
Committee on the Application of Standards

**Information from the Government of Mexico
on the application of Convention No. 87 with
a view to examination of the individual case
by the Committee on the Application
of Standards**

Mexico

Convention No. 87

Mexico

**Freedom of Association and Protection of the
Right to Organise Convention, 1948 (No. 87)**

The Government of Mexico has duly complied with the provisions of Convention No. 87 and has provided information on this at the appropriate time to the International Labour Organization (ILO) by reporting on its application. Moreover, it has replied to the requests for information from the Committee on Freedom of Association.

Part 1 Civil liberties and trade union rights

Regarding the allegations of the ITUC and IndustriALL concerning violence against trade unionists in the context of a collective dispute in the education sector in Oaxaca

The Government of Mexico regrets and condemns the events but **denies categorically that they constitute acts of violence against trade unionists, let alone a violation of ILO Convention No. 87.**

In support of our position, we are providing the Committee with reports on the Nochixtlán case prepared by a special commission of the Senate of the Republic – the sovereign and independent authority of the Government of Mexico – and the National Human Rights Commission, an independent advisory body, which were published on 31 August 2016 and 17 October 2017, respectively

These documents both agree that **underlying the events is a conflict of a socio-political nature involving the excessive use of force, which has been recognized and addressed by the Mexican State.**

We express our concern at the fact that cases of this type, despite being unrelated to violations of freedom of association and protection of the right to organize, should be used to lend an air of gravity to alleged non-observance of Convention No. 87.

Part 2 Reform of labour justice

This section addresses the points raised by the CEACR in its observations to the Government of Mexico regarding: (i) the communication from the ITUC, received on 1 September 2017, indicating that the constitutional reform was approved without holding any kind of consultations with the social partners; (ii) tripartite consultations on legislative developments relating to the constitutional reform; (iii) developments in the secondary legislation for applying the constitutional reform; and (iv) the impact of the constitutional reform and the establishment of the decentralized body.

- (i) **Consultations on constitutional reform.** The Government of Mexico states that the constitutional reform was presented by the President of the Republic as a result of the analysis “Dialogues for day-to-day justice: Joint diagnoses and solutions”¹ prepared by the Centre for Economic Research and Teaching, one of the most prestigious research centres in the country. Preparation thereof involved nine working groups, including on labour, and the participation of more than 200 specialists and 26 institutions for 14 weeks, with 123 meetings held. This constitutional reform was **unanimously approved** in the Senate, while in the Chamber of Deputies it was approved by **377 votes in favour** to only 2 votes against, which represents a **99.5 approval rate** from all votes cast.
- (ii) **Tripartite consultations concerning legislative developments relating to the reform.** This year, the Ministry of Labour and Social Welfare has held 91 meetings with **representatives of workers, employers, academics and associations of lawyers in order to reach the consensus required for approval of the reform.** Additionally, the Joint Commissions on Labour and Social Security; Equity and Gender; and Legislative Studies of the Senate of the Republic agreed, on 27 April 2018, to hold public hearings to receive **the suggestions, observations and proposals of workers, employers, academics and civil society organizations** regarding the preliminary draft opinion for the secondary legislation. These public hearings will be held at **four regional offices with the attendance of the labour sector stakeholders.**
- (iii) **Developments in secondary legislation.** Since the approval of the constitutional reform, **four proposals to reform the secondary legislation relating to labour justice**² **have been presented** to the Senate. The first was presented on 7 December 2017 by Senators Tereso Medina and Isaías González of the Institutional Revolutionary Party; the second was presented on 14 December 2017 by Senator Luis Sánchez, of the Democratic Revolution Party; the third was presented on 22 February 2018 by Senator María del Pilar Ortega, of the National Action Party; and the fourth was presented on 24 April 2018 by Senator Alejandro Encinas Rodríguez, an independent.

¹ Available at: https://www.gob.mx/cms/uploads/attachment/file/79028/Di_logos_Justicia_Cotidiana.pdf.

² Available at: http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-07-1/assets/documentos/Inic_Justicia-Laboral_07122017.pdf;
http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-14-1/assets/documentos/Inic_PRD_Ley_Amaparo_y_Ley_Trab.pdf;
http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-02-22-1/assets/documentos/Inic_PAN_Justicia_Laboral.pdf;
http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-04-25-1/assets/documentos/Ini_Encinas_LFT.pdf.

To continue the legislative process, the proposals were submitted to the Joint Commissions on Labour and Social Security; Equity and Gender; and Legislative Studies, within which the aforementioned public hearings for their discussion and subsequent approval will be held.

At the local level, **nine states have modified their Constitutions** to bring them into line with the Federal Constitution: (i) Campeche; (ii) Chiapas; (iii) Mexico State; (iv) Guanajuato; (v) Hidalgo; (vi) Morelos; (vii) Nuevo León; (viii) Quintana Roo; and (ix) Sonora. Furthermore, **two states** (Chihuahua and Hidalgo) **have approved laws establishing conciliation centres**.

- (iv) **Impact of the constitutional reform and the establishment of the decentralized body.** This is an historic labour reform, which has transformed the system for ensuring labour justice that has been in place for more than 100 years.

Regarding the **establishment of the decentralized public body** for conciliation in disputes under federal jurisdiction and the national register of trade union organizations and collective labour agreements, the Ministry of Labour and Social Welfare has devised a number of **administrative, organizational, technological and logistical tools for its implementation**.

As regards the establishment of labour courts, the **Federal Judiciary** has established the **Unit for the Implementation of Labour Justice Reform** with a **budget of 324 million pesos**. At the local level, in May 2017 the **National Committee on High Courts and the Supreme Court of Justice** agreed on the **establishment of a labour committee** to monitor the implementation of the reform.

Part 3 *Union representativeness and transparency*

This section addresses the points raised by the CEACR in its observations and direct request to the Government of Mexico concerning the ITUC communication received on 1 September 2017, which refers to: (i) the large number of “employer protection agreements” and the complicity of the labour authorities in the registration of such agreements; (ii) legislative measures and practices to resolve what the ITUC refers to as the phenomenon of “protection unions and protection contracts” (protection agreements), including in relation to the registration of trade unions; (iii) the publication of trade union registrations and constitutions; and (iv) the application of the labour inspection protocol on free collective bargaining.

- (i) **“Employer protection agreements”.** We reiterate our concern at the fact that observations are being made based on generic allegations that do not refer to specific cases or provide objective details for suspecting the existence of a “customary” practice that undermines the right to freedom of association and collective bargaining, let alone for suspecting that the Government is complicit in encouraging that practice.

The Government of Mexico has continuously reported on the specific steps taken to guarantee trade union representativeness. These measures include: the **constitutional reform of 2017** – which was welcomed by the CEACR – **and its future implementation; the agreements issued by the National Conference of Labour Ministers (CONASETRA); and the issuing and application of the “Operational protocol on free collective bargaining”**. The Government has reported on these measures at every opportunity.

It is important to recognize that, in cases concerning specific situations of alleged violations relating to the existence of “protection agreements”, the Government of Mexico

has always provided relevant and timely information, carrying out the appropriate investigations and providing information that will help to ensure labour justice. This issue has been considered within the Committee on Freedom of Association, specifically in relation to Case No. 2694.

In this regard, the Committee on Freedom of Association, in its 382nd Report of June 2017 (paragraphs 128–130), decided not to pursue its examination of the alleged extensive practice of “employer protection collective agreements”. On the contrary, the Committee on Freedom of Association decided to focus exclusively on examining the specific allegations regarding individual sectors or unions and the specific situations in which the existence of protection agreements was alleged.

- (ii) **Legislative and practical measures to address the issue of protection unions and protection agreements.** With the aim of identifying instances of bogus agreements and checking that workers are made aware of collective agreements at their workplaces, a labour inspection protocol on free collective bargaining has been in use since 2016. This protocol allows labour inspectors to verify that collective agreements are being publicized and that labour relations conform to the agreed terms and conditions.

In legislative terms, attention should be drawn to the fact that, as part of the constitutional reform on labour justice, a paragraph has been added to part XVIII of article 123(A), ensuring protection for worker representation.

Furthermore, paragraph XXIIbis has been added to the same article to safeguard the principles of trade union representativeness, along with certainty in signing, registering and depositing collective agreements. This paragraph also ensures that workers are given an individual, free and secret vote when it comes to resolving disputes between trade unions, requesting the conclusion of collective agreements and electing trade union officials.

- (iii) **Publication of trade union registrations and constitutions.** As a step forward, we can report that, by 30 April this year, information on **3,422 trade union organizations (unions, federations and confederations) registered with the federal authorities** had been published through the “trade union consultation system”. To date, the system has recorded **254,512 consultations**.

With regard to registrations at local level, it is worth noting that the Conciliation and Arbitration Boards are meeting their obligations in terms of transparency through the various mechanisms provided for in section 124(V) of the General Act on Transparency and Access to Public Information. These obligations will rest with the decentralized public body following the adoption and entry into force of secondary legislation, in accordance with the provisions of the constitutional reform to the effect that their actions shall be governed, *inter alia*, by the principles of transparency and disclosure.

- (iv) **Application of the labour inspection protocol on free collective bargaining.** We can report that, from the date on which the protocol entered into force until April 2018, **196** inspections have been carried out resulting in **528** technical measures, benefiting **68,285** workers.

Part 4 *Legislative provisions and practical measures noted by the CEACR*

This section addresses the points raised in the CEACR's comments to the Government of Mexico concerning: (i) trade union pluralism and the re-election of union officials; (ii) measures to amend paragraph II of section 372 of the Federal Labour Act; (iii) information on the participation of foreign nationals in trade union executive committees.

- (i) With regard to trade union pluralism in Government offices and the re-election of union officials, the Government of Mexico reports that, from 2013 to the present, five reform initiatives have been submitted to the Congress of the Union concerning trade union pluralism, together with a further two on the re-election of union officials in civil service workers' unions, but that so far no decision has been taken. However, it should be noted that the Federal Tribunal for Conciliation and Arbitration, guaranteeing trade union autonomy, has invariably granted accreditation when notified of any change in leadership.
- (ii) With regard to the comment on amending section 372 of the Federal Labour Act, the Government of Mexico reiterates that the prohibition on foreign nationals serving on trade union executive committees is not applied in practice. Moreover, no specific case of this has been confirmed and the Government is not aware of any complaint or claim in this regard. On the contrary, some trade union constitutions expressly recognize the possibility of foreign nationals serving on trade union executive committees.