

Freedom of Association and the Right to Bargain Collectively in Mexico



A resource tool for brands and manufacturers

Maquila Solidarity Network (MSN) | September 2016



This educational resource tool on freedom of association and the right to bargain collectively in Mexico was produced by the Maquila Solidarity Network (MSN) for use by apparel brands, their Mexican suppliers and social auditing organizations.

MSN is a Canada-based labour rights organization that collaborates with Mexican women's, trade union and labour rights organizations in promoting greater respect for workers' rights in global supply chains.

MSN also participates in and acts as the secretariat for the Mexico Committee of the Americas Group, a multi-stakeholder forum of international apparel brands, the Fair Labor Association (FLA), the Global Union IndustriALL, and MSN working together to promote and support globally competitive and socially responsible apparel and footwear industries in the Americas.

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For more information on MSN's work in support of freedom of association in Mexico, visit: www.maquilasolidarity.org/en/ourwork/freedomofassociation

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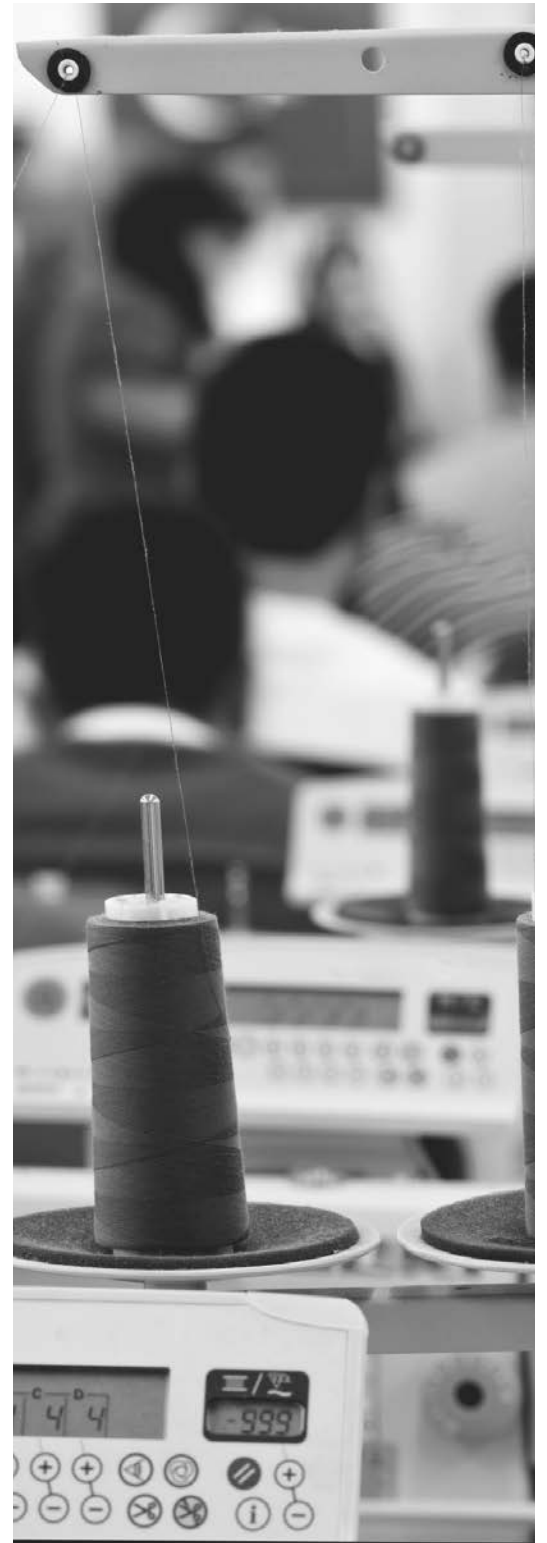
INTRODUCTION: THE INTERNATIONAL CONTEXT

The new international division of labour, caused by free trade, globalization and outsourcing of production from Northern countries to countries in the global South, requires a regulatory response at the international level.

One such response has been the adoption of the United Nations Guiding Principles for Business and Human Rights, which clearly define the roles of states and companies regarding their obligations to ensure respect for human rights, including human rights at the workplace. While states have a duty to respect and protect human rights and remedy human rights violations, business enterprises also have a duty to carry out due diligence to ensure that their operations, including in their global supply chains, are respecting human rights, whether or not the state is fulfilling its obligations.

Another response has been the development of voluntary codes of conduct by multinational enterprises, as part of their global business strategies. A code of conduct is a public expression of a company's intention to respect labour, environmental and social standards and rights, including in its global supply chain.

Consumers in North America and Europe make buying decisions based on a number of factors, including price, quality, style and personal identification with the brand. While labour and environmental practices may not be the major considerations in consumer purchases, reports of gross violations of workers' rights do affect the reputation of the brand. In order to satisfy the needs and concerns of retailers, brands and consumers, Mexican suppliers must be able to compete on price, quality, ability to produce a variety of styles and designs, and respect for workers' rights and sustainable environmental practices.



INTERNATIONAL REGULATIONS GUARANTEEING FREEDOM OF ASSOCIATION AND THE RIGHT TO BARGAIN COLLECTIVELY

The International Labour Organization (ILO), a tripartite institution with representation from governments, workers and employers, has enshrined two important labour rights – freedom of association and the right to bargain collectively – through the adoption of ILO Conventions 87 and 98, as well as Convention 154 and Recommendation 163 and other Conventions for specific sectors.

Mexico has ratified Convention 87 on freedom of association and the right to organize, but has not yet ratified Convention 98 on the right to organize and bargaining collectively. Nevertheless, because these are core conventions of the ILO, as expressed in the ILO's Declaration on Fundamental Principles and Rights at Work, Mexico is obligated to comply with them.

Convention 87 states that workers have the right to organize a union without the previous authorization of the government. Under the Convention, both workers and employers have the right to form organizations of their choosing and to affiliate with such organizations, the only condition being that they observe the statutes of that organization. In Mexico, supervisors and middle management personnel also have the right to form or join a union, but only those organizations that are restricted to that category of employee.

Collective bargaining is a process in which workers through their union negotiate with their employer on the terms and conditions of their employment. When such negotiations take place in good faith, it is possible to achieve a collective bargaining agreement that is acceptable to and respected by both parties. Once an agreement has been achieved, various procedures – from conciliation to mediation to arbitration – can be used to resolve specific conflicts between workers and management.

The rights to organize, to bargain collectively and to strike are recognized as human rights in the principal international agreements that have been ratified by Mexico, including the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Protocol of San Salvador. These agreements recognize freedom of association as an individual right of a person and a collective right of workers through their organizations.

KEY POINTS:

- » There is ample international regulation that guarantees the rights to freedom of association, to bargain collectively, and to strike.
- » These are recognized as fundamental human rights, the violations of which are taken seriously by the international community.
- » Mexico has ratified a number of international and hemispheric agreements that include obligations to respect the rights of workers to freedom of association, to bargain collectively and to strike.



VOLUNTARY INITIATIVES

The adoption of voluntary codes of conduct by multinational enterprises is one attempt to respond to the concerns of consumers regarding their labour and environmental practices and to overcome the institutional barriers and lack of political will of states to enforce labour standards due to globalization and competition between countries for investment and jobs. Voluntary codes of conduct are meant to complement and not replace government regulation.

In the garment sector, codes of conduct not only apply to the conduct of multinational companies, but also to that of their suppliers around the world. Most codes of conduct require compliance with national labour laws and environmental standards, and with additional standards adopted by the company itself, with the higher standard prevailing. Although the standards in code of conduct vary from company to company, the trend is toward aligning those standards with the Conventions of the ILO.

In order to increase leverage on shared suppliers and better coordinate their efforts to achieve labour standards compliance in their global supply chains, a growing number of companies are participating in multi-stakeholder initiatives (MSIs), such as the Mexico Committee of the Americas Group and the Fair Labor Association (FLA).

Both the Mexico Committee and the Fair Labor Association view “protection contracts” as a barrier to freedom of association in Mexico and have adopted policies and recommended actions to help overcome that barrier. The Mexico Committee defines protection contracts as simulated collective bargaining agreements (CBAs) signed by employers and unrepresentative unions or individuals without the affected workers’ knowledge or consent.

The international brands that participate in the Mexico Committee are requesting that their suppliers provide information to workers on the names of the union that has signed the CBA at their workplace, the federation to which it is affiliated, and the representatives of that union. These companies are also requesting that workers be provided a copy of the collective bargaining agreement, and are encouraging their suppliers to adopt their own policy in favour of freedom of association and the right to bargain collectively and effectively communicate it to all workers.

» The Mexico Committee’s *Guidance for Apparel Brands: Policies and Actions to Ensure Respect for Freedom of Association in Mexico*, January 2016 is available at: www.maquilasolidarity.org/en/new-guidance-tool-brands-freedom-association-mexico

KEY POINTS:

- » Voluntary regulatory initiatives fill a vacuum created by globalization.
- » Voluntary codes of conduct for global supply chains require that suppliers comply with local labour law, and in addition with other standards adopted by the brands.
- » Although the provisions of voluntary codes of conduct vary, the tendency has been to bring them into alignment with ILO Conventions.
- » In order to better coordinate their efforts, brands are participating in multi-stakeholder initiatives (MSIs), such as the Mexico Committee and the Fair Labor Association (FLA), which have adopted benchmarks to ensure respect for freedom of association and the right to bargain collectively.

For more on what suppliers are being asked to do, see Appendix A. For a Supplier FOA Policy, see Appendix B.

In a March 2015 *Issue Brief on Protection Contracts in Mexico*, the Fair Labor Association states: “While protection contracts represent a violation of the FLA Workplace Code of Conduct in their own right, the labor-rights environment they create – a workplace devoid of legitimate worker representation – leaves workers vulnerable to other serious workplace violations.” The memo goes on to state: “Before choosing new suppliers in Mexico [FLA] company affiliates should know the status of the unions operating in that factory. A company’s respect for legitimate freedom of association should then block any affiliates from knowingly entering into a business relationship where the factory’s collective bargaining agreement is with an employer-dominated union.”

Benchmarks of the FLA Code include:

- » recognition of workers’ right to form or join a union of their choice without previous authorization;
- » recognition of the right of employees to free and voluntary collective bargaining with a view to regulation of the terms and conditions of employment by collective agreements;
- » prohibition of employers using physical or psychological violence or threats, intimidation, retaliation, harassment or abuse against union representatives and workers seeking to form or join an organization of their own choosing;
- » prohibition of employers committing acts of anti-union discrimination or retaliation against a worker based on his/her union membership or participation in union activity, including blacklisting;
- » prohibition on employers threatening to shift production elsewhere or to close the workplace in order to prevent the formation of a union, in reaction to the formation of a union, or in reaction to any other legitimate exercise of the right to freedom of association and collective bargaining, including the right to strike;
- » prohibition on employers interfering in freedom of association by favouring one union over another;
- » requirement of employers that they make available a copy of the collective bargaining agreement to all workers and other interested parties; etc.

The FLA’s Code of Conduct and Benchmarks on FOA are available on page 22 at: www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf



Photo: Kathleen Mc Tighe, flickr.com/photos/uusc4all/8371570876/in/album-72157628296136711/

FREEDOM OF ASSOCIATION AND COLLECTIVELY BARGAINING IN MEXICO

Article 123 of the Mexican Constitution contains the basic principles and norms to regulate labour relations and achieve social justice and a balance between the interests of capital and labour. The Federal Labour Law details the regulations for labour relations in the private sector.

In the Federal Labour Law, a union is defined as an association of workers or employers for the education, improvement and defense of their respective interests. Article 2 says that decent work includes respect for the unrestricted collective rights of workers, such as freedom of association, autonomy, the right to strike, and collective bargaining. Article 359 says that unions have the right to determine their organization's statutes and rules, to freely choose their representatives, to organize the administration and activities of their organization, and to develop its program of action.

Article 357 states that workers have the right to constitute a union without previous authorization; Article 358 states that no one can be obligated to join or not join a union. However, the Law is contradictory on this last point; Article 395 permits the negotiation of an "inclusion clause" in a collective bargaining agreement requiring that only members of the union holding title to the CBA be hired, though "exclusion clauses" requiring the dismissal of workers who are expelled from or voluntarily resign from the union are no longer permitted. As well, workers who were not members of the union prior to the signing of the CBA or revisions to the CBA cannot be compelled to be members of the union. Article 357 also recognizes that employers or owners can form unions of companies involved in one or more branches of business activities, as well as federations of business organizations at the national level.

In Mexico, workers' unions must be registered by the Department of Labour and Social Services at the federal level or the Conciliation and Arbitration Boards at the local level. Workers' unions can be constituted if they have a minimum of 20 members with four years of service each, and cannot include management personnel (*empleados de confianza*) as members. However, management personnel have the right to form their own unions or associations.

A basic tool in the exercise of the right to bargain collectively is the collective bargaining agreement, which can be negotiated between one or more unions and one or more employers. The objective of such agreements is to establish the terms and conditions of employment in on one or more businesses or establishments.

KEY POINTS:

- » Mexico's Federal Labour Law recognizes the rights to freedom of association, to bargain collectively and to strike.
- » The reforms to the Federal Labour Law increase some guarantees of workers' associational and collective bargaining rights.
- » The International Labour Organization (ILO) has requested that the Mexican government make further changes to the Federal Labour Law to better guarantee freedom of association.



When a union exists in a workplace or business, the owner or employer has an obligation to negotiate a collective agreement, and if the owner or employer refuses to negotiate, the workers have the right exercise their right to strike.

Article 391 states that collective bargaining agreements must contain the rules for the establishment and functioning of joint worker/management commissions (*comisiones mixtas*) that are consistent with the Law. Commissions required by law include those regarding profit sharing; health and safety; training and productivity; and work rules.

Collective agreements should also include a salary table for each occupational position in the workplace or enterprise, as well as provisions for work shifts, rest and vacation days, and other rights and benefits beyond what is provided for in the Federal Labour Law. Article 393 states that a collective agreement will not go into effect if it does not contain provisions stipulating salaries. If a CBA doesn't include provisions defining work shifts, days of rest and holidays, the minimum requirements in the Federal Labour Law shall apply. Collective agreements cannot contain rights that are less favourable to workers than those established in the Law (Articles 56 and 394). The rights and benefits established in collective agreements apply to all the workers in the workplace or enterprise whether or not they are members of the union (Articles 396 and 184).

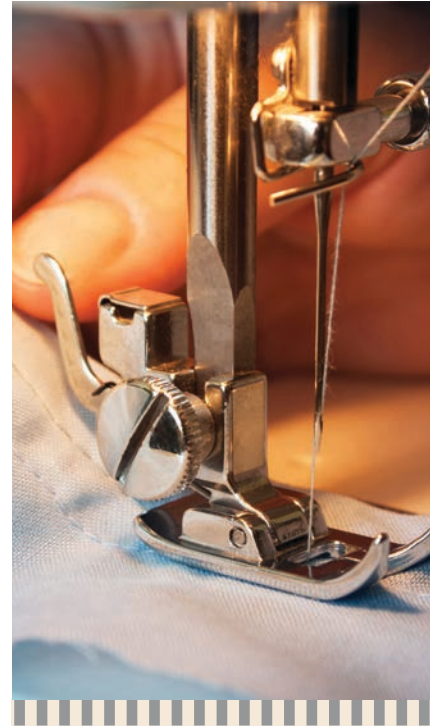
In Mexico, the duration of a collective agreement is a maximum of two years, after which it is subject to revision or renegotiation. However, the salary table can be revised each year.

If the collective agreement is being violated or the employer is refusing to negotiate, the workers have the right to strike. A strike, which is a temporary withdrawal of services, can be carried out by a union (a permanent coalition of workers) or by the owner or employer when their motives are attributable.

In November 2012, the Mexican government approved reforms to the Federal Labour Law, which will very likely have both positive and negative impacts on the rights of workers.

Although it is too early to know how these changes to the Law will be interpreted in practice, some of the reforms will undoubtedly be advances in guaranteeing the rights of workers to freedom of association and to bargain collectively, including obligations to:

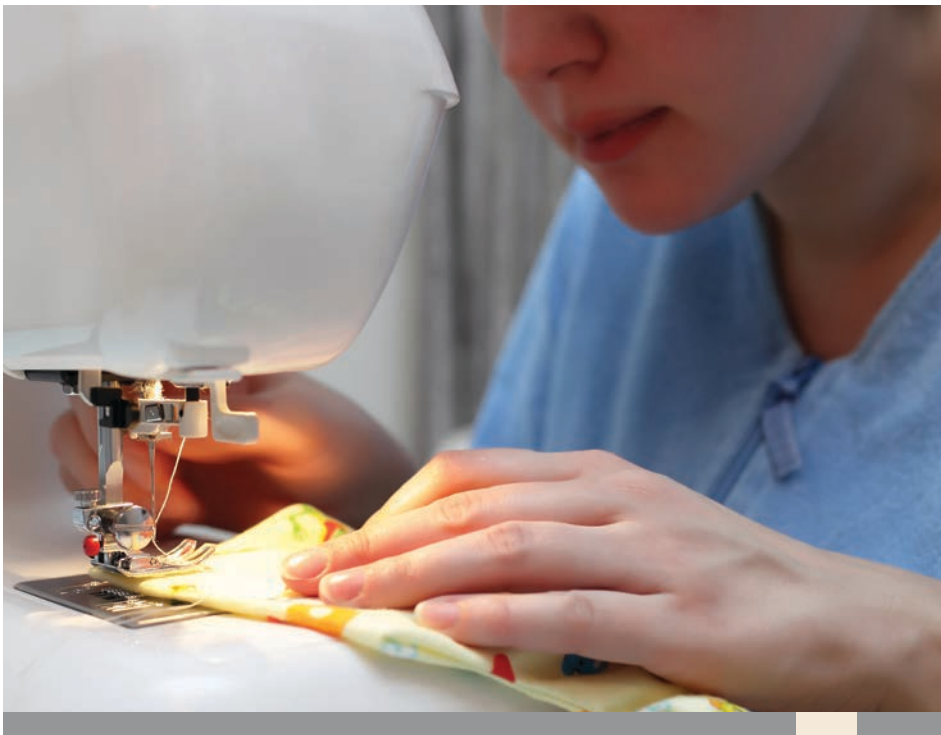
- Include in union statutes provisions for secret ballot votes in union elections, through direct votes or indirect votes;



- Include in union statutes internal mechanisms to disclose union financial reports to members and the possibility to file an appeal with the junta when requests for such information are refused;
- Publish union registrations, collective agreements and internal rules of the union; and
- Refrain from using “exclusion clauses” in collective agreements as justification to dismiss a worker for resigning from or being expelled from the union that holds title to the CBA.

In addition, the reforms increase economic sanctions against employers who violate workers’ rights.

In June 2015, the ILO Committee on Application of Standards requested that the Mexican government make additional legislative reforms to the 2012 Federal Labour Law necessary to comply with Convention 87, including “reforms to 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.” The Committee also requested that the government “fulfill without delay its obligations to publish the registration and bylaws of trade unions on local labour boards of the country’s 31 states....”



CONCLUSIONS

Economic globalization, free trade and outsourcing of garment production to countries in the global South have been accompanied by new forms of labour standards regulation, including international treaties; voluntary codes of conduct and multi-stakeholder initiatives; and reforms to existing national labour laws and regulations.

These new forms of regulation are bringing greater attention to labour practices in garment factories that produce for the global market. The willingness of suppliers to improve labour practices in order to bring them into compliance with both national labour laws and voluntary codes of conduct is increasingly important to international buyers sourcing from factories around the world.

Increased knowledge and understanding by workers and management personnel of their rights and obligations under national labour laws, international treaties, and voluntary codes of conduct can therefore be a competitive advantage for garment manufacturers in Mexico and other countries.

Among the labour rights contained in national labour laws, international treaties and voluntary codes of conduct, freedom of association and the right to bargain collectively are particularly important because they are enabling rights that allow workers to play an active role in determining the terms and conditions of their employment and in resolving conflicts between workers and management when they arise.



APPENDIX A

WHAT ARE MEXICAN SUPPLIERS BEING ASKED TO DO TO ENSURE RESPECT FOR FREEDOM OF ASSOCIATION AND THE RIGHT TO BARGAIN COLLECTIVELY?

These policies and actions are based on those outlined in “Guidance for Apparel Brands: Policies and Actions to Ensure Respect for Freedom of Association in Mexico,” Mexico Committee of the Americas Group, January 2016.

Adopt an FOA Policy: Adopt a policy expressing your commitment to the right of all workers employed by your company to freedom of association and collective bargaining, and effectively communicate that policy to all workers, including new employees.

Refrain from Signing a Protection Contract: Where there is currently no union in the factory, do not sign a “protection contract” (a simulated collective bargaining agreement signed without the knowledge and/or consent of the workers) with an unrepresentative union or lawyer.

Transparency about the Union: Where there is a union, inform all workers, including new employees at the time of their hiring, of the name of the union, the federation to which it is affiliated, and the representatives of the union and how to contact them.

Ensure Workers Receive CBA: Where there is a signed collective bargaining agreement (CBA), ensure that all workers, including new employees at the time of their hiring, receive a copy of that agreement, as well as the date of its signing and any revisions made to the agreement.

Eliminate the Exclusion Clause: Where there is an illegal “exclusion clause” in the collective bargaining agreement (requiring the dismissal of workers expelled from or who voluntarily resign from the union), ensure that the clause is eliminated from the agreement at the earliest opportunity.

Transparency about other Agreements: Inform the workers of any other agreements between the employer and the union on the terms and conditions of their employment.

Prior Notice of Negotiations: Whenever possible, give workers prior notice of negotiations of the first CBA, revisions to the CBA, or any other agreement between the union and employer on the terms and conditions of their employment.

No Discrimination: Do not dismiss, blacklist or otherwise penalize or discriminate against any worker in hirings, promotions, demotions or transfers for his/her present or past union activities or for ceasing to be a member of the union holding title to the CBA and/or for attempting to form or join another worker organization.

Remain Neutral: Where there is more than one union or union in formation in the workplace, remain neutral and refrain from doing anything that would place one organization at an advantage or disadvantage in relation to the other(s), including in recuentos between two or more unions for title to the CBA, and do nothing to delay, influence or prejudice the results of such recuentos.

No Interference: Do not interfere in the internal affairs of any union, for instance through bribes, inducements or other means to encourage workers to renounce their union affiliation, or use of financial or other means to place a union under the control of your company.

Mixed Commissions: In addition to the policies and actions outlined in the Mexico Committee’s Guidance document, suppliers should also ensure that all legally mandated mixed (worker/management) commissions are properly constituted and functioning effectively.

APPENDIX B

SUPPLIER FOA POLICY: KEY ELEMENTS AND MODEL POLICY

This list of key elements of a Supplier Freedom of Association (FOA) Policy is meant to provide guidance to Mexican suppliers of international apparel brands on what should be included in their own FOA policies. Some suppliers may prefer to adopt the Model Supplier FOA Policy below or use it as a reference, rather than developing their own policy.

A Supplier FOA Policy should include:

- A commitment to the principle of freedom of association and the right to bargain collectively, as expressed in international instruments and Mexican labour law.
- A clearly expressed commitment to the right of all workers employed by the company to join or form a union or other worker organization of their free choice.
- A commitment to transparency so that all workers employed by the company have sufficient information to understand and exercise their rights.
- A commitment to refrain from and not tolerate any acts of discrimination, intimidation, reprisal or threats of reprisal against workers for exercising their associational and collective bargaining rights.
- A commitment to respect the right of worker representatives to freely carry out their legitimate union functions.
- A commitment to remain neutral and to refrain from any acts that favour one union over another in cases where there is more than one union or union in formation in the factory.

Model Supplier FOA Policy

[Name of Supplier] supports the right of workers, under internationally recognized core labour standards and Mexico's Federal Labour Law, to freedom of association and collective bargaining. We respect the right of all workers employed by our company without distinction to join or form a union or other worker organization of their free choice and to bargain collectively, and we will ensure that they are provided sufficient information to understand and freely exercise their associational and collective bargaining rights. [Name of company] does not practice or tolerate threats, intimidation, reprisals or discrimination of any kind against workers or worker representatives because of their past or present union membership, sympathies or activities. We respect the right of union representatives to freely conduct their legitimate union activities. If there is more than one union established or in the process of formation in one of our workplaces, our company and management personnel will remain neutral and will not promote or favour one union over another.