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Justice for All: The Struggle for Worker Rights in Mexico

Lance A. Compa
Cornell University, lac24@cornell.edu

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Justice for All: The Struggle for Worker Rights in Mexico

Abstract
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Keywords
worker rights, Mexico, ILO, Declaration on Fundamental Principles and Rights at Work, social justice, labor movement

Comments

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■ **JUSTICE** for **ALL**

The **Struggle** for **Worker Rights** IN MEXICO

A REPORT BY THE SOLIDARITY CENTER

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JUSTICE FOR ALL

The Struggle for Worker Rights IN MEXICO

A REPORT BY THE SOLIDARITY CENTER

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SOLIDARITY CENTER
1925 K Street, NW, Suite 300
Washington, DC 20006
www.solidaritycenter.org

The American Center for International Labor Solidarity (Solidarity Center) is a non-profit organization established to provide assistance to workers who are struggling to build democratic and independent trade unions around the world. It was created in 1997 through the consolidation of four regional AFL-CIO institutes. Working with unions, non-governmental organizations, and other community partners, the Solidarity Center supports programs and projects to advance worker rights and promote broad-based, sustainable economic development around the world.

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FOREWORD

By **John J. Sweeney**
President, AFL-CIO

The Solidarity Center is launching a new series, *Justice for All: The Struggle for Worker Rights*. This series follows the May 2003 publication of the Solidarity Center's groundbreaking *Justice for All: A Guide to Worker Rights in the Global Economy*. Through powerful first-person narratives, the reports thoroughly examine worker rights, country by country, in today's global economy.

This first report, by renowned worker rights researcher Lance Compa, takes a hard look at Mexico's century-long fight for independent, democratic trade unions and social justice. Compa puts Mexico's labor law and practice to the test against international worker rights standards reflected in International Labor Organization conventions and the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

Between 2001 and 2003, Compa interviewed dozens of workers, union leaders, government officials, employer representatives, and advocates from non-governmental organizations. Their stories inform much of this report.

The report also draws on worker affidavits, complaints and reports to public authorities, labor department and court decisions, and laws and draft legislation. It cites numerous law journal and social science research articles; ILO reports; reports by governments,

This first report, by renowned worker rights champion Lance Compa, takes a hard look at Mexico's century-long fight for independent, democratic trade unions and social justice.

NGOs, and international trade unions; and press accounts of labor issues and disputes.

Worker rights in Mexico came to the international forefront ten years ago, when the U.S., Canadian, and Mexican governments signed the North American Free Trade Agreement. NAFTA proponents promised that the agreement would create new jobs and higher wages for Mexican workers. Mexican and U.S. unions believe that NAFTA has undermined worker rights in both countries. Devaluation of the peso has cut workers' earning power nearly in half. Moreover, the promised jobs are fast disappearing as companies shutter their Mexican operations and move to lower wage countries.

Now there is a proposed new hemispheric trade pact, the Free Trade Area of the Americas. FTAA would expand NAFTA to 34 countries in the Americas, creating the world's largest free trade zone. Many observers fear that FTAA, as presently proposed, would further erode worker rights throughout the hemisphere. Worker rights advocates worldwide are mobilizing to make sure that FTAA will not sacrifice worker protections.

Compa suggests that with an increasingly democratic government, well-enforced labor laws, and strong trade unions, Mexico has the potential to be a leader on worker rights standards among developing countries in Latin America and around the world. As the violations documented in this report make clear, however, Mexico still falls short of international worker rights standards.

From Colonization to the Fight for Social Justice: Mexico's Worker Rights History

Mexico is a federal republic of 33 states and 100 million citizens. Its rich, vibrant culture is shaped by influences that include thousands of years of native peoples' heritage, 400 years of Spanish conquest and colonization, 150 years of independence, and now almost a century following a social revolution that culminated in the landmark constitution of 1917.

With perhaps the exception of the new South African constitution, Mexico has the most progressive social charter in the world. Article 123 of the Mexican constitution guarantees workers the right to organize, the right to bargain, the right to strike, the eight-hour day, overtime pay, profit sharing, paid maternity leave, just cause for dismissal, and other social benefits and protections.

Another obvious and critically important influence on Mexico is its status as a developing country sharing a long border with the United States. The history of U.S. conquest and annexation of one-third of Mexico's national territory in the 19th century resonates deeply among the Mexican people, who remain concerned about subjugation to their giant neighbor to the north.

Movement for Social Justice

For decades, Mexico's political and economic landscape was dominated by the ruling Institutional Revolutionary Party (PRI). The PRI's grip on Mexican life followed the convulsive violence of the Mexican Revolution, in which every successive revolutionary leader was assassinated and 10 percent of the entire population was killed. Order and stability became paramount political values alongside policies characterized as "revolutionary nationalism." These principles reflected both the demands for social justice and the strong assertion of Mexico's distinct national identity and national interest vis-à-vis the United States.

From the time of the Spanish conquest, Mexico's workers have carried on struggles of epic proportions for social justice and worker rights. Mineworkers in times past and present; printers, textile workers, and railroad workers in the 19th century; oil, manufacturing, and public sector workers in the 20th century; maquiladora workers in the late 20th and early 21st centuries—all have mounted dramatic movements, often against great odds, to establish their organizations and secure the benefits of collective bargaining and protective labor legislation.

During the long years of PRI rule in Mexico, many unions were drawn into a classic corporatist relationship with the government and employer associations. Instead of acting independently to carry out programs developed by their members and bargain freely with employers, many unions subordinated their functions to government dictates. In return for seats in Congress set aside for union officials and favored treatment by successive PRI presidents and labor secretaries, union leaders delivered their members' votes to PRI candidates. This system left labor law enforcement in the hands of tripartite boards composed of government,

business, and union representatives committed to the corporatist system. Neutral, independent agencies and judicial bodies were not part of the worker rights picture.

Until the 1980s, PRI governments carried out economic policies broadly associated with the "import substitution industrialization" (ISI) model of economic development. High tariffs kept out imports from other countries and protected domestic industries. The government nationalized key sectors, especially oil resources and production. Private companies had to be majority owned by Mexican investors. For many years, ISI policies resulted in steady growth and rising incomes, and so-called "official" trade unions enjoyed secure, privileged positions of power in the economic structure. Even during this period, however, many Mexican workers created independent trade unions and struggled for a more democratic form of unionism.

Economic Pressure Leads to NAFTA

Mexico's inward focused economy began to stagnate when the fundamental poverty of most Mexicans failed to sustain it. A foreign debt crisis in the late 1980s brought Mexico's predicament to a head. One option for the new administration of President Carlos Salinas, who took office in 1988 in an election widely seen as fraudulent, was to declare a debt moratorium. This would likely provoke an investor boycott and possible economic collapse.

From the time of the Spanish conquest, Mexico's workers have carried on struggles of epic proportions for social justice and worker rights.

Salinas's other choice was to accept the terms of the Brady Plan, a debt-restructuring program authored by U.S. Treasury Secretary Nicholas Brady. Under the Brady Plan, Mexico's creditor banks in the United States and Europe would reduce payment obligations, while Mexico agreed to meet stringent new requirements for economic reform and favorable treatment of foreign investors. Only the resulting boom in foreign direct investment would allow Mexico to repay its debt, regardless of whether or not the boom benefited Mexico's working and poor people.[1]

The pressure of the Brady Plan prompted Salinas to move to negotiations with the United States and Canada on a North American Free Trade Agreement (NAFTA). The three North American countries signed a trade agreement in 1992 under the administrations of George H.W. Bush, Carlos Salinas, and Canadian Prime Minister Brian Mulroney. However, NAFTA did not take effect until 1994 after changes in all three governments.

The delay was attributable to a sharp struggle in the United States, not just over NAFTA itself, but also over NAFTA's social dimension, the North American Agreement on Labor Cooperation (NAALC). After Bill Clinton won the November 1992 election and took office in January 1993, the new administration began negotiations on labor and environmental side agreements with Mexico and Canada. However, instead of having the U.S. Department of Labor, under Secretary Robert Reich, take the lead and invite trade union consultation and participation in the negotiating process, Clinton allowed the U.S. Trade Representative's office, under USTR Mickey

Kantor, to take over side agreement negotiations and marginalize the labor movement. Unions had no voice in crafting the NAALC, in sharp contrast to labor involvement in negotiations for a social dimension in European Union and Mercosur arrangements.[2]

In August 1993, the parties concluded negotiations with final agreements on the NAALC and a companion environmental accord, the North American Agreement on Environmental Cooperation (NAAEC). The labor accord created a secretariat with a modest degree of independence, but subject to oversight by the labor ministers. It set forth "labor principles" that defined the subject matter of the NAALC, and it created a complaint mechanism for private parties to initiate cases under the agreement.

However, the labor principles were divided into three tiers with unequal treatment under the NAALC's review, evaluation, and dispute resolution mechanisms. The lowest tier, with minimal oversight in the form of ministerial consultations, includes what are called the industrial relations principles—the right to organize, the right to collective bargaining, and the right to strike. A middle tier open to evaluation by independent experts includes matters of forced labor, discrimination, and migrant workers' rights. The only labor principles subject to top-tier dispute resolution by a panel of arbitrators are those covering minimum wage, child labor, and job health and safety.

NAFTA locked in place the neoliberal reforms of the 1980s and early 1990s while removing most protections for Mexican small businesses and small agricultural producers.

Instead of creating a dynamic of upward harmonization toward international labor standards, the agreements maintained sovereignty over the substance of each country's labor laws and labor law enforcement system—effectively locking in existing low labor standards. Finally, the NAALC failed to include a strong enforcement mechanism like the one protecting investors and intellectual property holders.

Protecting Corporations at the Expense of Worker Rights

NAFTA locked in place the neoliberal reforms of the 1980s and early 1990s while removing most protections for Mexican small businesses and small agricultural producers. The government ignored warnings from domestic critics that NAFTA's commercial terms, with maximum protection for companies and investors and minimal concern for human rights, worker rights, the environment, and other social needs, would have significant negative consequences. The most devastating have hit Mexico's small farmers, displaced by the hundreds of thousands from their lands and agricultural life by massive imports of subsidized agricultural products from the United States.[3]

Even before NAFTA, large Mexican businesses had already integrated themselves into the U.S. economy, and many U.S., Japanese, European, and other multinational companies had already established extensive operations in Mexico, particularly in the maquiladora factory zones along the U.S.-Mexico border. By 2000, more than one million workers labored in thousands of maquiladora facilities. The changed economic context had

important effects on trade unions. Thousands of unionized workers' jobs in formerly protected sectors disappeared. In the maquiladora zones where thousands of new jobs were created, employers resisted union representation or welcomed only unions that agreed to provide labor peace, not representation for workers. Democratic currents again swelled in the labor movement, sometimes in dissident movements within official unions and sometimes in the formation of new, independent unions and federations.

A New Political Era? The Fight for Worker Rights Continues

Mexico entered a new chapter in its political history with the results of the 1997 congressional election and the 2000 presidential election. In 1997, the formerly PRI-dominated Congress, which had mostly rubber-stamped presidential decisions, became a divided body in which no single party held a majority. It now had to act like a normal legislative body, requiring formation of new coalitions to enact laws.

In 2000, the victory of Vicente Fox, the candidate of the conservative National Action Party (PAN), ended seven decades of unbroken PRI presidential rule. Two noted scholars of the Mexican labor movement described the implications of Fox's victory:[4]

"The ouster from power of Mexico's Institutional Revolutionary Party (PRI) after 71 years promised to rupture the longtime alliance among organized labor, the state, and the PRI. A transition to a democratic political regime would make possible for the first time a shift away from an authoritarian-corporatist system of industrial relations toward a democratic model of labor governance."

But the possibility of a transition toward a democratic model signaled by Fox's election has not been fulfilled. As a conservative, pro-business party, the PAN was not interested in fostering a more democratic, dynamic labor movement that might challenge corporate power. Many of the dominant official unions adjusted their strategic alliances and reached accommodation with the PAN government at the federal level and with PAN and PRI governments in states where those parties prevailed. These trade union and government officials found common cause in holding down wages and controlling worker militancy to keep investors happy.

Despite persisting corporatism in labor relations, many workers and progressive leaders both inside and outside the official labor movement are continuing the fight for independent, democratic trade unions. Most of the cases examined in this report stem from these struggles.

Endnotes

1 On Mexico's acquiescence to the Brady Plan, see Peter T. Kilborn, "How the Mexican Debt Pact Was Achieved," *The New York Times*, July 31, 1989, p. D1; Alejandro Ramos, "Mexico After the Brady Plan: Foreign Investment Is Key," *The Journal of Commerce*, February 16, 1990, p. 8A.

2 An account of NAALC negotiations can be found in Maxwell A. Cameron and Brian W. Tomlin, *The Making of NAFTA: How the Deal Was Done* (Ithaca, Cornell University Press, 2000). The chapter on the NAALC describes how Mexico's trade minister, Arsenio Farrell II, told businessmen that the NAALC was meaningless. For discussions of trade union involvement in EU and Mercosur affairs, see U.S. Department of Labor, *The Social Dimension of Economic Integration* (2000); see also the web sites of the European Trade Union Confederation at www.etuc.org and the Mercosur unions at www.sindicatomercosul.com.br.

3 See Mary Jordan and Kevin Sullivan, "Trade Brings Riches, but Not to Mexico's Poor: NAFTA's Critics Say Pact Has Failed to Improve Lives of Impoverished Majority," *The Washington Post*, March 22, 2003, p. A10.

4 See Graciela Bensusán and Maria Lorena Cook, "Political Transition and Labor Revitalization in Mexico," in Daniel Cornfield and Holly McCammon, eds., *Labor Revitalization*, Vol. 11 in the *Research in the Sociology of Work* series (Greenwich, JAI Press, 2003).

Mexico and International Worker Rights Instruments

Mexico has ratified all the principal United Nations covenants on human and worker rights:

International Covenant on Economic Social and Cultural Rights (ICESCR)

International Covenant on Civil and Political Rights (ICCPR)

International Convention on the Elimination of all Forms of Racial Discrimination (CERD)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Convention on the Rights of the Child (CRC)

In the Americas, Mexico has ratified the principal human and worker rights instruments:

American Convention on Human Rights (ACHR) ("Pact of San Jose")

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")

Mexico has ratified six of the ILO's fundamental conventions reflected in the 1998 Declaration on Fundamental Principles and Rights at Work:

Convention No. 29 on Forced Labor

Convention No. 87 on Freedom of Association and Protection of the Right to Organize

Convention No. 100 on Equal Remuneration

Convention No. 105 on the Abolition of Forced Labor

Convention No. 111 on Discrimination (Employment and Occupation)

Convention No. 182 on the Worst Forms of Child Labor

Mexico has not ratified two of the ILO's fundamental conventions:

Convention No. 98 on the Right to Organize and Collective Bargaining

Convention No. 138 on the Minimum Age for Admission to Employment

Freedom of Association, the Right to Organize, and the Right to Bargain Collectively

Mexico's constitution and laws generally guarantee freedom of association, the right to organize, the right to collective bargaining, and the right to strike. Moreover, the constitution provides for extensive economic and social rights: the eight-hour day, paid maternity leave, profit sharing, minimum wage, overtime pay, housing, vacations, and workplace health and safety.

Labor laws are federal, applying throughout the national territory. However, labor law enforcement is divided between federal and state authorities. Federal authorities apply the law to industries whose scope is national, and state authorities to industries considered more local. Despite their links to the global economy and their centrality in Mexico's economic development strategy, most of the thousands of maquiladora factories in Mexico come under state labor law enforcement jurisdiction. This distinction is important for understanding worker rights violations that occur in many maquiladora zones. Federal and state Conciliation and Arbitration Boards (CABs) enforce labor laws in Mexico. CABs are tripartite entities with representatives of government, management, and labor serving as a quasi-judicial labor court. They decide labor disputes of all kinds—those involving collective matters such as organizing, bargaining, and strike disputes, as well as complaints by individual workers on such matters as overtime pay, seniority violations, maternity leave, unjust discharge, failure to pay proper severance pay, and so on.

The CABs play a key role in unions' obtaining recognition and "title" (*titularidad*), or bargaining rights in a workplace. The boards also intervene directly in collective bargaining negotiations and in strikes.

Worker rights observers often charge that Mexico has great labor laws but does not enforce them. This criticism may be fair as a general proposition, but it needs qualification. Some of Mexico's labor laws actually violate international standards, as seen below in cases before the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) and Committee on Freedom of Association (CFA).

Mexican labor law has no provision for a public registry of trade unions and collective bargaining agreements. Many workers are completely in the dark about whether a union exists at their workplace, or, if they know of the union, they cannot obtain a copy of the collective agreement.

Unlike many developing countries, Mexico has an extensive labor law enforcement capacity and infrastructure. The problem is not that laws are not enforced at all. More often, the problem is one of selective enforcement, with tripartite labor law authorities favoring unions subservient to federal or state government policies and disfavoring independent unions and dissident worker activists and supporters.[1]

The discrimination that dissident and independent trade unionists face is exacerbated by the preva-

lence of "exclusion clauses" in collective bargaining agreements. The Federal Labor Law allows employers and unions to insert exclusion clauses into collective agreements. These clauses require workers to be members of the union before an employer may hire them, making the union in effect the hiring agent for the company. Exclusion clauses also require an employer to dismiss any worker expelled from union membership. Most unions' bylaws authorize expulsion of members who join or support other unions. Using the exclusion clause, incumbent unions can force the dismissal of workers who run afoul of union leadership.

In April 2001, the Mexican Supreme Court ruled that using exclusion clauses against dissidents violated workers' right to freedom of association. However, under Mexico's judicial system, several more such rulings are necessary to make them binding precedent and to force a change in the law and an end to the practice. In the meantime, many unions still use the exclusion clause to get rid of workers who challenge them.[2]

Many workers are completely in the dark about whether a union exists at their workplace.

Convention No. 87 on Freedom of Association and Protection of the Right to Organize

Mexico has ratified Convention No. 87. The CEACR, which oversees the performance of countries that have ratified ILO conventions, has singled out several aspects of Mexico's labor legislation as violations of Convention No. 87, including:

- The prohibition against the coexistence of two or more unions in the same state agency.
- The prohibition against a public employee trade union member from resigning union membership (as distinct from any continuing obligation to pay union dues).
- The prohibition against re-election of public employee trade union officers.
- The prohibition against public employees' unions joining federated organizations with other unions.
- Restrictions on freedom of association for bank workers and their unions.
- The prohibition against foreigners being members of trade union executive bodies.
- Restrictions on the right to strike of public employees and bank workers.

The ILO notes the significance of a 1999 Mexican Supreme Court decision upholding the ILO's position that these elements of Mexico's Federal Labor Law *Apartado B* (part B, on public employees) violate Convention No. 87. In that decision, the Supreme Court of Justice ruled that the federal labor law's requirement for a single trade union monopoly in each federal agency, without the possibility of workers' forming another union of their own choosing, as well as the mandate of the same monopoly for a single federation of public employee unions, violates Mexico's own constitutional guarantee of freedom of association and its obligations under Convention No. 87, whose ratification by Mexico makes it part of national law.

The CEACR stated, "The Committee once again expresses the firm hope that the Government [of Mexico] will take measures to repeal or amend these legislative provisions with a view to bringing them into line with [the Mexican Supreme Court's ruling]." On the violation of bank workers' right to strike, the CEACR said, "The Committee therefore once again requests the Government to take the necessary measures to amend the provisions which are in violation of the Convention, so that the legislation is explicitly adjusted to reflect national practice and the principles of freedom of association."[3]

Notwithstanding the Mexican Supreme Court's ruling and the CEACR's repeated admonitions, Mexico has failed to revise laws establishing trade union monopoly in the public sector, prohibiting foreigners from serving as trade union officers, and prohibiting re-election of public employee trade union officers. In fact, Mexico has not revised a single aspect of federal labor law repeatedly found to be in violation of Convention No. 87 for the past 30 years, and it has failed to revise aspects of the law found to be unconstitutional by Mexico's own Supreme Court.

The Mexican Supreme Court has found that national law violates both the international norm and the national constitution. A more serious example of a government's disdain for its international obligations and its own domestic judicial authority is hard to imagine.

This is not a situation where a country's supreme court has found that national law overrides ILO obligations under a "later-in-time" doctrine or other theory under which national law may supersede international norms. Here, the Mexican Supreme Court has found that national law violates both the international norm and the national constitution. A more serious example of a government's disdain for its international obligations and its own domestic judicial authority is hard to imagine.

Convention No. 98 on the Right to Organize and Collective Bargaining

Mexico has not ratified ILO Convention No. 98. However, like all ILO member countries, it is obligated under the ILO Constitution to adhere to the substantive provisions of the Convention.[4] The ILO Committee on Freedom of Association oversees adherence to non-ratified core conventions. The CFA receives complaints against countries for violations of Conventions Nos. 87 and 98, regardless of ratification, and issues authoritative findings of compliance and non-compliance with these conventions.

Violations of ILO Conventions

The CFA has repeatedly found Mexico in violation of Convention Nos. 87 and 98:

- In a 1995 case on workers' efforts to form an independent trade union in the Environment, Natural Resources, and Fisheries Ministry, the CFA noted that "it is impossible for public service workers to set up trade union organizations of their choice outside the established union structure."[5] The CFA requested the Mexican government—"as the [CEACR] has been doing for several years," it added exasperatedly—"to take the necessary measures to ensure that both in law and practice public service workers can freely establish and

join independent trade unions of their own choosing . . . ."[6]

- In a 1999 case involving the denial of the right to organize, the right to bargain collectively, and the right to strike for instructors at CONALEP, the National College of Technical Occupational Education, the CFA concluded that without these rights, and "contrary to the Government's statements," the teachers' association "does not allow them to defend and promote the interests of their members in a valid and effective manner from the standpoint of the requirements of Convention No. 87 and the principles of freedom of association in general."[7]
- In a 2001 case involving dismissals of dozens of airline pilots who voted for an independent union in the Aviacsa airline, the CFA noted "the high number of dismissals in the context of a collective bargaining dispute and that the Government merely points out the existence of the possibility of taking legal action." The CFA asked the government "to ensure that the relevant inquiries are conducted immediately" and "to consider the possibility of ensuring the reinstatement of these workers as soon as possible." As of late 2003, the fired workers had still not had their cases resolved.[8]

The U.S. State Department's 2002 *Country Report on Human Rights Practices* noted several serious problems with Mexico's performance on workers' freedom of association, the right to organize, and the right to bargain collectively. The report pointed out obstacles to independent union formation, noting that the labor department and labor boards "occasionally have withheld or delayed registration of unions [and] also have registered unions that turned out to be run by extortionists or labor racketeers falsely claiming to represent unions."[9] As noted above, Mexico's labor boards that grant registration and the authority to bargain contracts are tripartite bodies with government, business, and labor representatives. The tripartite arrangement is part of Mexico's long-standing corporatist system that maintained tight government control over many aspects of civil society. The tripartite boards favor official, pro-government, pro-employer unions against independent organizations chosen by workers. As the State Department's report noted, this approach "can sometimes lead to unfair partiality in representation disputes."

"Sometimes" is an understatement. The iron triangle of government, employer, and official union control over workers' organizing and collective bargaining still prevails in most jurisdictions, especially in states with high concentrations of maquiladora factories. State governments have important authority over labor law and labor relations matters in Mexico. In many states, the governor and the state administration openly favor investors, executives, and pro-government, pro-employer unions over independent worker organizations.[10]

The problems documented by ILO committees, the International Confederation of Free Trade Unions (ICFTU), the U.S. State Department, and independent NGOs cluster around the single greatest deficiency in Mexico's fulfillment of international norms on workers' freedom of association: the continued entrenchment of undemocratic unions not chosen by workers, not representative of workers, and not responsive to workers. Some such unions reflect

official unionism that is the legacy of corporatist links to the PRI during its seven decades of authoritarian rule over the Mexican body politic.[11] The PRI was unseated in the 2000 presidential elections, but many corporatist unions deftly recalibrated their political links to find accommodation with the new PAN administration.

This situation does not mean that all unions affiliated with the traditional corporatist union sector are undemocratic and unresponsive. Many official union affiliates and many local trade unions within official unions are democratically run and do a good job bargaining for members. The same can be said in reverse for the independent union sector: some of these unions fall short of the virtues claimed for their independent status. However, many worker rights violations in Mexico arise from ongoing conflicts between authoritarian, pro-government, pro-business unions associated with the corporatist tradition and independent, democratic unions struggling to bring genuine representation to Mexican workers.

The other brand of undemocratic unions in Mexico is the unions that exist on paper and nominally hold collective contracts with employers, but serve only the interests of employers and corrupt individuals who administer these paper unions for their own pecuniary gain. Real trade unionists call them "protection unions" because they protect employers from authentic self-organization and free collective bargaining by workers. Experts have estimated that some 90 percent of all collective agreements filed with the Mexican labor department are fraudulent "protection contracts" (*contratos de protección*) or "pretend contracts" (*contratos simulados*) meant only to block real unions from forming.[12]

The State Department's human

Experts have estimated that some 90 percent of all collective agreements filed with the Mexican labor department are fraudulent "protection contracts" or "pretend contracts" meant only to block real unions from forming.

rights report noted, "[P]rotection contracts, to which the workforce is not privy, are used in the maquila sector and elsewhere to discourage the development of authentic unions. These contracts are collective bargaining agreements negotiated and signed by management and a representative of a so-called labor organization, sometimes even prior to the hiring of a single worker."

The ICFTU described the "protection contract" system in its 2003 *Annual Survey of Violations of Trade Union Rights*:[13]

"Establishing an independent trade union, in other words a union that is not controlled by the employer, can resemble an obstacle course. The difficulties associated with obtaining legal status are used by the government to deny a union the right to register or to give preference to a particular union leader over another. Employers themselves sometimes set up a union, although workers may not even know there is one in their factory, because there are no meetings, no elections, and no collective bargaining. In practice, deficiencies in the Federal Employment Law have been exploited to create false collective agreements called 'protection contracts.' These contracts consist of an agreement whereby the company pays a monthly sum to the union. In exchange, the union guarantees social peace. Blacklists of trade unionists' names regularly circulate in the factories."

The ICFTU hardly exaggerated the problem. In 2002 the head of one of Mexico's largest employer federations, Canacintra, brazenly announced plans to create an Internet blacklist of workers and trade unionists deemed "conflictive" who should be denied employment in maquiladora factories. The criteria for designation as "conflictive" included trade union organizing, asking for higher wages, and seeking better working conditions.[14]

In its 2003 annual *World Report*, Human Rights Watch also pointed to the protection contract problem:[15]

"Legitimate labor organizing activity continued to be obstructed by collective bargaining agreements negotiated between management and pro-business unions. These agreements often failed to provide worker benefits beyond the minimum standards mandated by Mexican legislation, and workers sometimes only learned of the agreements when they grew discontented and attempted to organize independent unions. Yet when workers sought to displace non-independent unions, they ran the risk of losing their jobs. For example, efforts to form independent unions in factories that produced for the Alcoa corporation in Piedras Negras, Coahuila, failed in October when management fired independent union leaders, elected in March, in one plant, as well as a slate of independent candidates who had announced their intention to run in future union leadership elections in another plant."

An experienced labor lawyer and advisor to the conservative PAN gave an extended account of the

corporatist system under state governments in a March 2003 interview, confirming that state governors and official union leaders are in a tight alliance with companies to establish and maintain unions that will control workers' demands and meet employers' demands.

"Potential investors sit down with people from the governor's economic development office. If it's a major company or a large factory coming in, the governor himself comes to the meeting. The governor tells the company, 'This is the union you will have, and this union will make sure you don't have any labor troubles.'

"Usually, Mexican labor lawyers who advise foreign investors have already explained how the system works. Sometimes they have to spend a lot of time convincing investors that they should accept a union because the union will control the workers, not challenge the company. Then, even before the plant opens, the company signs a collective agreement with the chosen union just listing the legal minimums, and the contract is deposited with the state labor department. The plant opens, and workers don't even know that they have a union and a contract. The company just pays the union directly for what amounts to union dues.

"With the guarantee of a protection contract, companies often fail to provide decent wages and conditions or training and upgrading of workers' skills. Problems start coming out—low wages, dangerous conditions, bad food, forced overtime, harassment, and other abuses. Workers start to organize a union so they can bargain for improvements.

"Now the workers learn that they already have a union and a contract. Sometimes the official union representative will start to come around and fix a few little things to cool things off. If the workers persist and try to register their union with the state labor board, they run into the next big obstacles. First, the employers often fire the organizing leaders and force them to take a small severance payment so they have money to live on. They could challenge their firings at the state labor board, but these tripartite bodies have seats for governor's political party, the state employers' federation, and the official union federation. Procedures there are a black hole of delays and runarounds, so fired workers usually have no choice but to take their severance pay and look for another job.

"If the firings don't deter workers and they still try to register their independent union and obtain a vote to change unions, the same labor board ties them up in delays for many months and into years. If a vote finally takes place, it is by open, oral, voice vote by each worker going past a threatening mass of thugs brought in by the official union to intimidate them, and appearing individually at a table where state government, official union, and company management representatives take their votes. Those workers who dare to say they favor the independent union are often fired, and they face the same problems as the leaders fired before."

This analysis of the pattern of violations of workers' freedom of association in Mexico comes from a moderate labor lawyer not associated with more radical labor advocates. He puts his evaluation in the context of Mexico's development needs for

Complicated rules on strike votes, advance notice, timing, picket line conduct, and other variables allow the Conciliation and Arbitration Board to declare a strike "illicit," "illegal," "unjustified," or "nonexistent" on the flimsiest of pretexts.

greater productivity and labor-management cooperation. This system must be challenged and changed, he argued, "because only with freely chosen unions can workers negotiate pay raises linked to increased productivity, with greater skills training and opportunities for advancement."

The Right to Strike

Mexico's constitution guarantees workers' right to strike, and federal labor laws on their face provide ample protection of the right to strike. No-strike clauses are not permitted in collective bargaining agreements. Sympathy strikes and secondary boycotts are allowed. Not only is it forbidden for employers to hire replacement workers, but also employers must cease operations when workers declare a strike. Strikers are allowed to take control of company premises, with the legal obligation to preserve and protect the employer's assets and to maintain minimum operations and services to the extent necessary for such protection and for public welfare.

Despite these guarantees, government enforcement of labor laws has more often stifled workers' right to strike than protected it. Complicated rules on strike votes, advance notice before striking, the timing of a strike, picket line conduct, minimum operations and services, and other variables allow the CAB with relevant jurisdiction to declare a strike variously "illicit," "illegal," "unjustified," or "nonexistent" on the flimsiest of pretexts. Any of these findings halts a strike and requires workers to return to their jobs or face dismissal. The government also has ample powers to effectuate a *requisa*, a takeover and continued operation of a business facing a strike.

Federal and state governments, acting through their controlled, tripartite CABs, broke many strikes in the 1980s and 1990s as pro-investor policies took hold. Such government-sponsored strike-breaking was especially prevalent in industries with traditionally strong unions that resisted successive governments' neoliberal economic policies. In 1987 and 1988, the last years of the presidency of Miguel de la Madrid, the federal CAB declared strikes by AeroMéxico airline workers and by workers at the Ford Motor Co. assembly plant in Cuautitlán, near Mexico City, illegal. Similar findings broke strikes at the Modelo Brewery in Mexico City in 1990, again at the Ford Cuautitlán plant in 1990-1991, and at the Volkswagen assembly plant in Puebla in 1992, all under the presidency of Carlos Salinas. President Ernesto Zedillo broke a strike by flight attendants at Aerovías de México airline in 1998.[16] In the final weeks of the Zedillo administration, the government broke a strike by workers at the big Volkswagen plant in Puebla by ruling that the strike began at 12:01 a.m. rather than 12:00 midnight.[17]

Some developments early in the presidency of Vicente Fox hinted at a shift in the Mexican government's traditionally heavy-handed intervention against workers' right to strike. Strikes at AeroMéxico and at Volkswagen were allowed to run their course without government

action to end them. The strikes were settled quickly with good gains for workers and expressions of satisfaction by management. It remains to be seen whether these incidences signal a fundamental change in Mexico's policy toward free collective bargaining and the right to strike.[18]

Pending Labor Law Reform Proposals

In early 2003 the Mexican Congress began considering proposals for the first substantial changes to labor law in more than 30 years. While the outcome of congressional debates remains uncertain, the two proposals reflect many issues that this chapter addresses.

The Abascal Proposal

The first reform proposal was submitted by Labor Minister Carlos Abascal with support from the main employer federations and the official union hierarchy. Independent union forces strongly opposed the Abascal proposal, with good reason. The proposal would establish in law even more systematic violations of workers' freedom of association. It would tighten government control of union formation and collective bargaining while granting employers new unilateral powers to sidetrack unions. Instead of responding to calls for a judicially independent labor authority, the proposal would keep the corporatist tripartite labor boards made up of government, management, and official union representatives.

Requiring every worker's name and address and making this information immediately available to management and to an incumbent official puts all workers at the risk of reprisals and would have a chilling effect on workers' freedom of association.

The Abascal proposal would do nothing to increase transparency in union affairs. It rejects independent unions' long-standing demand to list local unions and collective bargaining agreements in a public registry available to all citizens. The Mexican government accepted management lobbyists' risible argument that collective bargaining agreements are "business secrets" that should not be publicly disclosed.[19]

The Abascal proposal would also create enormous obstacles to workers' right to organize. First, it would tighten jurisdictional rules defining which labor organizations can represent workers according to craft, enterprise, and company. The effect would be to "lock in" bargaining monopoly by incumbent official unions and insulate them against challenges from independent unions.

Finally, the Abascal proposal would require prior disclosure of the name and address of every worker who joins an independent union, then have the federal or state labor board with jurisdiction in the matter investigate each worker's signature. Under current law, only the leaders of an independent union movement in a workplace have to take the risk of identifying themselves when they seek registration. Requiring every worker's name and address and making this information immediately available to management and to an incumbent official puts all workers at the risk of reprisals and would have a chilling effect on workers' freedom of association. In addition, the proposal would shift the burden of proof in individual discharge cases, making it more difficult for workers who suffer

reprisals for independent organizing efforts to defend themselves in unfair dismissal cases.

The Alternative Labor Reform Bill

In April 2003, a coalition of legislators introduced an alternative labor reform bill that corrected many of the flaws noted above. The April bill contained these elements:

- A public registry of trade unions, their constitutions and bylaws, and collective bargaining agreements, administered by a decentralized independent body along the lines of the respected Federal Election Institute.
- Eased jurisdictional rules that would allow workers in different crafts, enterprises, and industries to opt for independent union representation.
- Secret ballot elections by rank and file members for union leadership.
- Secret ballot elections for choice of union representation.
- Prohibitions and legal penalties against employers and labor officials involved in protection contracts.

The April reform proposal also addresses employer and union concerns to achieve more modern and efficient operations. It would promote bargaining over productivity and profit sharing, with companies providing more information to workers and their representatives. It would grant more flexibility in setting work schedules, combining job descriptions, promoting employees on the basis of their ability as well as seniority, lengthening probation periods, and other goals long sought by employers in Mexico. However, such changes would have to be negotiated with workers' unions, not imposed unilaterally.

The outcome of these initiatives has not been settled. Midterm elections in 2003 did not dramatically alter the balance of power in Congress in a way that would accelerate labor law reform measures. The PRI gained seats, but none of the three major parties holds a legislative majority.

Whether or not Congress acts on labor law reform before the presidential campaign cycle gets underway in advance of 2006 elections is still an open question. However, pressure continues on Mexico from the business sector and from neoliberal economists and international funding agencies to weaken collective bargaining and worker protection laws.

At an October 2003 conference, one economist told assembled executives, bankers, and government officials that Mexico's progressive Article 123 of the Constitution is "obsolete," an obstacle to growth because it stresses social equality rather than productivity. Instead, he argued, labor law reform should "punish the mediocre and reward those that achieve." A World Bank official concurred, saying labor law reform should "redistribute workers," not redistribute wealth.[20]

Endnotes

1 For more detail, see Jerome Levinson, "NAFTA's Labor Side Agreement: Lessons from the First Three Years" (Washington: Institute for Policy Studies and International Labor Rights Fund, November 21, 1996).

2 See José Antonio Torres, "Los sindicatos se dispersan por libre asociación de obreros," *Spanish Newswire Services*, April 19, 2001.

3 See Observation of the ILO Committee of Experts on the Application of Ratified Conventions and Recommendations (2001).

4 Furthermore, under the 1998 Declaration on Fundamental Principles and Rights at Work, Mexico has committed itself to respect the principles and rights enshrined in Convention No. 98.

5 See *Report No. 300* of the ILO Committee on Freedom of Association, Mexico (Case No. 1844), May 31, 1995.

6 Id.

7 See *Report No. 326* of the ILO Committee on Freedom of Association, Mexico (Case No. 2013), February 18, 1999.

8 See *Report No. 329* of the ILO Committee on Freedom of Association, Mexico (Case No. 2136), June 14, 2001.

9 See U.S. State Department *Human Rights Country Reports 2002*, Mexico, Section 6 (a) (2003). For reasons unknown, the 2002 report eliminated language from the 2001 report explaining that authorities denied union registration to unions "hostile to government policies, influential employers, or established unions." This is an essential problem of freedom of association in Mexico: authorities' favoritism toward unions friendly to government policies and influential employers, and authorities' reprisals against independent unions that challenge government policies, influential employers, and pro-government, pro-employer unions.

10 For a technical description of Mexico's labor laws and labor law system, including the division of jurisdiction between the federal government and the states, see Secretariat of the Commission for Labor Cooperation, North American Commission for Labor Cooperation, *Labor Relations Law in North America* (Washington, D.C. 2000).

11 See Kevin J. Middlebrook, *The Paradox of Revolution: Labor, the State, and Authoritarianism in Mexico* (Baltimore, Johns Hopkins University Press, 1995).

12 See José Alfonso Bouzas, "Contratos colectivos de protección y el proyecto official de reformas laborales," in *Reforma Laboral: Análisis crítico del Proyecto Abascal de reforma a la Ley Federal del Trabajo* (UNAM 2003), pp. 97-115.

13 See ICFTU, *Mexico: Annual Survey of Violations of Trade Union Rights* (2003).

14 See Norma Patino Villalobos and María Esther Rodríguez, "La Canacintra busca fichar a trabajadores 'conflictivos,'" *Novedades*, February 28, 2002.

15 See Human Rights Watch, *World Report 2002*, available online at www.hrw.org/wr2k3/americas8.html.

[16] On these strikes, see Kevin J. Middlebrook, *The Paradox of Revolution: Labor, the State, and Authoritarianism in Mexico* (Baltimore, Johns Hopkins University Press, 1995); Maria Lorena Cook, "Mexican State-Labor Relations and the Political Implications of Free Trade," *Latin American Perspectives*, Vol. 22, No. 1 (Winter 1995); Dan LaBotz, *Mask of Democracy* (Boston, South End Press, 1992); Aviation Daily, "AFA Claims Mexican Abuse of Power in AeroMéxico Flight Attendant Strike," September 14, 1998.

[17] See "VW Seeks Strike Ruling from Mexican Court," *Los Angeles Times*, August 23, 2000, p. C-4; James F. Smith, "Mexico VW strikers Yield to Order but Signal New Stance for Unions," *Los Angeles Times*, August 24, 2000, p. C-1; Geri Smith, "Mexican Workers Deserve Better Than This," *Business Week*, September 11, 2000, p. 127.

[18] On these strikes, see Tim Weiner, "Attendants Accept 9.5% Raise And End Strike at AeroMéxico," *The New York Times*, June 4, 2001, p. C2; Chris Kraul, "Mexico's Unions Gain Muscle With VW Strike," *Los Angeles Times*, September 9, 2001, p. Business 1.

[19] On this point, see Arturo Alcalde, "Reforma laboral: Una iniciativa para fortalecer el corporativismo," in *Reforma Laboral: Análisis crítico del Proyecto Abascal de reforma a la Ley Federal del Trabajo* (UNAM 2003), p. 23.

[20] See John Nagel, "Economists Say Labor Rules Drag Down Mexican Economy," BNA *Daily Labor Report*, October 14, 2003, p. A-6.

Discrimination in the Workplace

Mexico has ratified ILO Convention No. 111 but has failed to stop a continuing blatant violation of workers' right to be free of discrimination in the workplace: testing women workers of childbearing age for pregnancy and punishing those who test positive. This practice is widespread, especially in the maquiladora factories. Employers refuse to hire applicants on the basis of their pregnancy status. Employers either find pretexts to dismiss current employees who are pregnant, or else transfer them to undesirable shifts or jobs to pressure them to quit work.

This form of discrimination against women workers has been the subject of analysis and reports by the ILO, the U.S. State Department's *Country Report on Human Rights Practices*, independent human rights organizations, and bodies created by the NAALC.

The CEACR has repeatedly dealt with pregnancy discrimination in Mexican maquiladora factories without obtaining satisfactory responses or action from the government. In 2000 the CEACR reminded Mexico that the Committee "had requested the government to . . . take action to end these practices . . . but observes that the Government's report contains no information on definite measures adopted or envisaged to investigate, penalize or eradicate such practices."

In its 2000 statement, the CEACR emphasized:

"Discriminatory practices against women workers in export processing zones continue to occur. For example, women are required to provide urine samples and, during the probationary period, provide proof to the enterprise of the continuation of their menstrual cycles. . . . According to the report of the Inter-American Commission on Human Rights . . . export processing zones impose pregnancy tests on women as a condition of employment and deny them work if the result is positive. In some cases, if a woman becomes pregnant shortly after she begins to work in the plant, she may be mistreated and forced to leave the job for that reason. . . ."

The CEACR spelled out in detail the steps that the Mexican government should take to halt this violation:[1]

"The Committee trusts that the Government will take appropriate measures to investigate and eliminate such discriminatory practices and thus bring their legislation and practice into conformity with the Convention; these measures could include, for example, sending a clear message to employers and workers to the effect that all action taken with a view to requiring women to undergo pregnancy tests constitutes discrimination based on sex; taking measures to penalize employers who persist in imposing such discriminatory practices; establishing of effective mechanisms of prevention, complaint, investigation and compensation where appropriate and, to this end, strengthening the labor inspection services and involving the bodies specialized in promotion and prevention, application and moni-

toring of the principles of the Convention."

In 2002 and 2003 the CEACR took special note of "allegations received over various years concerning a series of systematic discriminatory employment practices in export processing zones (the maquiladora industry). These practices discriminate against women by requiring pregnancy tests and other discriminatory practices as a condition for access to employment in maquiladoras. These practices are also carried out against women already employed in maquiladoras."[2] The CEACR noted the Mexican government's claim of addressing the problem through consultations, information campaigns and the like, but expressed doubt, accompanied by impatience, whether these mechanisms dealt with the pregnancy discrimination problem:[3]

"With reference to its previous request, the Committee once again asks the government to indicate whether the seminars, meetings and conferences, the Action Plan 'More and Better Jobs for Women in Mexico,' and the awareness campaigns on labor rights and obligations for women, undertaken by the General Directorate of Equality and Gender, include the problem of compulsory pregnancy tests as part of the recruitment procedure, especially in export processing zones."

Female job seekers in Mexico cannot rely on the government for protection from discrimination in the workforce.

The CEACR concluded that steps like these, whatever their long-term value, did not go to the heart of the problem:

"The Committee once again reiterates that the alleged practices referred to above constitute discrimination in employment and occupation on grounds of sex and requests the government to take appropriate measures to investigate and eliminate such discriminatory practices. In this context, it requests the Government to amend the Federal Labor Law to explicitly prohibit discrimination based on sex in recruitment and hiring for employment and in conditions of employment."

The government of Mexico has ignored the CEACR's recommendations, apparently bowing to the lobbying influence of maquiladora factory owners with a direct economic stake in continued discrimination against women workers.

The U.S. State Department's 2002 *Country Report on Human Rights Practices* addressed the question of sexual harassment against women in these terms:[4]

"The Federal Criminal Code includes penalties for sexual harassment, but victims must press charges. Many female victims were reluctant to come forward, and cases were difficult to prove. Sexual harassment in the workplace is widespread. In May 2001, the Human Rights Commission of the Federal District (CDHDF) estimated that at least 80 percent of the women who work in Mexico City have experienced sexual harassment."

On pregnancy discrimination, the State Department said this:[5]

"Labor law provides extensive maternity protection, including 6 weeks' leave before and after childbirth and time off for breast feeding in ade-

quate and hygienic surroundings provided by the employer. Employers are required to provide a pregnant woman with full pay, are prohibited from dismissing her, and must remove her from heavy or dangerous work or exposure to toxic substances. To avoid these expensive requirements, some employers, including some in the maquila industry, reportedly violate these provisions by requiring pregnancy tests in preemployment physicals, by regular examinations and inquiries into women's reproductive status (including additional pregnancy tests), by exposing pregnant women to difficult or hazardous conditions to make them quit, or by dismissing them."

The pregnancy testing practice was revealed in a landmark 1996 report by Human Rights Watch, working in collaboration with Mexican women's rights groups.[6] Their interviews with hundreds of women workers from dozens of factories, the majority of them owned by U.S.-based multinational companies, confirmed the widespread abuse of pregnancy testing to deny employment and to get rid of pregnant workers.

When I was asked for a urine sample, I asked what that sample was for. The nurse told me that it was for pregnancy tests. And, playing around, I asked, "And if I'm pregnant?" She replied "Well, we will kick you out of here," which means that I would be fired.

An important follow-up Human Rights Watch study in 1998 showed that the pregnancy testing practice continued unabated, despite public pronouncements by many U.S. companies that they were shocked to learn that pregnancy discrimination was going on in their factories and that they would halt the practice. Instead, Human Rights Watch concluded, it was still "rampant."[7] As for action by the Mexican government:

"Rather than condemn such practices, the Mexican government has taken every opportunity to interpret and apply labor law in a way that most favors the discriminatory practices of the corporations and affords women the least amount of protection. In fact, the government has even gone so far as to excuse publicly this discrimination. The Labor Department of the state of Baja California, which is charged with enforcing the federal labor code at the state level, issued a press release . . . indicating that pregnancy testing in the hiring process was legal and was in fact a corporation's fulfillment of an authority granted to it by the labor law. . . . Since the Mexican government does not consider the determination and use of pregnancy status in the employment process to violate its federal labor code, the government in fact ignores the most pervasive and openly practiced type of sex discrimination that exists in that sector: hiring-process sex discrimination. Female job seekers in Mexico cannot rely on the government for protection from discrimination in the workforce. . . . By failing to address and remedy these practices, the Mexican government not only violates its own domestic laws prohibiting discrimination and guaranteeing the protection of women's reproductive health, but also fails to fulfill its international human rights obligations to protect those under its jurisdiction from human rights abuses. . . ."

The NAALC Pregnancy Discrimination Case

Human Rights Watch and allied NGOs in the United States and Mexico filed a complaint with the U.S. National Administrative Office (NAO) under the NAALC, citing its Labor Principle 7 on the elimination of employment discrimination. The NAO held a public hearing in San Antonio, Texas, where many worker witnesses testified about their experience. María Vázquez Pérez[8] stated that she was required to fill out a questionnaire that included ". . . a series of questions that had nothing to do with body illnesses but rather with the private issues of life, which I felt were very intimate and that had nothing to do with my need or my skill in performing a job. These questions basically were my last menstruation, sexual activity, [and] birth control methods as well as questions on the [number] of children that one had."

She added that she found this experience to be "humiliating because they invade the most intimate part of a woman."

Ana Rosa Rodríguez testified that she underwent a physical examination shortly after beginning work in a maquiladora factory:

"The doctor, who no longer works at the company, carried out the exam, which was basically a urine sample, blood sample, as well as blood pressure testing, clinical information, your health, which is part of the exam. He asked me questions on my sexual activity, the use of birth control methods, and the date of my last menstruation. When I was asked for the urine sample, I asked what that sample was for. The nurse told me that it was for pregnancy tests. And, playing around, I asked, 'And if I'm pregnant?' She replied 'Well, we will kick you out of here,' which means that I would be fired."

Dulce María González testified that at her medical examination, she was asked ". . . if I was pregnant and the last date of my menstruation. They also asked me if I was sexually active and what kind of birth control methods I was using. At the end of the interview [on] the medical background, the nurse gave me a form and said, 'Sign it.' I asked her what I was going to sign and why. She said that it was a letter stating if I became pregnant during the hiring period of three months, I would be automatically fired."

The U.S. NAO recommended ministerial consultations in the case, which led to conferences, research reports, and "outreach initiative" on women workers' rights. However, this process failed to bring about action called for by Human Rights Watch's recommendations and by the CEACR. Mexico has failed to change the law where necessary and to effectively enforce the law where needed to put an end to widespread discrimination against women workers in the maquiladora factory zones.

Equal Pay for Work of Equal Value

The CEACR stated that in the maquiladora factories, "Most [women] are concentrated in the lower wage scales. For example, women account for 22 percent of managerial posts, compared with 55 percent of jobs as general workers, and their wages are lower than those of men at all levels."

The CEACR called special attention to ICFTU comments on equal pay for work of equal value. It asked the government to indicate whether it intends to adopt legislation on this principle. The CEACR noted "with regrets" that the government merely reiterated earlier pro forma comments on this point and reasserted that Mexican laws "do not apply in full the principle set out in the Convention." It went on to say, "[T]he wording of the national legislation is inadequate for the application of the principle of equal remuneration to work which is of equal value but of a different nature." The CEACR insisted that "for the legislation to be in conformity with the Convention, it should give expression to the principle of equal remuneration for work of equal value."

The U.S. State Department said:

"The Constitution and labor laws provide that women shall have the same rights and obligations as men, and that 'equal pay shall be given for equal work performed in equal jobs, hours of work, and conditions of efficiency.' However, women in the work force generally are paid less than their male counterparts and are concentrated in lower-paying occupations. In February, [the government] said that the top 10 percent of highest paid men earn 50 percent more than the top 10 percent of highest paid women, and that the bottom 10 percent of the lowest paid men earned 25 to 27 percent more than the bottom 10 percent of the lowest paid women."

The 2003 Anti-Discrimination Law

In an encouraging development, President Fox signed on June 9, 2003, a new Federal Law to Prevent and Eliminate Discrimination. Approved by Congress in April without a single dissenting vote, the law obligates federal authorities to apply all measures and resources in their power to halt discrimination within their own agencies and in the

public policy arenas where they have enforcement jurisdiction. Categories of discrimination covered by the new law include ethnic origin; sex; age; disability; and social, economic, or health condition. Moreover, the new law requires authorities to adhere to obligations under international treaties and conventions on discrimination ratified by Mexico. These include ILO Convention Nos. 100 and 111 and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The law calls for the creation of a National Council for the Prevention of Discrimination to oversee its implementation. The council is supposed to draft regulations and set penalties for violations. However, law is written in general terms and does not specify penalties or grant the council true enforcement powers. It remains to be seen whether labor authorities will apply this new law against employers who require pregnancy tests or who discriminate against women in the workplace. The head of the labor committee of the Mexican employers' federation declared that "this new law will not have a big impact on the labor sector."[10]

Endnotes

1 See ILO Committee of Experts on the Application of Conventions and Recommendations, Observation and Direct Request, Convention No. 111, Mexico, 71st Session (2000).

2 See ILO Committee of Experts on the Application of Conventions and Recommendations, Observation and Direct Request, Convention No. 111, Mexico, 73nd Session (2002). In its 2003 Individual Observation the CEACR also noted the Mexican government's failure to reply to the ICFTU's comments about widespread discrimination against indigenous peoples, their lack of employment opportunities, and job advertisements seeking persons "under 35 years of age, of light skin, and who are physically attractive."

3 Id.

4 See U.S. State Department *Human Rights Country Reports* 2002, Mexico, Section 5 (2003).

5 Id.

6 See Human Rights Watch, *No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector* (1996).

7 See Human Rights Watch, *A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector* (December 1998).

8 At their request, the women workers who testified at the public hearing used pseudonyms.

9 See ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation Concerning Convention 100, Mexico, 74th Session (2003).

10 See John Nagel, "Mexico's President Fox Signs New Anti-Discrimination Law," *BNA Daily Labor Report*, June 11, 2003, p. A-4.

Child Labor, Forced Labor

In 2000, Mexico ratified ILO Convention No. 182 on the Worst Forms of Child Labor. It has not ratified Convention No. 138 on the Minimum Age for Admission to Employment. Mexico has ratified both ILO conventions on forced labor, Nos. 29 and 105.

Child Labor

As in nearly all developing countries as well as in sectors of the U.S. economy, child labor is a serious problem in Mexico.[1] The Constitution prohibits children under 14 years of age from working. Children of 14 or 15 years can work in non-hazardous daytime jobs with their parents' permission and a certificate from the labor department.

Child labor in violation of the law is not a widespread problem in higher-end formal sector employment in large and medium-size companies. Factory owners usually hire workers 16 and older and require permits for any 14- and 15-year-old workers they hire. Workers interviewed at the Matamoros Garment factory in Puebla state said that management sent home the few sub-16 workers at the plant when auditors from Puma Corporation visited the factory in late 2002, because Puma's code of conduct called for no child workers under age 16. However, the workers said that the sub-16 employees did have parental permission and work permits from the labor department.

Mexico has adopted laws and regulations to prevent child labor and devotes resources to enforcing them. Enforcement is reasonably effective in the formal sector where an inspection and citation system can operate. However, most child labor is dispersed in agricultural regions and in city streets and micro-employment settings, overwhelming the child labor law enforcement system. The U.S. State Department's 2002 *Country Report on Human Rights Practices* summed up the situation in the rest of the economy this way: "Enforcement was inadequate at many small companies and in agriculture and construction. It was nearly absent in the informal sector, and the Government's efforts to enforce the law stalled."[2]

As president-elect, Vicente Fox was embarrassed by media exposés in 2000 disclosing that children under 14 were working on his family's ranch in San Cristóbal, Guanajuato. Children 11 and 12 years old earned $7 a day harvesting onions, potatoes, corn, peas, broccoli, and squash for export to the United States.[3]

The U.S. State Department asserts, "Reliable current statistics on child labor in the country do not exist." However, a number of sources provide well-researched estimates of the extent of child labor. A 1998 report by the U.S. Department of Labor, based on a survey by Mexico's National Institute of Statistics, Geography, and Data Processing (INEGI), estimated that more than one million children ages 12-14 were employed—17 percent of the children in that age range.[4]

A 2000 UNICEF report estimated that approximately 1.5 million children work in Mexico's agricultural

sector, especially in the northern states that ship products to the United States.[5] A number of these areas face labor shortages after many young men have migrated to the United States, making child labor sometimes a matter of family survival.

In comments to the CEACR, the ICFTU referred to reports suggesting a total of approximately 5 million working children, 2 million of whom are under 12 years old. The majority of working children work for or with their parents and relatives, often in agriculture or informal urban activities such as street vending. Some children are occupied as beggars.[6]

Other sectors with high concentrations of child labor include marketplace and construction site moving and hauling, kitchen help, fireworks manufacturing, brick making, home-based apparel work, and other low-end, mostly informal work settings. Mexico's family integration office estimates that some 135,000 children work long hours in the streets of Mexico City without a fixed wage. Most are migrants from the countryside whose parents are unemployed. Many are entirely separate from their families. The ICFTU indicated that the national education authority reported that 1.7 million school-aged children cannot receive an education because their poverty forced them to work. The ICFTU also stated that in the particular case of indigenous children, access to education is poor, because education is generally available only in Spanish and many indigenous families speak only their native languages. In its 2003 observation on Convention No. 182, the CEACR asked the government to reply to the ICFTU's comments.[7]

Working children themselves poignantly express the child labor problem. "I learned how to make bricks when I was little," said Maribel Esquivel, looking over her shovel at her job in a brick-making quarry in Ixtapaluca, near Mexico City. Maribel is 12 years old. She began work at the brick quarry when she was 8—the age of her younger brother working at her side.[8]

"I work six hours a day, from six in the morning until six at night," said Amador, one of thousands of children who labor in Mexico City's Central de Abastos, the huge central market. With no schooling, Amador cannot accurately calculate his working hours. He has no fixed employer at the market. He hustles for work carrying customers' purchases to their cars, making between $3 and $10 a day. Asked about his hopes for the future, Amador replied, "More work, here, the same."[9]

Forced Labor

Mexico does not engage in government-sponsored forced labor. The Constitution and laws prohibit forced or bonded labor. However, enforcement capacity does not match the scale of the problem. The U.S. State Department's 2002 *Country Report on Human Rights Practices* cites trafficking of child workers, migrant workers, and sex workers as "a serious problem." The report points to "credible reports that police, immigration, and customs officials were involved in the trafficking of such persons."[10]

A 2001 UNICEF report estimated that 16,000 children were victims of sexual exploitation, including prostitution. The U.S. State Department described their plight:

"In many cases, those who brought them in[to] the country promised them employment in legitimate occupations. Thereafter they were

sold to the owners of bars and other establishments and then forced into prostitution to 'pay off their debts.' This debt peonage often never ends because the children accrue more debt for their meals and housing. The owners sold or traded the children among themselves. Other children were transported to Mexico City for 'training' and then were sent to centers of tourism. Some children are trafficked to the U.S. and Canada."

Prison Labor

One key issue within the ambit of forced labor analysis is the growing use of prison labor in Mexico. It is generally recognized in national and international law that prisoners may be put to work for rehabilitative or punitive purposes, or on products or services used internally by government authorities. However, ILO Convention No. 29 (which Mexico ratified in 1934) is decisively clear that any prisoner engaged in labor may not be "hired to or placed at the disposal of private individuals, companies, or associations" (Article 2).

Indeed, Articles 4, 5, and 6 of ILO Convention No. 29 repeatedly underscore that prison labor production cannot be put to private use in the larger stream of commerce in competition with products and services provided by free labor. In direct violation of these strictures, however, Mexican prison labor is increasingly being put at the disposal of private companies. In 2001 the prison director of Tamaulipas state invited Mexican maquiladora factories to set up shop inside the state's 11 prisons.[11] One furniture manufacturer took up the offer and began making chairs and tables for a Texas restaurant chain. Workers make less than $5 a day with no benefits, and it is self-evident that absenteeism and employee discipline are not concerns. Imports of products of prison labor are prohibited under U.S. law; the Texas importer would not confirm his

purchases on the record, stating, "I'm afraid U.S. customs would ruin it."[12]

Allowing prison labor of this type also clearly runs counter to the NAALC's labor principles, which Mexico is "committed to promote." Labor Principle 4 calls for "the prohibition and suppression of all forms of compulsory labor, except for . . . work generally considered acceptable by the Parties, such as . . . prison labor *not for private purposes*. . . ." However, as with child labor, the worker rights advocacy community has not initiated NAALC complaints on prison labor in Mexico, nor on child labor and prison labor in the United States, which are also susceptible to scrutiny under the NAALC.[13] A general lack of confidence in the NAALC based on the meager results of earlier cases on freedom of association, discrimination, minimum wages, health and safety, and migrant workers' protection hinders initiatives on other issues.

Endnotes

1 On child labor in the United States, see Lee Tucker, *Fingers to the Bone: United States Failure to Protect Child Farmworkers* (New York, Human Rights Watch, 2000).

2 See U.S. State Department *Human Rights Country Reports* 2002, Mexico, Section 6 (d) (2003).

3 See "Family of Mexico's President-Elect Hired Young Children for Ranch Work," Associated Press wire report, September 2, 2000.

4 See U.S. Department of Labor, *Efforts to Eliminate Child Labor*, Vol. 5 in the *By the Sweat and Toil of Children* series (1998).

5 Cited in U.S. State Department *Human Rights Country Reports 2002*, Mexico, Section 6 (d) (2003).

6 See ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation Concerning Convention 182, Mexico, 74th Session (2003).

7 Id.

8 See Susan Ferriss, "For Mexico, Child Labor Remains a Rampant Reality," *Austin-American Statesman*, October 16, 2000, p. A1.

9 See "A Mexican Child's Dream: More Work," Agence France-Presse wire story, November 17, 2000.

10 See U.S. State Department *Human Rights Country Reports* 2002, Mexico, Section 2 (d), 6 (f), (2003).

11 See "Jailhouse Economics," *The Daily Texan*, August 2, 2001.

12 See Julie Watson, "Mexicans Tout Prison Labor to U.S.: Companies Told They 'Will Save Tons of Money,' " *Chicago Tribune*, December 4, 2002, p. 8.

13 See, for example, Lee Tucker, *Fingers to the Bone: United States Failure to Protect Child Farmworkers*; Gordon Lafer, "Captive Labor," *The American Prospect*, Sept.-Oct. 1999, p. 66; Rodney Ho, "Mr. Schwab Is Putting His Inmates to Work for the Private Sector," *The Wall Street Journal*, July 22, 1999, p. A10; Edward Wong, "Behind Bars and on the Clock," *The New York Times*, June 6, 2001, p. C1.

Promises Unfulfilled? The Future of Worker Rights in **Mexico**

Mexico's labor laws and enforcement capacity hold the potential for making it a model of effective protection of worker rights by a developing country engaged in the global economy. However, Mexico has not fulfilled this promise.

The criticisms contained in this report are not meant to condemn Mexico for gross violations of human and worker rights on a level seen in some other countries. Independent unions, collective bargaining, and strikes are not illegal. Shadowy death squads do not systematically assassinate trade union leaders and activists. Ten-year-old children are not working in export factories. Armed forces do not compel thousands of workers to labor at the point of a bayonet.

Even the main problem identified here—the continued entrenchment of a corporatist labor system constraining official unions to pro-government, pro-employer positions while independent unions face discriminatory obstacles—is a complex one. Official unions make up the major part of the labor movement in Mexico, and many of their leaders are elected, legitimate actors who believe that close ties to government at both federal and state levels, as well as to employers who provide investment and jobs, best serve their members' interests. Moreover, within this official labor movement, some individual unions and leaders are seeking a more independent course.

But Mexico should not be—nor would one expect that it would want to be—measured against the worst worker rights violators and let "off the hook" on core labor standards just because it is better than the worst offenders. The standard of measurement is contained in the substance of core labor standards and in the careful calibration of those standards by international organizations, especially over many decades by the CEACR and CFA. On this count, the violations of workers' freedom of association described in this report find Mexico falling short of international standards.

Another measurement could be Mexico's own potential for becoming a standard setter among developing countries in Latin America and around the world. Mexico has many advantages for creating a system of respect for workers' basic rights: an increasingly democratic government and an increasingly independent judiciary, professional civil service and labor law enforcement mechanisms, strong trade unions, employers with capacity to change, robust civil society, and other assets. Mexico can become a model of economic growth with social justice and respect for worker rights.

Mexico and Trade Agreements

Whether Mexico moves toward greater compliance with international worker rights standards is still an open question. Worker rights advocates are concerned about the Mexican government's position against including worker rights in trade agreements beyond NAFTA. In particular, Mexico has opposed strong worker rights provi-

sions in a hemispheric trade pact. A free trade agreement of the Americas (FTAA) might supersede NAFTA and make the NAALC a dead letter. Under a hemispheric accord, Mexico would lose its privileged position in trade with the United States and Mexico under NAFTA. But it would also escape scrutiny for worker rights violations, raising the possibility of a new clampdown on independent unions that challenge employers' unilateral power in the workplace.

An important signal of Mexico's fulfillment or rejection of core labor standards will come in months ahead as the three NAFTA partners refine their positions on linking worker rights and trade in hemispheric negotiations. If Mexico persists in opposing such linkage, advocates can conclude that it is walking away from its obligations to comply with international worker rights norms. If instead Mexico promotes a viable worker rights provision in a hemispheric pact with strong, enforceable labor standards, it will earn new respect for its commitment to social justice in the global economy.

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Taking Steps to Reform the NAALC

In the same connection, whether or not negotiations go forward on an FTAA, Mexico could engage its NAFTA partners in negotiations to strengthen the NAALC. Reforming the NAALC can take the following shape:

- Eliminate the "three-tier" division of worker rights, which excludes certain violations from the full range of treatment under the NAALC, to make all violations subject to review, consultation, evaluation, and arbitration. (Currently, violations of rights to organize, bargain, and strike are not subject to evaluation or arbitration, and violations of rights involving forced labor, discrimination, equal pay, workers' compensation, and migrant labor are not subject to arbitration.)
- Require public hearings and public participation in all proceedings by an NAO, an Evaluation Committee of Experts (ECE), and an arbitral panel. (Now only the U.S. NAO requires public hearings as part of its review process, and there are no requirements for public participation in ECE and panel proceedings.)
- Require all public hearings and other means of public participation to be held at sites most convenient for petitioners.
- Specify that an adverse inference may be made in the preparation of an NAO, ECE, or arbitral panel report against private parties who refuse to participate in public hearings or in ECE or panel proceedings. (Most companies involved in complaints to date have simply refused to participate, with no consequences.)
- Strengthen the independent role of the Commission for Labor Cooperation's Secretariat, requiring release of all Secretariat reports except for material error of fact. (Reports have been held up for political reasons.)
- Provide adequate funding for the Secretariat and for ECEs and arbitral panels. (The Secretariat's budget is incapable of sustaining large-scale research or supporting the work of an ECE or arbitral

panel, which come from the Secretariat budget.)

- Specify that a substantial portion of the Secretariat's budget must be devoted to cross-border educational work such as conference support and research grants to trade unions and NGOs.
- Negotiate a code of conduct for companies that operate in two or more NAALC countries, modeled on the codes already recognized by the United States, Canada, and Mexico in the Organization for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.
- Require a labor information audit by companies operating in two or more NAALC countries that would report annually on their North American operations, whether under their own corporate name, wholly or partly owned subsidiaries, joint ventures, or other corporate forms, with information about their employment relations and labor practices.
- Make parent or partner corporations liable for worker rights violations of subsidiaries or joint venture companies—eliminate the "corporate veil" defense against worker rights violations.
- Create a private right of action that would allow workers and unions to bring legal actions for violations of the NAALC's labor principles against employers in the courts of any of the NAALC countries.
- Require targeted trade sanctions (i.e., loss of favorable NAFTA tariffs) against companies found liable under domestic law for repeated violations of NAALC labor principles or of a code of conduct created under the NAALC.

Recent Case **Studies**

K&S Harnesses

K&S Wiring Systems Inc. is a U.S. subsidiary of Japanese-owned Sumitomo Wiring Systems, Ltd., with headquarters in Murfreesboro, Tennessee. K&S makes wire harness products for the automotive industry, principally Nissan, in the central Mexican city of Aguascalientes. An affiliate of the official corporatist union federation held bargaining rights for workers at the factory. This official union took out union registration and held "title" (*titularidad*) to the collective agreement under the state labor board, although labor matters in the automobile sector are supposed to come under federal jurisdiction. The official union also registered with the federal labor department. It became clear that this dual registration was purposely designed to thwart independent union organizing.

The official union did not defend workers' interests at the K&S factory. In 1998, workers sought a new bargaining representative, the Metal, Steel, and Iron union (STIMAHCS). STIMAHCS is an affiliate of the Authentic Labor Front (*Frente Auténtico del Trabajo*, or *FAT*). The FAT is an independent labor organization with a reputation for democratic governance and strong bargaining for its members.

In August 1998, STIMAHCS filed a demand for a *recuento* (an election to decide which union should bargain for K&S workers) with the state labor board of Aguascalientes. The state board first called for a complete list of STIMAHCS members at K&S. This was a highly unusual demand; normally, only a list of union officers and governing board members is needed. STIMAHCS submitted the list in a sealed envelope with assurances from the state board that the names would remain confidential.

Shortly after STIMAHCS delivered the membership list, top K&S personnel officials called workers from the list one by one into management offices and fired dozens who did not renounce STIMAHCS membership on the spot. Many other workers succumbed to the threat of dismissal and renounced membership in the independent union. For the next ten months the state board erected a series of procedural obstacles, requiring new filings and new documentation, all the while setting, postponing, and continuing hearings in the matter. Often the official union or the company would fail to appear at a scheduled hearing, with no action taken. At the end of this long period of manipulation and evasion, the state board said that the case belonged in front of the federal labor board. The state board dismissed STIMAHCS' petition. In the meantime, unfair dismissal cases for the fired K&S workers languished without decision in separate legal proceedings.

Workers' efforts to win STIMAHCS representation began anew at the federal labor board in June 1999. The federal board created an even worse obstacle course. It scheduled and canceled a series of hearings. It made new and burdensome demands on STIMAHCS while letting the official union stonewall proceedings. The case dragged on for more than a year, until finally the labor board scheduled a representation election

on September 4, 2000. At this point, two years after the fired K&S workers' dismissal, their cases were still unresolved.

The vote held inside the K&S factory on the afternoon of September 4, 2000, was a farce. STIMAHCS officials sought to have two of its fired members serve as election observers, since they knew their co-workers and could help the union challenge ineligible voters. However, the labor board agent conducting the election bowed to K&S managers' demand that no ex-employee could enter the plant. He told STIMAHCS representatives that K&S would allow only two of them to enter the facility to observe the election and that K&S managers would choose which two. The STIMAHCS leaders asked the labor board agent to exercise his authority to override these demands and to go forward with the election only if STIMAHCS could have its chosen observers at the election. He turned down the request. On principle, STIMAHCS leaders refused to enter the factory under these conditions.

STIMAHCS supporters inside the factory tell what happened next. One worker interviewed for this report said, "Between 11:45 a.m. and 2:00 p.m., the company lawyer called workers into his office and told them to vote for the official union. They told anybody who might support STIMAHCS not to vote. They told secretaries and office workers who had never been in the union to go vote for the official union. They also had a lot of new workers who were not on the voter eligibility list. All these people voted. A lot of STIMAHCS supporters were afraid to vote."

As with most union representation elections in Mexico, the vote was not by secret ballot. One by one, workers had to approach the voting table and declare orally and openly, in front of company managers and official union leaders, which union they preferred. "I voted for STIMAHCS," said one worker. "When I did, the managers and the official union guys all wrote down my name. The official union thugs that were their observers called me asshole and faggot."

STIMAHCS appealed the K&S union election results to the same labor board that had run the election. On November 27, 2000—more than two years after workers first tried to organize a new, independent union at K&S—the labor board threw out STIMAHCS' objections to the election and certified the incumbent official union as the workers' bargaining representative. The independent union drive was crushed.

Alcoa

In January 2002, more than 2,000 workers at an auto parts plant owned by Pittsburgh-based Alcoa Inc. revolted against a sellout contract negotiated by their official union. Union officials surrendered hard-won seniority protections and other benefits. Workers had never had an opportunity to vote on the contract.

Democratic forces in the local branch of the union succeeded in replacing official union representatives within the factory, notwithstanding threats, surveillance, and physical attacks against independent activists. "The problem is not the official union itself," said Alcoa worker Andrés Ballasteros, "but certain corrupt leaders who work alongside the company to block the workers' attempts to fight for their rights." The company dismissed a half-dozen key activists at the behest of the official union leadership.

Alcoa worker Conrado Sifuentes recounted:

"During the demonstrations, some workers were injured because the police or Alcoa guards beat them up. Some demonstrators fainted. The Social Security Clinic refused to give any of the injured workers medical treatment. The Social Security Clinic, run by the government, is supposed to help the people, but it refused to help us when we needed medical treatment."

Worker activists from Alcoa were blacklisted for work in area factories. An Alcoa worker who did not want to be identified explained:

"The names of independent union supporters are written down in books that are kept by Alcoa management and the official union. Once you are fired from Alcoa for participating in independent union organizing, you are labeled a troublemaker and your name is put on a list that is circulated to other companies. Once your name is on such a blacklist, you are denied work in other companies based on your association with the independent union organizing at Alcoa. You are seen as a threat by the management of the companies."

The fact that the old union maintained "title" to the collective agreement stymied any bargaining by the new union leaders. In April 2002, with support from most workers, they sought a vote to win bargaining rights at the plant. At the end of August, the labor board denied their request for an election, leaving the old union with official bargaining rights. The labor board is a tripartite body with government, employer, and union representatives. In this case, the "union seat" on the labor board was filled by an official from the same federation being challenged by the new union formation in the Alcoa plant—a direct conflict of interest.

The labor board's denial of a union representation election set the stage for a new round of even more egregious violations of workers' freedom of association. Throughout September 2002, Alcoa managers sent security agents to videotape union membership meetings and to track the movements of union activists. In early October 2002, Alcoa management fired 20 workers, among them the most active independent union leaders.

Organizer Rafael Salinas described what happened:

"Alcoa guards were following us, the independent union organizers, everywhere we went. They were videotaping us and watching our every move. After we were fired, we met regularly to think of different ways we could fight the injustices at the plants. Some of these meetings took place at a public lot in the center of town and the Alcoa guards would go by in their van, a dark green Voyager or Aerostar, with video cameras and film us. Usually, two Alcoa vans would come with groups of six to eight guards inside. Usually, two guards would be filming with separate video cameras."

One worker who preferred not to be identified eloquently conveyed her reasons for sustaining union activity at Alcoa:

"I fear losing my job as a result of my association with the independent union organizing, but my participation in the movement for an independent union is partly to benefit my children. I must do what I can to help in the struggle. There are many more women involved in the independent union than men. The women are the mothers in their families and they feel the urgent need to fight for their family's well-being. The change we

hope to achieve through organizing an independent union on the workers' behalf is not only for the currently employed workers, but for our children who may end up making a similar living working at the maquilas. I must make my contribution to the movement now, not only for the sake of my children's future, but for the sake of all the workers' children and their respective futures."

Matamoros Garment

Matamoros Garment began operations in 1999. It was part of the massive movement of maquiladora enterprises into Mexico's interior regions after the border maquiladora zones became saturated with more than 3,000 factories and more than a million workers. The border buildup put enormous strains on the environment, transportation, water systems, and social services, prompting many firms to look to the interior for new factories.

Mexican workers' proximity to the U.S. border in the northern maquiladora zones also made it easier for trade unions and NGOs on both sides of the border to build transnational alliances, pressing companies to stop abusing workers and the environment. Though they still faced enormous obstacles, workers in some border areas succeeded in raising wages and improving conditions. Sometimes they accomplished this goal through effective union representation, both by official union groups that take seriously the responsibility to defend their members and by independent unions. Sometimes they formed cross-border coalitions such as the San Antonio-based Coalition for Justice in the Maquiladoras (CJM) and the Piedras Negras-based *Comité Fronterizo de Obreras* (CFO), which conduct extensive worker education and advocacy programs.

The response of many owners, a good number from U.S.-based multinational companies, was an interior strategy that replicated the earlier developments of the first maquiladora boom in the 1960s and 1970s along the border. Companies set up operations in desperately poor regions to attract young, inexperienced workers from small towns and rural villages who were so glad for factory work at subsistence wages—in comparison with what they could make by scratching out a living on small farm plots—that they would not organize or push for higher wages and better conditions.

Some sectors of the official labor movement met this corporate interior strategy with one of their own: arranging "protection contracts" with the new maquiladora firms. The official unions promised a labor control system, backed up by state government authorities, to dampen workers' demands and get rid of outspoken or dissident workers.

Puebla state was an ideal place to implement the maquiladora investors' interior strategy. It is a largely rural state, but anchored by a major city with a large airport relatively close to Mexico City. Dozens of new factories have sprung up in Puebla state, among them the Matamoros Garment factory in Izúcar de Matamoros, 40 miles south of Puebla city and three hours east of Mexico City.

A large apparel factory with capacity for 1,500 workers, Matamoros Garment produces a variety of sportswear and uniforms for international brand companies. Before the plant opened, Matamoros Garment managers arranged a protection contract with an official union patronized by the governor of Puebla. The governor told company owners to sign a contract with the

official union, and the union guaranteed labor peace. The contract called only for compliance with minimum legal standards and payment of legal minimum wages.

Workers remained in the dark about the existence of the union and the contract. "We knew nothing about it," said assistant plant supervisor and independent union leader Liliana Tejeda Hernández in a March 2003 interview. "We never knew we had a union and we never saw a union representative. Only when we started to organize, the union showed up."

In January 2003, Matamoros Garment workers spontaneously walked off the job to protest increasingly abusive conditions and the official union's complicity. "The company was not paying our wages on time," explained Gabriela Tejeda, another union leader. "That was on top of all the other problems—dirty bathrooms and a dirty cafeteria, forced overtime without overtime pay, locking us in the factory until we met production quotas, verbal abuse, lack of transportation, and more." Matamoros Garment workers began forming a union. "That's when the old union started coming around telling us to stop, that we would get in trouble, that the company would close, and other threats," said another worker. But workers persisted in their independent organizing drive, with help from a new NGO called the Worker Support Center (*Centro de Apoyo al Trabajador*, or CAT).[1] CAT rapidly generated an international solidarity movement aimed at the plant's best-known international brand customer, the Germany-based Puma corporation. Trade unions and NGOs around the world began sending messages of support to Matamoros Garment workers and messages of concern to Puma executives.

Puma responded with a high-level executive delegation that visited the plant in early February 2003, five months after an official "social audit" by Puma auditors. Besides issuing its own code of conduct on worker rights in supplier factories, Puma also participates in the SA8000 program of Social Accountability International (SAI), one of the major organizations that promote corporate social responsibility through workplace codes of conduct. According to workers interviewed for this report:

> "Our managers had us clean up our workstations and the usual mess in the aisles before the Puma auditors came in. We had some 15-year-old girls working in the plant. The managers told them to stay home the day of the audit. The managers told us to answer only 'yes' if the auditors asked us if we were properly paid and well treated, or if the company complied with all the laws. They told us that if we didn't answer 'yes' we would get in trouble and Puma might pull out their work and cause layoffs."

Liliana Tejeda picked up the story here. "The Puma auditors asked for private meetings with workers. Management picked out the most timid or pro-management workers who would say the right things. They didn't allow any of us who were known to be discontented to talk to the auditors."

Under these conditions, the Puma auditors gave Matamoros Garment a "satisfactory" rating for compliance with its own code and with SA8000 standards in the September 2002 audit. The Puma executive group that examined conditions in February 2003 followed similar methods and got similar results. On

February 12, 2003, Puma issued a report that dismissed workers' claims. According to the report:

- Although workers were paid late, they were ultimately paid full wages.
- Flooding from nearby agricultural fields created dirty conditions in bathrooms and in the cafeteria, but a cleaning crew swept out the cafeteria before employees' lunch breaks.
- Interviewed workers categorically denied that they were forced, required, or strongly encouraged to work overtime.
- Interviewed workers indicated that they were never locked in the factory and that, with a supervisor's permission, they could leave the factory at any time.
- Interviewed workers said that they were members of the official union and that they had freedom of association.
- Interviewed workers overwhelmingly denied that physical or verbal abuse occurred.
- As for lack of transportation, routes and schedules had been restructured to provide a more cost-effective service network.

After their strike, workers formed an independent union called the Union of Matamoros Garment Workers (*Sindicato de Trabajadores de la Empresa Matamoros Garment*, or SITEMAG) and sought registration with state labor authorities. Registration would allow the workers to challenge the official union's hold on their collective agreement.

"That's when the pressure and the threats really mounted," said Liliana Tejeda. "The plant manager called us into his office and told us that the contractors would pull out if we formed an independent union. He warned us that the leaders would become known as troublemakers and never find work in this area."

"Strange men started following us around," added Gabriela Tejeda. "They followed us home from work and followed us shopping. Sometimes they took photographs from a distance. We never knew exactly who they were." These incidents stopped, she said, when victims filed a criminal harassment complaint with local police. But much damage was done to workers' independent organizing efforts. "A lot of workers stopped coming to meetings," said Liliana Tejeda. "They said they were afraid of being targeted by management and the official union." Management's continued blaming of lost orders on the independent union drive took a toll, too. Many workers left Matamoros Garment in search of better, more stable jobs. In late March 2003, managers closed the factory. At the same time, the local labor board, made up of government, management, and official union representatives, rejected SITEMAG's request for registration. This rebuff left workers undefended by their choice of an independent bargaining agent. Instead, the company's protection union agreed on plant closing wage payments short of full severance pay due to Matamoros Garment workers.

Endnote

[1] The CAT took shape in the aftermath of a successful struggle to establish an independent union in the Kukdong maquiladora factory in Atlixco, 20 miles north of Izúcar de Matamoros. Student anti-sweatshop groups, human rights organizations, and trade unions in the United States mounted an effective call on Nike, Reebok, and other brand-name firms contracting with the Kukdong factory to pressure local management to respect workers' rights.

Mexico and Cases Under the NAALC

In addition to its obligations under international human rights standards, Mexico accepted important obligations under the North American Agreement on Labor Cooperation (NAALC), the labor side agreement to NAFTA. Along with the United States and Canada, Mexico committed itself to enforcing "high labor standards." While not specifically referring to ILO conventions or to core standards contained in the 1998 Declaration, the NAALC includes those standards: freedom of association and the right to collective bargaining, abolition of forced labor and child labor, and non-discrimination in employment. The NAALC also covers the right to strike, equal pay for equal work, minimum employment standards on wages and hours, workplace health and safety, workers' compensation, and migrant worker protection.

The three NAFTA countries promised to effectively enforce their laws that protect these rights. They guaranteed strong laws, legal procedures, and remedies to carry them out. They have developed a process that allows worker rights advocates to file complaints or request investigation of specific cases. The process may involve a number of steps, including reports, public hearings, ministerial consultations, independent review panels, and arbitration boards. The governments believe that this process will make the agreement a significant force for advancing worker rights.

The NAALC has failed to achieve its high purpose. Apparently more eager to maintain diplomatic niceties rather than tackle and solve worker rights violations, the three governments have demonstrated a lack of will to hold one another to their NAALC commitments. Some investigations and reports have led to significant findings and recommendations, but they have not produced change. Ministerial consultations have resulted only in research projects and trinational conferences. Although these are often informative, they have not directly addressed or resolved worker rights violations documented and proven in NAALC proceedings. The three governments have not created a single independent review board or arbitral panel despite compelling cases for their establishment.

A review of just a few NAALC cases in Mexico demonstrates both a continuing, deeply rooted pattern of worker rights violations and the NAALC mechanism's failure to halt them.

TAESA

Executive Air Transport, Inc. (TAESA), was a privately owned Mexican airline company that employed some 1,500 workers, approximately 10 percent of them flight attendants. TAESA was formed in 1988 by well-known Mexican billionaire Carlos Hank Gonzales, a prominent political supporter of then newly elected President Carlos Salinas de Gortari. Hank's many business ventures thrived during the Salinas term, often in connection with the privatization of state-owned enterprises.

TAESA's fortunes depended significantly on favorable treatment under Salinas's rule. Among the favors

TAESA received at the outset was the granting of employees' union representation rights to the National Union of Air Transport Workers of Mexico, affiliated with the pro-Salinas official union federation.

TAESA workers did not form this union. They were presented with a fait accompli. There was no vote or other expression of employee choice. The incumbent union was part of the favored "official" labor federation organically linked to the ruling Institutional Revolutionary Party (PRI) under Mexico's traditional corporatist trade union and labor relations structure.

In 1997, the 150 flight attendants at TAESA sought representation by the Association of Flight Attendants of Mexico (ASSA), an independent, democratic union that was not part of the PRI-official union corporatist labor structure. ASSA was affiliated with the newly formed National Union of Workers (UNT), a federation that reflected an independent current in the Mexican labor movement.

Mexico's largest flight attendants' union, ASSA represents attendants at AeroMéxico, Mexicana, and some regional carriers. ASSA has negotiated good wages and benefits, high levels of training and skills development, strong health and safety rules, reasonable work schedules, job security, non-discrimination clauses, and other protections for the flight attendants it represents. On the basis of this record of achievement, TAESA flight attendants sought to have ASSA represent them in collective bargaining. They requested an election in early 1997 under a provision in Mexican labor law whereby an occupational or a craft union can obtain bargaining rights for workers in a particular occupation when a majority of workers in that craft desire it. But TAESA managers, with the complicity of government labor authorities, struck back against the flight attendants' efforts by launching a series of legal maneuvers to block the election.

The Election

The entire process of union organization, recognition, and collective bargaining is tightly controlled by Mexico's tripartite labor boards. The three-person boards are composed of government, employer, and trade union representatives. A representative of the official corporatist federation normally holds the union seat on the labor board, as was the case with the federal board that handled the TAESA dispute.

The labor board repeatedly ruled against ASSA's request for an election among TAESA flight attendants. When appeals courts overturned the ruling—a process that ultimately took two years—the board tried a new tack. It ordered that the election be held among all TAESA employees, including pilots, ticket agents, and ground crew personnel, even though ASSA insisted that it wanted to represent only the flight attendants.

The election was held March 22, 1999. In the days leading up to the vote, managers and representatives of the official union unleashed a campaign of threats and intimidation against ASSA supporters. Managers campaigned openly and aggressively against ASSA through oral and written threats, denunciations, and orders to vote against the independent union. They used scheduling and work assignments to make voting easy for anti-ASSA employees and difficult for pro-ASSA employees.

TAESA flight attendant and ASSA supporter Sergio Centeno Mota described the voting scene:

"The day of the vote, when we got to TAESA's facilities in Mexico, we could see that there was so much security that the company had hired—armed soldiers . . . with heavy caliber arms, attack dogs, an electrified wire—to intimidate us so that we couldn't go into the voting area since we were in favor of ASSA. Outside they had a loudspeaker system, very loud audio, that went beyond safe hearing levels . . . . When they finally let us go in to vote, they treated us like when you go into a prison. They took all the radios, cell phones, so that we couldn't communicate. And their argument was that this was for security purposes when we were employees of the company."

The company provided free transportation for off-duty non-flight attendants to come and vote against ASSA. Off-duty flight attendants, however, had to make their own way at their own expense to vote. In addition, managers scheduled many flight attendants for extra duty away from voting stations to prevent them from voting, while allowing on-duty non-flight attendants to vote at their convenience. ASSA supporters were forced to wait for hours. Flight attendant Carlos Alvarez Tejeda said:

"Those of us who wanted to change our union, we met very early that day. And at that time we were still employees, and we were not given access to the company. We saw how about 1,500 people came to vote and that they were inside, and we were left outside. And we had our uniforms; we had our IDs; we were outside. It was raining. It quit raining. It started raining again. And then it quit raining again. And then after about six hours of waiting outside, they gave us access."

The vote was open and oral, not secret. Workers had to identify themselves and declare their vote in the presence of government, management, and incumbent union officials. With a flourish, management and incumbent union officials took note of flight attendants who voted for ASSA.

Flight attendant Jorge Barrientos Vivas explained why he voted for the official union:

"I voted for the official union, which is the other—that was because my direct boss threatened me that if I didn't vote for the official union, I would be fired like the rest of my colleagues who voted for ASSA. And that besides, my career in aviation would be over. I had economic problems and family problems, and so I saw myself forced to vote for the official union.

"I was called at home and told to come to the airport to the main area, which we never did. We used to go just to TAESA's hangars. I went to the hangar where the voting was taking place and on the trip over there from the main lobby to the hangar, other company members threatened me, telling me what I should do, who I should vote for, and that I should have no contact with them because otherwise I would be fired.

"And when I got to the hangar, I saw that my colleagues were outside. They wouldn't let them in; they were being threatened with dogs. They wanted to talk and they put loud music on the loudspeakers. I voted for the official union. I was taken to a little cubicle far away, and I wasn't let out until everyone had gone. And then they let me go home."

Sergio Centeno recounted the experience of those voting for ASSA:

"Entrance into the voting was in groups of eight, and it wasn't directly into the area, it was to the management office of the flight attendants where [managers] would intimidate us. Again, yet again, so that we would vote for the official union and not vote in favor of ASSA.

"Inside the hangar, there were the voting tables. We had to vote facing the director of the company. He was sitting there in front of us. And we had to say out loud who we were voting for. There were approximately 300 people [there for the] . . . official union, when there were only four people representing ASSA. There were lots of people who were intimidating us and telling us who we had to vote for, and telling us that if we didn't vote for the official union we'd be fired immediately.

"And if that wasn't enough, when it was my turn to vote, I was asked by the polling staff who I was going to vote for. I said I was going to vote for ASSA. I was asked again. 'Are you sure you want to vote for ASSA?' And I said, 'Yes.' And he said 'Well, okay.'"

Attorney José Luis Mendoza García was one of the four ASSA representatives who observed the election. He described the experience as follows:

"TAESA only allowed four of us to be there while the management had everyone there that they felt that they wanted to have there. And the other union, they let them intimidate the workers, pressure the workers.

"In the case of TAESA, the tally, the vote was taken as follows. Behind the voting table, they had high chairs where the company's manager was seated with the management team looking down and observing how each worker's vote was going. At the same time, they had another little booth where the workers would first go in and they were asked who they were voting for.

"There they could tell if they were going to vote for ASSA, they would be fired . . . . But to ask a worker ahead of time how they were going to vote to intimidate them—when we told the notary publics who were present there who were certifying the vote, when we told them what was going on and we asked them to suspend this proceeding, they didn't accept it and the intimidation continued to the end."

ASSA President Alejandra Barrales told what happened when the union filed immediate objections to the conduct of the election:

"We let the authorities know. We told them about the problems that our fellow flight attendants had. Some of them were taken to a room and they were told that they were going to tell them how they had to vote. We took this to the authorities and the authorities told us they could do nothing because the company was the one that decided, and it was the official union that had the power there.

"And we called four or five different times the Undersecretary of Labor to let this person know what was going on. And we did so to request that there could be greater impartiality on behalf of the authorities . . . we wanted to make sure that they knew that there had been police there and all the other things we mentioned. But the authorities told us, 'Well, that's private property, and the company can do what it feels is appropriate.' "

The results of the election were predictable. An overwhelming majority of flight attendants indeed

voted for ASSA. But most of the other 1,350 workers voted against the flight attendants union.

After the vote, TAESA managers launched a vicious retaliatory assault against workers who had voted for ASSA. The union took advantage of the notorious "exclusion clause" permitted under Mexican labor law, whereby companies have to fire workers expelled from union membership by leaders out to crush internal dissidence. ASSA supporters were fired and replaced by newly hired flight attendants who were told that their jobs depended on renouncing ASSA. Fired flight attendants never received a written statement of cause for dismissal as required by law. Managers just orally fired them. As Carlos Alvarez said, "In my case they didn't tell me absolutely anything. They just said, 'Sign this sheet because you are no longer an employee and leave.'"

Sergio Centeno described his dismissal:

"At that time the only thing they gave me to sign was a resignation. As if I wanted to resign. And since I didn't sign this paper for obvious reasons, they fired me. They fired me. I was ushered out with security guards. And I was given no further explanation. We presume, we know that it's because I was a sympathizer of ASSA."

The discharged ASSA supporters' only legal recourse was to bring complaints before the very same labor board that had engineered the delays and the election travesty that had led to their firings, including a representative of the incumbent union's parent federation. Their cases languished for years without resolution. Economic necessity forced them, one by one, to accept severance pay and release all legal claims.

The NAALC Complaint

ASSA and the U.S. flight attendants' union, the Association of Flight Attendants (AFA), filed a joint complaint under NAFTA's labor side agreement. The U.S. NAO issued a highly critical report. Workers' testimony was credible, the NAO concluded, and "suggests that TAESA management and labor union representatives participated in threats and intimidation for the purpose of affecting the outcome of the election. It is indicative of a chaotic atmosphere where the ability of workers to exercise free choice is questionable." On the voting procedure, the U.S. NAO found that:

"Voting could be affected if the employees must state their choice openly before management whose preferences have been made clear and before an excessive number of union representatives utilizing intimidation tactics. There is significant information that such intimidation occurred at the TAESA union representation election. . . ."

On ASSA supporters' firings, the NAO said, "Considering the timing of the dismissals and that the discharged workers were associated with the challenging union, it appears plausible that the workers' dismissals occurred because of their participation in union organizing activities."

The U.S. NAO called for ministerial consultations in the TAESA case. Nothing came of this procedure. Without an effective enforcement mechanism, such "soft law" measures do nothing to change the behavior of an employer and a government bent on violating workers' rights.

ITAPSA

Echlin, Inc., based in Branford, Connecticut, produces and distributes automobile replacement parts in the United States, Canada, and Mexico. In Mexico, workers at Echlin's ten ITAPSA plants make parts for auto braking systems. ITAPSA employs approximately 350 people in its Reyes plant, located in Ciudad de los Reyes, a municipality in the State of Mexico.

An official corporatist union held bargaining rights for workers at the Reyes plant. Though the workers knew that they had a union, none of them had a copy of their contract. In 1996, Reyes workers approached the STIMAHCS affiliate of the independent FAT to seek union representation. STIMAHCS began an organizing drive at the plant.

Workers' main concerns involved low wages, hazardous working conditions, abusive supervisors, sexual harassment, and the official union's failure to respond to their problems. Several workers had died or become seriously ill. They were forced to handle asbestos without proper protections and ventilation. As ITAPSA worker Ruiz Rubio put it, "The main issues we were dealing with were hygiene and worker safety. The machinery at the factory is old and in disrepair and there is a lot of [asbestos] dust. There have been many accidents. About five years ago two brothers drowned in the large caustic soda containers. Several people have lost fingers; one man lost four of the five fingers on his left hand." According to Rubio, "When [employees] would tell the union representative at ITAPSA of problems such as abuse by supervisors he would just tell them that they should be thankful that they have jobs at all and that they shouldn't be complaining about such things."

On May 26, 1997, STIMAHCS filed a petition with the federal labor board for bargaining rights on behalf of ITAPSA employees. Soon afterward, agents of both ITAPSA management and the official union began a campaign of intimidation against the employees at the Reyes plant. As STIMAHCS official Benedicto Martínez described it, "They watched workers very closely, trying to determine which workers sympathized with the union. They questioned workers about their support for STIMAHCS, in some cases threatening and harassing workers. . . . In some cases they tried to intimidate workers and their families."

STIMAHCS supporter Hernández Cruz explained, "We knew we were being watched by supervisors and the official union delegates in the plant. They knew who the supporters of the union were. Every time we, as workers who supported STIMAHCS, would get together in the plant, one of the bosses would immediately come over to where we were."

Reyes worker Javier Velázquez added, "We were being subjected to a more than normal level of surveillance in our jobs. A week before the elections, I and other members felt placed under especially rigorous surveillance where if more than two or three people began to talk, the supervisor would come to see what we talked about."

Several workers reported that supervisors and official union leaders directly asked them whether they supported STIMAHCS or knew which workers did. Rubén Ruiz said that a plant security guard told him not to get involved in forming an independent union or "you will just end up hurting

yourself." Javier Velázquez said that ITAPSA and official union leaders "told many workers that they should not come to the election because there would be trouble and violence." According to worker Gildardo Hernández, an official union leader told him that ITAPSA would close the plant or fire STIMAHCS supporters if STIMAHCS won the election. Hernández went on to say:

"I was called into the office of the Human Resources Director of the company. She asked me who was going to vote for STIMAHCS. She told me if I voted for STIMAHCS I would lose my job at ITAPSA and I would have difficulty getting a job anywhere else because ITAPSA would advise other companies about my union activities."

Between the time STIMAHCS filed its petition and the date of the representation election, ITAPSA fired about 50 employees whom managers suspected of being STIMAHCS supporters. Many were fired after company and official union leaders threatened them in one-on-one conversations that they would be discharged if they supported STIMAHCS.

Describing his dismissal by an ITAPSA manager, Javier Velázquez said:

"He said I was fired because I had been seen talking with people from STIMAHCS, and that if I did not want to be fired I had to tell him who these people were and that I had to name all the workers in the plant who were involved in organizing with STIMAHCS. He said that if I told them all that information, I could save my job."

Another worker, who did not want to be identified, said that an ITAPSA manager "told me I was fired. He told me there were orders from the U.S. owners of ITAPSA that he must fire all of the people who were causing trouble here at ITAPSA and that my name was on the list."

The Election

On September 8, 1997—the day before the scheduled representation election—Echlin Divisional Manager Guillermo Vela Reyna met with both first- and second-shift employees to inform them that they "should vote for the official union and that if STIMAHCS should win they would suffer serious consequences."

At approximately 7:00 p.m. on that day, a white Thunderbird with Mexico City license plate number 828GTH entered the plant. Workers identified the driver as an agent of the Judicial Police of the State of Mexico who worked in the municipality of Los Reyes. Workers inside the plant reported that arms were taken from the trunk of the car. Subsequently, workers saw unknown armed men patrolling the factory grounds.

At approximately 1:00 a.m. on September 9, the company permitted two buses and a white truck to enter the plant. These vehicles carried approximately 170 people armed with sticks, chains, bars, tubes used for gas, and thin copper rods. These *golpeadores* (thugs) remained in and around the plant until around 3:00 p.m. the following afternoon, long after the election was over. Their conduct was coordinated by top ITAPSA managers and official union leaders.

At 6:00 a.m. on September 9, about 15 STIMAHCS supporters, some wearing stickers that read "*Mi voto es para STIMAHCS*" ("My vote is for STIMAHCS"), approached the Reyes plant. Immediately, a large

group of thugs surrounded the workers and threatened to beat them if they did not leave. Some thugs appeared to be members of the judicial police force.

The STIMAHCS supporters returned at about 11:00 a.m. with close to 100 other workers. The thugs, who were still manning the plant entrance, prevented the group from going inside. They threw bottles and stones at the STIMAHCS supporters and at NGO observers, yelling at them and threatening to beat and rape them. Meanwhile, these thugs permitted official union supporters, as well as non-employees, to enter the plant to vote.

Voting conditions inside the ITAPSA factory violated elementary norms of freedom of association. Only three STIMAHCS representatives were permitted to enter the Reyes plant to observe the election. Some 20 representatives of the official union filled the room. Voting took place in an atmosphere of intimidation and threats of physical violence. As one observer explained, "The passageway into the room was filled with the official union men standing against the walls. On the side of the room through which workers were to enter and vote, there was a gauntlet of men wearing official union stickers. The group of people practically reached the voting table."

Workers entering the plant to vote were forced to walk this gauntlet of official union leaders and their thugs armed with pipes and sticks, who verbally threatened them and their families. ITAPSA and the official union brought in many individuals to vote who had never worked at ITAPSA. STIMAHCS observer Benedicto Martínez noted:

> "It was impossible to really know if anybody voting was really a worker at ITAPSA. . . . At no time did the labor board representatives take responsibility for the impartiality of the election process, although we objected a number of times and asked that the election be suspended because we were unable to verify that the people who voted were entitled to do so."

STIMAHCS attorney Arturo Alcalde asked the labor board agent to suspend the voting, arguing that these conditions were unacceptable. The board agent denied the request. When the votes were counted, the official union prevailed, 170-29.

The NAALC Complaint

A broad-based coalition of nearly 50 trade unions and allied organizations across North America filed NAALC complaints before the NAOs of both the United States and Canada in 1997 and 1998. In response, the two NAOs issued sharply critical reports that called for ministerial consultations in the case. However, the NAALC process was powerless to remedy abuses at the Reyes plant. The official union remained in control of bargaining, and STIMAHCS supporters were fired or intimidated into silence.

Ministerial consultations in the ITAPSA case and another case involving the Han Young auto parts factory in Tijuana resulted in a "ministerial agreement" in which Mexico appeared to commit itself to "efforts . . . to promote the use of eligible voter lists and secret ballot elections over the right to hold the collective bargaining contract . . . and promote secret ballots and neutral voting places." However, as the next case demonstrates, the agreement was a dead letter from the time it was signed.

Duro Bag

The Duro Bag case calls into question whether the U.S. and Mexican governments will uphold or ignore the commitments they made pursuant to the NAALC.

The facts of the case were similar to earlier ones involving events at ITAPSA, but with a key difference. The ITAPSA case led to a ministerial agreement between the United States and Mexico that secret ballot votes in a neutral site would replace open, oral "votes" in front of management and official union leaders. But Duro Bag workers were denied such a secret ballot election—in direct violation of this agreement.

Duro Bag Manufacturing Company is a multinational producer of high-quality, premium shopping bags for well-known retail sales companies such as Hallmark, Nieman Marcus, Banana Republic, and The Limited. Based in Ludlow, Kentucky, with several plants around the United States, Duro set up operations in Mexico in the 1970s to take advantage of low-wage labor for high-volume, labor-intensive production. Duro's plant in Río Bravo, Tamaulipas, employs hundreds of workers making $6.00 to $10.00 per day.

When Duro began operations in Mexico, the company arranged for union representation through a "protection contract" with a union that promised a docile, controlled workforce with no labor "unrest." Workers had no voice in the selection of a union; there was no vote of any kind. In 1999, concerned about low wages and hazardous working conditions, Duro workers began organizing a democratic current within the pro-management union. Managers responded by firing key leaders and active workers. Frustrated by these tactics, workers formed a new independent union to seek *titularidad* ("title") to the collective bargaining agreement.

In filing their application for a representation election, Duro workers requested a secret ballot election at a neutral site with guarantees of free, fair, non-coercive conditions for the election. Mexican labor law does not specify the precise form of a union representation election (called a *recuento*) for transferring "title" from one union to another, nor does it stipulate whether such an election should be by secret ballot at a neutral site. However, the law does not preclude a secret ballot.

On election day, March 12, 2001, the atmosphere was circus-like, as loud rock music blared over factory loudspeakers to drown out calls from independent union supporters. But it was also physically intimidating. Managers allowed thugs from the incumbent union organization to throng the voting area while refusing admittance to independent union supporters and international observers. Workers had to run a gauntlet of supervisors and opponents of the independent union, as well as openly and orally state their choice of bargaining representative in front of management, government, and company union officials. Under these conditions, only 501 of more than 1,200 workers voted, and only four indicated support for the independent union.

The government of Mexico stood silent while Duro management negated its international agreement with the United States. The government of Mexico failed to assert the terms of the ministerial agreement to its own federal labor board, again standing silent while the board disre-

garded the commitment to neutral site secret ballot elections.

The NAALC Complaint

The government's failure to abide by the terms of the ministerial agreement in the Duro case did not stop at the Mexican border. The U.S. Department of Labor refused to accept a complaint, filed in June 2001 by the AFL-CIO and the Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE), that cited Mexico's reneging on the ministerial agreement. The U.S. government chose not to hold the Mexican government accountable for violating the agreement. Defending its action, the U.S. Department of Labor said, "[W]e remain committed to addressing worker rights in North America . . . we have forged a strong and deep relationship with the Government of Mexico on labor issues that will lead to a more meaningful collaboration. As we deepen the relationship and build greater trust, we will be even better able to address worker rights issues and find cooperative ways to move them forward."

This example raises concerns that the United States and Mexico may be abandoning the labor principles of the NAALC. The two countries pledged to open themselves up to review and criticism and to "strive to improve" labor laws and labor law enforcement. Instead, the record on the NAALC appears to signal an intention to downplay worker rights in free trade talks for Central America and for a hemispheric agreement. For this reason, it is all the more important that trade unions and their allies mobilize to ensure that the CAFTA and FTAA agreements contain strong, enforceable worker rights provisions.

GLOSSARY

CAB	Conciliation and Arbitration Board
CAT	Centro de Apoyo al Trabajador (Worker Support Center)
CDHDF	Human Rights Commission of the Federal District
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFA	Committee on Freedom of Association
contrato de protección	protection contract (a contract signed between a company and an official union without the employees' knowledge)
contrato simulado	pretend contract
ECE	Evaluation Committee of Experts
FAT	Frente Auténtico del Trabajo (Authentic Labor Front)
FTAA	Free Trade Area of the Americas
ICFTU	International Confederation of Free Trade Unions
ILO	International Labor Organization
ISI	import substitution industrialization
maquila, maquiladora	offshore processing industry (also known as export processing zone)
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NAO	National Administrative Office for the NAALC
NGO	non-governmental organization
OECD	Organization for Economic Cooperation and Development
PAN	National Action Party
PRI	Institutional Revolutionary Party
recuento	union representation election
requisa	takeover and continued operation of a business facing a strike
STIMAHCS	Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares (Union of Metal, Steel, Iron, and Allied Workers)
titularidad	title, bargaining rights in a workplace

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"From the legal loopholes that help perpetuate the corporatist structure of industrial relations, to the tripartite labor law authorities' bias against independent unions, to the government's failure to put a stop to pregnancy discrimination, this report concisely and incisively identifies the shortcomings in Mexico's labor regime that prevent workers from exercising their human rights. With sharp, compelling case studies, the report also demonstrates the failure of the North American Agreement on Labor Cooperation to bring meaningful improvement. The invaluable conclusions, lessons, and recommendations set forth here should be carefully studied and taken to heart not only by Mexican authorities but by policymakers crafting the texts of future free trade accords."

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Labor Rights and Trade Researcher
Human Rights Watch

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"The Solidarity Center's report can provide a basis for collective initiatives (e.g., social dialogue) aimed at strengthening law and practice in relation to freedom of association, collective bargaining, and discrimination in the country. The report contains much information that can prove useful for development assistance and technical cooperation efforts directed at improving wages, working conditions, and the quality of life of workers in Mexico."

Michael Sebastian
Deputy Director, Bureau for Workers' Activities (ACTRAV)
International Labor Organization

AMERICAN CENTER FOR INTERNATIONAL LABOR SOLIDARITY/AFL-CIO
1925 K Street, NW
Suite 300
Washington, DC 20006
www.solidaritycenter.org