

Debate on Mexican Labour Justice Reform Continues as Counter-Reform Bill Suspended

UPDATE ON RECENT DEVELOPMENTS

Maquila Solidarity Network

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On February 24, 2017, Mexico's long awaited Constitutional Reform to the labour justice system became law. Among its defining features is the dissolution of the tripartite labour boards (*juntas de conciliación y arbitraje*) that are charged with adjudicating individual and collective labour disputes and registering unions and collective bargaining agreements. The tripartite structure of the *juntas* has been a major impediment to freedom of association and collective bargaining in Mexico. Given that the *juntas* are legally controlled by employer organizations, corporatist unions, and the executive branch of the federal and state governments, they have long acted prejudicially towards workers who choose to form or join independent unions, preventing their registration, while registering and legitimizing "protection contracts" signed by employers and representatives of corporatist unions without the knowledge or consent of workers. Their replacement with specialized, impartial and autonomous conciliation centres, an independent, transparent and autonomous agency to register unions and CBAs, and impartial, independent and autonomous labour courts, would, in theory, democratize collective bargaining, guarantee the right to freedom of association, and advance the rule of law in the area of labour relations.

As MSN reported in our July 2017 *Briefing Paper* and January 2018 *Update*¹ on the Reform, the Mexican legislative process requires that the adoption of the Constitutional Reform be followed by the passage of secondary or 'implementing' legislation that would bring the Reform's new institutions into existence and ensure that they embody the new Constitutional principles. When President Enrique Peña Nieto submitted the Constitutional Reform bill to Congress in April 2016, he indeed accompanied it with a bill for corresponding reforms to be made to the Federal Labour Law (*Ley Federal del Trabajo*). That proposal, however, languished in the Senate Labour and Social Welfare Commission, where it was never debated. Meanwhile, rumours circulated that COPARMEX (the Mexican Employer's Association, *Confederación Patronal de la República Mexicana*), and the corporatist unions were preparing to submit bills for the implementing legislation that would render the new Constitutional principles and key institutional achievements of the Reform null and void by shoring up tripartism and ensuring the survival of protection contracts.

¹ Both MSN documents can be accessed at: www.maquilasolidarity.org/en/will-mexico-make-good-on-promise-of-labour-justice-reform

Competing Bills Submitted

In December of 2017, the rumoured alternative proposals for implementing legislation began to surface. The first, submitted by two senators of the Institutional Revolutionary Party (*Partido de la Revolución Institucional, PRI*) – Tereso Medina Ramírez of the Confederation of Mexican Workers, (*Confederación de Trabajadores Mexicanos, CTM*) and Isaías González Cuevas of the Revolutionary Confederation of Workers and Peasants (*Confederación Revolucionaria de Obreros y Campesinos, CROC*),² the principal corporatist unions of Mexico, and therefore those most likely to hold a seat on the *juntas*, offered a counter-reform proposal that reintroduced a tripartite governing structure to the federal level institution mandated to register unions.

On December 14, the Party of the Democratic Revolution (*Partido de la Revolución Democrática, PRD*) filed a second bill in response, developed and written by the independent union confederation National Workers' Union (*Unión Nacional de Trabajadores, UNT*), with detailed directives for the establishment of the registration agency, and democratic procedures for the ratification of new collective bargaining agreements.

A third bill, advanced by the National Action Party (*Partido de Acción Nacional, PAN*) and considered by labour analysts to largely represent COPARMEX's interests, was submitted on February 22, 2018. Finally, Senator Alejandro Encinas Rodríguez, a long-time

member of the PRD and now a political independent, presented yet another proposal for the implementing legislation on April 25. However, it is unclear whether this most recent proposal comes from Encinas as an individual or has support in the legislature.

Despite the existence of various initiatives available for review by the PRI-controlled Senate Labour and Social Welfare Commission, on March 22, 2018, the President of the Commission, José María Tapia Franco, introduced a version of the PRI-CTM-CROC proposal as a "*proyecto de dictamen*" to Commission members as the **only** document to be debated prior to a Senate vote.³ Observers expected that the vote would take place before the end of the congressional calendar on April 30, in order to limit debate on its content and origins. In that sense, it was presented as a *fait accompli* to other Commission members and Senators.

However, before the dictamen could be presented to the Senate, Carlos Aceves del Olmo, Secretary General of the CTM and President of the Labour Congress (*Congreso de Trabajo, CT*), announced the end of the PRI-CTM-CROC proposal when he declared the labour reform bill dead at a PRI campaign event on April 23 for Mexico City Mayoral candidate Mikel Arriola Peñalosa.⁴ In the national press, the CTM leader noted that Senators Medina Ramírez and González Cuevas never asked for prior approval from CTM leadership before presenting their bill to the Senate Labour Committee, leading to his declaring the demise of the proposal.⁵

² González Cuevas is a PRI militant and member of the CROC since 1980, and has been the Confederation's Secretary General since 2005. His term has been marked by controversy, stemming from allegations of fraud within his own confederation over the discretionary use of union funds and the retention of workers' housing benefits, which led CROC affiliates in 17 states to formally reject his 2016 reelection victory and leave the Confederation last year. González Cuevas is reported to personally manage the negotiation of protection contracts in the transportation industry in Nuevo León and Veracruz. He has been elected to the Mexican Congress as a Federal Deputy on two previous occasions. Medina Ramírez, the bill's co-sponsor, is a member of the PRI and Secretary General of the CTM in Coahuila State, where he also heads the union at General Motors. He serves in the Senate as an alternate for the Senator for Mexico State. Both the CTM and CROC were suspended from the International Trade Union Confederation (ITUC) in December 2017 for their history of using protection contracts, and for opposing the creation of democratic and independent unions in Mexico.

³ Tapia Franco also serves as the Secretary for Electoral Action in the National Executive Committee of the PRI. In this role, he is charged with developing PRI electoral strategies for the upcoming elections.

⁴ Muñoz Ríos, Patricia. "La reforma laboral, detenida en el Senado; será presentada en el próximo periodo," April 23, 2018, La Jornada, www.jornada.unam.mx/2018/04/23/politica/017n1pol.

⁵ Del Pilar Martínez, María. "Reforma a justicia laboral no logra materializarse," El Economista, April 4, 2018. www.eleconomista.com.mx/empresas/CTM-anuncia-cancelacion-de-la-reforma-laboral-20180423-0062.html.

In effect, the legislative period ended without any of the proposals emerging from debate in committee, meaning that the proposals on implementing legislation must now wait until Congress is back in session.

Fallout for Bill's Sponsors

While the PRI *dictamen* may not have advanced, it still needs to be formally revoked by Medina Ramírez or González Cuevas in the Senate Labour Committee if it is to be removed from consideration. Meanwhile, Senate President Ernesto Cordero Arroyo (PAN) is opening the implementing legislation up for public debate, as forums to hear the perspective of citizens, trades unions, business associations, labour experts, academics, civic associations and other stakeholders are being convened for May and June during the Congressional recess. Although key details about how the forums will be organized are still unclear, and some skepticism around whether public input will ultimately impact the legislative process remains, the creation of a channel for much needed public debate would appear to preclude any legislation being voted on prior to the Mexican election.⁶

The reversal of the PRI-CTM-CROC *dictamen* represents an important political defeat for the CTM, and for Senators Medina Ramírez and González Cuevas, who are being vilified as traitors to the working class and their own union confederations for having presented a proposal that so clearly undermines the interests of

Mexican workers. Even corporatist unions, including the National Coalition of CROC Organizations and Unions (*Coalición Nacional de Organizaciones y Sindicatos Croquistas*), the 17 confederations of FROC-CROC unions across the Mexican states that do not recognize González Cuevas' leadership, have made statements rejecting the proposal.

Aceves del Olmos is said to be contemplating sanctions against the senators within the bounds of the CT statutes, which could potentially include expelling them both.⁷ Medina Ramírez is facing calls from opposition party leaders in Coahuila to renounce his leadership role in the CTM, while González Cuevas' leadership at the CROC was already in question. Meanwhile, the National Committee of the CTM is working to distance itself from the *dictamen*, going as far as responding in writing to a letter from IndustriALL to reiterate that the PRI-CTM-CROC *dictamen* was not authorized and is not supported by CTM leadership.⁸

The PRI-CTM-CROC Dictamen: Reviving Tripartism

The *dictamen* once advanced by the PRI represents a damaging reversal to the principles of the Constitutional Reform and threatens to reverse the progress made in promoting labour rights in Mexico. The legislative process for Mexico's Constitutional Reform to the labour justice system is far from "dead", however. Rather,

⁶ The general elections on July 1 may have important effects on the current legislative majorities held by the PRI in both houses of Congress, and therefore the fate of any legislative proposal. All 500 seats in the Chamber of Deputies and the Senate's full 128 seats are being contested in this round, and the projections on potential voting majorities in both houses are still unclear.

⁷ On the FROC-CROC rejection of the PRI-CTM-CROC *dictamen*, see Téllez Flores, Armando. "Opinion," Plataforma Laboral, April 26, 2018. <http://entornolaboral.com.mx/index.php/2018/04/26/plataforma-laboral-285>. On sanctions for Medina, see "La CTM contempla "cargos pesados" contra Tereso Medina," Vanguardia (Coahuila), April 25, 2018, www.vanguardia.com.mx/articulo/la-ctm-contempla-cargos-pesados-contra-tereso-medina, and on the potential expulsion of the Senators from the CT, see Vergara, Rosalia. "Marca jaloneo por outsourcing entre la CTM y la CROC conmemoración del Día del Trabajo," Proceso, May 1, 2018. www.proceso.com.mx/532307/marca-jaloneo-por-outsourcing-entre-la-ctm-y-la-croc-conmemoracion-del-dia-del-trabajo On calls for Medina Ramírez to resign in Coahuila, see Cobián Lafont, Armando. "Tereso Medina sí es un traidor: Nicasio Monreal," *Noticias del Sol de la Laguna* (Coahuila), April 25, 2018. www.noticiasdelsoldelalaguna.com.mx/local/tereso-medina-si-es-un-traidor-nicasio-monreal

⁸ Letter, dated April 26, 2018, on file at MSN.

Mexican labour rights experts anticipate that proposals for the implementing legislation are merely on hold until Congress reconvenes, and expect to see one or more new proposals submitted for debate, including versions similar to the PRI-CTM-CROC proposal.

The March 22 PRI *dictamen* is largely based on the December 7, 2017 bill advanced earlier by the two CTM and CROC senators, which threatens to reinstate tripartism to the decentralized union and CBA registration agency. Concretely, the proposal introduces a Governing Council to which the Director of the agency would then report, comprised of four representatives each from employers' associations, employer-dominated 'official' unions like the CTM and CROC, and the government. Effectively, this tripartite layer of governance reverses authority within the agency to the Council, nullifying the autonomy of the agency, and directly contradicts the principles of the Constitutional Reform itself. This proposal would re-establish the control of employer organizations, corporatist unions, and the executive branch over union and contract registration decisions that the Reform was designed to end.

Reviving tripartism and ending the independence of the registration agency in turn would have chilling effects on other aspects of the exercise of the right to freedom of association and the right to collective bargaining

as originally anticipated in the Constitutional Reform, because the bill would:

- Transfer discretionary decision-making powers to the new Technical Committee. Relocating those powers to the new registration agency would directly undermine the rule of law in that the Constitutional Reform mandated that decision-making faculties be established within the judiciary branch, leaving administrative tasks to the registration agency.
- Empower the registration agency to effectively approve or deny all decisions associated with collective rights, including which union holds title to the CBA, which unions and CBAs are registered, and whether strikes are authorised. Without guarantees of impartiality, the new institutions would have the same ability as the *juntas* to block independent unions from exercising their constitutional rights, as their corporatist union rivals would be the decision-makers on the Governing Council.
- Impose new and extensive burdens of evidence on workers and their unions for demonstrating support for CBAs and eligibility to vote in union representation elections (*recuentos*).⁹ These burdens alone would be unreasonable, but when combined with the requirement that union supporters' names must be submitted to the agency, the lack of impartiality would expose workers to the very real threat of dismissal for union activity.¹⁰

⁹ Both procedures are marked by extensive bureaucratic processes that in the case of union representation elections, would introduce four new steps for determining the list of workers eligible to vote in the *recuento*, and establish a preliminary hearing on the composition of the list prior to setting the location, date and time of the vote. The current law allows the *juntas* to establish the dates and conditions of the *recuento* without the prior registration of potential voters, leaving challenges to voter eligibility to post-election procedures. New regulations would require listing social security numbers for each worker in order to create the eligible voter lists, curtailing the exercise of freedom of association for those workers who may not have been registered at the Social Security Institute (IMSS) by their employer.

¹⁰ For example, the proposal that worker organizations supply names and social security numbers in order to register new collective bargaining agreements or to qualify to vote in *recuentos* would introduce biases against workers in small enterprises, which are often unregistered at the IMSS. Access to social security and IMSS health care is a leading reason that workers in small and micro enterprises seek to unionize. In the past, the identification of workers seeking to organize authentic unions has been a key factor in union-related dismissals, and it is unlikely that workers seeking to form a union and challenge the title to the collective bargaining agreement at their workplace would consent to provide identifying information to any new institution, as long as rival unions have access to that information. Perversely, the proposal would also provide incentives to business to not comply with legal requirements to register workers for social security benefits in order to avoid union activity.

- Mandate that in filing a strike notice, unions must provide extensive evidence of their representivity prior to a preliminary hearing. Legitimate unions would justifiably be unwilling and potentially unable to do this because it would mean revealing information about workers to employers' organizations, thus exposing them to anti-union dismissals.
- Remove constitutional guarantees that require employers to provide notification for some types of dismissals in writing, and entrust the approval of dismissals to the registration agency, not the judicial branch.
- Fail to establish the internationally accepted right of workers to vote on the content of CBAs that determine their working conditions, and therefore the right to be represented by a union of their free choice.

The *dictamen* also includes language that would chip away at the 2015 *Ley General de Transparencia y Acceso a la Información Pública*, which guarantees worker access to information about the unions that claim to represent them. For example, the bill would weaken the requirement that the state disclose public information on union registrations or existing CBAs. Transparency in these matters is key to dismantling the use of employer protection contracts.

Growing Domestic and International Opposition to the Counter-reform

Support for the Constitutional Reform and opposition to implementing legislation that would reverse or undercut the advances represented by the Reform has emerged from a variety of quarters.

On July 28, 2017, fourteen international brands that source apparel and footwear products from Mexico, together with the Fair Labor Association (FLA), sent a

joint letter to the Mexican Minister for Labour and Social Welfare signalling their support for the Constitutional Reform and for implementing legislation that would guarantee workers the right to freedom of association and to bargain collectively.¹¹ The letter marks the first instance where members of the business community have come out in support of implementing legislation that would reinforce, rather than undermine, the spirit and intent of the Constitutional Reform.

The campaign Labour Reform for All (*Reforma Laboral para Todos*), a civil society initiative directed by prominent Mexican labour rights lawyers, academics and activists, has been monitoring progress on the legislative process and the proposals for implementing legislation.¹² Throughout this process, they have held public forums to counteract the secrecy surrounding the legislative process through which the implementing legislation is being determined. This series of public events has been accompanied by informational materials about the reform on their campaign website, via Twitter, and through other social media venues.

Through a series of meetings, conferences and press events, the Citizens' Observatory on the Labour Reform (*Observatorio Ciudadano de la Reforma Laboral*) has also been active in working with Mexico's opposition political parties to analyze the reform process and generate opposition to the PRI proposal in Congress.

In March, the Mexican Bar Association of the College of Lawyers filed a legal challenge against both houses of Congress and the Mexican President at the First District Court for Administrative Law in Mexico City regarding the constitutionality of the reform. The injunction (*juicio de amparo indirecto*) was transferred to the Ninth District Judge for Labour Matters and was granted a review by the district judge on April 16, but was later suspended pending a decision as to whether a trade

¹¹ www.maquilasolidarity.org/en/joint-letter-14-clothing-brands-supporting-labour-justice-reform-mexico-july-2017

¹² <http://reformalaboralparatodos.mx>. The website includes excellent informational videos and additional material on the reform of the labour justice system

union represented by Mexico's National Association of Democratic Lawyers (*Asociación Nacional de Abogados Democráticos, ANAD*), has legal standing as an interested third party.

The *amparo* alleges that the inability of the Congress to move forward on debate on the various proposals for implementing legislation, and the failure to meet the original February 24 deadline, ignores legislative procedures, and therefore violates fundamental rights protected by the Constitution. While the *amparo* is being delayed as the legal procedures make their way through the court system, Mexican legal analysts expect that additional legal challenges to the implementing legislation will follow as the reform process moves forward, aiming at both the federal level and state level implementation procedures.

International pressure on Mexico to stop the passage of this bill also came from many sides. Letters expressing concern over the content of the PRI *dictamen* were sent to Ernesto Cordero Arroyo, from prominent North American union organizations including the AFL-CIO, UNIFOR, the International Brotherhood of Teamsters, and the International Association of Machinists and Aerospace Workers. Global and regional union allies including IndustriALL, the *Confederación Sindical de Trabajadores de las Américas (CSI)*, the *Unión de Obreros Curtidores (UOC)* of Uruguay, the National Union of Metalworkers of the CUT of Brazil, and the Argentine Federation of Light and Power Workers (FATLyF) also sent letters expressing their concerns about the *dictamen*.

These trade union organizations conveyed to the Senate their shared conviction that the proposed implementing legislation not only fails to address the structural challenges posed by current labour law and practice regarding the right to association and collective bargaining, but also that the *dictamen*, if implemented,

would be inconsistent with the principles of the Constitutional Reform, international commitments made by Mexico to the International Labour Organization around Conventions 87 and 98,¹³ and the labour principles of the current NAFTA labour side agreement. These letters are important sources of international solidarity for Mexico's workers, and serve to demonstrate that the larger international community of labour unions and activists is watching the fate of the implementing legislation closely.

NAFTA Negotiations Add to the Pressure

The ongoing NAFTA negotiations provided a second arena for leverage on the Mexican government to reconsider how the reform process proceeds, as questions concerning the use of protection contracts in Mexico, the content of the implementing legislation, and slow progress on the labour justice reform have become important topics of debate during the renegotiation of the trade agreement and the formulation of its labour chapter. On January 23, 183 Democrat members of the US Congress sent a letter to US Trade Representative (USTR) Lighthizer expressing concern over four areas of the negotiation of NAFTA's labour chapter, aimed at making the new agreement responsive to Mexico's labour rights issues. In that letter, lawmakers noted that the outsourcing of US jobs to Mexico is the result of Mexican wage policies, and barriers to freedom of association and collective bargaining that make it impossible for workers to fight for and achieve wage improvements. Lawmakers noted that the proposals for the NAFTA labour chapter do not go far enough in addressing these issues, and though the Constitutional Reform was designed to resolve them, the Mexican government had not done nearly enough to make progress on implementing the Reform. Lawmakers demanded identifiable progress from Mexico on the implementation of the labour reform before any vote on NAFTA takes place.

¹³ Mexico has signed and ratified Convention 87 on the Freedom of Association and Protection of the Right to Organize. Mexico has also expressed its intention to ratify Convention 98 on the Right to Organize and Collective Bargaining, but has not yet done so. Nonetheless, the 1998 ILO Declaration on Fundamental Principles and Rights at Work commits all member states of the ILO to respect and promote these and additional conventions on fundamental labour rights, regardless of whether they have ratified them.

A second, urgent letter from Congressional Democrats followed when the March 22 *dictamen* was made public. This letter, signed by 94 legislators, raises concern that the *dictamen* would dismantle progress made on the labour reform to this point and would leave intact the protection contract system. Lawmakers urged USTR's Lighthizer to work with Mexico's Economy Minister Guajardo Villarreal and Mexico's trade negotiators to encourage the Senate to stop the adoption of the bill. Lawmakers stated that passing the bill would have serious and negative effects on the ongoing negotiation of the NAFTA agreement, and create new obstacles to its completion.

The United Steelworkers (USW) also highlighted the opportunity that the NAFTA negotiations presented for pressuring the Senate to refrain from passing the *dictamen* into law. In a letter to USTR's Lighthizer dated April 2, the USW president reminded the USTR that the regressive Mexican bill would jeopardize worker support for a renegotiated NAFTA in the US, as the particular aspects of the *dictamen* run counter to the fundamental labour standards reflected in NAFTA's current labour side agreement.

Unions and labour rights advocates are also effectively using the dispute mechanisms of the existing NAFTA labour side agreement to weigh in on the implementing legislation. On January 25, as the three trade ministers met in Montreal for the 7th round of NAFTA negotiations, the AFL-CIO and the UNT filed a NAFTA case, arguing that the PRI proposal violates the central tenants of the labour accord in providing for high labour standards and the improvement of those standards in North America. The submission reviews the major elements of the December 7 proposal and revisits the adverse effects it poses for freedom of association and collective bargaining rights, the right to strike, union transparency, increases in occupational injuries and illnesses, and the expansion of outsourcing.

The US Department of Labor office charged with managing the NAFTA complaint mechanism has 60 days to formally accept the petition. Challenges to the bill under the NAFTA dispute mechanism even prior to any vote by the Mexican legislature suggests that new petitions confronting Mexico's perennial violation of the rights to association and collective bargaining would be filed by unions and labour advocates if the renegotiated labour side agreement is established with enhanced enforcement mechanisms.

Intense mobilization by Mexico's independent and democratic unions and their national and international allies played a key role in the failure of the PRI-CTM-CROC initiative in the Senate. In statements reported by the Mexican press, Aceves del Olmo claimed that beyond betraying workers and their families, the *dictamen* **did not benefit the [PRI] party, and less so in an election year**, suggesting other motivations for renouncing the bill.¹⁴ This pressure raised the stakes for the PRI and promised to cost them at the polls, which explains why the CTM leader chose to act so late in the game, instead of when the first version of the bill was introduced back in December.

Support for Genuine Reform Builds

The suspension of the legislative process for now is good news for Mexican workers and their allies, as it creates space for organizing a collective response to the challenges ahead when Congress reconvenes after the election, whether that be for ordinary sessions from September to December 2018, or if an extraordinary session is convened between July and September 2018.

Irrespective of the outcome of the legislative process, the February 2017 Constitutional Reform is now Mexican law. As such, it represents an important advance for labour justice in Mexico, and is a significant achievement

¹⁴ Vergara, Rosalia. "La reforma laboral quedó cancelada... y la CTM juzgará por "traición" a sus promotores: Aceves del Olmo," Proceso, April 23, 2018, www.proceso.com.mx/531178/la-reforma-laboral-queda-cancelada-y-la-ctm-juzgara-por-traicion-a-sus-promotores-aceves-del-olmo.

in and of itself. Moreover, the Constitutional Reform can and will be used as a tool to challenge inconsistencies between the new principles embodied in that law and any proposals for implementing legislation that would establish the new procedures for their practical application that might be in conflict with the Constitution.

The process of mobilizing in support of the Constitutional Reform and its effective implementation also represents a deepening of civil society understanding of the

obstacles to labour justice in Mexico, the solidification of a leadership dedicated to protecting the gains of the Reform, and increasingly diverse participation across the country in the social movement for improved labour rights in Mexico. Whatever secondary legislation is eventually adopted, Mexican labour rights advocates, independent unions and their national and international allies will continue to work to ensure the effective implementation of a Constitutional Reform that has the potential to guarantee greater labour justice for Mexico's workers.

MSN will continue to monitor and report on the ongoing developments on the progress of labour reform in Mexico. The outcome of the implementing legislation and its impact on the exercise on freedom of association, the right to collective bargaining and improving transparency in the regulation of industrial regulations is crucial to gaining justice for workers in Mexico. For more information on MSN's work on freedom of association in Mexico, visit: www.maquilasolidarity.org/supporting-freedom-association-foa-mexico

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