**SHADOW REPORT:**

**MEXICO’S COMPLIANCE WITH THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS OBLIGATIONS ON WORKERS RIGHTS**

**(ARTICLES 6, 7 AND 8)**

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# 1. INTRODUCTION

The Mexican Constitution, enacted in the wake of the 1910 - 1920 revolution was the world’s first Constitution to entrench social rights, including a wide array of worker rights guaranteeing a minimum wage, the right to strike, collective bargaining, an eight-hour day, workers insurance, an end to child labor, equal pay and maternity leave. In 1931, the Federal Labor Law was enacted, and subsequently superseded by the 1970 Labor Law, which improved conditions for workers. The Labor Law was again amended in 2012 to facilitate a wider program of economic liberalization, opening Mexico to foreign capital, as embodied by NAFTA.[[2]](#footnote-2)

But the flip side to this story of economic growth, has been the growth in inequality and rise in poverty; economic liberalization has resulted in massive job losses in the agricultural sector, while the increase in non-agricultural employment has been precarious, and largely in low wage maquiladoras.[[3]](#footnote-3) According to the OECD 2017 economic survey, the richest 10% of the population in Mexico, now earn 20 times more than the poorest 10% of the population.

According to Roman and Velasco[[4]](#footnote-4) the decline in unionization, from 22.4% to 13% between the early 1990’s and 2012, has been decisive in the decline of real wages. Yet the Mexican government has an interest in keeping wages low to attract foreign investment; and protection contract unions, which constitute the vast majority of Mexico’s unions, are notorious for controlling workers, rather than representing their interests. This corporatism has long been a feature of Mexican labor relations, and the 2012 Labor Law amendments, further chip away at worker rights, by facilitating subcontracting and outsourcing.

In February 2017, constitutional amendments were passed that, inter alia dissolve the discredited Conciliation and Arbitration Boards (CABs), and transfer their functions to federal and local level labor courts. The amendment also transfers the registration of trade unions to a decentralized agency (*un Organismo Descentralizado*). These changes are welcome and have been vociferously advocated for by the Mexican and international trade union movement. However, they are but the beginnings of a larger process which will need to address “deeply rooted structural barriers” to freedom of association and worker rights.[[5]](#footnote-5) There remain important question as to whether the implementing legislation will adequately reflect and embody the same respect for a more democratic form of industrial relations, and whether the new institutions created by the amendment, are staffed with appropriately trained personnel, who understand the constitutional injunction to protect worker rights. [[6]](#footnote-6) The optimism at the constitutional amendment, has however, been tempered by caution, since all the while that reforms have been taking place, the government has not displayed any change in approach to resolution of existing industrial relations conflicts.[[7]](#footnote-7) Further, independent unions have been kept out of consultations on the implementing legislation.

This report analyzes the level of compliance of the Mexican State with international obligations undertaken related to the right to work, derived from the International Covenant on Economic Social and Cultural Rights, a convention ratified by Mexico in March 1981. The ICESCR is particularly significant to worker rights and the labor movement, because outside of the ILO, it contains the most extensive provisions with respect to labor. Section one of this report looks at the General Framework of Obligations under the Covenant; Section two, looks at article 6 which entrenches the “Right to Work”; Section three analyses Mexico’s compliance with the “Right to Just and Favorable Condition at Work”; and while Section four looks at “Collective Labor Rights” found in article 8 of the Covenant. Section 5 lays out the specific recommendations of this report, while Section 6 lists previous recommendations of the CESCR to Mexico.

# 2. GENERAL FRAMEWORK OF STATE OBLIGATIONS UNDER ICESCR

## 2.1 The Respect, Protect and Fulfill framework

The Committee has distinguished between different tiers of obligations of respect, protection and fulfillment of such rights. [[8]](#footnote-8) In terms of (i) the obligation to “respect” is focused on the obligation not to interfere in the enjoyment of the rights[[9]](#footnote-9). The duty to respect is traditionally understood as a negative duty, which implies that states must not interfere in the enjoyment of the rights, and respect the freedom, autonomy, resources and liberty of action of the right-holders.[[10]](#footnote-10) While (ii), the obligation to “protect” requires that states take measures to prevent third parties or private actors from violating economic, social and cultural rights.[[11]](#footnote-11). Obligation (iii) is the obligation to “fulfill”, which is considered a positive duty because it implies that states must take affirmative measures to guarantee human rights. The type of measures that can be adopted include “relevant national policies to ensure the goal of full realization of Economic, social and cultural rights to those who cannot secure rights through their personal efforts.”[[12]](#footnote-12)

Some view the obligation to “facilitate”, to be a derivative of the obligation to fulfill. This obligation assumes positive measures that enable and assist individuals and communities to enjoy economic, social and cultural rights.[[13]](#footnote-13) Sepulveda’s analysis of the obligations show that the Committee considers three broad facilitation levels: to adopt reforms to combat poverty, to achieve better wealth distribution and to overcome obstacles to the enjoyment of the rights.[[14]](#footnote-14)

## 2.2 Progressive Realization

The notion of progressive realization considers the reality that the full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. However, the fact that realization over time, or progressively, should not be misinterpreted as depriving the obligation of all meaningful content.[[15]](#footnote-15)

While progressive realization allows states discretion in the allocation of resources, this discretion is limited for different obligations. For example, the obligation to improve conditions implies that states must move “as expeditiously and effectively as possible towards the full realization of all substantive rights contained in the Covenant”.[[16]](#footnote-16) Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education.”[[17]](#footnote-17) In addition, once a state has reached a level in the fulfillment of a specific right, the state has the obligation to maintain it. Furthermore, the Maastricht guidelines clarify that both acts and omissions can generate a violation of human rights.[[18]](#footnote-18) A final duty entails that “states cannot tolerate a decline in the degree of protection affordable to a particular right without taking any action to try to redress or improve the situation”.[[19]](#footnote-19)

Similarly it is imperative that they establish proper and adequate remedies: “the covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.”[[20]](#footnote-20) The Committee considers States to have the obligation to monitor the level of enjoyment of all economic, social and cultural rights by all individuals under their jurisdiction and to devise strategies and programs to respond to the problems identified.[[21]](#footnote-21)

## 2.3 Obligations with Immediate Effect: Non-Discrimination and Minimum Core

While progressive realization amounts to an acknowledgement that states might be constrained to realize rights due to the limits in available resources, nevertheless the Convention does impose on State parties’ various obligations which are of immediate effect; most notably, the right to non-discrimination and to realize the minimum core of each right. In General Comment No. 3, the Committee enunciated that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. It has also interpreted the prohibition of discrimination to include protect individuals not only from formal discrimination, but also substantive discrimination, it has also required states to recognize the ways in which intersectional and structural discrimination exacerbate inequality.

The CESCR has also found that the rights and obligations to (i) provide all workers with fair wages and equal remuneration for work of equal value without any distinction, particularly guaranteeing that women’s conditions of work are not inferior to men’s work conditions; and (ii) ensuring the right to form and join trade unions and go on strike, are immediately realizable and not subject to progressive realization.

## 2.4 Recent General Comments

In General Comment No 23 (2016) on the Right to Just and favorable Conditions at Work, the CESCR Committee noted that the concept of work and workers has evolved from the time of the drafting of the Covenant, to include new categories such as self -employed workers, workers in the informal economy, agricultural workers, refugee workers and unpaid workers (para 4), and highlighted that the right to just and favorable conditions at work applies to “all workers in all settings, regardless of gender, as well as young and older workers, agricultural workers, workers with disabilities, workers in the informal sector, migrant workers, workers from ethnic and other minorities; domestic workers, self-employed workers, agricultural workers and unpaid workers”. (art 5)

In the ICESCR Statement on State Duties to Migrants and Refugees under ICESCR March 2017, the committee set out that all people, including documented and undocumented migrants, are under the jurisdiction of and should enjoy covenant rights. The statement outlines that while many rights can be progressively realized, this does not mean a state can infinitely postpone taking action. It reiterated that a number of the covenant rights are of immediate application, even for large groups such as immigrants or refugees, including the guarantee of all rights without discrimination.

In General Comment No 24 on State Obligations under the ICESCR in the Context of Business Activities (23 June 2017), the committee clarifies state party duties with respect to preventing adverse impacts of business on human rights. It sets out that business activities includes “all activities of business entities, whether they operate transnationally or whether their activities are purely domestic, whether fully privately owned or State-owned, regardless of size sector, ownership and structure”.[[22]](#footnote-22)The Committee recommends that state parties address the specific impact of business activities on women and girls.[[23]](#footnote-23) The ICESCR Committee stresses that state parties not enter into Covenant or trade investment treaties, which have adverse human rights impacts.[[24]](#footnote-24)Further, state parties should ensure accountability and access to remedies for violation of ICESCR rights, preferably judicial remedies. This would include the ability of victims to sue business entities directly, on the basis of the Covenant, in jurisdictions where there are self-executing international obligations, which are binding on private actors. [[25]](#footnote-25)

This newest General Comment is of particular relevance to Mexico. Since the demise of the Trans Pacific Partnership (TPP), which was expected to replace and better NAFTA’s ineffective labor provisions, public statements by US government representatives now suggest that the US will no longer make signing NAFTA contingent on the Mexican government implementing labor law reform, and it is in doubt what the substantive labor obligations of the new NAFTA may be. [[26]](#footnote-26) However, GC 24 obliges the Mexican government to comply with its ICESCR obligations in the negotiation of trade agreements, which would require Mexico to incorporate labor justice provisions, including access to remedies for violation of ICESCR provisions, into a re-negotiated NAFTA as well as other free trade agreements scheduled to be signed by Mexico. General Comment 24, read together with the strong commitments of the ICESCR to the realization of substantive equality, would require Mexico to consider the gender impacts of such trade agreements on women, as well as other vulnerable populations, working in both formal and informal economies in Mexico.

Similarly, November 2017, the renewed free trade agreement between Mexico and European Union, is expected to be ratified. The current proposal includes in the trade and development section references to the ILO Fundamental Principles and Rights at Work and Decent Work Agenda, the OECD Guidelines on Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. [[27]](#footnote-27) Given that Mexico has ratified the ICESCR, we would argue that significant ICESCR provisions, including those on the right to work as well as General Comments 24 and 23, be used as a frame of reference, and incorporated in these agreements where applicable. This would require that there be access to remedies for violation of ICESCR. Such remedies could include denying awarding public contracts to companies who have not put in place due diligence to avoid or mitigate ICESCR violations. In addition, GC 24, envisages that victims should have direct access to judicial remedies and be able to sue a business entity directly, based on the Covenant. Since Mexico’s national Constitution was reformed in 2011, to elevate international human rights treaties that have been ratified by Mexico, to Constitutional level, it has the doctrinal and institutional obligation to fully comply with these provisions.

# 3. ARTICLE 6: THE RIGHT TO WORK

The text of Article 6 of the ICESCR reads as follows:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to have the opportunity to make his living by work which he freely chooses or accepts.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies, and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

This Article therefore contains two main components: (1) the right to work in a profession of the individual’s choosing, and (2) the means for guaranteeing this right.

## 3.1 The right of everyone to the opportunity to gain his living by work which he freely chooses or accepts

### 3.1.1 To prohibit forced or compulsory labor

*The Committee in General Comment N° 18 assumes the ILO’s definition of forced work: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”[[28]](#footnote-28)According to the General Comment, state parties are under the obligation to respect the right to work by, inter “prohibiting forced or compulsory labor and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including prisoners or detainees, members of minorities and migrant workers.”[[29]](#footnote-29) This obligation is considered to be a component of the general obligation of protect everyone from slavery that has been recognized and protected for different international human rights instruments.[[30]](#footnote-30)*

### 3.1.2 Eradicating Slavery

The Mexican Constitution contains a clear prohibition of slavery: “Slavery shall be forbidden in Mexico. Every individual who is considered as a slave in a foreign country shall be freed and protected under the law by just entering in the national territory.”[[31]](#footnote-31) Furthermore, Article 5 the Constitution states that “No one can be compelled to do personal works without a fair wage and without full consent, except when compelled by a judicial authority under article 123, sections A) and B).”[[32]](#footnote-32)

In June 2012, Mexico enacted the Law to Prevent and Sanction Trafficking in Persons. This law establishes the federal public policy for preventing traffic of persons and defines the related crimes. The law is divided in two main parts. The first part defines the crimes related to trafficking persons and the institutional structure necessary to prosecute these crimes.[[33]](#footnote-33) Importantly, the law defines the conditions of slavery[[34]](#footnote-34), labor exploitation[[35]](#footnote-35) and forced labor or services[[36]](#footnote-36) as exploitation. The second part of the law creates a Commission to Prevent and Sanction Trafficking in Persons.[[37]](#footnote-37) The law defines the members of the commission and the functions of this institution.[[38]](#footnote-38) In addition, the law establishes that the commission is the responsible for the creation of National Program that defines the Mexican policy to prevent the crimes related with traffic persons.[[39]](#footnote-39) In April of 2014 the Secretary of Government published the National program for Prevention, Punishment and Ending of Trafficking in Persons Crimes and for the Protection and Assistance of Victims of these Crimes 2014 – 2018.[[40]](#footnote-40)

Despite these initiatives, there is concern that Mexico has not seen sufficient progress in the area of eradicating forced labor. According to the 2017 Trafficking in Persons Report, Mexico is a “source, transit and destination country” for sex trafficking and forced labor.[[41]](#footnote-41) The report finds that Mexicans of all ages are “exploited in forced labor in agriculture, domestic servitude, child care, manufacturing, mining, food processing, construction, tourism, forced begging, and street vending in Mexico and the United States.” In 2017 it finds that despite increasing efforts Mexico still does still does not fully meet the minimum standards for eliminating trafficking and that official complicity continued to be a serious and largely unaddressed problem.

In its 2016 Human Rights Report, the U.S. Department of State found that women, children, indigenous people and migrants, are the most vulnerable to forced labor, and that in November 2016, 81 workers were found by authorities to be in situations of forced labor on a commercial farm in Coahuila.[[42]](#footnote-42) The report considers that agricultural, industrial and informal sector are the areas where forced labor persists. Moreover, “women and children were subjected to domestic servitude. Migrants, including men, women, and children, were the most vulnerable to forced labor.”[[43]](#footnote-43) In 2015, the police discovered 49 people, mainly from indigenous groups, being held captive and forced to work in a drug rehabilitation facility in Mexico City.[[44]](#footnote-44)

A [2015](http://www.latimes.com/la-app-mexico-part-1-story.html#page=1) Los Angeles Times article reported on the conditions of forced labor on 30 Mexican mega farms, which form a bedrock for Mexican exports to the United States. The reporter found many workers on export-oriented farms “essentially trapped for months at a time in rat-infested camps, often without beds and sometimes without functioning toilets or a reliable water supply.” [[45]](#footnote-45) They also found that some camp bosses illegally withhold wages to prevent workers from leaving during peak harvest time; and that laborer’s go into debt and cannot escape camps which are guarded and surrounded by barbed wire.[[46]](#footnote-46) There have also been allegations that disappeared Mexicans are being enslaved in forced labor camps, run by criminal groups.[[47]](#footnote-47)

### 3.1.3 To abolish forced labor as a punitive measure for convicts

*The main obligation related to convicts is to abolish forced labor as a punitive measure.[[48]](#footnote-48) Furthermore, the Committee recommends that the work of convicted prisoners require their consent[[49]](#footnote-49) and that the conditions of work of detainees, including wages and social security benefits, are fair and just.[[50]](#footnote-50)*

#### Convicts and Forced Labor

Mexico ratified the ILO Convention No. 29 on forced labor and it is in force. In terms of article 2, any prisoner engaged in labor may not “be hired to or placed at the disposal of private individuals, companies or associations”. Article 18 of the Mexican Constitution establishes that the prisons’ management will be organized by the principle of labor, among others.[[51]](#footnote-51) Article 23 of the Law to Prevent Trafficking Persons establishes that it will not be considered forced labor or exploitation when the labor is enforced by sentence pronounced for a judicial decision.[[52]](#footnote-52)

In September of 2011, the National Commission of Human Rights published its general recommendation N° 18 on the situation of human rights in domestic correctional centers of the Mexican Republic. In this report, the National Assessment on Correctional Supervision concluded that “the national prison system has serious structural problems, because most of the prisons are unable to comply with the provisions of Article 18 of the Constitution, in the sense of supporting your organization based on the work of internal, for the same training and education as a means to achieve social rehabilitation of offenders.”[[53]](#footnote-53)

### 3.1.4 To prohibit labor of children under the age of 16 and to prohibit all forms of economic exploitation and forced labor of children

*General Comment 18 establishes that State parties must take effective legislative measures to prohibit the labor of children under the age of 16. They must prohibit all forms of economic exploitation and forced labor of children.[[54]](#footnote-54) Furthermore, State parties must adopt effective measures to ensure that the prohibition of child labor will be fully respected.[[55]](#footnote-55) In this regard, the Committee recommends that the State party ratify ILO Convention No. 182 (1999) concerning the worst forms of child labor.”[[56]](#footnote-56)*

Mexico has ratified ILO Convention No 182 and it is in force. Nevertheless, the ILO Convention No 138 concerning to minimum age for admission to employment has not been ratified. In April of 2014, the Mexican Senate reformed the Constitution (Article 123, Part A, Fraction III) and modified the minimum working age to 15 years.[[57]](#footnote-57) In 2015, the Federal Labor law was amended to reflect constitutional changes. The amendment also allows employees who are 15 years and older to join and participate in the management of unions. This reform brings Mexico into compliance with ILO Convention No. 138, but not with the obligation of establishing the minimum age for work is 16 years established in the ICESCR.

In August 2016, the Mexican government declared that child labor had decreased from 11.5 percent of total children in 2007, to 7.5 percent in 2015.[[58]](#footnote-58) The reasons for the decline in the last decade has been attributed to parents being better educated and also due to social programs like Oportunidadas that give cash to families that keep their children in school.[[59]](#footnote-59) Yet, these gains have not been felt to the same extent in the countryside, where twice as many children continue to work.[[60]](#footnote-60) However, a recent study published by the National Autonomous University of Mexico (UNAM) said that there are approximately 3.6 million Mexican children and adolescents between the ages of five and seventeen years old, who are employed; and that six out of every ten children in Mexico are looking for “informal but honest” ways to survive.” [[61]](#footnote-61) Of the population that work, 42.5% do not receive any income for it; 19.1% receive up to twice the daily minimum wage.[[62]](#footnote-62)

Yet there is a gender dimension to this work, and in 2017, INEGI found that one million and 686 thousand children and adolescents from 5-17 years, carry out domestic activities under inadequate conditions. Within this number, it is primarily Mexican girls and adolescents most affected, with 3 out of ten girls performing 28 hours/week. [[63]](#footnote-63)While working hours for children cannot exceed 6 hours/day, 36.6% of those employed worked 35 hours or more a week; and 42.5% reported not receiving any income per week.[[64]](#footnote-64)

The U.S. State Department 2016 Human Rights Report reported that the Mexican government had been reasonably effective in enforcing child labor laws in large and medium-sized companies, most particular in the maquila sector, but “was inadequate in many small companies and in the agriculture and construction sectors, and nearly absent in the informal sector, in which most child laborers worked.”[[65]](#footnote-65) The State Department found that penalties, ranging from 16,780 pesos, to 335,850 pesos, were insufficient to constitute an adequate deterrent. In the Universal Periodic Review from 2011, the Mexican government recognized that the exploitation of children with labor purposes requires special attention. The government considered as a priority to create a national policy focused in protecting adolescents that works and eradicating the worst forms of child labor. Furthermore, the Government described a set of programs which purposes are to capture data about the situation of workers children and work together with unions and civil society organizations.

### 3.1.5 To protect domestic workers from forced labor

*Another group that requires special protection are domestic workers. The Committee has suggested to the countries “to include the subject of domestic workers in the Labor Code and undertake all the necessary measures to eliminate practices amounting to forced labor. The Committee also recommends that those who violate labor legislation be sanctioned and that the victims of such violations be compensated.”[[66]](#footnote-66)*

#### Domestic Workers

Mexico has not ratified ILO Convention No 189. The Constitution only establishes that Congress should enact laws that protect domestic workers and describe the main aspects that should be regulated. The Federal Labor Law has a chapter that regulates the domestic work. Chapter XIII defines domestic workers and the main aspects related with this type of work: daily and weekly rest, salary, specific obligations of employers and employees and causes of termination of the work. However, the labor law reform did not significantly modify the characteristics of domestic work. Article 333 establishes break times for domestic workers that live in the home where they work: a minimum of nine (9) hours of interrupted break at night and three (3) hours between morning and afternoon work.[[67]](#footnote-67) Furthermore, Article 336 establishes that each worker has the right to one (1) day and half of uninterrupted day of rest per week, but the half day can be negotiated between employer and employee and accumulated.

The provisions in Article 333 seem to be in direct conflict with the Constitution since the regular work day is an 8-hour day, but the law extends the regular domestic work day to 12 hours. [[68]](#footnote-68) Another possible breach of the Constitution is the “half-day” shift, by allowing for the 1.5 days of rest to be composed of any combination of morning or any afternoon shift during the calendar week.”[[69]](#footnote-69) In addition, provisions with respect to social security do not necessarily apply to domestic workers because Article 12 of the law does not list domestic worker as a subjects of the obligatory assurance and registration in the social security system is voluntary, and the employer is not obligated to register a domestic worker. [[70]](#footnote-70) These provisions do not comply with article 10 of C189, which obliges governments to “take measures ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid leave”. Article 14 further obliges member states to ensure that that domestic workers enjoy conditions that are no less favorable than other workers in respect of social security protection, including maternity protection.

INEGI in its National Survey of Occupation and Employment (ENOE) 2013 reported that there are 2.2 million domestic workers; 96% of domestic workers do not have a written contract that proves the existence of a labor relationship. [[71]](#footnote-71) According to INEGI, 95% of domestic workers are women, of whom three quarters earn twice the daily minimum wage or less; and only 4% are employed under the terms of a contract in which rights and obligations are set out. [[72]](#footnote-72)Under 20% of domestic workers are enrolled in a health insurance program,65% never get a vacation; 47% don’t receive the end-of year bonus and 45% don’t have a fixed income. [[73]](#footnote-73) According to the president of the National Council to Prevent Discrimination, one out of every ten people surveyed in 2014 disagreed with granting domestic workers retirement plans or written contracts. [[74]](#footnote-74)

Female domestic workers are often victims of abuse, which translates into verbal violence, overwork, low wages or insufficient and inadequate food.[[75]](#footnote-75) One third of domestic workers (31%) say that the main problem is the low salary, followed by abuse, neglect, humiliation and discrimination (19.3%).[[76]](#footnote-76) Article 5 of C189 obliges member states to take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence, and Article 7 of the Domestic Workers Recommendation (201) suggests the establishment of accessible complaint mechanisms for domestic workers to report such behaviors; and that states ensure all such complaints are appropriately investigated and prosecuted; and that there are programs for relocation and rehabilitation of domestic workers who have been abused/harassed/violated, including the provision of temporary accommodation and healthcare.

The 2012 labor reforms did not include several important domestic worker protections. For Marcelina Bautista, founder of the Center for Support and Training for Domestic workers and Defense of Human Rights of domestic workers, the labor reform did not take into account the domestic workers that work and live in different homes. The law only applies to domestic workers that live in the house of the employer. Furthermore, domestic workers attempting to secure their rights face the intimidation of their employers. Ignorance about protections for domestic workers is another obstacle, and when a case is presented before judicial system, the public officials exert pressure for the parties reach a conciliation that almost always means that domestic worker has to relinquish some of their rights or receive a lower compensation.[[77]](#footnote-77) Art 1 of C189, is clear that domestic work means work performed for one household, or more households, and consequently includes both live-in and live-out domestic workers, and obliges member states to effectively “respect, promote and realize” rights at work, including the elimination of discrimination in employment and occupation.

In 2015 the National Union of Domestic Workers, was established, and now has a membership of 500 workers, and has achieved the requirement for employers to provide unionized domestic workers with contracts; establishing an eight-hour work day, with different types of domestic work, commanding different minimum salaries. [[78]](#footnote-78)

## 3.2 Article 6(ii) To achieve the full realization of this right: Obligation to have a National Employment Plan

***With respect to Steps to be taken to achieve full realization of the Right, the quantitative*** *aspect of the right requires that the number of jobs available in an economy be sufficient to provide freely chosen employment for everyone who wants to work; The Committee has indicated in GC No 18 (2005) that the core obligations under this right oblige State parties to: Adopt and implement a* ***national employment strategy*** *and plan of action based on, addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers’ and workers’ organizations. Such an employment strategy and plan of action should target disadvantaged and marginalized individuals and groups in particular and include indicators and* ***benchmarks*** *by which progress in relation to the right to work can be measured and periodically reviewed.*

*To combat unemployment, the Committee has been clear that countries should limit, as far as possible, the use of temporary employment contracts as tools to encourage firms to hire persons belonging to vulnerable groups - such as young people, single parents and persons without professional qualification. The Committee also recommends that such contracts be concluded only in those cases provided for by the legislation in force, and that sufficient guarantees be provided to ensure that employees recruited under such contracts are not prevented from enjoying the right to an adequate standard of living, as well as the labor rights set out in articles 6 and 7 of the Covenant.[[79]](#footnote-79) Furthermore, the Committee has insisted that state parties amend labor legislation “in order to combat contractual insecurity, including by reducing the use of temporary contracts and the subcontracting of workers formally employed full time and whose labor contract has ended.”[[80]](#footnote-80) Further, the Committee recommends that states strengthen measures “to reduce the substantial number of unemployed persons and to counteract the impact of the economic downturn on employment in order to implement fully the right to work, in particular with regard to the most disadvantaged and marginalized individuals and groups.”[[81]](#footnote-81)*

One of the most repeated demands by the Committee when assessing the obligations of States is related to the type of information that each State must provide in order to show the level of fulfillment of the different obligations. The Committee prioritizes the necessity of providing “extensive gender-disaggregated data in order to facilitate the analysis of trends, progress or worrying tendencies with regard to the enjoyment of economic, social and cultural rights.”[[82]](#footnote-82) Furthermore, it has asked states to include “updated statistical data on employment, disaggregated by age, gender, and urban/rural region, as well as information on the measures adopted to remedy disparities in regional unemployment rates.”[[83]](#footnote-83) Information regarding the nationality of the workers is also relevant.

### 3.2.1 Combatting unemployment

Mexico has not ratified ILO Convention 2 or 122.

One of the most important motivators for the 2012 labor law reform in Mexico was job creation and government estimated that the reform could create up to 40,000 new jobs in the first year of implementation.[[84]](#footnote-84) The reform (Art 153 K) establishes the National Productivity Committee, and in May of 2013, the President created the Committee and established its obligations, functions and structure.[[85]](#footnote-85) The main responsibility of the Committee is to “propose strategies, policies and actions in terms of productivity and employment, so that they are considered by the agencies of the Federal Government within the scope of their respective powers.”[[86]](#footnote-86) Subsequently, in August of 2013 the Program to Democratize Productivity, was published.[[87]](#footnote-87) In this document, the executive branch considers the disparity between profitable companies and informal companies “with poor access to finance, who daily face obstacles to keep going, formalize and grow”.[[88]](#footnote-88) The result of this disparity is low economic growth that has prevented the creation of enough quality jobs.[[89]](#footnote-89)

One of the objectives of this program is to promote employment, which is framed as the objective “to promote the efficient use and allocation of factors of production in the economy” and the first strategy is “to strengthen the functioning of labor markets to encourage the creation of formal jobs and well paid.”[[90]](#footnote-90) This strategy raise some lines of actions: strengthen mechanisms for mediation and address information asymmetries that affect the functioning of labor markets; modernize labor processes imparting justice to promote certainty in labor relations; fully analyze government programs and policies for strategies and government programs to induce formality, promote universal coverage of social security, set unemployment insurance that protects the rights of workers and stimulate the creation of formal jobs and job flexibility, and strengthen inspection and enforcement programs to promote compliance with the obligations of membership of the social security.[[91]](#footnote-91)

The second objective of the Program is “raising the productivity of workers, businesses and producers in the country.”[[92]](#footnote-92)The main proposed strategies for this objective are to increase investments in the human capital of the population throughout educational programs that promote abilities for work and entrepreneurship. Furthermore, this second strategy is focused on “strengthening job training activities and job training to raise the productivity of workers.” This strategy will be developed along the following lines: promoting active policies to promote job training and upgrading of skills and effective skills of workers; boost labor participation of women, youth, elderly and disabled, particularly in sectors with higher potential; implement and disseminate technological tools to help increase labor productivity, promoting increased labor productivity benefits shared between employers and employees; support companies in designing and implementing programs that improve the productivity of their workers; and leveraging statistical systems in the workplace for informed decision making in the public, private and academic sectors.[[93]](#footnote-93)

While the emphasis of Mexican government is on productivity, it is not clear that programs related to training and capacity-building for work meet the purpose to fulfill international obligations related to right to work and the observations raised by the Committee on Economic, Social and Cultural Rights. Accordingly, the responsibility for training, rests on employers, and it is training for workers, not for people outside the labor market seeking access to employment. Similarly, while right to vocational training of workers is established, there no mention of the affirmation of young people and women to get jobs. In addition, despite the emphasis on productivity, the proposal for training of workers presents the problem that "most workers face serious difficulties to increase productivity, access to training or to organize a union labor, or because working at reduced hours in smaller units, or the place of employment offers poor conditions for collective action."[[94]](#footnote-94)

Yet the Committee recommends that high-quality vocational training, especially for the long-term unemployed, considering the needs of disadvantaged and marginalized individuals and groups. It also recommends the adoption of employment strategies and plans of action targeting regions where unemployment is most severe and has requested annual statistics on the general employment situation, disaggregated by sex, age, nationality, disability, and by urban or rural region.[[95]](#footnote-95) In determining such policies, it is essential that they have a long term perspective and “an effective monitoring and evaluation mechanism to address the root causes of youth unemployment, paying particular attention to disadvantaged and marginalized groups, while continuing its efforts to increase the quality, diversity and number of apprenticeship and vocational training opportunities.” [[96]](#footnote-96) With the purpose to promote the guarantee of the right to work of persons belonging to vulnerable groups, the Committee has suggested measures such as “special training, the removal of physical barriers limiting workplace access by persons with disabilities, and wage subsidies or other incentives for employers, and to report on the results of these measures in its next report.”[[97]](#footnote-97) The Committee has also expressed concern for the protection of foreign workers. In this case, the Committee has proposed that countries include in their strategies awareness campaigns.[[98]](#footnote-98)

In fact, the 2012 Labor Reform’s twin goals of promoting the creation of more jobs and bringing informal labor into the formal market, has had the opposite effect, and decreased labor security.[[99]](#footnote-99) As a way to adjust legislation to improve the access to job for young and women, the labor reform legalized new forms of recruitment (probationary and training contracts). Moreover, the reform regulated outsourcing contracts. Outsourcing was a widespread practice in Mexico but it was not regulated before the labor law reform. For example, in the banking sector 46% of workers work under a subcontracting scheme.[[100]](#footnote-100) The labor reform tries to establish a set of norms that control the way a company may outsource its activities. According to Professor Bouzas, although some checks were established as a way to limit the abuse of outsourcing, in the practice companies are using outsourcing as the best strategy to avoid labor obligations and to increase the precariousness of work conditions.[[101]](#footnote-101)

Regarding the obligation to limit the use temporary employment contracts, the reform of the labor law modified some articles permitting the use of such contracts. Article 35 “allows not just for permanent, temporary and specific work-related contracts”[[102]](#footnote-102), but also for workers to be hired on seasonal, probationary or training contracts. The expansion of these types of labor contract increases “the likelihood workers will not be offered permanent contracts at the time of hire, and lessens the possibility that workers can file (and win) claims for unjust firings.”[[103]](#footnote-103)

Similarly, the definition of training or probationary contracts established in Article 39 creates uncertainty for workers because they are subject “to arbitrary evaluations of their performance by the employer, and allows employers operating in a labor surplus environment to artificially maintain a high turn-over rate at a very low cost. Workers on these contracts are not able to accumulate seniority rights.” [[104]](#footnote-104) Contrary to the Committee’s recommendation about limit the use of temporary contracts, Article 39-F of the labor law introduces “the concept of ‘discontinuous’ work meaning that workers on permanent contracts may be called to work for any number of days per week receiving pro-rated salary and benefits. The employer is permitted to decide how many and which days are required.” [[105]](#footnote-105)

Provisions permitting new types of contracts apparently seeking young people while they learn and train, provides the possibility for employers to hire workers with more flexible conditions at the time of dismissal and that the dismissal is cheaper than before the reform. The provision limiting compensation to one year of salary as compensation for the dismissal, is similarly a boon to employers. This change will limit the bargaining power of the worker because he or she does not have the economic incentive to participate in a judicial process for a long time and he will prefer to make a settlement for fewer amounts than what should legally receive.

### 3.2.2 Reducing informal economy

*In the General Comment N° 18 the Committee considers that “high unemployment and the lack of secure employment are causes that induce workers to seek employment in the informal sector of the economy.”[[106]](#footnote-106) As a consequence, the Committee has asked the “State party takes whatever action is necessary to reduce the proportion of the population working in the informal sector and ensure that the social security system offers workers adequate coverage and minimum pensions.”[[107]](#footnote-107)Particularly, the Committee has suggested that the State “step up its efforts to increase opportunities in the formal labor market and to take the necessary measures to ensure that workers in the informal economy enjoy basic labor standards. The Committee also recommends that the State party should increase funding for, and ensure, regularization of the unstructured labor market. The Committee further recommends that the State party should amend its labor legislation to combat contractual insecurity, including by reducing the use of temporary contracts and the subcontracting of workers formally employed full time and whose labor contract has ended.”[[108]](#footnote-108)*

When the Federal Labor Law reform was discussed in Congress, the government emphasized that the principal problem that should be attacked was the growing number of informal jobs in the labor market.[[109]](#footnote-109) To encourage the creation of formal jobs, the government tried to reduce the benefits and privileges of formal workers as a way to facilitate the labor recruitment and firing of workers without paying expensive compensations. The Federal Labor Law Reform in Article 15 “expands the forms of subcontracting that may take place[[110]](#footnote-110), making it easier to argue that work has been subcontracted, but places liability for working conditions, pay and benefits solely with the contractor.[[111]](#footnote-111) Despite its claim to do the opposite, the model entrenches mechanisms for avoiding employer responsibility towards workers. What this means for international production and supply chains with contractors located overseas, using locally based subcontractors, is unclear.”[[112]](#footnote-112)

Article 47 expanded the causes for the termination of a labor contract: (1) committing injuries not just to the employer, her or his family and management, but also to their clients and suppliers; and (2) failure of the worker to provide all necessary documents relating to the work.[[113]](#footnote-113) Both new causes for dismissal are ambiguous and therefore make it easier for the employer to argue just cause.[[114]](#footnote-114) In addition, by bringing the client into the equation, workers engaged in supply chain campaigns are likely to encounter problems. Further, the employer may now give written notice of cause for discharge to the Labor Board[[115]](#footnote-115) within a period of five working days, rather than immediately and directly to the worker.[[116]](#footnote-116) Again, this makes it easier to terminate workers and, by removing the right of the worker to know the reason he or she was fired, makes it harder to challenge the discharge.[[117]](#footnote-117) The modification of Article 48 in the labor law reform is the biggest change to worker rights. Although the worker may still request reinstatement[[118]](#footnote-118), back pay in proven cases of unjust termination is capped at 12 months. Prior to the reform, the back pay was for all the time that the process lasted. If the case goes beyond 12 months, the worker is only entitled to 12 months back pay plus interest of 2% per month (on the value of the salary) for up to 15 months.

In July 2013, the government presented the Program for Job Formalization. The main objective of this program is to “reduce the number of workers in the informality, by promoting the formalization of unregistered employees to safety social, primarily in medium-sized formal firms and large.”[[119]](#footnote-119) To meet this objective the government proposes to: strengthen interagency coordination between the IMSS, STPS, the labor authorities of the states, and with the participation of the Entrepreneurs concerted actions be established for employers to register their employees subordinates who are not registered at IMSS[[120]](#footnote-120); promote the volunteer inscription of workers in condition of vulnerability, domestic workers for example, in the Mexican system of social security; guarantee that public entities and especially public constructions which contract an important number of informal workers.[[121]](#footnote-121) This program has as proposed target 200,000 informal workers by the second half of 2014. The program operates through agreements whose objective is to ensure that all workplaces comply with the provisions of the Federal Law on Employment and the social security law in an effort to uphold workers’ right to receive all social security benefits.[[122]](#footnote-122) Is it important highlight that the program establishes that institutions have the obligation to create monitoring system which should present a “progress report on compliance with the state goal, which should provide hard data on the number of workers formalized to date, registered with the Mexican Institute of Social Security or other social security institutions.”[[123]](#footnote-123) In March of 2014 the Congress approved a reform of the law of social security and established an unemployment insurance and universal pension. [[124]](#footnote-124)

### 3.2.3 Obligation to provide information about labor context: Context/statistics on informal market

There are two main institutions responsible for collecting information: INEGI, and the National System of Statistic Information and Geography (responsible for indicators). INEGI produces indicators about occupation and employment. The National Council to Prevent Discrimination produces information about different issues related with discrimination.

Yet there is a critical lack of statistical information about the right to work. According to Martha Heredia, Mexico is a country that does not have the statistics necessary for define and implement public policies. According to Heredia, “Mexico makes important efforts for showing as a good actor in the international arena, for this reason only uses information that favors its interests.”[[125]](#footnote-125) An important exception in this area is the construction of decent work indicators undertaken by the Mexico ILO office. Thomas Wissing, director of ILO’s office in Mexico, said that ILO is working on the construction of a set of national indicators of decent work that allows to different states of the country assessing the level of the labor rights. The project is in a process of construction. There are 21 indicators, the purpose of which is to create a baseline for measuring the fulfillment of labor rights and compare the level of realization between States.[[126]](#footnote-126) The next step is to disaggregate the indicators for gender and incorporate new sources of information in order to have a broad assessment of the realization of labor rights and the effort of each State.

### 3.2.4. Foreign Workers

Article 28 of the Federal Labor Law regulates the services of Mexican workers outside of Mexico. The article establishes that the job of Mexican workers abroad must still respect Mexican law as Mexican employees. Article 28-A describes the conditions that the labor contract between the workers and the companies should respect: the general condition of the work; the recognition of consular authority of the other country that the expedition of the visa means the existence of a labor relationship; conditions of repatriation, housing, social security and other benefits; and establish that the Secretary of Labor and Social Prevision are responsible for the recruitment and selection of workers in coordination with local authorities.

Article 28-B establishes that Mexican workers can be recruited and selected by private organizations. The article requires that these organizations: be authorized and registered; prove the accuracy of the general conditions of the jobs and that workers have made the process of visa and working permits; inform to workers the right about consular advisory and the address of the consular authorities. Finally, if the workers are deceived about the working conditions, the private organizations are responsible for paying the repatriation costs. Private organizations are responsible for their own labor inspections.

In May 2014, the Legal Department of the Mexican Labor Ministry published the Recruitment Agency Regulation that “establishes provisions for recruiters of migrant workers, such as bonds, registration, and model contracts, and requires that for-profit recruiters register and obtain a license from the Secretary prior to operation.”[[127]](#footnote-127) In April of 2014, President Peña Nieto signed the Special Program of Migration 2014 – 2018. The plan establishes as a line of action to: “implement and strengthen temporary work programs with the active participation of the countries involved in its planning, management, and evaluation.”[[128]](#footnote-128) Moreover, the plan considers a strategy that “Promote[s] the employment of migrants, from the effective recognition of their rights and considering different criteria.” [[129]](#footnote-129) This strategy tries to articulates institutional efforts between different authorities; strengthen mechanisms of access, permanency and labor development of migrant workers; and create capacitation and training programs to improve the capabilities of migrant workers.[[130]](#footnote-130)

According to the population census, in 2010 Mexico had 961,121 international migrants. The information compiled by the Commission reveals that migrant workers tend to be more exposed to abuses of their labor rights than their Mexican counterparts are. The information reported by civil society organizations indicates that some migrants claim to be making half what their Mexican counterparts earn per day worked; sometimes they are not paid what was promised or not paid at all. Their work days are longer than eight hours and there are many documented cases in which migrant workers are not given days off. [[131]](#footnote-131)

The Commission’s delegation was told that where work was concerned, the situation of migrant workers in Mexico is not much different from that of Mexican farmhands. According to the data compiled by the ENJO 2009, 90.9% of farm workers did not have a labor contract and 73% were paid on a wage basis or by day worked, and 23.7% were paid by piecework. Some 60.9% of farm workers work 6 days a week, while 13.9% work seven days a week.[[132]](#footnote-132) The Commission was also informed about the existence of a significant percentage of migrant child labor engaged in agricultural work in Mexico. Under international human rights standards, children have labor rights, whose enjoyment and exercise demands a much higher standard of protection.[[133]](#footnote-133)

The Legal services NGO ProDESC has been centrally involved in advocating for stronger regulation in recruitments, of Mexican workers to work in the United States. They gathered information over a period of two years, interviewing predominantly female guest workers from Sinaloa to Louisiana.*[[134]](#footnote-134)* In these meetings issues of fraud, illegal fees and questions around unpredictable nature of re-hires, were repeatedly raised by workers. They found that the company would recruit a migrant worker to recruit other migrants and he/she would be compensated via benefits such as getting the best assignments and the best living arrangements for herself; she could also prefer friends and family in the recruitment process and also exchange money/bribes in exchange for being placed on the recruitment list. In June 2013 a group if migrants reported that the representative of a well-known agency had called a public meeting where he demanded $200 fee for those who wanted to be put on a list for recruitment for 200 construction industries. [[135]](#footnote-135)

### 3.2.5 Obligation to Protect Persons with Disabilities

*Another population in which the Committee has shown special interest is persons with disabilities, which it suggests “intensify efforts to integrate persons with disabilities into the labor market and the education and professional training systems, to make all workplaces and educational and professional training institutions accessible for persons with disabilities, and to provide detailed information on the results of the National Disability Program and action plans in its next periodic report.”[[136]](#footnote-136)*

In Mexico, just over half million (540,991) workers have disabilities. Most are agricultural workers (26.1 percent), partisans and laborers (17.1 percent) and shop and market sales (13.1 percent). According to their position, 35.8 percent are working self-employed, 40.3 percent are employed, 10.7 percent laborers and 7.2 percent are unpaid workers.[[137]](#footnote-137) The three largest obstacles for disabled workers are: unemployment, discrimination and not be self-sufficient.[[138]](#footnote-138)

Disability is one of the conditions prohibited from discriminating according to labor law (article 2). Article 133 prohibits employers from discriminating persons with disabilities. Article 9 of the law of persons with disabilities considers that “People with disabilities have the right to work and training, in terms of equality of opportunity and equity.” The law against discrimination establishes in Article 13 stipulates that federal authorities carry out different types of measures to promote equal opportunities for people with disabilities, including the creation of “ongoing training programs for employment promotion and labor market integration.” Article 132 of the Labor Law reform established a new obligation for companies: workplaces with more than 50 workers should have appropriate facilities people with disabilities. In April of 2014, the government published the Labor and Employment for People with Disabilities 2014-2018 National program.[[139]](#footnote-139)

# 4. ARTICLE 7 – THE RIGHT TO JUST AND FAVORABLE CONDITIONS OF WORK

The language of Article 7 is as follows:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

## 4.1 Fair Wages and Equal Work for Equal Value

*The guarantee of rights of women has been an important component of the work of the Committee on Economic, Social and Cultural rights, and includes the use of affirmative action, special measures and temporary measures to achieve gender equality. Recently, General Comment No.23 on the Right to Just and Favorable Conditions at Work recognizes that the level of wages in many parts of the world, remain low, and there is a persistent gender pay gap. The GC clarifies that remuneration goes beyond wages and salary, and includes allowances such as health insurance grants, housing and food allowances and on-sire affordable child-care; and that such remuneration should be fair. The committee has reiterated that equality applies to all workers without distinction based on race, ethnicity, nationality, migrant or health status, disability, age, sexual orientation, gender identity or other ground.*

Articles 2 and 3 of the Mexican Federal Labor Law prohibit gender discrimination, while Article 56 establishes the principle of equal pay for work of equal value. Sexual harassment is also prohibited, and is punishable by fines from 250 to 5,000 times the minimum wage.[[140]](#footnote-140)In 2006 the General Law for Equality between women and men, was enacted. [[141]](#footnote-141) The law defines the guidelines of the National Policy about Equality, and establishes that “the relevant authorities shall ensure the principle of substantive equality between women and men in the field of employment, as well as the fundamental right to non-discrimination of those in job offers, training and professional development in working conditions, including remuneration, and membership and participation in the labor and business organizations or any organization whose members carry on a particular profession.”[[142]](#footnote-142)In August 2013, the executive branch presented the National Programme for Equal Opportunities and Non-Discrimination against Women. Objective 3 of the program seeks “promoting women's access to paid work, decent work and productive resources, within a framework of equality.”[[143]](#footnote-143) In addition, the protection from sexual harassment is guaranteed in the General Law on Women's Access to a Life Free of Violence which came into force on 2 February 2007 and, in the case of harassment, a criminal offense under the federal Criminal Code since early 1991.[[144]](#footnote-144) CONAPRED has also launched the National Program for Equality.

Although the reform of the labor law aims to address this inequality, it still requires a policy aimed at achieving more balance between work and family.[[145]](#footnote-145) Furthermore, there is major occupational segregation and the labor market participation gap between men and women is higher in the poorest sectors, particularly for youth.[[146]](#footnote-146) This gap between men and women increases when a women is over 30 years old, and can be attributed to women’s reproductive role in society.[[147]](#footnote-147) The argument that women are more expensive that men in a job is connected to the stereotype that that has assigned to women the exclusive role to take care of children and the expansion of care to older and sick people.[[148]](#footnote-148)

A recent 2017 report of the OECD found that Mexico continues to face major gender-equality challenges, and lags behind that of the other OECD members, and even that of many Latin American countries. According to OECD statistics, only 47% of women of working age are part of the workforce, way below the OECD average of 67%. Over half of Mexican women of working age are in informal employment with little or no social protection, which increases poverty and inequality. According to the OECD report, young Mexican women are four times more likely than young men not to be in employment, education or training, and have one of the greatest unpaid workloads in the OECD, in terms of childcare and housework. Mexican women also face higher levels of violence, which restrict their freedom and safety, and approximately 67% of Mexican women have been victims of gender-based violence.

Similarly, according to the Oxfam report on inequality and poverty in Mexico 2013, there have been advances in “the salary gap, the creation of gender quotas in decision-making arenas or the proclamation of laws regarding access to gender equality and to lives free of violence have been important on the political agenda over the past few decades, particularly starting in 2007. Nevertheless, and despite these legislative initiatives, substantive equality between men and women continues to appear to be a distant and difficult goal.”[[149]](#footnote-149) The National Survey on Occupation and Employment found that compared to men’s earnings, women earn less on all salary scales, with the exception of minimum wage. This is partially due to salary discrimination due to gender even when people carry out the same job.

A study carried out by the National Institute for Women (INMUJERES) and INEGI revealed that women face a 20.6% rate of labor discrimination, which includes unequal pay for equal work carried out by men and women, evidence of mandatory pregnancy testing and obstacles to women’s professional development.[[150]](#footnote-150) According to INMUJERES, women earn between 5 and 30 percent less than men for comparable work, whereas, the World Economic Forum puts the number at 43 percent less than men for comparable work. [[151]](#footnote-151)INMUJERES also reports that sexual harassment in the workplace remains a difficult challenge, with women being reluctant to come forward with complaints and cases being difficult to prove. [[152]](#footnote-152) *Yet in order for Mexico to comply with ICESCR obligations, it needs to reform both the legal system and eliminate social norms that may infringe the rights of women. To this end it is necessary, to create institutions that promote and protect gender equality, including institutions for labor inspections, who should be trained in “ application of the principle of equal remuneration for work of equal value and take other measures to ensure effective enforcement of applicable legislation.”[[153]](#footnote-153)* It is equally important that workers know of existing protective legislation or how enforce it; in addition, such legislation should create accountable mechanism that allow to make an assessment of its impact.[[154]](#footnote-154)

CONEVAL reports that according to the study "Poverty and Gender in Mexico: Towards a System of Indicators, 2008 to 2012", only six working women have direct access to social security [*health insurance and pension*] for each 10 men who have it.[[155]](#footnote-155) It adds that in 2012, 54.1 percent of women 25 to 44 years of age with children worked for pay, while among those with no children 74.9 percent work for pay. The total number of employed women who receive no pay for their work is higher than men. Between 45 and 64 years of age there are three women for every man who works for no pay. The CONEVAL report concluded that the volume of employed women who are not paid for their work is overwhelmingly higher than comparable men in the same situation, particularly among people at advanced ages. Furthermore, poor women are the majority of those working without a contract, pay and incomplete sessions.[[156]](#footnote-156)

## 4.2. To guarantee a decent living for themselves and their families in accordance with the provisions of the present Covenant

*When a government establishes the minimum wage, it should be adequate for the requirements of the minimum level of subsistence and the State must take measures to enforce the establishment of the minimum wage, which means, applying the legislation that establishes the minimum wage. Concretely, the Committee has suggested “that the State party extend the applicability of the minimum wage legislation to those sectors where it still does not apply and intensify its efforts to enforce legal minimum wages through increased labor inspections and fines or other appropriate sanctions for employers who fail to comply with the minimum wage legislation. The Committee further recommends that the State party ensure that changes in the calculation of the minimum wage to take into account deductions for meals and accommodation presently under consideration do not disproportionately affect migrant workers.”[[157]](#footnote-157)*

The Mexican Constitution Art. 123 A. VI establishes that “minimum wages’ amounts shall be sufficient to fulfill normal family needs from a material, social and cultural points of view as well as to provide for the compulsory education of children.” In the Part VII of the same article, the Constitution prescribes the principle of equal remuneration for men and women workers for work of equal value without discrimination based neither on sex nor on nationalism.

The Federal Labor Law regulates salaries in Articles 82 to 116. According to the obligations derived from the rights contained in the ICESCR and the concluding observations of the Committee, Article 86 establishes the principle of equality of salaries. However, article 86 has been criticized by the Committee of Experts on the Application of Conventions and Recommendations of ILO, in its recommendations of 2014, the Committee noted with regret “that the Government did not take the opportunity of the recent reform of the Federal Labor Act to include the principle of equal remuneration for men and women for work of equal value, as set out in the Convention. Indeed, Section 86 of the Act continues to provide that there shall be equal pay for equal work performed in the same post, the same working day and conditions of efficiency.”[[158]](#footnote-158)

According to the Federal Labor Law, the institution responsible of the definition of minimum salary is the National Commission on Minimum Salary.[[159]](#footnote-159) The Commission has tripartite nature (representatives of government, workers and employers)[[160]](#footnote-160) and it can meet and decide about minimum wage any time when the members of the Commission consider necessary. The Commission has the obligation to submit investigations and necessary studies to Representative Council decide the level of minimum wage.[[161]](#footnote-161) The most important task is to determine the budget that a family requires to satisfy their necessities (food, education, transport, etc.) [[162]](#footnote-162). Currently, the minimum wage is determined with the inflation ex-post. Article 123.IX of the Constitution establishes that workers have the right to participate in the utilities of the Companies. In consequence, the Constitution orders the creation of the National Commission of tripartite character that will define the percentage of utilities to share and the responsibility of make the searches and studies necessaries to determine the minimum wage.[[163]](#footnote-163)

In 2016 the minimum wage was set at 73 pesos ($4.35) per day, and formal sector workers received between one and three times the minimum wage.[[164]](#footnote-164) Yet at the end of 2016, the food basket, including food for two adults and two minors costs 218.06 pesos ($10.52/day), which meant that one worker could afford to buy 33.5% of necessary food. The National Council for Evaluation of Social Development Policy estimated the poverty line at 90 pesos ($5.40) per day for the year.[[165]](#footnote-165)

In January 2017, the Mexican government raised the country’s daily minimum wage from 73.04 pesos to 80.04 pesos (approx. $3.52 -3.86). According to Business Insider, in January 2013, when President Pena Nieto took office, the minimum daily salary was 64.76 pesos (while the basic food basket was 171.86 pesos), and consequently while in nominal terms there has been an increase in minimum salary, by the end of 2016, prices have gone up 26.9%.[[166]](#footnote-166) They comment that while Mexican family income has risen 1.29% since 1987, based on minimum salary, after factoring in inflation, their purchasing power has fallen. Similarly, according to OECD, Mexico comes last amongst OECD countries when measured in terms of hours worked and wages earned.

The 2012 labor law reform did not make changes in the legal procedures to the work of the National Commission on Minimum Salary that allowed the recovery of minimum wage policy as an instrument of public policy to fight against poverty and inequality. The social dimension of the labor reform is only declarative.[[167]](#footnote-167) In the last 20 years salary has lost its value by 25%, so today the minimum wage is equivalent to a quarter of it was in 1982. [[168]](#footnote-168)

In Mexico, the wage scheme is discretionary, vertical, and authoritarian. This is because it is the head of the Executive Branch that unilaterally defines the annual minimum wage increase. The minimum wage is determined by the priority of maintaining macroeconomic stability, under the false assumption of neoliberalism in vogue that wages are responsible for the rising prices and thus low competitiveness.[[169]](#footnote-169) The National Commission on Minimum Salary does not elaborate an adequate analysis of the basic basket requires for a decent living. Instead, the National Commission determines the minimum wages according with data on annual price increase calculated by the National Bank.[[170]](#footnote-170)According to the US State Department, the commission incorporates protection unions, and continues to block increases that keep pace with inflation.[[171]](#footnote-171) Furthermore, the Commission – while tripartite in theory - in reality does not have the representativeness that is necessary to define a decent minimum wage.

Experts Jose Bouzas and Graciela Bensusan have emphasized that the problem with the minimum wage is that the economic model that Mexico has promoted in the last 30 years requires low wages because its competitive advantage is cheap labor. This situation implies that government requires having control of the minimum wage and avoiding increases. Furthermore, the redefinition of the minimum wage each year is important because it defines the amount of the fines that citizens have to pay for traffic infractions and other issues. Ironically, the definition of the minimum wage might be more relevant for a number of administrative areas of law, but less for guarantying a decent wage for workers.[[172]](#footnote-172) Yet, in terms of ILO Convention 131, Minimum Wage Fixing Convention, minimum wage must be set in agreement or after consultation with representative organization of employers and workers, and needs to take into account both the needs of the workers and their families, as well as economic factors.

## 4.3. Recognize (guarantee) safe and healthy conditions

### 4.3.1 To guarantee that measures (legislative) are properly implemented – enforced

*A central concern of the Committee is how countries can implement and increase the labor inspections, establish sanctions, and develop informational campaigns about rights in the work place.[[173]](#footnote-173) Furthermore, the Committee recommends that the State party consider ratifying ILO Convention No. 81 (1947) concerning Labor Inspection in Industry and Commerce.[[174]](#footnote-174) The best way “to intensify its efforts at ensuring that occupational safety legislation is a proper implementation, especially by allocating sufficient resources to the State Labor Inspectorate and imposing effective sanctions with respect to violations of safety regulations.”[[175]](#footnote-175) Furthermore, the committee has suggested that countries should “provide labor inspections with adequate human and financial resources to enable them to effectively combat abuses of workers’ rights.”[[176]](#footnote-176)*

The Constitution of Mexico in Article 123. XXXI defines the authorities responsible for enforcing the labor law at the federal and state level. The Federal Labor Law in the Article 523 determines the concrete authorities responsible of enforcing the labor law. Labor inspection is regulated in Articles 540 to 550. Article 540 defines the main functions of inspectors and Article 541 describes attributions and responsibilities. The reform of the labor law created two more attributions that allowed labor inspectors to have more faculties to correct the problems or violations of workers safety.

The STPS (Secretary of Labor) is responsible for enforcing labor laws. In 2013 the STPS was authorized to hire 179 additional inspectors. The STPS carried out regular inspections of workplaces, using a questionnaire and other actions to identify victims of labor exploitation. Between January and July, it undertook 59,746 inspections in 40,078 workplaces, including the monitoring of industries identified as having a high incidence of child labor (agriculture, coal mines, and construction). On April 9, the STPS trained 300 federal and local labor inspectors on child labor. According to the STPS, training for labor inspectors included a program focused on enforcement of labor laws in the agricultural sector, but there was no program for labor inspections in the informal sector. Nevertheless, all workplaces are subject to STPS inspection.[[177]](#footnote-177)

### 4.3.2. Enforcement

Article 48 of the labor law established that any litigant or their representative found to be delaying or otherwise manipulating the case, will be fined 100-1000 times the minimum wage[[178]](#footnote-178). While, any civil servant found to be delaying or otherwise manipulating the case will be suspended without pay for up to three months, or fired and criminally investigated if the behavior is repeated. [[179]](#footnote-179) There is low a percentage of workers who may hold the employer responsible for lost employment (estimated at the beginning of 2000 by about 6%) and a high percentage of arbitral awards that never come to fruition, especially when it comes to smaller companies, which are those that can most be affected by the cost of a dismissal.[[180]](#footnote-180) According to Arturo Alcalde, “the strategy of promoting conciliations between employers and employee as a result of a labor conflict presented before labor justice usually implies that employees give up their rights because the pressure of public officials to show results.”[[181]](#footnote-181)

### 4.3.3 Labor Inspections

The first area where the enforcement of the labor rights has problems and affect the realization of labor rights is the obligation of the state to carry out labor inspections. A report by USAID showed that “responsible agencies of labor inspections lack adequate resources and capacity,”and considers the main problems to include understaffed and poorly paid inspectors, which could contribute to low numbers of inspections, a diminished capacity to investigate working conditions thoroughly, and long delays between the time of inspection, the issuing of recommendations, and a juridical resolution (in the rare event that cases reach this last stage). [[182]](#footnote-182) Second, some experts argue that few recommendations lead to sanctions and, when they do, the fines are relatively low and rarely paid. [[183]](#footnote-183) The labor authorities tend to privilege voluntary compliance and prevention over punitive sanctions (although there was some shift in favor of the latter after a tragic accident killed 65 workers at the Pasta de Conchos mine in 2006). Third, there is a lack of coordination among the multiple agencies responsible for enforcing workplace rules, which include the STPS and the Mexican Social Security Institute (IMSS). Fourth, some experts assert there may be collusion between inspectors and employers, e.g., when inspectors give employers the opportunity to temporarily “clean up” violations and/or remove troublesome workers before the inspection. In addition, workers are sometimes co-opted into this collusion because formal sector jobs are difficult to find. Finally, traditionally in Mexico workers rarely report abuses or violations of the law, reflecting fears among workers of being harassed, losing their jobs, and/or being placed on a black list.”[[184]](#footnote-184)

In the ILO 2011 conclusions on Mexico under C155, the ILO recommended that Mexico review its labour inspectorate in order to strengthen its ability to deal with situations of imminent danger. It was asked to provide information on measures for immediate enforcement currently at the disposal of the labor inspectorate, including closure in the event of imminent danger to the health and safety of workers. The Committee also recommended that Mexico undertake an analysis of the inspections conducted in coal mines and also provide information on the measures proposed for tackling these problems. Most significantly, the CAS recommended that pending these reviews, Mexico take the necessary measures in the very near future to safeguard the lives and safety of workers.

The issue of absence of adequate Occupational Health and Safety is particularly egregious in the mining and agricultural sectors. For example on 30 July 2007, union members took action at three mines run by Grupo Mexico after repeated health and safety problems, including the [industrial homicide at Pasta de Conchos](http://www.industriall-union.org/es/los-mineros-de-mexico-marchan-a-11-anos-del-homicidio-en-pasta-de-conchos) on 19 February 2006, which caused the death of 65 workers and injuries to another 29 . [[185]](#footnote-185)Yet the company and the government did not properly investigate the real causes of the disaster, bring the guilty parties to justice, recover the bodies or compensate fairly the families of the victims.[[186]](#footnote-186) Moreover, Grupo Mexico owner, German Larrea, refused to take measures to improve safety at the mine or to comply with labour ministry orders.” As a consequence further accidents have occurred including the death of 5 miners at the Grupo Mexico mine in 2007 including an incident on 6 August 2014, when a spillage of toxic material into the River Sonora damaged the environment and seriously affected the health of local communities.[[187]](#footnote-187)

In June of 2014, the President Peña Nieto signed a new general regulation for labor inspection and application of sanctions.[[188]](#footnote-188) According to the National Survey of Occupation and Employment, between 2005 and 2012 the percentage of workers subordinated and remunerated with access to health institutions drop from 54% to 53%.[[189]](#footnote-189) Only one of two workers has protection before illness connected with employment. The labor reform only increased the amount of the fines that an employer can receive if it does not fulfill its obligations related with the health conditions of the workers. There is no interest in prosecuting the crimes related with the accidents of workers when the employer can be held responsible.

In February 2016, the Mexican government adopted a labor inspection protocol on the freedom to conclude collective bargaining agreements. The Protocol established procedures to inspect compliance including interviewing workers to determine if they know which union represents them and the terms of the relevant collective bargaining agreement. Yet, there is a dearth of available data on the number of inspections, and their results.[[190]](#footnote-190)

### 4.3.4 Conciliation and Arbitration Boards

A second issue related to the adequate enforcement of the law, is the recently disbanded (in law only, until further legislation is passed) Conciliation and Arbitration Boards (Juntas de Conciliación y Arbitraje) at the federal level (JFCA) and the state level (JLCA) have been riddled with serious problems, including that selected representatives of workers have come from “yellow” unions, which have undermined the ability of workers to obtain justice. Also, these boards have been overly dependent on executive powers (federal or local).[[191]](#footnote-191) These critiques have been made by the local and international labor movement in both domestic and international fora, and have resulted in the recent 2016 Constitutional amendment, which eliminates these Conciliation and Arbitration Boards, and replaces them with courts. Despite this positive development, it is still essential to understand the shortfalls of the existing system, in order to ensure that new institutions do not replicate this.

The JFCA and JLCA have provided an important channel for individual grievant to dispute unjust and/or illegal practices in the workplace (Middlebrook and Quinteros 1995), but they were widely criticized for being biased and inefficient (Bensusán et al. 2007a). First, their tripartite structure empowers actors with a vested interest in the status quo and thereby stifles the formation of more independent unions and/or demands for better working conditions. The structure also makes the government the tie-breaker, increasing its power over business and labor. Second, the Boards lack the capacity to handle the high volume of claims. Although the number of collective conflicts fell by 50 percent between 1991 and 2004, the number of individual conflicts tripled during the same period (Bensusán et al. 2007a: 43). Third, conflicts are rarely resolved in a timely fashion, leading many workers to settle their claims for a lesser amount before a ruling is issued. Finally, some experts argue that the proceedings are plagued by intimidation and violence.[[192]](#footnote-192)

Workers have faced multiple obstacles in their quest for access justice: high cost of additional payments; improper legal advice; unfair decisions, not founded in law; insufficient experience of staff of the JFCA; slow adoption of resolutions and low number of arbitral awards executed.[[193]](#footnote-193) The statistics shows that only 5% of the cases studied ended with the victory of the applicant organization in JFCA and 11% in JLCA.[[194]](#footnote-194)

### 4.3.5 Constitutional Reform of CABs

In February 2017, constitutional amendments were passed that dissolve the Conciliation and Arbitration Boards (CABS) and transfer their functions to federal and local courts. The administrative function of the CABs will be transferred to a new federal administrative entity, and conciliation functions will transfer to a new “specialized and impartial” conciliation center that has “full technical, operational, budgetary, decision-making and administrative autonomy”.[[195]](#footnote-195) The labor reform also requires verification of worker support for a collective bargaining agreement before it is registered and timeframes for challenging a unions exclusive bargaining rights[[196]](#footnote-196).

Although the constitutional reform is now law, the CAB’s will continue to hear cases and register unions, until the new institutions envisaged by the constitution, are established.[[197]](#footnote-197) It is unclear where the judges to be recruited and trained for the labor court will come from, and whether the staff from the CABs will be transferred to the new institutions. [[198]](#footnote-198) There is the obvious risk that the new institutions will be packed with staff from the former CABs and that the old approach, and culture will now be imported to a new institution.[[199]](#footnote-199) There are similarly risks inherent in the fact that it is the President and Federal Government, who have been charged with nominating a director for the decentralized agency, which will conciliate in federally regulated industries, and register all trade unions. At the state level. Conciliation will be regulated by local laws.

Congress at both federal and state level have one year of from the publication of the reform to pass implementing legislation (until February 18th 2018) to reform the relevant implementing laws, including the Federal Labor Law, but to date there has been no public debate or discussion on this reform. In fact, according to Briefing Paper of the Maquila Solidarity Network , “there appears to be very little awareness among workers, employers and other stakeholders of its content and potential implications”.[[200]](#footnote-200) There is an obvious risk, that yellow unions and employers associations will attempt to undermine reforms through obstructing the passage of implementing legislation and/or non-compliance once it has been passed. [[201]](#footnote-201)

Both President of Mexico, Pena Nieto as well as the Mexican Employers Association (COMPARMEX) have submitted reform proposals to Congress in 2016, which did not reach the floor for debate[[202]](#footnote-202). President Nieto’s, proposal would expedite the process and prevent long delays in the union representation vote; would revise procedures to register collective bargaining agreements in order to ensure trade union representivity, and limit the signing of protection contracts, by (a) verifying the existence of a workplace before the registration of the CBA; (b) disseminate copies of union documents (registration, by-laws and CBA’s) to covered workers; and (c) verify the support of at least 30% of covered workers of the union holding the CBA.[[203]](#footnote-203) Whilst the COPARMEX proposal was seen as regressive, allowing an employer to voluntarily sign a protection contract in cases where they were not being coerced to do so, under threat of strike. [[204]](#footnote-204)

### 4.3.6. Promotions

#### (i) Guarantee equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence

The 2013 labor law reform changed the criteria required for determining promotions. Aside from experience, the reform introduced aptitude and productivity as criteria for determining the worker's access to training and promotion. The problem with this is that it allows the employer to “exclude some workers from training, and permits an arbitrary evaluation of productivity and/or aptitude for the job.” [[205]](#footnote-205) Furthermore, it creates the possibility that workers can be hired with alternative types of contracts that do not provide all the guarantees that the labor contract does. Specifically, the possibility to contract workers with temporary contracts makes "possible for a worker on a probationary or training contract to be ‘promoted’ into an indefinite temporary contract, over and above a permanent worker.”[[206]](#footnote-206)

#### (ii) To Ensure Rest, Leisure and Reasonable Limitations on Working Hours

#### To establish maximum numbers of hours

*The ICESCR Committee also calls on the State parties to protect workers’ right to safe and healthy working conditions and to reasonable limitation of working hours. The State party strengthen measures to prevent long working hours and ensure that deterrent sanctions are applied for non-compliance with limits on extensions to working hours.****[[207]](#footnote-207)***

Article 5. III. Of the Federal Labor Law establishes that a clause in a contract that imposes an inhumane workday will not have any legal effect. Articles 58 to 68 regulate the workday, and sets the maximum legal that a worker can work, define daytime and evening working hours (8 hours day time, 7 hours evening night and 7 hours and half mix workday). Article 69 establishes that for every 6 working days, the employee will enjoy a day of rest. Articles 76 to 81 regulates vacations.

The law sets six eight-hour days and 48 hours per week as the legal workweek. Consequently, work more than eight hours in a day is considered overtime, for which a worker receives double the hourly wage. After accumulating nine hours of overtime in a week, a worker earns triple the hourly wage; the law prohibits compulsory overtime. The law includes eight paid public holidays and one week of paid annual leave after completing one year of work. The law requires employers to observe occupational safety and health regulations, issued jointly by the STPS and the Mexican Institute for Social Security. Legally mandated joint management and labor committees set standards and are responsible for overseeing workplace standards in plants and offices. Individual employees or unions may complain directly to inspectors or safety and health officials.[[208]](#footnote-208)

Yet, Mexico is one of the countries in the region with longer weeks for paid workers (48 hours per week). According to the ENOE (National Survey of Occupancy and Employment) about one in two subordinate workers reported having in the past seven years a day between 35 and 48 hours, which can be considered as a full-time attached to the labor legislation. Nearly one in four workers exceeds the 48-hour workweek. Less than 20% had a day that could be considered part-time.[[209]](#footnote-209)

# 5. ARTICLE 8: COLLECTIVE LABOR RIGHTS

The text of Article 8 of the ICESCR is as follows:

*1. The States Parties to the present Covenant undertake to ensure:*

*(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

*(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;*

*(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

*(d) The right to strike provided that it is exercised in conformity with the laws of the particular country.*

*2.This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.*

*3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.*

## 5.1. The Right of Everyone to Form Trade Unions and Join the Trade Union of his Choice, Subject Only to the Rules of the Organization Concerned, for the Promotion and Protection of his Economic and Social Interests

*Collective labor rights are understood to require immediate implementation, and are not subject to progressive realization. Accordingly, states must provide a constitution and legal framework that guarantees the exercise of freedom of association for trade unions; and must facilitate and promote an environment that allows the exercise of these rights. The most important type of measure that a country should take is legislative, and should ensure that all workers, including the subcontracted and temporary ones, are able to exercise their trade union rights.[[210]](#footnote-210) The Committee has stressed the importance “to take measures to enable the development of independent trade unions that are better able to defend their members’ interests” and has recommended specific authorities take measures “to ensure that the Ministry of Justice and Labor carries out trade union registration procedures with due diligence”. [[211]](#footnote-211) It has also been concerned that state parties adopt strong measures to protect unionized workers and their leaders from acts of intimidation, including through investigation, legal proceedings and the imposition of penalties on those responsible for such acts.[[212]](#footnote-212) The Committee is also concerned that there are guarantees of plurality and equality of trade unions in law and in practice.[[213]](#footnote-213)*

*The first obligation under the right of labor unions to function freely subject to no limitations is to ratify the ILO conventions. The Committee has invited states “to expedite ratification of ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize”[[214]](#footnote-214)and to “consider ratifying the ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining.”[[215]](#footnote-215) Along with the ratification of Conventions, the Committee considers it important that States have the support of the ILO. For instance, in addition to affirms “that the rights of workers as provided for under article 8 of the Covenant can only be exercised in a climate free from violence, pressure or threats of any kind” ; the Committee urges “the State party to take all necessary measures as requested by the ILO Committee on Freedom of Association, to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security or their lives.*

### 5.1.1 Right to Organize

*Since this right implies mainly a negative obligation, the Committed has asked states to “remove from its legislation any unjustified registration requirements and grounds for dissolving trade unions”[[216]](#footnote-216); and “the administrative obstacles to the exercise of the right to organize, including through the prompt issuance of an acknowledgement of receipt for an application to form a trade union.”[[217]](#footnote-217)Furthermore, Committee considers it necessary “to remove, in law and practice obstacles to trade unions’ rights to conduct collective bargaining, and to pay particular attention to the workers’ rights in Special Economic Zones (SEZs) and Export Processing Zones (EPZs).” [[218]](#footnote-218)*

The Constitution of Mexico recognizes that “both the workers and the employers have the right to organize in defense of their respective interests, by forming unions, professional associations, etc.”[[219]](#footnote-219) The Constitution also protects freedom of assembly, freedom of association and freedom of speech. This set of principles are the foundations of rights to form or join a union; support unions; bargain as a group for wages, hours and working conditions; elect union leaders; elect bargaining representatives; help other employees influence wages, hours, or working conditions; and strike, under certain conditions. Mexico ratified ILO Convention No 87, but the country has not ratified ILO Convention No 98. Also, Mexico made a reservation (Interpretative statement) in the article 8 of the International Covenant of Economic, Social and Cultural Rights.[[220]](#footnote-220) Title 7 of the Federal Labor Law regulates industrial relations, and defines what a union trade is (Art 356), states that all workers and employers have the right to form unions (Art 357).

Mexico’s labor movement is currently facing a serious crisis of representation. First, the unions represent an increasingly small share of the workforce. Between 1992 and 2006, the unionized share of the economically active population fell from 13.6 percent to 9.7 percent, and the unionized share of workers who were at least 14 years old and worked in establishments of 20 or more workers (therefore being eligible to join unions) fell from 22.1 percent to 15.3 percent (Salas 2008: 18).[[221]](#footnote-221) One study in 2015, found that only 8.6% of the economically active population is unionized.[[222]](#footnote-222) According to the Mexican Labor Year in Review of 2015, even that figure may be too high and a recent article suggests that there are less than three million union members and possibly less than one million. The review comments that there is no confidence in the union’s reported membership figures; and figures regarding labor union contracts are equally difficult to assess. These non-representative “ghost unions” which comprise the majority of registered unions are severely discredited as corrupt and self-serving or have no presence at all in the workplace. Their lack of legitimacy has contributed to public support for anti-union initiatives.[[223]](#footnote-223) These official unions make up almost ninety percent of unions in the country, and since the informal economy employs more than half of all workers, few Mexican employees have meaningful access to representative unions that can protect worker rights.[[224]](#footnote-224) Most crucially, Mexico’s unions have often been used as a mode of state control, rather than advancement of worker rights.[[225]](#footnote-225)

### 5.1.2. Registration of Trade Unions

The Federal Labor Act establishes ostensibly straightforward registration requirements. The Law requires 20 workers to form a union, and unions must register with the appropriate conciliation and arbitration board (CAB) or the Ministry of Labor and Social Welfare (STPS)).[[226]](#footnote-226) The CABs are tripartite, but have been criticized for not adequately providing worker representation, and having a bias against independent unions, which is exacerbated by the prevalence of representatives from “protection” (unrepresentative, corporatist) unions.[[227]](#footnote-227)

The process of registration of an independent trade union is beset with obstacles. [[228]](#footnote-228) Although federal law establishes that the only reason to deny a registration is that the goals of the union conflict with the labor code and that “the recognition cannot be administratively cancelled unless the union ceases to comply with the law”, the law is frequently interpreted in such a way as to avoid the registration of independent trade unions, by creating administrative hurdles or jurisdictional complexities An example of this is depicted in the interim report elaborated by the Committee of Freedom of Association in its report of June 15 of 2012. In the case of the National Union Petroleum Technicians and Professionals (UNTyPP) , the Secretariat of Labor and Social Affairs (STPS) rejected the registration of the union trade several times, requesting documents that were not required in the Federal Labor Law. The delay in the registration of the union allowed the employers to dismiss the employees that are promoting the creation of the union to avoid the exercise of rights to union members.[[229]](#footnote-229) This issue was addressed by the recent ILO Committee of Experts and Committee on the Application of Standards, which requested Mexico to provide information on the implementation of protocols to ensure registration of trade unions without prior authorization, as required by law.[[230]](#footnote-230)

In addition, the division between federal jurisdiction and local jurisdiction has complicated the process because on occasions the authority that receives the application denies the registration because is in the jurisdiction of a different authority.[[231]](#footnote-231) According to the CILAS report, the Secretariat of Labor and Social Welfare (STPS in Spanish), through the Directorate of Register of Associations (DGRA), has “routinely denied registration to unions (note-taking) that are not related to government (democratic unions) or group corporate unions, pro employer unions. They have denied registration to both unions, v. gr. National Union of Technical and Profesionista Oil, the United Workers Union Honda Mexico as secretaries general unions already registered, Union Mexican Electricians, the miners' union Metallurgical Mexico.”[[232]](#footnote-232)

In specific cases, the Secretary has imposed conditions to the union labors that are not specified in the labor law: mandatory content for writing statutes, breach of Convention 87, the which shall contain the name, designation, address, purpose and duration quorum for its sessions, and how it integrates its directive, rights and obligations of members, admission requirements, and exclusion, the disciplinary regime organization. (Art. 371). Furthermore, the report stated that “the Mexican government authority limits administration of trade unions by requiring statutes regulate: the way they handle their properties, the semiannual reporting accounts (Art. 373), the system of union fee, and how your assets would be liquidated.”[[233]](#footnote-233)

The practice of “toma de nota” or “taking notice”, whereby elected trade union leaders “are required in order to take office, to obtain a certificate from the labor authorities attesting that the elections were held in accordance with the statute of the trade union” has been a significant challenge to the exercise of collective rights and freedom of association.[[234]](#footnote-234) Although the Supreme Court of Justice has restricted the scope of this procedure, the practice continues to be a basis for denial or delay or declarations that that the trade unions chose the representatives of workers; or for political reasons to prevent a firm or industry from having a union.[[235]](#footnote-235)

Since the 2017 Constitutional Law amendment now dissolves these CABs, a new federal level institution will be established for the registration of all unions and CBAs. [[236]](#footnote-236) It will have full technical, operational, budgetary, decision-making and administrative autonomy. Its leadership will be approved by the Senate from a shortlist of three candidates presented by the President. In the situation where there is no consensus on an appointment, the President will make a final decision. The criterion for appointment include experience in labor relations, no role in a political party or cannot have stood for political office, within the last three years; must have a good reputation, and no criminal record. The position will be for six years, with possibility of renewal. Some have expressed concerns that the new institution will be tripartite, bringing in the same problems as before.

### 5.1.3 Union Democracy and Protection Contracts

The Constitution of Mexico recognizes that “both the workers and the employers have the right to organize in defense of their respective interests, by forming unions, professional associations, etc.”[[237]](#footnote-237) The Constitution also protects freedom of assembly, freedom of association and freedom of speech. This set of principles are the foundations of the right to form or join a union; support unions; bargain as a group for wages, hours and working conditions; elect union leaders; elect bargaining representatives; help other employees influence wages, hours, or working conditions; and strike, under certain conditions. Mexico ratified ILO Convention No 87, but the country has not ratified ILO Convention No 98. Also, the country made a reservation (Interpretative statement) in the article 8 of the International Covenant of Economic, Social and Cultural Rights.[[238]](#footnote-238) Mexico ratified ILO Convention No 87, but the country has not ratified ILO Convention No 98. Also, the country made a reservation (Interpretative statement) in the article 8 of the International Covenant of Economic, Social and Cultural Rights.[[239]](#footnote-239) Federal Labor Law defines that rights and obligations of union trade (Art 377), provides some rules for democracy inside the union (Article 373 and 424 bis, among others) and establishes the process of collective bargaining and the signing of collective bargaining agreements (Art 391 bis).

The most important obstacle to the realization of the right to create and join a union labor has been the existence of “Protection Contracts” or CCPP. Protection contracts are widely practiced throughout the country and they violate the freedom of association of workers by forcing them to belong to a particular union.[[240]](#footnote-240) As a consequence, this practice prevents workers from the exercise of their bargaining rights and the right to strike. The protection contract is defined as “that which arms an employer with a union, or more accurately, a person who holds a union registration and who guarantees that the employer can work unbothered by union opposition or worker complaints in exchange for payment to the “union” who offers these services.”[[241]](#footnote-241) However the existence of protection contracts is not sourced in the Constitution, and neither are the authorities completely responsible for them.[[242]](#footnote-242)

The Federal Labor Law’s regulation of union formation is set out in Articles 386 and 387 of the Federal Labor Law, and establishes that unions have the right to sign a collective agreement and that if an employer hires workers who are members of a union, “it will be required to sign, when requested, a collective bargaining agreement.”[[243]](#footnote-243) However, a principal problem is that unions do not have to prove the representativeness of the workers.[[244]](#footnote-244) Correspondingly, authorities do not have the obligation to verify if the union trade has the minimum number of members (20) nor that the member of the union are current members.

In addition, the regulation permits employers to negotiate with corrupt, non-representative unions, prior to opening a factory, with the purpose of blocking future employees from forming representative unions that can protect worker interests and negotiate their rights. These collective bargaining agreements resulting from protection contracts usually fail to provide worker benefits beyond the legal minimum and impede the rights of independent unions to effectively and legitimately bargain collectively on behalf of workers.[[245]](#footnote-245) According to a recent study, an astounding 90% of collective contracts in Mexico’s Federal District are protection contracts (Bouzas 2009).[[246]](#footnote-246) The US State Department report considers protection (company-controlled) unions as a problem that affects all sectors, and many observers noted that a majority of workers in unions belong to unrepresentative unions.[[247]](#footnote-247)

Cases involving protection contracts abound.[[248]](#footnote-248) One recent example involves workers at a Finish auto parts company (PKC) in Ciudad Acuna, Coahula that produces for Ford and other U.S. automakers, who made a formal bargaining demand in terms of the law in 2011. The company refused on the basis that there was already an existing collective bargaining agreement which had been deposited to the Labor Board in 2011.[[249]](#footnote-249) This was the first time that workers of PKC were informed that they had a collective bargaining agreement or were being represented; and when they challenged this, they faced harassment and worker leaders were dismissed. Workers have been waiting since 2012 for a bargaining rights election, and dismissed worker leaders have not been reinstated. Another case involving the Minera y Metalurgica del Boleo, owned by the Korean government to produce copper, cobalt, and zinc, and then outsourced to a labor brokerage firm, Mesetra, which had a protection contract with SNTEEBMRM, an organization created by Grupo. Under this protection contract workers were required to sign blank resignation letters; and there were no negotiated improvements in working conditions. When workers protested to demand control of the protection contract, the police became involved; and ultimately 130 workers were fired.[[250]](#footnote-250) There are still new protection contracts, such as at the BMW plant in San Luis Potosi, which continue to be signed behind workers backs.[[251]](#footnote-251)

The protection agreements model, fundamentally violates the right to organize by preventing trade union diversity and the registration of new organizations and by imposing prior authorization and state discretion for its full exercise, as well as requirements that are almost impossible to meet, in a practice based on open state interventionism.[[252]](#footnote-252) Congresswoman María Luisa Alcaldé commented on the 2012 Labor reform that although the first draft of the reform established norms that promote internal democracy inside the union labors with the purpose of eliminating external control of unions by employers or government; the negotiation between parties eliminated all these norms and the representatives of traditional union labor were given carte blanche to continue with their model that limits the real exercise of labor collective rights. This central difficulty presented by protection contracts was addressed by the ILO CEACR in its 106th session (2017) where it requested the “government in consultation with social partners, to continue adopting the necessary legislative and practical measures to find solutions to the problems arising out of the issue of protection trade union and protection contracts, including in relation to the registration of trade unions.”

The 2016 Constitutional amendment, now entrenches principles for bargaining, which will include representatively and certainty in the signing, filing and registration of the CBA (Article 123. B. XXII Bis.), and that the Union must demonstrate that it represents workers at the workplace if it has filed a strike notice in order to oblige the employer to bargain (Article 123. A. XVIII). However, the realization of these principles is contingent upon the enactment of implementing law, which is consistent with the Constitutional provisions.

The Federal law establishes that if there are more than one labor unions within a Mexican firm, the most representative (in terms of number of members) must sign collective agreements. It also did not establish an obligatory secret ballot in the elections of representative, which meant that votes were public. This meant that a company would know which workers were promoting and participating in the creation of a union, and be able to retaliate against them, if they chose to. However, the Supreme Court declared this practice of Vive Voce to be unconstitutional and the 2012 labor reform law established that internal union leadership votes may be held via secret ballot, either directly or indirectly. [[253]](#footnote-253) However, it is unclear whether in fact the practice of Vive Voce has been stopped.

Cardoso concludes that the structure of the union system in Mexico is founded in two main characteristics of the institutional framework: the control exerted by registered unions over the collective agreements, and their representation in the local and national Conciliation and Arbitration Courts.[[254]](#footnote-254) This framework has allowed the creation of a monopoly that captures the representation of workers without their consent. Moreover, the union that has the monopoly has a special relationship with the State, especially with labor authorities. This relationship favors the monopolies in the collective bargaining by exclusion clauses and the seats in tripartite labor administration mechanisms, including labor courts and commissions.[[255]](#footnote-255)

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## 5.2 The Right to Strike

*The Committee has considered that the first obligation of states is to “explicitly recognize the right to strike in its domestic legislation and define the permissible limitations on that right. It encourages the State party to proceed with its initiative to repeal the prohibition of the right to strike for civil servants in the Civil Servants Act.”[[256]](#footnote-256) Furthermore, it is essential “to ensure the correct implementation by employers of its legislation on the right to strike, so as to guarantee its consistency in law and practice with the provisions of article 8 of the Covenant.”[[257]](#footnote-257) All these measures should be in accordance with ILO norms.[[258]](#footnote-258)*

The Constitution recognizes the right to strike (Article 123 XVII). The Constitution considers that strikes are legal when they are held for purpose to find equilibrium between the different factors of production and harmonize the right to work with the capital. Furthermore, if the strike is in the public sector, the workers have the obligation to inform to the authorities 10 days in advance. Finally, the strike will be illegal if most of the strikers commit acts of violence.

The Federal Labor Law regulates the substantive and procedural aspects of the right to strike.[[259]](#footnote-259) However, there has not been a lawful strike in many years. As explained in ILO Case 2694 with regard to the public sector, “the concept is practically dead. That is not to say that there is no strike action in this sector. On the contrary, it could be said that it is the most mobilized sector. The problem is that strike action in this sector is unlawful because the legislation is so restrictive that nobody has faith in it.”

The CILAS report, cited above, reinforces the criticism made by the actors in the case 2694 about the lack of effective guarantees for public employees. The report shows that public employees have “a limited right to strike because they can enjoy the right to strike only in case of general and systematic violation of their rights.”[[260]](#footnote-260) Furthermore, the Committee of Experts on the Application of Conventions and Recommendations has considered that general and systematic violation of rights cannot be the only reason that allows the exercise of the right to strike. In addition, the exercise of the right is the requirement of two thirds of the votes to declare strike. This situation according to the Committee of experts has made the right to strike practice, very difficult.

A final obstacle analyzed in the CILAS report is the existence of legal rules that limit the right to strike when the national economy could be affected. The report recalls that the Committee has concluded that “the requisitioning in strike would only be justified to ensure the functioning of the services that are essential in the strict sense of the term and some provisions that no refer to essential services in the strict sense should be modified.”[[261]](#footnote-261) The report shows in practice the difficulties in exercising the right to strike. According with CILAS report 2011, only 4% of complaints analyzed are related with the violation to right to strike. This situation reflects “the obstacles faced by an organization for the recognition of a union, or all of the problems that workers face against a representation that is not authentic, it prevents the free exercise of trade union activities, and therefore the legitimate use of this instrument.”[[262]](#footnote-262) Many of the cases reported are striking workers whose companies prefer to close and go to another place, to negotiate the terms with the workers.[[263]](#footnote-263) The CILAS report describes 24 cases about negative of juntas de conciliacion y arbitraje to declare the strike legal, detentions of workers in strike by authorities as way to make pressure against the strike; violence against union member that promote legal strikes, among others.[[264]](#footnote-264)

## 5.3. Violence Against Trade Unionists

*The ICESCR Committee has emphasized that states must take measures “to ensure the protection of trade union members and leaders from all forms of harassment and intimidation and thoroughly investigate reports alleging any form of violence.”*[[265]](#footnote-265) *Concretely, the Committee has recommended that states “take legal action against those who are responsible for committing crimes against landless farmers and members of trade unions and to take effective preventive measures to ensure protection to all farmers and members of trade unions.”*[[266]](#footnote-266)

A fundamental obstacle to the realization of labor rights is violence against unionists. There are no statistics about violence against union members. Cilas’ reported 55 cases of violence against union laborers in 2011, including: homicides against representatives of union labor; enforced disappearances of workers; threats against member of union labor negotiating collective agreements or promoting the creation of union labors, pressure of authorities with threats against workers that promote the creation of union labors, among others.[[267]](#footnote-267) According to Matthew McEvoy, although the anti-union violence is not always evident, the threats against members of union workers are constant, and the authorities do not view threats of violence as a form of violence itself. For many public officials, an attack against a union worker is a prerequisite before they will consider the existence of anti-union violence.

According to the 2017 CEACR Observation, there were allegations of the deaths of four members of the National Union of Mining, Metallurgy, Steel and Allied Workers, attacks on trade union action of miners, and the detention of 14 agricultural workers in 2015, as well as other acts of violence against trade unionists. The Committee noted concern over the ITUC and Industriall reports of the arrest of nine trade unionists, in the context of a collective dispute in the education sector in Oaxaca.

# 6. CONCLUSION

Mexico stands at an important crossroads. It has recently, passed significant amendments to the Constitution, disbanding the discredited CABS, and begun the process of putting judicial decision-making in their place. The constitutional amendment also envisages the establishment of independent institutions for registering TU’s. These reforms have been long-awaited, and are essential to Mexico’s compliance with its obligation under the ICESCR. However, they are but the first steps in a process that will require a complete disentangling of unions from government control.

For the constitutional amendment to be put into effect, will require a further amendment of the Labor Law and the enactment of enabling legislation that is both true to the spirit of the amendments, reflects the participation of democratic unions, and is timeously passed. It is imperative that the institutions charged with registering trade unions and the judges that are appointed are independent and free of executive interference, and aware of their constitutional and ICESCR obligations with respect to worker rights. This is particularly significant, given that it is the president and the federal government who are empowered to make these appointments. It is also imperative that effective measures be taken to ensure that the current corruption and institutional dysfunctionality, not be imported into the new institutions.

Mexico amended its labor law in 2012, with the purpose of combatting unemployment and reducing the informal economy. Yet, for it to be fully compliant with its ICESCR obligations to progressively realize the right to work, the measures adopted need to be concrete and targeted and contain both short and long-term benchmarks; and Mexico needs to further take into account the needs of marginalized individuals and groups, such as women and youth and migrant and rural workers. According to the 2017 OECD finding, over half of Mexican women are in the informal economy, with little or no social protection; and, also carry one of the greatest unpaid workloads in terms of childcare and housework.

While the Federal Labor Amendment Act of 2012 aimed to increase productive employment by flexibilizing the workforce - through mechanisms such as outsourcing and the provision of short-term contracts - these measures have only increased contractual insecurity, and militate against the realization of the right to decent work. The modification in the outsourcing is the best example of this type of policy. Despite these limits established in the law to prevent abuses related to outsourcing, employers used outsourcing without any regard for the regulation. Ultimately, the real consequence of the 2012 labor reform is that employers have more avenues to hire workers at lower cost and reduced firing costs. Indeed, according to 2017 figures from the Mexican Social Institute, 89.9% of new jobs created were temporary.[[268]](#footnote-268) Yet flexibility, has been described as “a short word for a shift in costs” and providing temporary or outsourced jobs, implies shifting costs from the employer to the worker. This is exacerbated in in the context of women workers, where this, “shifts the financial costs of childbearing and childcare to households with children or to women themselves.”[[269]](#footnote-269)

In addition, Mexico has a way to go in realizing right to just and favorable conditions at work, both with respect to the minimum wage, which is insufficient to allow a decent living, and is inadequate for the requirements of a minimum level of subsistence, as evidenced by the reality that the current minimum wage of 80.00 pesos, is woefully inadequate of affording the 2016 food basket In fact, Mexico came last amongst OECD countries rated for minimum wage in 2017, and while the Mexican economy grows, real wages have decreased. [[270]](#footnote-270) The underlying issue is that the primary considerations behind minimum wage law are macroeconomic - the government need to guarantee foreign countries low wage workers in Mexico - rather than being predicated on the provision of a decent standard of living for workers. Ultimately this amounts to “an important redistribution of resources from workers to employers through the decline of wages.” And women also lag behind in the formal workforce, where they face labor discrimination, including unequal pay for work carried out by both men and women. Yet the right to non-discrimination is not subject to progressive realization, and is directly and immediately realizable.

Similarly, the collective rights set out in the ICESCR are immediately realizable. Yet the registration of independent Mexican trade unions has been beset with often insurmountable institutional and, procedural difficulties, making nonsense of the right to organize and form unions, entrenched in the ICESCR, as well as Mexico’s own national Constitution. The principal obstacle to the realization of this right is the existence of protection contracts, which allows the employer to enter into a collective bargaining agreement with a trade union, even if it is not truly representative (90% of which are not), and even before the workplace has been set up. Sometimes workers are not even aware of the existence of these collective agreements, to which they are bound. Essentially this prevents future employees from forming democratic unions, that genuinely protect worker rights and interests. The dominance of non-representative unions in Mexico, is not limited to particular workplaces but compromises tripartite forums at every level of government, which then function in the absence workers’ voices, and serves as obstacles to access to justice.

While the 2017 Constitutional amendment entrenches principles of bargaining, which include representivity in the signing, filing and registration of the CBA, and the union must now demonstrate if it has filed a strike notice to oblige the employer to bargain, there is a danger that this will be interpreted narrowly. Indeed, and as a cautionary advisory, even though the current Constitution and the Federal Labor Law recognize the right to strike, the implementing legislation is so restrictive, as to totally undermine the right to strike. In fact, there has not been a lawful strike in Mexico in recent years. Yet the right to strike as understood by ICESCR requires that the right to strike be both recognized in the legal system and effectively implemented under of Article 8 of the Covenant.

These significant structural hurdles to the realization of worker rights, take place against a background of pervasive intimidation, harassment and violence against trade unionists. It also takes place in an increasingly globalized economic universe, fundamentally impacted by the movement of people and capital. The ICESCR Committee has recently made great strides in recognizing that in a globalized world, economic and social rights need to be protected in the context of both migration, international trade and transnational business entities. For Mexico to meet its ICESCR obligations, it too needs to take great strides to ensure that these rights and norms contained in the ICESCR inform its trade agreements, and that Mexican workers are made aware of, and have access to judicial remedies in cases of violations of their social, economic and cultural rights.

# 7. RECOMMENDATIONS

1. **ICESCR and Trade:** Mexican government should respect, protect and fulfil ICESCR rights in negotiating international trade agreements, and ensure that these agreements provide access to effective remedies for violation of ICESCR, including judicial remedies. Mexico should also consider any particular gender impacts of such trade agreements, considering its ICESCR obligation with respect to substantive equality. Since GC 24, envisages that victims should be able to sue a business entity directly, on the basis of the Covenant; Mexico should ensure that workers are able to access courts for these purposes, and are aware of remedies.
2. **Prohibition of labor children**: Although the age limit for work of children was modified to 15 years, this falls short of ICESCR stipulated minimum age of 16 years old (Check). While the number of children reported working in Mexico has decreased, the numbers of children still working exceed one million; and Mexico needs to go further to enforce its obligations. Mexico should be cognizant to the gender dimensions to child labor, including domestic labor.
3. **Slavery and Forced labor**: Mexico falls short of its obligation to eradicate slavery and forced labor and needs to ensure effective implementation of law; and increase investigation, prosecution and sanctions, as well as wider support services to victims of trafficking. It needs to pay particular attention to the forced labor in export oriented farms and factories, and also the informal sector, where women and children are often subjected to servitude.
4. **Domestic Work**: Mexico should, without delay ratify the ILO Covenant 189 provide an adequate legal framework to domestic workers rights, which protects all domestic workers, and guarantees them equal conditions at work to other workers, including adequate pay, hours of work, vacation time, as well as health and retirement insurance, and the collective rights set out in ICESCR. In addition, Mexico should take special measures to establish mechanisms to protect domestic workers from abuse, harassment and violence. Since both the right to form and join a trade union; and the right to fair condition of work, are immediately realizable, Mexico should adopt special measures to assist domestic workers in organizing trade unions so that they can better represent their own interests.
5. **Unemployment:** While unemployment is recognized as a key problem that affects the realization of labor rights and the labor market; and the executive promoted the reduction of unemployment as a relevant goal in the 2012 Labor Law Reform, the measures adopted were focused on creating a flexible environment, providing employers with easier ability to hire workers at lower cost and reduced firing costs. Examples of this are the modification in the outsourcing; the limitation in one year the compensation that a worker can receive after a judge decides that a firing was illegal; the green light for temporary work etc. These reforms have retrogressively and detrimentally affected the right to access to decent work.
6. **Right to Work**: Similarly, the job creation strategy contained in the 2012 labor amendment, does not contain concrete, targeted measures to provide vulnerable populations access to the right to work. According to the OECD, 47% of Mexican women are part of the formal workforce; and over half are in the informal economy, with little or no social protection; and, also carry one of the greatest unpaid workloads in terms of childcare and housework. In order for Mexico to satisfy its obligations under the right to work, it need address the underemployment of women in the labor force; as well as the negative impact of gender stereotypes on equal employment.
7. **Reduce Informality**. The strategies implemented by State have not reduced the level of informal jobs in a significate way. Mexico should take effective measures to address issues facing vulnerable groups, including migrant women, women with disabilities, rural women, elderly women and unpaid domestic child laborer’s.
8. **Minimum wages**. The amount of the minimum salary does not cover the minimum basket of food and services that a family requires. The mechanism of definition each of the salary does not take in account the recommendations that the Committee ESCR has made.
9. **Implementation/ Conciliation and Arbitration Boards**: The crisis in the application of justice and the complex institutional system of labor justice impede the fulfillment of the international obligations. For example, the existence of conciliation and arbitration boards as a tripartite institution responsible for deciding labor conflicts does not guarantee impartial and neutral justice. Although the 2017 constitutional reform is now law, the CAB’s will continue to hear cases and register unions, until the new institutions envisaged by the constitution, are established.[[271]](#footnote-271) Pending the passing of this legislation, it is essential that the government change its approach to existing industrial relations conflicts, and that workers that try to create independent union labor are not victims of threats against their integrity and nor are they are fired or threated with firing.
10. **Constitutional Reform**: It is essential that the institutions that succeed the CAC’s recruit and train, independent-minded, qualified staff; and that there is a concerted effort to ensure that the biases and corruption in the old institutions, not be imported to the new.[[272]](#footnote-272) There are similarly risks inherent in the fact that it is the President and Federal Government, who have been charged with nominating a director for the decentralized agency, which will conciliate in federally regulated industries, and register all trade unions. It is essential that these appointments be conducted in a transparent manner, and the staff appointed be appropriately qualified and trained to understand their ICESCR obligations with respect to the protection, promotion and fulfilment of worker rights.
11. **Implementing Legislation/Constitutional Reform**: It is essential that the implementing laws required to put effect to the constitutional amendments, be passed with public input and participation, and that the voices of independent unions, are included in this process, and that implementing legislation be passed in a timeous manner (Congress at both federal and state level have one year of from the publication of the reform to pass implementing legislation (until February 18th 2018)) and that this law reflects the intent of the constitutional amendment of 2017, to fully respect and implement trade union and worker rights.
12. **The right to form and join the trade union**. The impact of protection contracts in all dimensions of collective labor rights is the foremost obstacle to the freedom to join a union of a worker’s preference and impedes the realization of strikes due to the difficulties in the process to declare them. It is **essential** that the amendments to the labor law, limits the signing of protection contracts, by (a) verifying the existence of a workplace before the registration of the CBA; (b) disseminate copies of union documents (registration, by-laws and CBA’s) to covered workers; and (c) verify the support of at least 30% of covered workers of the union holding the CBA.
13. The solution of this problem will require measures beyond formal reform of labor law. As an example, protection contracts are not sourced in the law. However, the gaps in the legislation and the power of traditional union trades have allowed that employers and corrupts representatives of union trades, with the permission of authorities, develops a model of control of workers and unions that in practice defeats the exercise of collective labor rights.
14. **The right to strike**. The labor law establishes obstacles that impede the exercise of these rights. The process of declaring a strike is beset with obstacles: legal obstacles (the law establishes many requirements to consider a strike as legal), bureaucracy obstacles (Authorities interpret the law in a way that hinder the right to strike and delay the declaration of it in benefit of the companies), and political obstacles (protection union labors attack the workers promoting strikes with the support of police).
15. **Labor Inspections**: The labor inspections do not have the infrastructure and the personnel required to meet their obligations. Further, labor inspections focus their control in big companies, but there are not labor inspections in small and micro companies which do not respect the law and offer poor conditions to the workers. However, the largest number of informal jobs are located in small and micro business, and this has obvious gender implications.
16. **Reservations**: The current reservation under Article 8 of the International Covenant on Economic, Social and Cultural Rights and the weak government efforts to remove it are signals of the unwillingness to comply with the obligations and commitments related to guarantee and protect the right of freedom of association.
17. **Statistics:** Despite the existence of institutions specializing in the construction of statistical data, there is a constant criticism of the lack of reliable data. Furthermore, statistical information appears to be not used in the formulation of strategies.

# 8. PREVIOUS RECOMMENDATIONS established by the Committee on Economic, Social and Cultural Rights to Mexican State after submission of periodical reports

* + 1. Ratification of ILO Conventions

The Committee recommends that the State party consider ratifying the Minimum Age Convention, 1973 (Convention No. 138) of the International Labor Organization (Concluding Observation (CO) 1999. Para 38.). The Committee recommends that the State party consider ratifying ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment and that it accordingly raise the minimum working age from 14 years to the age of completion of compulsory schooling and, in any case, to no less than 15 years. (CO 2006. Para 41).

* + 1. Measures against discrimination

The Committee urges the State party to take effective measures to improve the working conditions of indigenous workers by, inter alia, adopting and/or implementing relevant legislation, enforcing the Federal Act for the Prevention and Elimination of Discrimination and corresponding state legislation, increasing the number and effectiveness of labor inspections in indigenous communities, and by sanctioning employers who violate minimum labor standards. (CO 06 Para 32)

* + 1. Recognition of commitment to full employment

The Committee recommends that the State party gradually regularize the situation of workers employed in the informal sector and to continue and intensify its job placement programs and financial support for persons seeking employment (CO 06. Para 30).

* + 1. Measures related with the construction of public policies of work

It also recommends that the State party extend the competence of the National and State Human Rights Commissions to include considering alleged violations of labor rights (CO 06 para 34).

* + 1. Measures to ensure minimum wage and correspondence with decent living conditions

The Committee recommends that efforts should be made to curb the decline in the purchasing power of the minimum wage (CO 94. Para 11). The Committee recommends in particular that the State party should take energetic steps to mitigate any negative impact that the North American Free Trade Agreement (NAFTA) might have on the enjoyment of the rights set out in the Covenant (CO 94. Para 11). The Committee calls upon the State party to adopt effective measures to guarantee compliance with article 7 (a) (ii) of the International Covenant on Economic, Social and Cultural Rights, which is reflected in article 123.VI of the Mexican Constitution, in relation to the officially set basic food basket. The Committee recommends that the State party ensure that wages fixed by the National Wages Commission or negotiated between workers and employers secure for all workers and employees, in particular women and indigenous workers, a decent living for themselves and their families, in accordance with article 7 (a) (ii) of the Covenant (CO 06 Para 31).

* + 1. Measures to guarantee women rights

The Committee also urges the State party to adopt immediate steps towards the protection of women workers in the maquiladoras, including prohibiting the practice of demanding medical certification that prospective workers are not pregnant and taking legal action against employers who fail to comply (CO 99. Para 37). The Committee urges the State party to amend the Federal Labor Act or other legislation, with a view to prohibiting the practice of requiring non-pregnancy certificates from women as a condition of employment and to sanction employers who fail to comply with these provisions (CO 06. Para 33).

* + 1. Protection of collective labor rights

The Committee calls upon the State party to comply with its obligations under article 8 of the Covenant and to withdraw its reservation made under that article (CO 99. Para 39); to review its labor legislation with a view to removing any restrictions on trade union rights other than those necessary in a democratic society in the interest of national security or public order or for the protection of the rights and freedoms of others (CO 06. Para 34); to consider withdrawing its interpretative statement to article 8 of the Covenant and ratifying ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining (CO 06. Para 34); to implement the judgments of the Supreme Court of Mexico declaring illegal the imposition of a trade union monopoly in the public sector and the “exclusionary clause” providing that only members of the existing union at the workplace may be hired by public or private employers (CO 06. Para 34), and to extend the competence of the National and State Human Rights Commissions to include considering alleged violations of labor rights, and to implement the recommendations concerning trade union freedom contained in the “Diagnosis on the human rights situation in Mexico” elaborated by the office of the United Nations High Commissioner for Human Rights in Mexico (CO 06. Para 34).

# ANNEX

Chart: Assessment of the fulfillment of Mexican State of international obligations established in the International Covenant on Economic, Social and Cultural Rights related with articles 6, 7 and 8 (Right to work)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ARTICLE 6** |  |  |  |  |
| **The right of everyone to the opportunity to gain his living by work which he freely chooses or accepts** |  |  | **Mexican Legal System** | **Reality – context** |
| Main Obligation | Sub-Obligations | Description of the obligations | Resources  Constitution  Federal law  Public Policy   * Program * Plan * Commission * Strategy   Judicial Decisions of Judicial Branch | Resources  Statistics  Analysis of book  Studies  Interviews |
| To prohibit forced or compulsory labour |  |  |  |  |
|  | To eradicate slavery | To implement a National Plan for eradication of slave labour  To impose effective penalties | Constitutional prohibition of slavery  Constitutional prohibition of work without fair wage and consent.  Law to prevent trafficking of persons  National program for prevention, punishment and ending of trafficking in persons | Although the laws, there are not enough enforcement mechanisms to make effective legal system.  Forced labor persists in agricultural, industrial and informal sector. |
|  | To abolish forced labor as a punitive measure for convicts | To ensure the conditions of work of detainees (Fair and just wages and social security benefits)  To apply the ILO Convention No 29 | Mexico ratified ILO convention 29 about forced labor.  Constitution Art 18 stablishes the principle of labor of a guideline in the prison’s management. | National prisons system has serious structural problems. Most prisons enable to comply with training, educational and working programs. |
|  | To prohibit labor of children under the age of 16  To prohibit all forms of economic exploitation and forced labour of children | To take effective legislative and other measures  To ratify ILO Convention No 182 (1999)  To review the legislation in order to prohibit work of children under 15  To monitor child labor affectively  To punish individuals and business that make use of child labour and to institute criminal proceedings  To take measures to rehabilitate children | Mexico ratified ILO Convention 182, but not ILO Convention 138.  Art 123 Constitution reformed in the minimum age for work (15 years). This minimum fulfill ILO standards, but not ICESCR standards (14 years)  Labor law regulates issue: types of jobs, limits hours among others.  There is a policy to prevent child labor. | 3.6 million boys and girls under 17 work. 1.1 million are under 14.  There are not enough enforcement mechanisms to apply the law. |
|  | To protect domestic workers of forced labour | To include the subject of domestic workers in the Labour Code  To undertake measures to eliminate practices amounting to forced labour  To sanction those who violate labour legislation  To adopt remedial measures.  To bring the rights and benefits accorded to domestic workers in line with those afforded to other workers (work for equal pay) | Mexico has not ratified ILO Convention N 189  Constitution describes general aspects that should be regulated by Congress.  Federal labor Law Title 6 Chapter XIII, regulates main aspects of this type of work. Labor law reform in 2012 does not make significant changes.  Art 333 can be a breach of international obligation: limits of the rest hours: 9 hours per day. | 2’200.000 domestic workers  96% of domestic workers do not have a written contract.  Precarious salaries: 64.7% of women workers receive two minimum wages. |
| **Obligations related to achieve the full realization of the right to work** |  |  |  |  |
| To have a National Employment Plan | To combat and reduce unemployment | To ratify ILO Convention No 2 (1919)  To Adopt long-term policies and strategies with an effective monitoring and evaluation mechanism to address the root causes of youth unemployment  To develop, in consultation with civil society, a coherent labour market policy for addressing unemployment  To create high-quality vocational training focused in: long-term unemployed; disadvantage and marginalized individuals and groups, women, young people and foreign workers  To use specifically targeted measures: programs in regions where unemployment is most severe and specific vulnerable groups  To ensure the strict application of anti-discrimination legislation.  To promote youth employment (review training strategy)  To encourage the establishment of small business (creation of accessible credit schemes)  To limit, as far as possible, the use of temporary employment contracts as tools to encourage firms to hire persons belonging to vulnerable groups - such as young people, single parents and persons without professional qualification  To reinforce measures to reduce the proportion of workers on temporary contracts, including strengthening incentives for employers to offer their employees open-ended contracts  To strengthen the measures designed to reduce the percentage of workers hired on short-term contracts and to encourage employers to offer their employees permanent contracts  To stimulate rural development, inter alia, through local employment initiatives  To ensure that its obligations under the Covenant, in particular the right to work, is fully respected in bilateral and multilateral negotiations and official development assistance  To ensure that there is a regular and open dialogue between the Public Employment Service and unemployed persons to take individual needs and concerns into account  To “submit” (have) annual statistics on: general employment situation, disaggregated by sex, age, nationality, disability, and by urban or rural region; concrete measures taken to combat unemployment, and their effectiveness | Mexico has not ratified ILO Convention 2 and 122.  No policy document focused in a National Employment Plan.  Labor Law Reform promoted the creation of a National Productivity Committee.  Plan to democratizing productivity. Focus in economic growth. Attack the disparities in the quality of jobs.  Labor Law Reform:  Modification of temporary employment contracts. It facilitates the fired of workers and reduces workers’ rights.  Aptitude and productivity as criteria for promotion. | Unemployed population 2013: 8´900.222.  Young people and older adults are groups with more precarious jobs.  Labor Law reform legalized new forms of recruitment. (Probationary and training contracts)  Regularization of outsourcing contracts. |
|  | To reduce the informal sector | To increase opportunities in the formal labour market and to take the necessary measures to ensure that workers in the informal economy enjoy basic labour standards.  To increase funding for, and ensure, regularization of the unstructured labour market  To amend its labour legislation in order to combat contractual insecurity, including by reducing the use of temporary contracts and the subcontracting of workers formally employed full time and whose labour contract has ended  To extend the applicability of the minimum wage legislation to those sectors where it still does not apply  To ensure the full protection of workers irrespective of their sector of employment  To afford individual workers the opportunity to register themselves and to subscribe to social security schemes, irrespective of the registration of the employer  To take measures that seek to reduce the vulnerability of the employment sector to economic shocks  To raise awareness among the population that labour rights, and just and favourable working conditions of work in particular, also apply to the informal economy | Main purpose of Labor Law reform was to attack informality of labor market.  Regularization of outsourcing contracts. Defines the limits of this type of contract.  Facilitate the firing of workers.  Limit in 12 months the payment for unjust termination of the labor contract.  Program for formalization of jobs. Strength inter-institutional coordination.  Obligation to create monitoring systems: number of workers registered in the Mexican Institute of Social Security. | Informal employment is estimated 59.1% of total employment (2013). Government reported reduction of informality between 2012 and 2013.  Most informal workers work in small business. |
| Full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. |  |  |  |  |
|  | Obligation to provide information about labor context | To provide extensive gender-disaggregated data in order to facilitate the analysis of trends, progress or worrying tendencies with regard to the enjoyment of economic, social and cultural rights.  To provide statistical data on employment, disaggregated by age, gender, and urban/rural region, national and ethnic origin as well as information on the measures adopted to remedy disparities in regional unemployment rates | Two main institutions responsible: INEGI and National System of Statistic and Information and Geography. |  |
|  | Obligation to implement effective policies to protect the rights of overseas workers | To improve existing services: counselling and medical assistance  To conclude and invoke bilateral agreements with those countries of destination where discriminatory treatment and abuse are more frequent  To provide legal and consular assistance to its nationals seeking justice in case of discriminatory treatment and abuse at the workplace, including rape and sexual violence against women migrant workers, and ensuring that reports are investigated by competent authorities of the countries of destination | Labor Law regulates work of Mexican workers out of Mexico in the article 28.  Conditions of the labor contract.  Secretary of Labor is responsible for the recruitment and selection of workers.  Rules for recruitment and selection for private organizations  Recruitment Agency Regulation |  |
|  | Obligation to protect migrant workers | To ensure strict control over the terms of employment and working conditions of migrant workers by strengthening financial and human resources of the labour inspectorate  To increase the flexibility of the registration and quota system, including by enabling migrants to legalize their stay on a declaratory basis and to obtain work permits for longer periods (three–five years) with the subsequent possibility of the regularization of their permanent residence in the country  Ensure that migrant workers have access to effective appeals against orders of deportation and that detention and deportation of migrant workers are made in full compliance with the human rights obligations  To exercise strict control over private entities to ensure respect for just, equally favourable social and employment conditions for migrant workers  To increase the flexibility of access of migrant workers to the system of social benefits of the State party  To consider ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to adopt and implement an effective integration policy for lawful immigrants | Special Program of Migration 2014-2018. | 961.121 international migrants in 2010.  Migrants workers are more exposed to abuses of labor rights: less payment.  More of migrants work in farms with precarious conditions: no written contracts, 6 days of work per week or more and underpaid.  Significant percentage of migrant child labor. |
|  | Obligation to protect persons with disability | To make all workplaces and educational and professional training institutions accessible for persons with disabilities  To take effective measures to promote the integration of persons with disabilities into the labour market, including by strengthening the system of job quotas for them, or by providing penalty payments for non-employment | Federal Labor Law. Disability  See: Conapred[[273]](#footnote-273)  National Plan discrimination |  |
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| **ARTICLE 7** |  |  |  |  |
| To recognize the right to everyone to the enjoyment of just and favorable conditions of work |  |  |  |  |
| Sub- Obligation to guarantee remuneration to all workers | Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work | To take the necessary measures in order to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living and that the minimum wage standard is effectively enforced  To take effective measures to raise wages  To ensure effective and equal application of its current labour legislation for the protection of the rights of all workers, including migrant workers  To extend the applicability of the minimum wage legislation to those sectors where it does not apply,  To intensify its efforts to enforce legal minimum wages through increased labour inspections and fines or other appropriate sanctions for employers who fail to comply with the minimum wage legislation  To consider giving workers from 18 to 20 years of age the same minimum wage which is given to those beyond the age of 21  Non-regular workers be entitled to: equal pay for work of equal value; adequate social insurance coverage; labour law protection, including severance pay, vacation and overtime; and safeguards against unfair dismissal  To ensure that the minimum wage is effectively enforced and that it provide workers and their families with an adequate standard of living  To undertake comprehensive reform to repeal legal provisions which may perpetuate gender discrimination and empower women through gender-sensitive labour policies aiming at hiring of women to non-traditional professions, enhancing their access to vocational and technical education and ensuring equal conditions of work  To establish a State institution responsible for the promotion and protection of gender equality  To undertake effective measures, including through affirmative action, to improve the working conditions for women and to ensure equal pay for work of equal value, and to ensure that women enjoy full and equal participation in the labour market and in political life  To take all appropriate measures – including temporary special measures, where needed - to promote equality between men and women, improve the employment rate of women, reduce wage differentials vis-à-vis men and increase the percentage of women in high-ranking posts, in the public as well as in the private sector  To implement adopted measures to support the participation of women, including women from ethnic groups, in the workforce and to continue in its efforts to mainstream gender equality across all public policies  To continue strengthening the right to full-time work for women by developing further pro-active measures  To enact legislation criminalizing sexual harassment in the workplace  To include updated statistical data, disaggregated by age, ethnic group, social and other relevant status, on the representation of women in the public and private employment sectors, as well as on the salaries received by women as compared to those received by men for equal work  To undertake a study to determine and evaluate the factors that make it difficult for women to enter and remain in the formal labour market, including sociocultural factors that affect their educational and professional choices  To take effective measures to increase public awareness, especially in the private sector, about the importance of maternity and paternity leaves that reconcile professional and family life for men and women  To continue to educate men and women about equal career opportunities with a view to promoting their pursuance of education and training in fields other than those traditionally dominated by either sex and take specific measures to promote women’s advancement in the labour market  to raise awareness of the illegality of the application of different rates for men and women for work of equal value and of the obligation of employers in this regard to provide accessible and effective remedies in case of discrimination in remuneration  To train labour inspectors in the application of the principle of equal remuneration for work of equal value and take other measures to ensure effective enforcement of applicable legislation  To amend the Federal Labour Act or other legislation, with a view to prohibiting the practice of requiring non-pregnancy certificates from women as a condition of employment and to sanction employers who fail to comply with these provisions  To adopt measures to enforce the principle of equal pay for equal work, enact legislation to strengthen the protection of persons working under atypical employment contracts, and intensify its efforts regarding qualification programmes for women working in low-paid jobs and unemployed women | Federal Labor Law: Prohibition of discrimination by gender. Article 56 establishes principle “same salary for same job”.  General Law for Equality between women and men. It establishes guidelines of National Policy about Equality.  National programme for equal opportunities and Non-Discrimination against women.  Protection for sexual harassment established in General Law on Women’s access to life free of violence. | The gender gap persists.  Women have more part-time positions than men.  Not enough information to determine remuneration gap.  Occupational segregation.  In the poorest sector there is a big gap in the labor market participation between men and women.  The volume of women who are not paid for their works is overwhelmingly superior to men. (Especially in poor sectors) |
|  | To guarantee a decent living for themselves and their families in accordance with the provisions of the present Covenant | To adopt a minimum wage that would enable workers and their families to enjoy an adequate standard of living and to ensure that the minimum wage standard is thoroughly enforced.  To take the necessary measures in order to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living and that the minimum wage standard is effectively enforced  To conduct an urgent review of the current national minimum wage to determine its sufficiency and take the necessary measures to ensure that it provides an adequate standard of living for workers and their families  To take immediate steps to address the low wage levels of public sector employees and, in particular, improve the conditions of work and social protection of employees in the health and education sectors  To provide and regularly update statistical data regarding the basket of consumer goods as a basis for calculating what is required for a minimum standard of living | Mexican Constitution Art 123 A. VI, establishes that minimum wage shall be enough to fulfill normal family needs.  Part VII prescribes principle of equal remuneration for men and women workers for equal value without discrimination based neither on sex nor on nationalism.  Part IX establishes that workers have the right to participate in the utilities of the company.  Federal Labor Law. Art 82-116.  Art 86 about principle of equal remuneration do not met ILO international standards.  National Commission on Minimum Salary is the institution responsible to define salary. Main obligations: decide about amount of minimum wages and makes studies and research about situation of wages.(Determine the basic basket) | The salaries have lost 25% of their value in last 25 years.  Increase in the number of workers that cannot afford the basic food basket with their salary.  The scheme to define wage is discretionary, vertical and authoritarian.  National Commission do not elaborate studies to determine salaries and the minimum wage is determined with the inflation ex-post.  Labor inspections do not enforce the minimum wage. |
| To recognize (guarantee) safe and healthy conditions | To improve conditions | To improve the legislation concerning labour inspections, in particular with regard to the private sector, and to provide more resources to the Labour Inspectorate  To continue its efforts to bring its legislation on occupational safety and health in line with international standards, including the ILO Convention No. 167 concerning safety and health in construction  To take effective measures to prevent accidents in the workplace, including by strengthening the occupational safety and health commissions  To strengthen the regulatory framework by expanding it to cover all occupations, and ensure the application of appropriate sanctions in the event of a failure to observe safety regulations | Constitution. Article 123 XXXI. Authorities responsible to enforce labor law.  Federal Labor law determines concrete authorities responsible for enforcement. Main responsible: Secretary of Labor and Social Security. The labor inspector are part of the Secretary.  IN 2014 was established a new general regulation for labor inspection and application of sanctions. | Disinterest of authorities to make effective employer obligations.  Labor reform increased the amount of fines.  There is no interest in prosecute crimes related with accidents in the work place. |
|  | To guarantee that the measures (legislative) are properly implemented – enforced | To intensify its efforts at ensuring that occupational safety legislation is properly implemented, especially by allocating sufficient resources to the State Labour Inspectorate and imposing effective sanctions with respect to violations of safety regulations  To provide labour inspections with adequate human and financial resources to enable them to effectively combat abuses of workers’ rights  To ensure that labour inspections are carried out regularly in places of work, particularly in the maquiladoras  To ensure that victims of violations are provided with fair and satisfactory working conditions and with the means and information necessary to report violations to which they have been subjected  To increase the effectiveness and transparency of labour inspections and to impose fines or other appropriate sanctions for violations of occupational safety and health standards  to take steps to ensure that private companies actually have occupational medical officers available and to provide information and statistics on conditions of employment and occupational health and safety in such companies | Constitution. Article 123 XXXI. Authorities responsible to enforce labor law.  Federal Labor law determines concrete authorities responsible for enforcement. Main responsible: Secretary of Labor and Social Security. The labor inspector are part of the Secretary.  IN 2014 was established a new general regulation for labor inspection and application of sanctions. | There is a low percentage of workers who claim when lose their jobs (6% in 2000)  High percentage of arbitral awards that never come to fruition.  Labor inspection agencies lack of resources and capacity.  Authorities privilege prevention measures than punitive measures.  The tripartite structure of arbitration boards affects their independence. Specially that these boards are part of executive branch.  The compensations for wrongful dismissal are no met the purpose to deter employers.  Different obstacles to access justice system: high costs, improper legal advice, decisions no founded in law, difficult enforcement of judicial decisions. |
|  | To guarantee safety conditions in specifics industries | To enhance its efforts to reduce the frequency of occupational accidents both on land and at sea by raising awareness of the importance of preventive measures and, in particular, by providing training to seamen in matters relating to vessel stability and the use and treatment of hoisting equipment  To continue to revise mining contracts and to adopt a clear strategy, with the participation of trading companies, to prevent accidents in mines |  |  |
|  | To provide information about measures and improvements | To provide disaggregated figures on the incidence of occupational diseases, showing changes during the reporting period, and refers the State party in this regard to the Committee’s general comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the Covenant), in particular paragraphs 43 and 44 regarding core obligations |  |  |
| To guarantee equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence |  | Not committee recommendations about this obligation. |  |  |
| To ensure rest, leisure and reasonable limitation of working hours and periodic holidays with pay | To establish a maximum number of hours | To introduce a statutory maximum number of work hours.  To protect workers’ right to safe and healthy working conditions and to reasonable limitation of working hours, the State party strengthen measures to prevent long working hours and ensure that deterrent sanctions are applied for non-compliance with limits on extensions to working hours.  To adopt legislation and regulations aimed at prohibiting and preventing all forms of harassment in the workplace | Federal Labor Law. Any clause in the contract that imposes inhuman workday will not produce legal effect.  Maximum legal hours: 48 hours per week and 6 days per week. | Mexico labor journey is one of the longest in Latin America.  25% percent of workers exceed this limit. |
| Sub. To ensure as well as remuneration for public holidays |  | Not committee recommendations about this obligation |  |  |
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| **ARTICLE 8** |  |  |  |  |
| The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests |  | To take immediate legislative or other measures necessary to ensure that all workers, including the subcontracted and temporary ones, are able to exercise their trade union rights  To take measures to enable the development of independent trade unions that are better able to defend their members’ interests  To ensure that the right of everyone, including judges, to form and join trade unions and to take part in trade union activities is respected  To protect in law and practice trade unions’ rights to conduct collective bargaining  To review its labour legislation with a view to removing any restrictions on trade union rights other than those necessary in a democratic society in the interest of national security or public order or for the protection of the rights and freedoms of others.  To consider withdrawing its interpretative statement to article 8 of the Covenant and ratifying ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining  To implement the judgements of the Supreme Court of Mexico declaring illegal the imposition of a trade union monopoly in the public sector and the “exclusionary clause” providing that only members of the existing union at the workplace may be hired by public or private employers  To extend the competence of the National and State Human Rights Commissions to include considering alleged violations of labour rights, and to implement the recommendations concerning trade union freedom contained in the “Diagnosis on the human rights situation in Mexico” elaborated by the office of the United Nations High Commissioner for Human Rights in Mexico  To ensure that the Ministry of Justice and Labour carries out trade union registration procedures with due diligence  To adopt strong measures to protect unionized workers and their leaders from acts of intimidation, including through investigation, legal proceedings and the imposition of penalties on those responsible for such acts  To prevent and punish harassment of members and leaders of independent trade unions  To guarantee plurality and equality of trade unions in law and in practice  To amend its relevant legislation to ensure that collective bargaining is always entrusted to trade unions, where they are established in the workplace  To ensure that compulsory arbitration is restricted to what are known as essential services  To ensure that any wages negotiated in collective agreements must secure workers and employees a decent living for themselves and their families | Constitution recognizes the right of workers to organize in defense of their interest. Also it protects freedom of assembly, association and speech.  Mexico ratified ILO Convention 87, but no ILO Conv 98. Also the country made a reservation in article 8 ICESCR.  Federal Labor Law regulates industrial relation: rules for creation of a union trade and requisites before authorities. | Only 13.2% of subordinated workers are unionized (2012).  Unionized workers decreased 5% in 7 years.  Although Federal Law establishes straightforward process for union obstacles for unions.  The existence of “protection Contract” is the most important feature that impedes the independent realization of collective labor rights. 90% of collective contracts in Mexico City are protection contracts.  The lack of representativeness of the workers is another problem.  There is not statistics about violence against union labor members. |
| The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations |  | Not concluding observations |  |  |
| The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others |  | To expedite ratification of ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize  To consider ratifying the ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining  To remove from its legislation any unjustified registration requirements and grounds for dissolving trade unions  To remove the administrative obstacles to the exercise of the right to organize, including through the prompt issuance of an acknowledgement of receipt for an application to form a trade union.  To remove, in law and practice, obstacles to trade unions’ rights to conduct collective bargaining, and to pay particular attention to the workers’ rights in Special Economic Zones (SEZs) and Export Processing Zones (EPZs).  To take adequate measures to ensure the protection of trade union members and leaders from all forms of harassment and intimidation and thoroughly investigate reports alleging any form of violence  To review the legislation on industrial labour disputes with a view to removing the compulsory arbitration procedure, in conformity with the observations made in 2002 by the ILO Committee of Experts on the Application of Conventions and Recommendations, with reference to ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise  To lift the restrictions on “pattern barging”, the pursuit of multi-employer agreements and matters that are not “permitted”, and to remove the secret ballot requirements for workers who wish to take industrial action  To take legal action against those who are responsible for committing crimes against members of trade unions and to take effective preventive measures to ensure protection to all members of trade unions  To strengthen its efforts to protect trade unionists, by enhancing the National Programme of Protection, and to reinforce the sub-unit which deals with murders and murder attempts against trade unionists in the Attorney General’s Office.  To firmly combat impunity, by investigating all cases, prosecuting and sentencing those responsible, and to compensate victims or their families under the Victims Compensation Fund  To increase penalties applicable to anti-union discrimination, allow trade unions to bring anti-union discrimination claims directly before the courts and ensure that anti-union actions are duly investigated and examined by courts within a short period of time | Constitution recognizes the right of workers to organize in defense of their interest. Also it protects freedom of assembly, association and speech.  Mexico ratified ILO Convention 87, but no ILO Conv 98. Also the country made a reservation in article 8 ICESCR  Federal Labor Law provides rules to promote democracy inside union labors and define the procedure for collective bargaining.  Labor reform made some changes with the purpose to increase transparency and accountability inside union labors.  Supreme Court declared illegal the practice of a voice vote in the elections.  Federal Labor Law established the labor prosecutor as an authority that mediates and represents workers in issues related with labor law. | Mexico’s labor movement suffers a crisis of representation: decreasing of labor unions members, only 7.5% of salaries workers were established by collective bargaining and the limitations imposed by authorities that affect the independence of unions.  There is a corruption problems in part of the labor unions.  The conciliation boards (federal and local level) exert pressure in independent union labor and create obstacles for them.  The process of registration of an independent union labor is very restrictive. The authorities have discretion powers to accept the registration.  The process of taking notes is a tool used by authorities to denied and delay the exercise of union trades.  The lack of plurality of unions labors affect realization of collective rights. Problem related with “protection contracts”  The exclusion clauses is another relevant obstacle for unions labors. Supreme Court declared unconstitutional this clause, but this decision did not affect all the labor system.. The labor law reform modified the article that allowed this clause.  The obstacles in the election of representatives are relevant. Federal Labor Reform allows the secret ballot in elections.  The level of collective bargaining in micro and medium enterprises is declining. The protection contracts affect the collective bargaining. |
| The right to strike, provided that it is exercised in conformity with the laws of the particular country. |  | To explicitly recognize the right to strike in its domestic legislation and define the permissible limitations on that right  to ensure the correct implementation by employers of its legislation on the right to strike, so as to guarantee its consistency in law and practice with the provisions of article 8 of the Covenant  To amend current law with a view to lifting the restrictions imposed on civil servants’ right to join trade unions and on their right to strike, and to clearly define “essential services”  To ensure that the right of everyone, including judges, to form and join trade unions and to take part in trade union activities is respected  The right to strike be incorporated in legislation and that strike action no longer entail the loss of employment  To amend the Trade Unions Act of 2002 in order to allow for the establishment of autonomous trade unions and their federations and to allow local-level trade unions to call a strike without authorization from the higher-level trade union bodies.  Legislation preventing workers from striking be reviewed in the light of the State party’s international commitments and that the requirements for trade union membership be lowered, in order to facilitate more constructive and meaningful dialogue between workers and employers  To ensure that no sanctions involving compulsory labour be imposed for disciplinary offences or participation in peaceful strikes in services other than essential services defined in the strict sense of the term and to amend its legislation accordingly  To Ensure that no sanctions involving compulsory labour be imposed for disciplinary offences or participation in peaceful strikes in services other than essential services defined in the strict sense of the term and to amend its legislation accordingly  To ensure that mechanisms for monitoring conditions at work are provided with sufficient human and financial resources to enable them to protect the rights of workers effectively  To provide detailed information on the restrictions placed on the right to strike under the Labour Code and on the functioning of the tripartite councils in the collective bargaining process, including with regard to those “essential services” for which strikes are prohibited  To review section 381 of the Labour Code, that provides for the possibility of the replacement of striking workers, and section 384 that gives too broad a definition of essential services in which strikes may be prohibited  To limit the scope of its definition of “essential services” and to ensure that the exercise of the right to strike does not lead to the suspension of social security rights | Constitution recognizes the right to strike and lockouts. Define the conditions for legal strikes and the limitations in some sectors.  Federal Labor Law regulates strike in two parts: substantive and procedural. | Federal Labor Law limits the right to strike when the national economy can be affected.  Public employees have enormous obstacles in the realization of right to strike. There has never been a lawful strike.  There are legal obstacles in the process of vote a strike. |

1. This report was based on interviews conducted by Solidarity Center in Mexico with workers, trade union officials, academics and NGO’s; in addition to legal and desktop research. It has benefitted from the incisive comments and suggestions of Jeff Vogt and the keen eye of Matt Hersey. [↑](#footnote-ref-1)
2. OECD Economic Surveys: Mexico 20017 at 14. According to this survey, Mexico is now the 11th largest economy. [↑](#footnote-ref-2)
3. Global Workers Alliance, “Article 28 of Mexico’s Federal Labor Law: Does it Protect Mexican Workers Abroad”, New York (2012) at 5. [↑](#footnote-ref-3)
4. Richard Roman and Edur Velasco, “Introduction: Mexican Workers in the Continental Crucible”, NACLA, Reporting on the Americas Since 1867. [↑](#footnote-ref-4)
5. Guy Rider and Karen Curtis, “Comments to the ILO Committee of Experts on the Application of Conventions and Recommendations: Mexico: Convention on Freedom of Association C87” Industriall 1 September 2016. [↑](#footnote-ref-5)
6. Maquila Solidarity Network, Labour Justice Reform in Mexico (July 2017). The Labor Component of the Reform has not yet been approved. Also Industriall Global Union, “Comments to the ILO Committee of Experts on the Application of Conventions and Recommendations: Mexico: Convention on Freedom of Association C87” Industriall 1 September 2016. [↑](#footnote-ref-6)
7. The Maquila Solidarity Network cite as examples, PKC, an autoparts company in Ciudad Acuna, Coahuila, where workers have been waiting since 2012 for a bargaining rights election; and where worker leaders, fired in 2012, have not been reinstated. They also cite the fact that new employer protection contracts (for example at the BMW plant in San Luis Potosi) continue to be signed behind workers backs. [↑](#footnote-ref-7)
8. There are several books and papers that have compiled and analyzed the obligations of states: M. Magdalena Sepulveda: The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights. 2004. Manisuli Ssenyonjo. Economic, Social and Cultural Rights in International Law. 2009; Olivier De Schutter. International Human Rights Law. 2010; Sandra Liebenberg. The protection of Economic and Social Rights in Domestic Legal Systems. In: Economic, Social and Cultural Rights. A textbook. 2001; David Bilchitz. Poverty and Fundamental Rights: The justification and Enforcement of Socio-Economic Rights. 2007. [↑](#footnote-ref-8)
9. Ssenyonjo. Page 23. [↑](#footnote-ref-9)
10. Ssenyonjo. Page 23. See also Sepulveda 212 who identifies several different dimensions of the obligation of respect: i) the duty to avoid depriving individuals of the possibility to be self-supporting on the basis of their own work ii) the duty to abstain from depriving individuals of the means of subsistence, particularly their land; iii) the duty to abstain from interfering with the enjoyment of the Covenant’s rights; iv) the duty to abstain from enforcing any discriminatory law, policies or practice; v) the duty to abstain from interfering with the provision of services (or direct satisfaction of these rights) provided by others; and vi) the duty to refrain from implementing public policies that affect the enjoyment of economic, social and cultural rights, particularly of the more vulnerable groups within society. [↑](#footnote-ref-10)
11. Ssenyonjo page 25. See also Sepulveda Furthermore, the obligation to protect requires that measures taken by a state be appropriate and, if a private actor causes harm to another person, that the state apply adequate and effective remedies. The duties derived from this obligation are: i) the duty to take measures to prevent third parties from interfering with the enjoyment of the Covenant’s rights; ii) the duty to uphold the principle of non-discrimination in legislation; iii) the duty to take measures to protect vulnerable groups within society (Protection of women, children; iv) the duty to ensure that enterprises (national and transnational) do not deprive individuals of their enjoyment of economic, social and cultural rights; and, the duty to regulate the provision of public services provided by private entities. [↑](#footnote-ref-11)
12. Ssenyonjo page 25. [↑](#footnote-ref-12)
13. Ssenyonjo page 25. [↑](#footnote-ref-13)
14. Sepulveda page 239. [↑](#footnote-ref-14)
15. Id. [↑](#footnote-ref-15)
16. Id. [↑](#footnote-ref-16)
17. General Comment The right to education (art. 13). Paragraph 43. Committee on Economic, Social and Cultural Rights, 1999. [↑](#footnote-ref-17)
18. MAASTRICH GUIDELINES ON VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Mastricht, The Netherlands, January 22-26. 1997. Para 15. [↑](#footnote-ref-18)
19. Sepulveda page 321 [↑](#footnote-ref-19)
20. Sepulveda. Page 354. [↑](#footnote-ref-20)
21. General comment Nº 01 para 4. [↑](#footnote-ref-21)
22. General Comment No 24, para 3. [↑](#footnote-ref-22)
23. General Comment No 24, para 9. [↑](#footnote-ref-23)
24. General Comment No 24, para 13. [↑](#footnote-ref-24)
25. The obligation to protect requires states to adopt appropriate measures (legislative, administrative and educational) to protect against Covenant rights violations linked to business activities, and victims of such corporate abuse have access to effective remedies. See examples in para 18. The obligation to fulfil requires state parties to take necessary steps to the maximum available resources to facilitate and promote the enjoyment of ICESCR rights, “and in certain cases, to directly provide goods and services essential to such enjoyment. “This may involve requiring business to comply with human rights standards. [↑](#footnote-ref-25)
26. Maquila Solidarity Network, Labour Justice Reform in Mexico (July 2017). [↑](#footnote-ref-26)
27. Maquila Solidarity Network, Labour Justice Reform in Mexico (July 2017). [↑](#footnote-ref-27)
28. General Comment N 18 Para 9. [↑](#footnote-ref-28)
29. General Comment N 18 Para 23. See ILO Convention 29, article 2. [↑](#footnote-ref-29)
30. See Ssenyonjo page 297. [↑](#footnote-ref-30)
31. Constitution of Mexico Article 1 Paragraph 2. [↑](#footnote-ref-31)
32. Constitution of Mexico Article 5 Paragraph 5. [↑](#footnote-ref-32)
33. Congress of Mexico. Law to Prevent and Sanction Trafficking in Persons. June 14 of 2012. Chapter 2. [↑](#footnote-ref-33)
34. Law traffic Persons Article 10 part I. Article 11 of the law establishes slavery as a crime. [↑](#footnote-ref-34)
35. Law traffic Persons Article 10 part IV. Article 21 defines labor exploitation as a crime [↑](#footnote-ref-35)
36. Law traffic Persons Article 10 part IV. Article 22 defines forced labor as a crime. [↑](#footnote-ref-36)
37. Congress of Mexico. Law to Prevent and Sanction Trafficking in Persons. June 14 of 2012. Article 84. [↑](#footnote-ref-37)
38. Article 88 defines the functions and competences of the Commission. [↑](#footnote-ref-38)
39. Congress of Mexico. Law to Prevent and Sanction Trafficking in Persons. June 14 of 2012. Article 92. [↑](#footnote-ref-39)
40. Web page of secretary of government, Mexico. Last visited 08/10/2014 <http://www.dof.gob.mx/nota_detalle.php?codigo=5343079&fecha=30/04/2014> [↑](#footnote-ref-40)
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44. US Department of State, Mexico, 2016, Human Rights Report p 32. [↑](#footnote-ref-44)
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65. U.S Department of State Report. Pag 33. [↑](#footnote-ref-65)
66. Concluding Observation Kuwait 2004. Para 210 - Annual Report Committee on Economic, Social and Cultural Rights E/C.12/2004/9 [↑](#footnote-ref-66)
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81. Concluding Observation United Kingdom 2009. Para 247 - Annual report Committee on Economic, Social and Cultural Rights E/C.12/2009/3 [↑](#footnote-ref-81)
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88. Programa para Democratizar la Productividad 2013-2018. [↑](#footnote-ref-88)
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90. Programa para Democratizar la Productividad 2013-2018. [↑](#footnote-ref-90)
91. Programa para Democratizar la Productividad 2013-2018 [↑](#footnote-ref-91)
92. Programa para Democratizar la Productividad 2013-2018. [↑](#footnote-ref-92)
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94. BENSUSAN, Graciela. Reforma Laboral, desarrollo incluyente e igualdad en México. CEPAL. 2013. Page 37. [↑](#footnote-ref-94)
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96. Concluding Observation Norway 2013. Para 8 - E/C.12/NOR/CO/5. Also see Concluding Observation Jamaica 2012. Para 14 - E/C.12/JAM/CO/3-4 [↑](#footnote-ref-96)
97. Concluding Observation Serbia y Montenegro 2005. Para 304 - Annual report Committee on Economic, Social and Cultural Rights E/C.12/2005/05 [↑](#footnote-ref-97)
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100. <http://www.mediasolutions.com.mx/ncpop.asp?n=201209260428402101> [↑](#footnote-ref-100)
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109. BENSUSAN, Graciela. Reforma laboral, desarrollo incluyente e igualdad en México. Cepal. Serie estudios y perspectiva – Mexico – No 143. 2013 [↑](#footnote-ref-109)
110. Work may be considered subcontracted so long as it is not the entirety of the work, it is specialized work, it is not work that other workers in the same place do, and the subcontractor doesn’t use its own raw materials [↑](#footnote-ref-110)
111. Contradicting Articles 13 and 14 which remain unchanged. [↑](#footnote-ref-111)
112. Solidarity Center Report. Page 3 [↑](#footnote-ref-112)
113. The reformed law does not specify which documents the worker must provide, making it easy to argue that the worker has not complied. [↑](#footnote-ref-113)
114. Who determines who qualifies as a “client”? And what prevents an employer from seeking a damaging report from a client in order to prejudice a worker? [↑](#footnote-ref-114)
115. Previously the option of informing the Labor Board was only available if the worker refused to accept the written notice of dismissal from the employer. [↑](#footnote-ref-115)
116. It will no longer automatically be considered an unjust firing if the worker is not informed directly. [↑](#footnote-ref-116)
117. Solidarity Center Report. [↑](#footnote-ref-117)
118. Reinstatement is not, and has never been, a mandatory remedial measure in cases of unjust firing in Mexico [↑](#footnote-ref-118)
119. The document can be seen in: <http://www.stps.gob.mx/bp/micrositios/forma_empleo/Programa%20para%20la%20Formalizaci%C3%B3n%202013%20presentacion%20general%20II%20Trim%202013.pdf> [↑](#footnote-ref-119)
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162. Federal Labor Law. Art 562 [↑](#footnote-ref-162)
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213. Concluding Observation Ukraine 2007. Para 534 - Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2007/03) [↑](#footnote-ref-213)
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215. Concluding Observation on India 2008. Para 280 - Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2008/03) [↑](#footnote-ref-215)
216. Concluding Observation Serbia and Montenegro 2005. Para 305 - Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2005/05) [↑](#footnote-ref-216)
217. Concluding Observation Morocco 2006. Para 304 - Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2006/01) [↑](#footnote-ref-217)
218. Concluding Observation on India 2008. Para 280 - Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2008/03) [↑](#footnote-ref-218)
219. Constitution of Mexico. Article 123 A. XVI. [↑](#footnote-ref-219)
220. The no ratification of ILO convention 98 and the reservation in article 8 ICESCR are related with the article in the labor law about the exclusion clause. This article was eliminated by the reform and right now, Mexico can ratify ILO Convention and retire the reservation of article 8 ICESCR. [↑](#footnote-ref-220)
221. The rate of unionization as a share of the EAP is somewhat higher (10.6 percent in 2006) using the statistics in the National Survey of Occupation and Employment (ENOE), which adopts a different methodology (Salas 2010). [↑](#footnote-ref-221)
222. Dan La Botz, Mexican Labor Year in Review, Solidarity, January 25 2016, http://solidarity-us.org/site/mexican\_labor\_year\_in\_review\_2015. [↑](#footnote-ref-222)
223. USAID Report 2010. Page 16. [↑](#footnote-ref-223)
224. Andrea Penman-Lomeli, “The Fight for Mexican Labor”,10/20/2016, www.jacobinmag.com/2016/10/mexico-unions-cnte-oaxaca-corporatism-pri-nieto/ [↑](#footnote-ref-224)
225. Andrea Penman-Lomeli, “The Fight for Mexican Labor”,10/20/2016, www.jacobinmag.com/2016/10/mexico-unions-cnte-oaxaca-corporatism-pri-nieto/ [↑](#footnote-ref-225)
226. Department of State report on Human Rights 2016. Page 28. [↑](#footnote-ref-226)
227. Department of State report on Human Rights 2016. Page 28 [↑](#footnote-ref-227)
228. CARDOSO. Industrial relations and collective bargain: Argentina, Brazil and Mexico compared. Industrial and Employment Relations Department. Working Paper N° 05. ILO. 2009. [↑](#footnote-ref-228)
229. Case 2694 The Committee of Freedom of Association in its report 364 June 15 of 2012 Paragraph 732, [↑](#footnote-ref-229)
230. Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017) http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\_COMMENT\_ID,P11110\_COUNTRY\_ID,P11110\_COUNTRY\_NAME,P11110\_COMMENT\_YEAR:3297628,102764,Mexico,2016 [↑](#footnote-ref-230)
231. CARDOSO. [↑](#footnote-ref-231)
232. CILAS Report Page 9 [↑](#footnote-ref-232)
233. CILAS Report Page 10. [↑](#footnote-ref-233)
234. ILO Committee of Experts, Direct Requests (CEAR) adopted 2016, published 106th ILC session (2017). [↑](#footnote-ref-234)
235. CILAS Report Page 11. Also ILO Committee of Experts, Direct Requests (CEAR) adopted 2016, published 106th ILC session (2017). According to CILAS (2011) a total of 40 cases granting trade union registration, taking note of, or recognizing an organization of workers were reported during the period under review. See P 70. [↑](#footnote-ref-235)
236. See Maquila Solidarity Network, Labour Justice Reform in Mexico: A Briefing Paper (July 2017) [↑](#footnote-ref-236)
237. Constitution of Mexico. Article 123 A. XVI. [↑](#footnote-ref-237)
238. The no ratification of ILO convention 98 and the reservation in article 8 ICESCR are related with the article in the labor law about the exclusion clause. This article was eliminated by the reform and right now, Mexico can ratify ILO Convention and retire the reservation of article 8 ICESCR. [↑](#footnote-ref-238)
239. The no ratification of ILO convention 98 and the reservation in article 8 ICESCR are related with the article in the labor law about the exclusion clause. This article was eliminated by the reform and right now, Mexico can ratify ILO Convention and retire the reservation of article 8 ICESCR. [↑](#footnote-ref-239)
240. DE BUEN, Carlos. Collective Bargaining agreements for Employer Protection (Protection Contracts) in Mexico. FES. Mexico 2012. [↑](#footnote-ref-240)
241. Bouzas Ortiz, José Alfonso and María Mercedes Gaitán Riveros, “Collective Bargaining Agreements for Protection,” in Alfonso Bouzas,

     *Union Democracy*, México, Economic Research Institute/UNAM, UAM, AFL-CIO, FAT, 2001, pp. 52. [↑](#footnote-ref-241)
242. DE BUEN, Carlos. Collective Bargaining agreements for Employer Protection (Protection Contracts) in Mexico. FES. Mexico 2012 [↑](#footnote-ref-242)
243. DE BUEN, Carlos. Collective agreements. FES. 2012 page 11. [↑](#footnote-ref-243)
244. According with De Buen “it is enough that a union sign a CBA and that one of the parties register it with the Labor Board, for the CBA to be considered in effect, according to Article 390. [↑](#footnote-ref-244)
245. Department of State Report. Page 43 [↑](#footnote-ref-245)
246. A notable example of the proliferation of protection contracts can be found in the stores owned by Walmart, currently the largest employer in Mexico. Although all Walmart workers are formally unionized, studies show that very few of them have any idea that they belong to a union (ProDESC 2008). Moreover, each store (and sometimes different departments within a store) has its own collective contract, giving Walmart the option of closing down any operation in which workers attempt to organize a formal union. [↑](#footnote-ref-246)
247. Department of State Report. Page 42. [↑](#footnote-ref-247)
248. Industriall, Comments to the ILO Committee of Experts on the Applications of Conventions and Recommendations: Mexico - Convention on Freedom of Association C87, 1 September 2016. The Comment lists numerous cases involving protection contracts. [↑](#footnote-ref-248)
249. Industriall, Comments to the ILO Committee of Experts on the Applications of Conventions and Recommendations: Mexico - Convention on Freedom of Association C87, 1 September 2016. [↑](#footnote-ref-249)
250. Industriall, Comments to the ILO Committee of Experts on the Applications of Conventions and Recommendations: Mexico - Convention on Freedom of Association C87, 1 September 2016. The Comment lists numerous cases involving protection contracts. [↑](#footnote-ref-250)
251. Maquila Solidarity Network, Labour Justice Reform in Mexico (July 2017). [↑](#footnote-ref-251)
252. Case 2694. Para 750. [↑](#footnote-ref-252)
253. Department of State Report. Page 42. [↑](#footnote-ref-253)
254. CARDOSO. Industrial relations and collective bargain: Argentina, Brazil and Mexico compa red. Industrial and Employment Relations Department. Working Paper N° 05. ILO. 2009. [↑](#footnote-ref-254)
255. CARDOSO. Page 29. [↑](#footnote-ref-255)
256. Concluding Observation Liechtenstein 2006. Para 131- Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2006/01) [↑](#footnote-ref-256)
257. Concluding Observation Belgium 2007. Para 352 - Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2007/03) [↑](#footnote-ref-257)
258. Concluding Observation Estonia 2002. Para 522 - Annual report Committee on Economic, Social and Cultural Rights E/C.12/2002/13 [↑](#footnote-ref-258)
259. The substantive part defines that a strike is the temporary suspension of work carried out by a coalition of workers (Art. 440) ; the scope of the strike which may include a company or one or more of its establishments (Art. 442); the limits of a strike whose immediate purpose is the suspension of work (Art. 443); provides for the suspension of the effects of labor relations (Art. 447); establishes guarantees for workers when they exercises the right to strike (Art. 449); defines as objective of the strike maintaining the balance between production sectors and the labor force, so that the latter develops in a context of freedom and justice, with a decent job and actually paid (Art. 450); establishes requirements for the suspension of work (451); establishes the conditions to determine when a strike is legally non-existent (459); and defines the event of termination of the strike (469).

     The procedural regulation of the strike establishes: when a strike begins and the requirements to begin; the response required of the employer; the concept of public services for the strike; the hearing conciliation and how to use this institution; the conditions required to determine the absence of strike; the procedure for the declaration of the inexistence of the strike; the test count of workers; acts to perform once declared the lack of legal status to strike; the effect of declaration of the illegality of the strike; and the use of the police. [↑](#footnote-ref-259)
260. CILAS REPORT Page 19. [↑](#footnote-ref-260)
261. CILAS REPORT Page 19. [↑](#footnote-ref-261)
262. CILAS. Report on violation on freedom of association in Mexico. 2011. Page 88 [↑](#footnote-ref-262)
263. CILAS Report Page 88. [↑](#footnote-ref-263)
264. CILAS report Chart I Cases on violations of right to strike. Page 90. [↑](#footnote-ref-264)
265. Concluding Observation Brazil 2009. Para 128 - Annual report Committee on Economic, Social and Cultural Rights (E/C.12/2009/03) [↑](#footnote-ref-265)
266. Concluding Observation Brazil 2003. Para 156 - Annual report Committee on Economic, Social and Cultural Rights E/C.12/2003/14) [↑](#footnote-ref-266)
267. Centro de Investigación Laboral y Asesoría Sindical (CILAS). Reporte sobre violaciones sobre violaciones a la libertad sindical en México. 2011. Chart I. Page 34 [↑](#footnote-ref-267)
268. Cited in Elena Toleda, “Job Creation in Mexico breaks January record despite feud with Trump, Gas Hike, Panam Post Feb 13 2017 https://panampost.com/elena-toledo/2017/02/13/job-creation-in-mexico-breaks-january-record-despite-feud-with-trump-gas-hike/ [↑](#footnote-ref-268)
269. Alvaro Santos, “Three Transnational Discourses of Labor Law in Domestic Reforms” Georgetown Public Law and Legal Theory Research Paper No 10-72; 32 U Pa. J Int’l L 123-202 (2010) at 187. [↑](#footnote-ref-269)
270. Alvaro Santos, “Three Transnational Discourses of Labor Law in Domestic Reforms” Georgetown Public Law and Legal Theory Research Paper No 10-72; 32 U Pa. J Int’l L 123-202 (2010) at 197. [↑](#footnote-ref-270)
271. Maquila Solidarity Network, Labour Justice Reform in Mexico: A Briefing Paper (July 2017). [↑](#footnote-ref-271)
272. Maquila Solidarity Network, Labour Justice Reform in Mexico: A Briefing Paper (July 2017): [↑](#footnote-ref-272)
273. <http://www.conapred.org.mx/index.php?contenido=pagina&id=160&id_opcion=170&op=170> [↑](#footnote-ref-273)