote in GM when process was suspended". *El Economista*, May 13, 2021, available at: <https://www.eleconomista.com.mx/empresas/Sindicato-de-CTM-perdia-votacion-en-planta-de-General-Motors-en-Silao-que-trato-de-esconder-20210513-0074.html>; Aristegui Noticias. "There will be extraordinary surveillance of the new vote in General Motors-Silao: STPS". May 15, 2021, available at: <https://aristeguinoticias.com/1405/dinero-y-economia/habra-vigilancia-extraordinaria-de-la-nueva-votacion-en-general-motors-silao-stps/>

⁸⁰ Jared Laureles. "Suspenden firma de contrato colectivo de trabajo en General Motors". *La Jornada*, April 22, 2021, available at: <https://www.jornada.com.mx/notas/2021/04/22/economia/suspenden-firma-de-contrato-colectivo-de-trabajo-en-general-motors/>; Alonso Merino Lubetzky. "Trade union freedom? General Motors union opens 15-hour window for 10,000 workers to vote on new contract". POPLab, April 18, 2021, available at: <https://poplab.mx/article/LibertadSindicatodeGeneralMotorsabreventanade15horasparaque10miltrabajadoresvotennuevocontrato>; Bertha Becerra, May 11, 2021 op. cit.

collective bargaining.⁸¹ The request was made under the terms of the new Rapid Response Labor Mechanism (RRLM) of the USMCA, representing the first use of the mechanism. A senior USTR official told reporters that USTR and the US Labor Department had received information over a number of months via a confidential hotline (established as required by the USMCA implementing legislation) that workers' rights were being violated at the GM plant.⁸² USTR directed the US Secretary of the Treasury to suspend the final settlement of customs accounts for imports from GM's Silao facility until it is determined if there has been a denial of rights and, if so, until it is remedied.⁸³ This preserves the option for the US to impose tariffs above the USMCA levels or other penalties on the relevant products of the factory.

A GM spokesperson told the media "We do not believe there was any GM involvement in the alleged violations and have retained a third-party firm to conduct an independent and thorough review."⁸⁴ In late May Mexican media reported claims by dissident workers that the union that controls the contract at the GM plant, the National Union of Workers of the Metal-Mechanical, Sidero-Metallurgical, Automotive and Suppliers of Auto Parts in General, Energy, its Derivatives and Related Industries of the Mexican Republic "Miguel Trujillo López," affiliated to the Confederation of Workers of Mexico (CTM), was offering various bribes to workers to vote in favor of the union contract in a subsequent vote and claimed that the GM human resource department was offering the Miguel Trujillo López union facilities to hold small group meetings to coerce workers.⁸⁵ In June members of the group Generating Movement, which opposes the incumbent union, reported being arrested while distributing leaflets to workers critical of working conditions in the factory.⁸⁶

⁸¹ USTR. "United States Seeks Mexico's Review of Alleged Workers' Rights Denial at Auto Manufacturing Facility", May 12, 2021, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/united-states-seeks-mexicos-review-alleged-workers-rights-denial-auto-manufacturing-facility-0> ; Gobierno de Mexico. "STPS Joint Communication 009/2021", May 12, 2021, available at:

<https://www.gob.mx/stps/prensa/comunicado-conjunto-009-2021?idiom=es>

⁸² World Trade Online. "U.S. launches first USMCA complaint against GM plant in Mexico", May 12, 2021, available at: <https://insidetrade.com/daily-news/us-launches-first-usmca-complaint-against-gm-plant-mexico>

⁸³ USTR, op. cit., n. 79.

⁸⁴ Agence France Press, "US Asks Mexico to Probe GM Union Vote", May 12, 2021, available at: <https://www.industryweek.com/talent/labor-employment-policy/article/21164070/us-asks-mexico-to-probe-gm-union-vote-under-usmca>.

⁸⁵ Zona Franca, "Raffle of 15 cars in GM Silao to co-opt workers in favor of the union is denounced", May 26, 2021, available at: <https://zonafranca.mx/politica-sociedad/denuncian-rifa-de-15-autos-en-gm-silao-para-cooptar-a-trabajadores-a-favor-del-sindicato/?fbclid=IwAR1RjkQ99T3VvQ91xxma5FUF-MxYJJNLxTyP4A02IUm6sCBXxuSOW9NKqOE>; Óscar Ramos, "Trabajadores de GM denuncian coacción por el sindicato Miguel Trujillo López," *El Sol de León*, May 19, 2021, available at:

<https://www.noticiasvesperinas.com.mx/local/trabajadores-de-gm-denuncian-coaccion-por-el-sindicato-miguel-trujillo-lopez-silao-guanajuato-cct-6736684.html>; Jacob Sánchez, "General Motors asked to keep hands off the legitimization process in Silao", *El Sol de México*, May 20, 2021, available at:

<https://www.elsoldemexico.com.mx/finanzas/piden-a-general-motors-sacar-las-manos-de-proceso-de-legitimacion-en-silao-6739944.html?fbclid=IwAR3HR1RznHQGXy5jQfSvt1XjX4vLeVqQ9wejhhejboTaPptiAeU1OFeCh0>

⁸⁶ Karla Silva, "GM Silao union dissidents denounce arrest by León police officers in Romita", *El Correo de Guanajuato*, June 18, 2021, available at: <https://periodicocorreo.com.mx/disidentes-sindicales-de-gm-silao-denuncian-detencion-de-policias-de-leon-en-romita/>

The 30-day deadline for a new vote set by the STPS passed and was ignored by the union.⁸⁷ Press reports stated that the union planned to seek a court injunction (*amparo*) arguing that the labor authority cannot impose a date for the workers to vote.⁸⁸ However on June 21, 2021 the STPS issued a determination that the new consultation must be held not later than August 20, 2021 and noted that this reflected an agreement “derived from the request of the Union itself to extend the term to replace the consultation, as a result of operational and technical impediments that make it difficult for the majority of the workers to participate in the vote.”⁸⁹ STPS warned the union that, “in the event of non-compliance, the collective contract will be terminated, preserving the benefits and working conditions recognized in it for the benefit of the workers.”⁹⁰

According to the STPS website, of the union legitimization votes held to date which listed the union’s affiliation, the largest number were affiliated to the CTM.⁹¹ 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.⁹² While using the legitimization process, CTM affiliates also filed hundreds of legal challenges to the labor law reform as noted above, alleging that the requirement for worker approval of existing collective bargaining agreements and other union democracy rights created by the legal reform amounted to unlawful interference in internal union affairs.⁹³ The Mexican Supreme Court has upheld the constitutionality of the contested provisions of the labor law, dismissed most of the cases and issued jurisprudence that affirms the right of workers to vote on CBAs to guide the resolution of any remaining cases.⁹⁴

The process of legitimizing existing CBAs will likely be affected to some degree by the Mexican legal reform of outsourcing (subcontracting) adopted in April 2021. The law now forbids firms to outsource any work that is part of their corporate purpose or predominant economic activity and

⁸⁷ Daina Beth Solomon and David Shepardson, “Fresh GM union vote in Mexico headed for delay – sources”, Reuters, June 7, 2021, available at: <https://www.reuters.com/business/autos-transportation/fresh-gm-union-vote-mexico-headed-delay-sources-2021-06-07/>

⁸⁸ María Del Pilar Martínez, “Con amparo, sindicato de la CTM busca frenar votación en planta de GM”, *El Economista*, June 13, 2021, available at: <https://www.eleconomista.com.mx/empresas/Con-amparo-sindicato-de-la-CTM-busca-frenar-votacion-en-planta-de-GM-20210613-0103.html>

⁸⁹ Gobierno de México. STPS Communication 010/2021, June 21, 2021, available at: <https://www.gob.mx/stps/prensa/comunicado-numero-010-2021>

⁹⁰ Ibid. While the government may have the legal authority to nullify a contract based on irregularities in the legitimization process, such an action would likely generate an appeal (*amparo*) from the CTM and potentially a lengthy court battle.

⁹¹ Most unions did not list their affiliation to a central federation. Gobierno de México. “Consulta del Listado de Legitimaciones”, available at: https://legitimacioncontratoscolectivos.stps.gob.mx/Listado_Legitimaciones.aspx

⁹² Gobierno de México. “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>

⁹³ U.S. Interagency Labor Committee for Monitoring and Enforcement. “Report on Labor Monitoring and Enforcement under USMCA”, January 25, 2021.

⁹⁴ Ibid.; Gerardo Hernandez, “SCJN [Supreme Court of Justice of the Nation] supports new union democracy rules”, March 30, 2021, available at: <https://www.eleconomista.com.mx/capitalhumano/SCJN-da-espaldarazo-a-nuevas-reglas-de-democracia-sindical-20210330-0012.html>

requires employers to transfer the workers performing such work from the payrolls of the subcontracting firm to their own payroll not later than July 23, 2021.⁹⁵ This could affect large numbers of workers, as 4.6 million positions are estimated to be outsourced. STPS has stated that companies that have carried out the legitimation of CBAs will not need to make a new consultation when workers are transferred from an outsourcing company payroll to that of the main employer.⁹⁶ However there will likely be some situations where two or more unions claim the right to represent those workers based on existing ownership of CBAs.

c. Assessment of the legitimation process to date

The legitimation process continues to have very significant weaknesses. A fundamental source of weakness is the provision, in Transitional Article 11 of the revised Federal Labor Law, that allows unions that acquired ownership of CBAs under the previous labor law regime to conduct the contract legitimation process. As a result, the four-year transition period is operating under a hybrid regime. It is not as lax and subject to corruption as the old regime, under which it was possible for unions to own and register a CBA without ever having to engage the covered workers or prove their support. However, it is not as sound as the new regime established in Article 390 Bis of the revised labor law which requires unions that wish to negotiate a new CBA going forward to first prove support by at least 30 percent of the workers who will be covered by the agreement. The current transitional hybrid regime in effect assumes that a union that acquired ownership of a CBA under the old regime without proof of worker support can be trusted to run the legitimation process with minimal oversight by the government authorities. While it is likely that some of the unions that currently control CBAs do have the support of the covered workers, there is a long and well-documented history of collusion between protection unions and employers and failure to represent the workers involved.⁹⁷ Since the ownership of most existing collective bargaining agreements was acquired under the old system, allowing the same unions to verify support now raises significant concerns about potential conflict of interest, credibility and reliability.

Reinforcing these concerns are the anomalies in the vote results noted above, the anecdotal and press reports of intimidation or threats in some of the votes and the fact that less than 0.001% percent of the votes held to date led to rejection of the CBA. As discussed above, the

⁹⁵ Gobierno de México. “With the announcement of the subcontracting reforms, more than 300 thousand workers have already been hired”, STPS Bulletin Number 047/2021, April 23, 2021, available at: <https://www.gob.mx/stps/prensa/con-el-anuncio-de-las-reformas-a-la-subcontratacion-mas-de-300-mil-trabajadores-ya-han-sido-contratado?idiom=es>

⁹⁶ Gobierno de México. “STPS calls on its state counterparts to prepare to receive subcontracting reform employer substitution agreements”, STPS Bulletin Number 052/2021, available at: <https://www.gob.mx/stps/prensa/stps-llama-a-sus-homologos-estatales-a-prepararse-para-recibir-convenios-de-sustitucion-patronal-por-reforma-de-subcontratacion?idiom=es>

⁹⁷ 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; 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>.

STPS itself estimated that only about 10-15 percent of existing CBAs could pass the legitimation test by proving worker support and so the fact that incumbent unions which conducted votes to date have reported majority support for the agreements in more than 99.9 percent of the consultations raises serious questions of credibility.⁹⁸ The vote at the General Motors factory in Silao, Guanajuato brought into sharp focus the risks involved in allowing a union that gains substantial financial benefit from owning a CBA to be given the responsibility for verifying that ownership. Union activists claim that the types of intimidation and collusion seen in the GM plant are common in legitimation votes across the country.⁹⁹

There has not been sufficient government oversight to manage the serious risks inherent in the weak hybrid transitional regime. Even the requirement in the law that workers have the right to see the collective bargaining agreement before voting on it is not actually guaranteed in the Protocol for Legitimation of Existing Collective Bargaining Agreements. The Protocol provides that the employer must (*deberá*) provide a printed or electronic copy¹⁰⁰ of the contract to each worker three days prior to the consultation. If the employer fails to do this, the union may (*podrá*) provide a copy to the workers and notify the authorities.¹⁰¹ However, the union is not required to do this, and there is no sanction if it does not. Given the close cooperation between employers and employer-dominated unions, it is far from certain that workers are in fact receiving their contracts in all cases.

Until the protocol was revised in February 2021, the STPS did not take responsibility for surveillance of union or company behavior before or away from the voting place. Workers involved in a vote had no way to raise concerns with the STPS. With the February revisions to the protocol the STPS assigned itself the right—although not a mandate—to verify compliance with requirements before, during and after the vote and created a mechanism for workers to lodge complaints of non-compliance. The revised protocol still allowed unions to opt for oversight by a notary public paid by the requesting union. STPS stated that it would also oversee such votes, but did not establish an obligation to do so. Nor has any provision been made to allow independent monitoring or review of legitimation votes to determine whether irregularities occurred.

The new Protocol that governs the legitimation process under the Federal Center after May 1, 2021 continues to allow unions to choose to have consultations overseen by a notary public:

Article 19 IV d) When the union requests the intervention of a notary public in the consultation procedure, it will indicate that in the registration and provide the full name,

⁹⁸ See footnote 70.

⁹⁹ El Economista. “Workers' uprising at GM, another sign of union discontent”, Factor Capital Humano Editorial, 12 May 2021, available at: <https://factorcapitalhumano.com/leyes-y-gobierno/levantamiento-obrero-en-gm-otro-boton-de-muestra-del-descontento-sindical/2021/05/>; Legitimations of collective bargaining agreements keep labor authorities on alert

¹⁰⁰ As noted above, providing only an electronic copy of the contract may make it more difficult for workers to read, study and understand it.

¹⁰¹ Gobierno de México. Protocolo para la legitimación de contratos colectivos de trabajo existentes, Art. 2.4, available at: https://dof.gob.mx/nota_detalle.php?codigo=5566910&fecha=31/07/2019. The records (*actas*) of the legitimation votes do not indicate whether workers received their copies.

notary number, as well as contact and electronic email information of the notary public; and

e) When the union opts for the verification of the [government] verifying personnel, it will indicate that in the registration, having to previously confirm the availability of the day and time selected, as well as the public servant in charge of the diligence.¹⁰²

The new Protocol also stipulates in its Article 28 that the Federal Center **may** verify compliance with the requirements established in the Protocol, before, during and after the consultation if the union opts to use a notary public, but again does not **require** it to do so. Further, the new Protocol appears to explicitly recognize that some consultations will be overseen **only** by a notary public and not by government verifying personnel:

Article 30. Verifying personnel and/or, [emphasis supplied] where appropriate, notaries public will observe that the entire consultation procedure with the workers is carried out in accordance with the provisions in this Protocol and the provisions of the Law.¹⁰³

The probability of such reliance on notaries is underscored by the report in the public session of the USMCA Labor Council on June 29 that the Center currently has only 29 staff dedicated to verifying legitimization votes, with an additional 20 to be added by October. While these verifiers can be supplemented with some of the 513 federal labor inspectors and perhaps state inspectors as well, these inspectors already have a full workload tracking freedom of association, wage and hour, and health and safety compliance, as well as the application of the recently approved subcontracting reform. It is thus extremely difficult to see how government authorities can effectively oversee 125 legitimization votes per day for the next two years, especially

In Mexico, the use of notaries compensated by the incumbent union is a well-known practice in labor proceedings. Despite the potential conflict of interest created by this arrangement as well as concerns about corruption,¹⁰⁴ the Federal Center signed a joint Memorandum of Understanding with the STPS, the National College of Mexican Notaries (CNNM), and the United Nations Development Program (UNDP) to train and encourage the participation of notaries in the processes of legitimization of collective contracts.¹⁰⁵ More recently the Federal Center has

¹⁰² Centro Federal de Conciliación y Registro Laboral, “Extracto del Acuerdo por el que se aprueba el Protocolo para el procedimiento de legitimación de contratos colectivos de trabajo existentes”, April 30, 2021, available at: https://www.centrolaboral.gob.mx/documentos/protocolo_legitimacion_contratoscolectivos.pdf

¹⁰³ Ibid.

¹⁰⁴ See, e.g., Gardenia Mendoza, “Notarios, pieza clave en la corrupción de los gobernadores de México”, April 17, 2017, La Opinión, 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 NOTARIAS Y JUZGADOS QUE SE APROPIA DE PREDIOS Y CASAS DE MANERA ILEGAL, Reporte Indigo, Mar. 18, 2019, available at: <https://www.reporteindigo.com/reportes/alertan-por-red-que-opera-en-notarias-y-juzgados-que-se-apropia-de-predios-y-casas-de-manera-ilegal/?fbclid=IwAR37VoNaKAJnEjj6a0n15jGEzpJYEtyrebpAtISvE2mC93cK9rfeBpLhfjU>.

¹⁰⁵ UNDP México, “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>

explicitly foreseen that as the May 2023 deadline for legitimation approaches, many votes may be monitored only by a notary public.¹⁰⁶ In effect, the protocol allows a corrupt union to engage and pay a notary and thus legitimize a CBA and continue to collect dues. The Federal Center and its oversight board can address the specific risk of corrupt notaries by amending the protocol to require oversight of all legitimation votes by government authorities.

This is also a requirement under the USMCA, which specifies governmental responsibility for the implementation of labor law and procedural guarantees. Article 23.10 of the trade agreement discusses 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.¹⁰⁷

Even if the protocol is revised as suggested above, the broader risk entailed in allowing self-interested unions to control the legitimation process must be corrected. The most effective way to offset the risks and conflicts of interest inherent in the hybrid transitional regime would be to require the government, rather than the incumbent union, to conduct the votes to determine whether workers support the existing contracts. The Federal Center could establish a new protocol under which *it* organizes and runs all legitimation votes, although this might require an amendment to Transitional Article 11 of the FLL. It is worth noting that the transitional provisions of the FLL explicitly anticipate that further legal changes may be required by assigning to the Coordination Council for the Implementation of the Reform of the Labor Justice System the power to “[d]esign criteria for the implementation of **legal** [emphasis supplied] and regulatory adjustments necessary to fulfill its purpose.”¹⁰⁸

At a minimum, the government should step up its oversight before, during and after legitimation votes and require sufficient government presence at all votes. In addition, the government must exercise its authority, when serious irregularities occur, to suspend the legitimation process and terminate the CBA.¹⁰⁹ (Note that this would not prevent a union whose ownership of the CBA

¹⁰⁶ Maria Del Pilar Martinez. “Sindicatos fallan en requisitos básicos al legitimizar contratos colectivos”. *El Economista* May 16, 2021, available at: <https://www.eleconomista.com.mx/empresas/Sindicatos-cometen-errores-para-registrar-sus-legitimaciones-de-contrato-20210516-0017.html>

¹⁰⁷ USMCA Chapter 23 Labor Article 23.10, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

¹⁰⁸ Gobierno de México. *Ley Federal del Trabajo, Transitorios*, Transitional Article 17 second paragraph III, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf

¹⁰⁹ In USMCA Labor Council meeting on June 29, Esteban Martinez, head of the Liaison Unit for the Reform of the Labor Justice System in STPS, said that Mexico would make the following commitments in application of the

was terminated to subsequently file for a representation election based on a showing of support by 30 percent of the workers.)

Transitional Article 11 of the revised Federal Labor Law does not explicitly address situations in which an incumbent union or the employer violates the requirements of the constitution and the FLL relating to proof of worker support for a CBA, apparently failing to anticipate this eventuality. The accumulation of time and experience, including the case of General Motors in Silao, Guanajuato, have now made clear that the arrangement set out in Transitional Article 11 leaves critical gaps in translating the requirements of the Mexican constitution into law. The constitution establishes the following rights and obligations in Art. 123:¹¹⁰

Section XVIII, second paragraph. When it comes to obtaining the conclusion of a collective bargaining agreement, **it must be proven** [emphasis supplied] that it has the representation of the workers.

Section XXII Bis. The procedures and requirements established by law to ensure freedom of collective bargaining and the legitimate interests of workers and employers, **must guarantee**, [emphasis supplied] among others, the following principles:

- a) Representativeness of trade union organizations, and
- b) Certainty in the signing, registration and deposit of collective bargaining agreements.

The STPS and now the Federal Center bear responsibility for carrying out the constitutional mandate to ensure freedom of collective bargaining and the legitimate interests of workers by guaranteeing the representativeness of trade union organizations and certainty in the signing, registration and deposit of collective bargaining agreements, even if there are deficits in the current transitional arrangement or Transitional Article 11.

This is also required by Annex 23-A of the USMCA, under which Mexico agreed to the following:¹¹¹

Paragraph 2(e) Adopt legislation in accordance with Mexico's Constitution *Constitución Política de los Estados Unidos Mexicanos* requiring:

legitimation protocol (1) inspectors will have broad authority to question management; (2) inspectors will have the tools to prevent/correct violations of law (it was not clear if this applies just to the consultation or to the period before and after); (3) if the vote takes place at multiple sites, ballots will not be opened until all are collected; (4) if less than a majority of workers vote, the result will not be certified; (5) STPS will be able to impose precautionary measures. It was not clear if these changes would be included in a future version of the Protocol or whether they were considered to be within the current authority of inspectors.

¹¹⁰ Constitución Política de los Estados Unidos Mexicanos, as amended February 24, 2017, available at: https://www.gob.mx/cms/uploads/attachment/file/234847/Decreto_DOF_Reforma_CPEUM_24.02.17.pdf; Gobierno de México, STPS, "Labor Justice Reform", available at: <https://www.gob.mx/stps/documentos/reforma-en-materia-de-justicia-laboral?idiom=es>

¹¹¹ USMCA Chapter 23, Labor Annex 23-A, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

- (i) verification by the independent entity [Federal Center] that collective bargaining agreements meet legal requirements related to worker support in order for them to be registered and take legal effect; . . .

The obligation is further specified with regard to the transition process for legitimation of existing collective bargaining agreements:

Paragraph 2(f). Adopt legislation in accordance with Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*), which provides that, in future revisions to address salary and work conditions, all existing collective bargaining agreements shall include a requirement for majority support, through the exercise of personal, free, and secret vote of the workers covered by those collective bargaining agreements.

The legislation shall also provide that all existing collective bargaining agreements shall be revised at least once during the four years after the legislation goes into effect. The legislation shall not imply the termination of any existing collective bargaining agreements as a consequence of the expiration of the term indicated in this paragraph, **as long as a majority of the workers covered by the collective bargaining agreement demonstrate support for such agreement through a personal, free, and secret vote** [emphasis supplied].

The legislation shall also provide that the revisions must be deposited with the independent entity [the Federal Center]. In order to deposit the future revisions, the independent entity shall **effectively verify** (emphasis supplied) through, as justified under the circumstances, documentary evidence (physical or electronic), **direct consultation with workers, or on-site inspections** [emphasis supplied] that:

- (i) a copy of the revised collective bargaining agreement was made readily accessible to the workers covered by the collective bargaining agreement prior to the vote, and
- (ii) a majority of workers covered by the revised agreement demonstrated support for that agreement through a personal, free, and secret vote.¹¹²

In cases of legitimation votes where observed irregularities, worker complaints or other indications of inappropriate behavior by incumbent unions or employers occur, such as the GM Silao case, the STPS and Federal Center cannot allow a violation of the constitutional rights of workers to stand and cannot certify a contract that does not have support of the workers without violating Article 123 of the Mexican constitution and the USMCA.

For any effective oversight of the transitional legitimation process the Federal Center will need additional resources. The Center currently has 35 staff assigned as verifiers of legitimation votes with plans to hire 15 additional staff for this function. In recognition of the shortfall of resources, given the numbers of legitimation votes to be conducted, STPS agreed to backstop the Federal Center by providing additional personnel for verification votes and related oversight when requested as noted above.¹¹³ However STPS itself is probably understaffed, particularly given

¹¹² Ibid.

¹¹³ See footnotes 66 and 67 above.

the additional responsibility to monitor and enforce the provisions of the new outsourcing law. It will be important to identify sources of funding to provide the necessary staffing. One potential source of funds to adequately staff the transitional legitimation process could be found in the \$800,000,000 policy-based loan from the IDB approved on May 15, 2020 to improve the quality of employment by supporting implementation of the labor law reform.¹¹⁴ The loan designates STPS as the executing agency, although the funds were disbursed to the Secretariat of Public Finance and Budget (Hacienda), which has the discretion to allocate the funds to government programs other than labor law reform implementation.¹¹⁵ Another policy-based loan from the IDB is also under consideration. Given the importance of a successful transition from the old labor law regime to the new one and the limited time to complete the transition by May 2023 this would seem to be an effective use of part of those funds. The US government should use its voice and oversight role at the IDB to ensure that funds approved to support the implementation of labor law reform in Mexico are used for that purpose.

If the Federal Center takes responsibility for conducting *all* of the verification votes, it will need a strategy to accomplish this within the transition period that ends in May 2023. IMLEB's interim report sketched out one illustrative approach which would involve organizing the votes by sector. As noted in that report, the Federal Center could establish a calendar under which each sector would be assigned a time period 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, should 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 contracts within that sector on key issues such as wages and benefits. Perhaps most importantly, the worker education could make very clear that if the vote on the contract is negative, there are options available to the workers: the union that formerly represented the workers could seek to hold a new representation vote (*recuento*), or another union could 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

¹¹⁴ Inter-American Development Bank. 2020. ME-L1289:Program to Improve the Quality of Employment in Mexico. May 15, 2020, available at: <https://www.iadb.org/en/project/ME-L1289>

¹¹⁵ U.S. Interagency Labor Committee for Monitoring and Enforcement. "Report on Labor Monitoring and Enforcement under USMCA", January 25, 2021.

established to effectively implement them.¹¹⁶ 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,¹¹⁷ however, states' failure to implement local reforms has, in part, already disrupted the first stage of the labor reform implementation.¹¹⁸ 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, staffing determination called for starting the collective labor courts with a "minimum staff" to make the allocated budget "more efficient".¹¹⁹ 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 workers¹²⁰ and frequent labor disputes. The first stage of implementation only included only 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.

Table 2		
Current Local and Federal Conciliation and Labor Courts Implementation Schedule		
Phase 1 – November 2020	Phase 2 – October 1, 2021	Phase 3 – May 1, 2022

¹¹⁶ 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://reforma laboral.stps.gob.mx/Documentos/EstrategiaNacionalReformaLaboral.pdf>

¹¹⁷ 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

¹¹⁸ <https://www.milenio.com/policia/judicatura-federal-da-a-conocer-nuevos-jueces-en-materia-de-trabajo>

¹¹⁹ 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>

¹²⁰ Service and mining personnel numbers were not available for analysis on INEGI at the time of this report.

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, local entities will open with Phase 2

Source: <https://reforma laboral.stps.gob.mx/index.html#container>

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.¹²¹

Given the Mexican government has already shown that the stages of implementation can be amended,¹²² 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.¹²³

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

¹²¹ 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>

¹²² 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.

¹²³ In the public session of the USMCA Labor Council on June 29, 2021, the Board was informed for the first time that the US would not support this recommendation.

and Labor Registration (Federal Center) was introduced in the Chamber of Deputies.¹²⁴ The bill was approved on October 29, and published in the Official Journal on January 6, 2020.¹²⁵

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 is 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.¹²⁶ On August 7, 2020, the Federal Center's Governing Board held its inaugural meeting,¹²⁷ in which it approved the organic statute of the Federal Center, which sets out its general structure and procedures.¹²⁸

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 Campeche, Mexico City, Chiapas, Durango, State of Mexico, Hidalgo, San Luis Potosí, Tabasco and Zacatecas.¹²⁹

¹²⁴ 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>.

¹²⁵ 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

¹²⁶ 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-dominquez-marrufo-como-titular-del-centro-federal-de-conciliacion-y-registro-laboral.html>.

¹²⁷ 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>.

¹²⁸ 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_CFCRL.pdf

¹²⁹ 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; 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>

The Board 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,¹³⁰ to assess whether the Federal Center’s conciliator and substantive staffing levels are adequate, but has 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.¹³¹ 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,¹³² and the overall weakness of Mexico’s anti-corruption mechanisms noted by international observers,¹³³ 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.

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.¹³⁴ The Federal Center began its functions regarding the registration of unions and collective bargaining agreements on May 1, 2021. On May 12, 2021 the STPS and Federal Center signed a collaboration agreement under which the STPS agreed to backstop the Federal Center when requested by providing additional personnel

¹³⁰ “Estrategia Nacional para la Implementación del Sistema de Justicia Laboral,” available at: <https://reformalaboral.stps.gob.mx/Documentos/EstrategiaNacionalReformaLaboral.pdf>.

¹³¹ 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).

¹³² 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.

¹³³ 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/>.

¹³⁴ 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

for verification votes and related oversight.¹³⁵ The term of the agreement is open-ended and reflects the reality that the Federal Center does not currently have the infrastructure or personnel to manage the process alone.¹³⁶

b. State Reforms and Staging of Implementation

Two months after the First Stage began the Coordination Council held its first meeting of 2021. It reported out preliminary numbers on local conciliation centers, indicating that there was a total of 148 conciliators at 19 locations in 7 states. There had been 6,674 requests for conciliation, resulting in 4,301 agreements being signed, and 250 certificates of non-conciliation to date. The state of Tabasco saw the highest number of requests at almost 2,000, followed by the state of Mexico with 1,750, and San Luis Potosi with 1,600. It was also reported that the local labor courts have 32 judges in 18 courtrooms. To date, 305 lawsuits had been filed, but none had a decision rendered.¹³⁷

In its discussion the Council recognized that it needed to establish more frequent, standardized reporting to allow for adequate analysis, planning, and improvement of the states' implementation. To this end the Council approved Acuerdo 03-18/01/2021,¹³⁸ urging local and federal conciliation centers and courts to submit monthly, uniform reports to the Technical Secretariat of the Council. This data should be made public, in an easily accessible format, to allow workers, academics, and all interested parties the opportunity to analyze the data.¹³⁹

Between July 2020 and January 2021,¹⁴⁰ there was some improvement in the states' adoption of the needed legal reforms – but in many states there does not appear to be a sense of urgency. Considering the desire to implement the federal and local conciliation centers and labor courts in states simultaneously,¹⁴¹ 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

¹³⁵ Centro Federal de Conciliación y Registro Laboral. Boletín 22/2021 “Inspectores de la STPS apoyarán al Centro Federal Laboral en verificación de procedimientos de democracia sindical”, May 12, 2021, available at: https://centrolaboral.gob.mx/images/prensa/022-12052021_Convenio_STPS-CFCRL.pdf

¹³⁶ El Economista. “They will strengthen inspections in union democracy”, May 12, 2021, available at: <https://www.eleconomista.com.mx/empresas/Autoridad-laboral-fortalece-inspeccion-de-procedimientos-de-democracia-sindical-20210512-0084.html>

¹³⁷ Coordinating Council minutes of the First Regular Session 2021, January 18, 2021; available at: https://reformalaboral.stps.gob.mx/rl/doc/Acta_Primer_Sesion_Ordinaria_2021.pdf

¹³⁸ https://reformalaboral.stps.gob.mx/rl/doc/Acuerdo_03-18012021.pdf

¹³⁹ It would be particularly useful in determining whether the Coordination Council and the Federal Judicial Council (CJF) used the correct assumptions in determining the appropriate staffing levels in Stage 1.

¹⁴⁰ The Board requested the draft minutes of the April 19th, 2021 of the Coordination Council for the Implementation of the Reform of the Labor Justice System to give a more current official count, but was unable to obtain a copy.

¹⁴¹ 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.

systems across states where federal cases are addressed using conciliation centers and labor courts, and while cases are addressed using the old CAB system.¹⁴²

These delays have an impact on other aspects of USMCA implementation. For example, lack of cooperation by State authorities may adversely impact the Rapid Response cases where key documents are held by Local CABs (e.g. in the Tridonex case).

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.

In May 2019 the Coordination Council interpreted this as a requirement for states to implement the needed reforms by December 2019.¹⁴³ Since then the Coordination Council has repeatedly exhorted the states to implement the needed reforms.¹⁴⁴

In January, 21 states already had completed the needed constitutional reforms (up from 20 in July 2020), with 11 states still working on the reforms (down from 12). Michoacan still did not have a program to implement any of the needed reforms.

Additionally, 9 states had harmonized their organic laws for the needed judicial reform (up from 6), with 8 in varying stages of pending approval and publication (up from 6). However, 15 states still had not presented legislation (down from 20) on the needed reform.

Finally, 11 states had approved the needed organic laws for the implementation of the new state conciliation centers (up from 6), with 5 states in vary stages of pending approval (down from 7). Again, 17 states still had not presented legislation (down from 19).

This slow progression on the needed reform is increasingly concerning given that the labor reforms were passed over two years ago, and that all states will have to implement them by May

¹⁴² 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.

¹⁴³ Estrategia Nacional para la Implementación del Sistema de Justicia Laboral, available at: <https://reformalaboral.stps.gob.mx/Documentos/EstrategiaNacionalReformaLaboral.pdf>

¹⁴⁴ 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

2022. Not surprisingly many of the states in the final implementation stage are ones that have not submitted to their congresses the needed judicial or conciliation center reforms – with the state of Michoacan making no progress on the needed constitutional reform either.

c. Staged Implementation of Conciliation Centers and Labor Courts

As discussed in IMLEB Interim report of December 15, 2020, the slow implementation of the needed reforms in the states is especially concerning given the labor reform implementation has been backloaded with states with high concentrations of priority sector manufacturing workers, and high rates of labor disputes.

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.¹⁴⁵ 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.

The Interim report noted that Stage 1 states only had 18.5% of the total manufacturing personnel in Mexico’s USMCA priority manufacturing sectors,¹⁴⁶ Stage 2 will have 25.9%, and Stage 3 will capture 55.5%. It further noted Stage 1 only accounted for 15.5% of local labor conflicts, Stage 2 represented 30.3%, and Stage 3 accounted for 54.1% of local labor conflicts.

These observations were recently echoed by Public Citizen in a report¹⁴⁷ assessing the implementation of the USMCA’s labor obligation. The report also noted Mexico’s staged implementation was backloaded. It noted that Stage 3 states:

- “produce nearly half of the gross domestic manufacturing output. The states that are classified as Phase One, which are the only ones in which the new labor institutions are already functioning, represent only 21% of Mexico’s manufacturing activity.”¹⁴⁸

¹⁴⁵ 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_Sesion_Ordinaria.pdf

¹⁴⁶ 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.”

¹⁴⁷ Public Citizen’s Global Trade Watch, Implementation of Mexico’s USMCA-Required New Labor Justice, May 2021, available at <https://www.citizen.org/wp-content/uploads/2021.05.26-New-Labor-Justice-System-Report.pdf>

¹⁴⁸ *Ibid*, page 9.

- “experiences on average 25.7 new strikes per year, [while] Phase Two states’ average of new strikes per year is 4.3, and Phase One states only face 1.5 new strikes.”¹⁴⁹
- “Finally, Phase Three states are also the main recipients of FDI, and they also are the source of a large portion of Mexico’s exports. The states relegated to Phase Three receive at least half of the foreign investment inflows coming into Mexico and represent at least half of Mexican exports.”

Given these, and issues previously raised by IMLEB, the US Government should advocate for accelerating some states included in Stage 3 to Stage 2.¹⁵⁰ This would vastly increase the number of Mexican workers able to enjoy the full rights agreed to under the USMCA as soon as possible.

Specifically, the states of Nuevo León 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”).¹⁵¹ 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

¹⁴⁹ *Ibid*, page 11.

¹⁵⁰ The IMLEB Interim report of December 15, 2020 noted the pulling up of Nuevo Leon and Tamaulipas would create greater parity between Stages 2 and 3.

¹⁵¹ 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>

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 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 1:¹⁵²

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

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.

¹⁵² At the time of the assessment Guanajuato and Tlaxcala were still assumed to be part of Stage 1.

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.”¹⁵³

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.¹⁵⁴ Eleven Federal labor courts started operation in the eight Stage 1 states on November 18 along with the Federal Center.¹⁵⁵

At the January 18, 2021 Coordination Council meeting a preliminary report of the number of cases handled by the federal labor courts was discussed. It provided¹⁵⁶:

State	Campeche	Chiapas	Durango	Hidalgo	Mexico	Mexico City	San Luis Potosi	Tabasco	Zacatecas
Cases	74	9	30	34	204	79	25	0	12

The report did not provide the exact dates that these numbers represent, so no analysis is done comparing them to the CJF’s estimates.

¹⁵³ 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>

¹⁵⁴ 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

¹⁵⁵ 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

¹⁵⁶ Coordinating Council minutes of the First Regular Session 2021, January 18, 2021; available at: https://reformalaboral.stps.gob.mx/rl/doc/Acta_Primer_Sesion_Ordinaria_2021.pdf

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.¹⁵⁷ These funds are available for 2020 and the following three years.¹⁵⁸

With the new 2020 funds ILAB is providing 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 awarded five additional grants with 2020 funds.¹⁵⁹ One grant for \$3 million was awarded to the Pan-American Development Foundation for a project titled "Engaging Mexico's Auto Sector Employers in Labor Law Reform Implementation". A second grant for \$10 million was

¹⁵⁷ 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>

¹⁵⁸ 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. Available at: <https://www.grants.gov/search-grants.html?agencies%3DDOL%7CDepartment%20of%20Labor?keywords=ilab>

¹⁵⁹ ILAB Grants and contracts/current opportunities. Available at: <https://www.dol.gov/agencies/ilab/resources/grants>

awarded to Partners for the Americas for raising awareness of the new labor systems among workers, employers and union leaders. A third grant for \$10 million was awarded to the Solidarity Center to strengthen workers' ability to exercise their labor rights. ILAB also awarded \$5 million to an ILO project on occupational health and safety, and \$416,600 to World Vision for a project on child labor in agriculture. s. ¹⁶⁰ These awards total just under \$50 million, leaving \$130 million of USMCA funds to be allocated.

The funds already obligated 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.¹⁶¹ We address two of these gaps in this interim report.

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,¹⁶² 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.¹⁶³ The commitments form part of the obligations that Mexico assumed under the USMCA.

¹⁶⁰ 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.

¹⁶¹ 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 DFC, and through multilateral institutions in which the US plays a key role including the ILO, World Bank and Inter-American Development Bank.

¹⁶² The corporatist model that developed in Mexico, under which the State (and the ruling party) mediated between the interests of labor and capital, has generally been seen by scholars as beneficial to workers, although this conclusion is certainly debated. There is a broad consensus that with the onset of neoliberal corporatism in the 1970s, the main corporatist union structures were increasingly subordinated to global capital. See Enrique de la Garza Toledo, *Corporativismo Sindical y Modelo Neoliberal en México*, available at <http://sgpwe.izt.uam.mx/pages/egt/congresos/otero%20espa%F1ol.pdf>

¹⁶³ 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%20AML_O%20Neal%20letter.pdf

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 encourage 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".¹⁶⁴ As noted above, the Mexican President has committed to equivalent goals for Mexico and the US, Mexico and Canada have obligated themselves to carry 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.¹⁶⁵

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.

¹⁶⁴ 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>.

¹⁶⁵ USMCA Article 23 and Annex 23-A. Available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23%20Labor.pdf>

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.¹⁶⁶ 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 as intended to support "desperately needed worker-focused capacity building activities in Mexico".¹⁶⁷ 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.¹⁶⁸ 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

¹⁶⁶ 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

¹⁶⁷ 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>

¹⁶⁸ 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>

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.”¹⁶⁹ 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.”¹⁷⁰ A very robust program of cooperation between 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

¹⁶⁹ 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>

¹⁷⁰ 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

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. Some of the mechanisms already adopted by the STPS and Federal Center pose problems by allowing potential conflicts of interest to persist or by failing to require adequate supervision by the government. The vast majority of unionized workers are not yet able to democratically elect their leaders or ratify their collective bargaining agreements; many cannot even obtain a copy of their CBA. The system of protection contracts, sustained by employer payments to union leaders, remains intact at this time. 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 killed, with little hope of justice.

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.¹⁷¹ We do not make such a determination at this time. We do offer the following recommendations to address the legal, institutional, procedural 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, and ensuring that those responsible are brought to justice. Failure to do so has a chilling effect on efforts to democratize labor relations. The Board has not been informed of progress on any pending cases. The recent detention of GM workers and the matters involving Tridonex (addressed in the Board’s interim report) raise additional concerns.

■ 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 an important step forward, but it does not ensure access: every worker should have a printed copy of his or her contract, union statutes and financial reports. Requiring workers or academic researchers to submit burdensome and time-consuming information requests for these documents would be counterproductive and undermine one of the key objectives of the reform, to promote transparency and dialogue based on access to information. The ILC and Congress

¹⁷¹ USMCA Implementation Act, Sec. 734.

should carefully monitor Mexico's implementation of the relevant provisions of the Federal Labor Law,¹⁷² 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,¹⁷³ 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. If it is not possible to fully implement the reforms on this accelerated schedule, at minimum the opening of the Federal Labor Tribunals in these states should be moved forward.

■ Reform the legitimation process

The ILC and Congress should urge Mexico to modify the Protocol for legitimation of existing CBAs to (1) organize legitimation votes by sector, following a schedule determined by the government and providing meaningful education about the process and options to workers in that sector in advance; (2) ensure that workers receive a printed copy of their CBA prior to the consultation; (3) require that legitimation votes be conducted by government representatives with the authority to investigate and correct violations in order to ensure fairness, secrecy and protection of all rights; (4) create a secure procedure for workers to report violations; (5) where evidence of serious violations by the titular union during or prior to the consultation is received, the contract should be nullified.

■ 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 career opportunities and civil service protections and 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. Given the problems and delays in implementation of the reforms addressed in this report, it is even more important that the delivery of USMCA funds be

¹⁷² Specifically Articles 132.XXX, 358.IV, 365 Bis, 371 Bis.XIII, and 373.

¹⁷³ 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>.

focused on building worker capacity,¹⁷⁴ frontloaded to offset prior delays, and streamlined to reduce bureaucratic obstacles.¹⁷⁵ To this end, as previously recommended, ILAB should immediately direct at least \$100 million of the unallocated USMCA funding to building worker capacity for organizing and bargaining, including legal and research support. Congress should consider allocating additional funds as needed.

■ Hold employers accountable

As noted in this report, Mexico's protection contract system is facilitated by 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. The recent visit of Vice-President Harris, along with Ambassador Tai's articulation of a worker-centered trade policy and her upcoming visit to Mexico, are encouraging in this regard.

¹⁷⁴ See letter from members of the House Committee on Ways & Means to the Chair and Ranking Member of the Committee on Appropriations, April 26, 2021 ("To satisfy Congressional intent, ILAB should spend at least \$30 million annually of USMCA Appropriated Funds on worker organizing and union capacity building in Mexico").

¹⁷⁵ See n. 160, *supra*.

V. SEPARATE STATEMENT AND DISSENTING VIEWS OF BOARD MEMBERS KYLE FORTSON, STEFAN MARCULEWICZ, PHILIP MISCIMARRA AND CHARLOTTE PONTICELLI

The United States-Mexico-Canada Agreement (“USMCA”) reflects a consensus that structural labor reforms and meaningful labor law enforcement in Mexico were critical parts of the agreement to have free trade between the United States, Mexico and Canada. To assist Congress, the Independent Mexico Labor Expert Board (“IMLEB” or “Board”) – created by the United States-Mexico-Canada Agreement Implementation Act (“Implementation Act”)¹ – was given an important responsibility, which is to prepare and submit an annual report that “contains an 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.”² The Board’s report “may also include a determination that Mexico is not in compliance with its labor obligations.”³

We do not join in this latest report (“Report”) by our other colleagues on the Board, although we agree with its four main conclusions:

- First, the present circumstances do not warrant a determination that Mexico has failed to be “in compliance with its labor obligations” under the USMCA;
- Second, “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”;
- Third, “[t]he 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”; and
- Fourth, “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.”⁴

Our dissenting views stem from four aspects of our colleagues’ Report which, in our view, prevent the Report from being considered a reliable barometer regarding implementation of the significant labor law reforms adopted by Mexico in 2019 pursuant to the USCMA.

¹ Public Law 116-113, 134 Stat. 11 (codified at 19 U.S.C. §§ 4501 et seq.).

² 19 U.S.C. § 4674(1)(A), (B).

³ *Id.* at § 4674(1)(2). The Implementation Act separately provides that the Board shall “advise the Interagency Labor Committee with respect to capacity-building activities needed to support [Mexico’s] implementation and compliance.” *Id.* at § 4671.

On December 15, 2020, the Board issued an Interim Report that was subscribed to by eight Board members: Benjamin Davis (chair), Timothy Beaty, Catherine Feingold, Owen Herrstadt, Daniel Mauer, Sandra Polaski, Fred Ross, and Jason Wade. Board members Stefan J. Marculewicz and Philip A. Miscimarra coauthored a Separate Statement (“Marculewicz-Miscimarra Statement”) and did not join in the Interim Report.

⁴ Report, at 43. Board Member Miscimarra recused himself and played no role in any evaluation or discussion of facilities or cases involving General Motors in this Statement and other parts of this Report.

1. *The Independent Mexico Labor Expert Board is Not Congress, and Was Not Vested with Authority to Make Recommendations.* The Report’s most significant deficit involves the failure to recognize the specific role that Congress assigned to the Board, which is to provide an accurate “assessment” of Mexico’s labor law reform efforts to Congress and to an Interagency Labor Committee (co-chaired by the U.S. Trade Representative and the Secretary of Labor, and consisting of other federal departments and agencies with relevant experience).⁵ There is an obvious and critically important reason for assigning to a group of experts the task of submitting an objective and even-handed “assessment” of these issues to Congress: members of Congress are elected to represent their constituents (and the public interest as a whole) regarding trade issues, appropriations, and related matters of federal policy. Likewise, the Interagency Labor Committee (the other recipient of IMLEB’s annual report) is charged with requesting “enforcement actions with respect to a USMCA country that is not in compliance” with USMCA labor obligations.

The Board members serving on IMLEB – notwithstanding their formidable expertise – are not vested with the authority to decide the above issues.⁶ Thus, nothing in the USMCA or the Implementation Act vests the Board with authority to make wide-ranging recommendations like those contained in our colleagues’ Report, which include suggested new or different mandates regarding:

- (a) having \$40 million allocated to U.S. unions and other participants in “cross-border union coalitions” for the purpose of fostering “cross-border organizing by unions in Mexico and the United States” (Report, at 40-41);
- (b) having “at least \$100 million” in current USCMA funding immediately allocated to “worker capacity,” “organizing and bargaining” (Report, at 45).
- (c) the re-ordering and restructuring of all remaining CBA legitimation votes by “sector” with the assignment of specific time periods “when all contracts in that sector would be voted” (Report, at 27-28);
- (d) the “reshuffling” of the implementation stages governing when different states in Mexico are required to open the new conciliation centers and labor courts (Report, at 27-29, 34-35, 44);

⁵ 19 U.S.C. § 4641(b). The Implementation Act provides that IMLEB’s annual report must be submitted to “appropriate congressional committees” and the “Interagency Labor Committee.” *Id.* § 4674. The full name of the Interagency Labor Committee is the “Interagency Labor Committee for Monitoring and Enforcement.” This Committee’s responsibilities include monitoring Mexico’s implementation and maintenance of its labor reform efforts and labor obligations (based in part on the “assessment” provided by IMLEB), and to “request enforcement actions with respect to a USMCA country that is not in compliance with such labor obligations.” *Id.*

⁶ The Implementation Act provides for the Board to “advise the Interagency Labor Committee with respect to capacity-building activities needed to support such implementation and compliance.” 19 U.S.C. § 4671. However, this advice is specific to the Interagency Labor Committee and to “capacity-building activities.” *Id.* See also 19 U.S.C. § 4642(4), (5)(B). In our view, this does not vest authority in the Board to include recommendations in the Board’s annual report or to make broad-based recommendations regarding labor reform and labor law enforcement in Mexico, or U.S. legislation or other U.S. initiatives that may relate to such issues.

- (e) recommending that the U.S. government “advocate” having certain Mexico states (e.g., Nuevo León and Tamaulipas) reassigned to earlier implementation stages rather than later implementation stages (Report, at 35);
- (f) changing the role played by incumbent unions and public notaries in legitimization votes concerning existing collective bargaining agreements (“CBAs”), even if this requires amending Mexico’s newly-enacted Federal Labor Law (“FLL”) (Report, at 21-24);
- (g) changing the manner in which historical union files and documents should be made available (Report, at 13-14); and
- (h) immediate implementation by Mexico states of other “necessary constitutional, legal, and budgetary reforms” to create local conciliation centers and labor courts (Report, at 32).

We have more than an academic disagreement with issuing a Board “assessment” that is replete with recommendations like those set forth above. These types of recommendations – whether or not they might have merit⁷ – inevitably cast doubt on whether the Board’s Report can be regarded as an even-handed evaluation of matters that are within the Board’s authority.

This concern is heightened by the Report’s many subjective observations that are based on supposition or otherwise lack any clearly articulated support. See, e.g., Report, at 13 (“Given the history of collaboration between employers and employer-dominated unions, it would not be surprising if workers in many cases did not receive hard copies of their contracts . . .”); Report, at 13 (“To require workers to submit a freedom of information request, and then wait for an indeterminate period while that request is processed, creates a significant interference with freedom of association”); *Id.* (“Since the ownership of most existing collective bargaining agreements was acquired under the old system, allowing the same unions to verify support now raises significant concerns about potential conflict of interest, credibility and reliability”); Report, at 22 (“Given the close cooperation between employers and employer-dominated unions, it is far from certain that workers are in fact receiving their contracts in all cases”); Report, at 23 (“In effect, the protocol allows a corrupt union to engage and pay a notary and thus legitimize a CBA and continue to collect dues”); Report, at 31 (“Given the long-standing concerns about corruption and ineffectiveness . . . and the overall weakness of Mexico’s anti-corruption mechanisms noted by international observers, simply transferring staff from the CABs to the Federal Center would raise serious doubts about the integrity of the new institution”); Report, at 32 (asserting that, notwithstanding progress in adopting legal reforms between July 2020 and January 2021, spanning the COVID-19 pandemic, “in many states there does not appear to be a sense of urgency”).

⁷ Every Board member believes, of course, that employees in Mexico should be free from violence in the workplace, and should have freedom of association and related rights consistent with USMCA Chapter 23 and Annex 23-A and the related 2019 labor law reforms that have been adopted in Mexico. Our disagreement with having our colleagues’ varied recommendations included in their Report should not be construed as passing on the merits of those recommendations.

2. *Effective Labor Reform in Mexico Requires Focusing on Multiple Constituencies.* Many aspects of the Report inaccurately portray the historical shortcomings in Mexico labor practices and enforcement by suggesting that the existing practices are completely attributable to employers. For example, the Report describes “protection contracts” are being signed by employers and “employer-dominated ‘protection’ unions” which the Report describes as having the “purpose” in part of protecting the employer “from having to negotiate with an independent and democratic union” (Report, at 3). Similarly, the Report states “the protection contract system allows employers to use protection union leaders to suppress the rights of their employees” (Report, at 6). These characterizations distort the reality that the entrenched system of “protection contracts” in Mexico often perpetuated practices that benefited labor organizations or public officials *at the expense* of employees *and* employers.

The immense challenges associated with Mexico’s current reform efforts also make clear that businesses could not meaningfully change these practices without the type of near-wholesale restructuring of Mexico labor laws, labor courts, and related institutions that has now taken place. Our colleagues acknowledge the enormity and ambitious scope of this restructuring. See Report, at 38 (“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 . . . [that] have been made even more difficult by the coronavirus pandemic.”).

Therefore, it is important to recognize that the broad-based reforms being implemented in Mexico involve four distinct constituencies. The first constituency involves Mexico labor organizations, which encompass two types of unions: (a) labor organizations that are commonly referred to as “protection unions” (involving relationships and agreements that seemingly involve little or no participation by employees) and “independent unions” (which have support and active involvement of employees they represent at a particular location). The second constituency involves Mexico employers, whose relationships with “protection unions” in many cases resulted from extortion, threats and coercion directed *against the employers*. In other cases, these relationships resulted in large part from the *absence* of functioning independent democratic unions, among other things. The third constituency in Mexico consists of employees. Many if not most employees have had little or no involvement in selecting the unions that ostensibly represented them, and many employees in Mexico also have had little or no understanding of their rights under the agreements governing their employment. We also agree that many employees in Mexico lack knowledge of the newly enacted protections that are associated with the labor law changes that have been adopted in Mexico.⁸ The fourth constituency in Mexico is the government (both the federal government and the states) which have adopted substantial

⁸ We believe all concerned parties – including employees, unions and employers – should have the opportunity to understand relevant labor law rights and obligations, and Mexico has been undertaking substantial outreach efforts in this regard. However, even in the United States, various advocates have contended that employees do not sufficiently understand their labor law rights, and the National Labor Relations Board’s attempt in 2011 to require employers to post notices in the workplace regarding collective bargaining rights was invalidated as being in excess of the Board’s authority under the National Labor Relations Act. See, e.g., *Chamber of Commerce of the United States v. NLRB*, 721 F.3d 152 (4th Cir. 2013); *National Ass’n of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

labor law reforms which (as described in our colleagues' Report) that remain in various stages of implementation.

Given the magnitude of the changes being implemented in Mexico, *each* of these four constituencies must play a significant role in making these changes successful. Prospectively, the Board should focus more attention on outreach and coordination relative to each these groups, rather than focusing more narrowly, for example, on activities and funding directed to U.S. and Mexico unions. Similarly, the Board should address the extent of cooperation and reform – or lack thereof – by each of these constituencies, including unions in Mexico, rather than presuming that employers are responsible for all or most of the problems.

3. *Labor Law Enforcement: The Need for a Hard Analysis of Metrics.* There are widely divergent views regarding the effectiveness of U.S. labor laws and their enforcement. However, within the United States, decades of metrics provide an objective measure of the extent to which employee rights disputes and other cases are effectively enforced by the National Labor Relations Board (which has jurisdiction over labor-management disputes and representation elections involving most private sector employees in the U.S., excluding railroad and airline employees) and the National Mediation Board (which has jurisdiction over the same types of cases involving railroad and airline labor-management disputes and representation elections).⁹ By comparison, our colleagues' Report contains a small assortment of raw statistics regarding staffing and cases involving Mexico's Federal Center for Labor Conciliation and Registration ("Federal Center") and its Federal Conciliation and Arbitration Board ("Federal Board") (Report, at 30-31); conciliation requests and related data involving certain local conciliation centers released by the Coordination Council for the Implementation of the Reform of the Labor Justice System ("Coordination Council") (Report, at 32); and some figures regarding staffing and case-handling by the Federal Labor Courts (Report, at 36).

In our view, much more rigorous scrutiny of details regarding the newly created labor law structures in Mexico is fundamental to the Board's duty to evaluate "the manner and extent to which labor laws are generally enforced in Mexico." We believe this requires the Board to obtain and evaluate hard data regarding, for example, (i) the number of cases (federal and state) that have been adjudicated in the past, (ii) the number of union officer elections conducted (and the number of union officer election outcomes that have been verified by labor authorities), (iii) the number of CBAs ratified by secret ballot elections, (iv) the number of new cases filed and handled by the Federal Center, (v) the number of cases filed with the new system of labor courts (which replaced the former system consisting of tripartite Conciliation and Arbitration Boards), (vi) the track record of the Federal Center and labor courts in processing and resolving past and pending cases, and most importantly, (vii) the *outcomes* of both sets of cases. Hard analysis regarding reliable information concerning these issues is indispensable to the Board's work.

We would have favored doing this additional work and taking whatever modest additional time would be necessary for this to be included in the Board's Report. As a result of this omission,

⁹ IMLEB Board Member Miscimarra is former NLRB Chairman and Board Member, and IMLEB Board Member Fortson is a current NMB Board Member (and former Chairman).

the Board's Report is fragmentary and selective, which leaves the Board with little choice but to make such general statements as "reform institutions should be robustly staffed" (Report, at 30) and "it is difficult . . . to assess" whether there may be "short staffing" of the "new labor courts" (Report, at 36).

4. Mexico Has Made Substantial (But Unfinished) Progress Towards Labor Reform. As indicated above, our colleagues' Report reaches four main conclusions with which we agree: (a) the present circumstances do not warrant a determination that Mexico has failed to be "in compliance with its labor obligations" under the USMCA; (b) "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"; (c) "[t]he 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"; and (d) "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" (Report, at 43). However, when reading our colleagues' Report – including their many recommendations – one could easily walk away with the impression that labor law reform in Mexico is floundering. As reflected in our colleagues' conclusions recited above, this Board unanimously agrees that Mexico has continued to make impressive progress in its labor reform efforts, and in establishing effective institutions for meaningful labor law enforcement.

Within the United States, substantial credit goes to appropriate committees in Congress, the U.S. Department of Labor's Bureau of International Labor Affairs ("ILAB"), the United States Trade Representative's Labor Office, and the Interagency Labor Committee, all of which have undertaken substantial efforts to help ensure that Mexico's labor reforms are meaningful in their design and adequately enforced in practice. This has been reflected in funding by Congress, substantial work by ILAB, coordination with government officials in Mexico and Canada, the creation of the Labor Chapter and Rapid Response Petition Mechanisms, and independent monitoring and reporting by IMLEB.

Everyone also agrees this hard work remains unfinished. As Members Marculewicz and Miscimarra observed in December 2020: "Mexico has committed to the implementation of major labor law reforms affecting fundamental labor relations practices, the manner in which unions function, the nature of employee representation, and other important aspects of collective bargaining and labor-management relations in Mexico. These are immense tasks."¹⁰ Our colleagues obviously agree, as reflected in their statement that "[d]espite [the] 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" (Report, at 38).

As stated above, we dissent from our colleagues' views presented in this Report. However, there is no disagreement among Board Members regarding the importance of the policies and objectives incorporated into the USMCA and Implementation Act. The Board will continue

¹⁰ Separate Statement, at 1.

prospectively to discharge its responsibility to monitor and evaluate Mexico's implementation of labor reforms and the manner and extent of labor law enforcement in Mexico.¹¹

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July 7, 2021

¹¹ 19 U.S.C. § 4671 (noting the Board is “responsible for monitoring and evaluating the implementation of Mexico’s labor reform and compliance with its labor obligations”).