



Democratic Labor Reform in Mexico

By Graciela Bensusán and Kevin J. Middlebrook

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Introduction

The reform of Article 123 of the Mexican Constitution regarding “Labor Justice, Union Freedom, and Collective Bargaining” (February 24, 2017) and the entry into force of its implementing regulations in the Federal Labor Law (May 2, 2019) entail a radical transformation of Mexico’s long-established labor model. The reforms aim to give workers control over the exercise of their collective rights and to guarantee impartiality in labor conflict resolution. Since December 2018, these reformed laws have been accompanied by a new policy enacted by the government of President Andrés Manuel López Obrador (2018-2024) of restoring the value of the minimum wage and overseeing the fulfillment of employers’ obligations, thereby reversing almost four decades of labor policies that were unfavorable to Mexican workers (García, Carrillo and Bensusán 2019; Bensusán 2020).¹

The enactment of these institutional changes is largely explained by international pressures linked to the negotiation of trade agreements with the United States (the Trans-Pacific Partnership agreement, TPP, and the United States-Mexico-Canada Agreement, USMCA), but it is also important to take into account the longer-standing domestic demands for labor reform that had lacked sufficient political strength to be realized (Bensusán and Middlebrook 2020). The precedents for these recent changes thus lie in older demands from various sectors, such as those that arose with the “union uprising” of the 1970s and the “Democratic Tendency” (Tendencia Democrática) movement within the national electrical workers’ union (Trejo Delarbre 1978). These demands were later included in the various labor law reform proposals presented by the political opposition, especially by the Party of the Democratic Revolution (Partido de la Revolución Democrática, PRD), independent unions like the National Workers’ Union (Unión Nacional de Trabajadores, UNT), and labor experts who called for deepening the country’s democratization process by including labor rights (Bensusán and Middlebrook 2013). In the end, in the presidential election of July 2018, they formed part of the winning candidate’s political agenda, which included proposals for union democracy, freedom of association, and wage recuperation.²

The purpose of this paper is to examine the characteristics of the aforementioned institutional reforms, their relevance in the broader context of the history of the Mexican labor model, and their current implementation status. We first present what might be called the “institutional stability paradox” of the old labor model, which prevailed in Mexico for nearly a century. We then discuss the main transformations of this model in the context of the TPP and USMCA negotiations. The paper ends with an assessment of current challenges in the reform process.

¹ This is a translation of a text originally written in Spanish. Some of the ideas presented here are developed in Bensusán 2020 (English and Spanish); they have been revised and updated for the present publication.

² See *Proyecto de Nación del Partido Morena (Movimiento Regeneración Nacional)*, 2018-2024 in Morena 2017 and López Obrador 2017.

Mexico's Post-revolutionary Labor Model: The Paradox of Institutional Stability

The old Mexican labor model was forged in the conflictive context that prevailed during and in the decades after the Mexican Revolution (1910-1920), with the goal of promoting the country's modernization via institutional means without jeopardizing opportunities for economic development. Article 123 of the 1917 Constitution and the 1931 Federal Labor Law formed part of the process of integrating the popular classes (in this case, wage workers) into the new order that arose from the Mexican Revolution, at a time when they were still a minority share of the labor force.

The origins of this model were, moreover, linked to the goals of correcting the deep inequalities and addressing in the constitution the social challenges that had arisen during the rapid industrial development that occurred during the rule of Porfirio Díaz (1877-1880, 1884-1911), prevailing social backwardness, and the disorganization that had resulted from the armed conflict, all in a context of highly legitimized social mobilization and the relative autonomy of the state *vis-à-vis* the conservative demands of capital. Nonetheless, as a foundational element of Mexico's post-revolutionary authoritarian political regime, the post-revolutionary regulation of labor rights was also designed so as to include significant ambiguity and indetermination, which expanded the scope of state intervention in distributive conflicts between capital and labor.

In the context of a historic fragility of the rule of law and concentration of power in the federal executive, these characteristics proved particularly useful in adapting labor relations to the changing demands of economic development, counterbalancing the apparent formal rigidity of laws that were sanctified at the highest juridical level. However, the ample margins for state intervention in the management of labor conflicts were insufficient to limit the transformative potential of Article 123, so political controls on organized labor were required as well (Bensusán 2000 and 2006; Middlebrook 1995).

Unlike the legitimizing value of both agrarian and labor social reforms, which is what is underscored by most of the research on the period during which Article 123 was drafted, the longer-term consequences of the early adoption of high levels of protection for wage workers in a context of significant productive backwardness and state fragility were less apparent. This abrupt quantitative and qualitative leap in the protection of individual and collective rights immediately made post-revolutionary governments seek ways to contain a transformative potential that threatened the interests of employers, which they did through the institutionalization of political and social controls over the labor organizations. The collective rights formally granted to trade unions (freedom of association, the right to collective bargaining, the right to strike) were, therefore, subordinate to state control, and their exercise was subject to changing government policies and priorities.

The "tripartism" on which the post-1917 labor justice system was based (conciliation and arbitration boards comprised of worker, employer, and government representatives, under the control of the executive branch), as well as the possibility of state intervention both in trade unions from the time of their creation and throughout their existence and in collective bargaining under a weak or absent rule of law, produced a "state corporatist" form of labor relations. These instruments were pillars of the labor model that in fact provided quite selective protections for workers, generally limited to those who worked in large public and private companies. In sum, throughout the history the old labor model, the realization of constitutional rights was gradual and selective, with phases of activation and deactivation of worker

protections. Indeed, a century after the enactment of Article 123—which formally covered anyone working under a labor contract—only a minority of workers were actually protected by its provisions.³

The labor model derived from Article 123 and the 1931 Federal Labor Law conformed first with a development strategy oriented toward the domestic market between 1940 and 1980, and later with a strategy based on exports to the United States under the North American Free Trade Agreement (NAFTA), the latter of which shifted labor and wage policies toward favoring foreign investment. The model was thus an essential instrument in an authoritarian political system, but it also coexisted with Mexico's democratic opening from the late 1980s onward and it survived partisan alternation in power in the federal executive in 2000. In essence, it remained practically unchanged in contexts that differed radically from the one in which it was created.

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The post-revolutionary labor model thus displayed extraordinary stability despite initial resistance in business circles and in public opinion due to its one-sidedness and the high level of protection it offered workers, which clashed with the conservative ideas of the time. However, under the industrialization strategy oriented toward the domestic market, these labor norms were no longer questioned because of the importance of encouraging worker consumption by improving their living conditions and because of the government's control over union actions. However, beginning with the economic crisis that Mexico endured throughout the 1980s, business pressures grew to replace and make more flexible the old institutional order as part of a process of deep economic restructuring. As all available evidence indicates, this recasting of the model and the export-oriented development strategy that it underpinned offered scarce benefits to millions of Mexican wage earners, who endured inflation-adjusted wages below the poverty line and among the lowest in Latin America, precarious employment, exhausting work days, expanded outsourcing in all sectors of the economy, and labor organizations that not only failed to act as a counterweight to corporate power but even reversed the direction of conventional workplace representation.⁴

Finally, after two decades of increased flexibility in labor relations in practice, a 2012 reform of the Federal Labor Law timidly modified some of its provisions concerning individual hiring and increased the sanctions for violating workers' rights, without touching the pillars of legal/political control or the “tripartism” of the labor justice system, as a number social sectors and some opposition parties were demanding. Among the few legal changes concerning collective rights, so-called “separation exclusion clauses”—provisions in collective bargaining agreements requiring employers to dismiss workers who had resigned from or who had been expelled from their union—were eliminated. This change incorporated into law a Supreme Court of Justice ruling that had found such clauses unconstitutional (Bensusán 2000, 2006, 2013).

In summary, democratizing labor reforms had long been delayed. When the right moment arrived, somewhat unexpectedly it was in the context of bilateral negotiations with the United States over Mexico's accession to the Trans-Pacific Partnership agreement (Bensusán and Middlebrook 2020).

³ Although the Federal Labor Law covers all wage workers, in both the formal and informal sectors of the economy, in practice only those workers who are registered for social security (that is, formal employees) actually have full rights as workers. This leaves out some sixty percent of workers (INEGI 2020).

⁴ For a detailed analysis of the labor situation and gaps in worker protection in Mexico when the 2017 constitutional reform was enacted, see CONEVAL 2018.

The New Labor Model: Main Characteristics

The institutional bases for reforming the old labor model were constructed in two very different political moments: between 2015 and 2017, during the administration of President Enrique Peña Nieto (2012-2018), and in 2019 during President López Obrador's tenure in office. Both processes were linked to trade negotiations with the United States, first with President Barack Obama (2009-2013, 2013-2017) and then with the Donald Trump administration (2017-2021).

The main principles of the 2017 constitutional reform were based on important national precedents that favored a new system of labor justice that was impartial and separate from the executive branch, as well as the creation of an autonomous body to register unions and collective contracts. Since the 1990s, various political parties and academic and social organizations had made different proposals pointing in the same direction.⁵ However, U.S. pressures during the TPP negotiations (that is, U.S. demands for far-reaching labor reforms as a condition for Mexico's accession to the multilateral free-trade agreement), added to the ILO's critiques of violations of freedom of association and collective bargaining (such as complaint 2694, which had been presented by the International Metalworkers' Federation and a coalition Mexican unions), together led the Peña Nieto administration to agree to a reform of Article 123, which came into effect on February 24, 2017.

This transcendental constitutional reform took only a year to be approved, which revealed the control that then-President Peña Nieto still held over the federal Congress and state legislatures. It is evident that without external pressures, the reform would not have come about, given the massive resistance and fear that previous democratization initiatives had met from government-aligned unions and among business organizations.⁶ However, it must also be said that President Peña Nieto's initiative was, thanks to the participation of independent unions and labor law experts, expanded in Congress to extend the scope of universal and secret voting by workers to include collective bargaining procedures, something that was not contemplated in Peña Nieto's original proposal.⁷

⁵ One of the immediate precedents for the 2017 constitutional reform was the document drafted by the Working Group on Everyday Justice (Grupo de Trabajo sobre Justicia Cotidiana), coordinated by the Centro de Investigación y Docencia Económicas (CIDE), in 2015. A few years earlier, when the Federal Labor Law reform of 2012 was under discussion, the political dimensions of the reform (provisions concerning trade unions and collective contracts) proposed by President Felipe Calderón (2006-2012) had caused heated political debate, even though they left intact the principal bases of the old institutional order. Previous proposals presented by the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) left out these changes, even though they had been included in the National Action Party's (Partido Acción Nacional, PAN) earlier reform initiative in 2010. Based on the PAN's 1995 legislative initiative and those by the PRD in 1997 and the PRD-UNT in 2002, 2010, and 2012, Calderón's 2012 initiative included some proposals concerning democracy, transparency, and accountability in unions. These proposals included free, secret, and universal—although not direct—voting in union elections, as well as recount elections to determine which union had legal control over a collective contract or the right of workers to refuse to pay their dues in the absence of procedures to ensure the accountability of union leaders. However, the final measure that was approved in 2012 was very limited; union democratization was still a pending issue. See Bensusán and Middlebrook 2013.

⁶ Regarding the positions of unions and business organizations *vis-à-vis* previous attempts at labor reforms favoring democracy and union independence, see Bensusán 2000. For a detailed analysis of the negotiation process with the United States leading to the 2017 constitutional reform, see Bensusán and Middlebrook 2020.

⁷ An analysis of the way in which a secret ballot for the approval of collective contracts was finally included in the constitutional reform can be found in Alcalde 2020: 12-14.

As far as the liberalization of controls on the exercise of collective rights is concerned, the main purpose of the 2017 constitutional reform was to guarantee freedom of association and collective bargaining, as well as union democracy and the representational authenticity of labor organizations as a necessary condition for negotiating a collective contract (Article 123, section A, fractions XVIII, XXII bis). These changes closed the door on so-called “employer protection contracts,” which employers sign with unrepresentative union leaders—behind workers’ backs. To further that goal, the reform guaranteed the autonomy of unions *vis-à-vis* the state and employers by creating a national, decentralized federal institution with responsibility over the registration of unions and collective bargaining agreements, thus doing away with the artificial distinction between the local (state-level) and federal jurisdiction of contracts and labor organizations. At the same time, the reform returned union power to the rank and file, making it possible for workers to pursue redistribution conflicts that link wage increases to rising labor productivity. Another key part of the reform’s effort to disband the post-revolutionary labor model was the elimination conciliation and arbitration boards, tripartite bodies that had previously formed part of the executive branch. The aim was to place labor law under the supervision of the judicial branch, thus strengthening the rule of law in labor relations.

In sum, the 2017 reform catalyzed true structural change in the world of labor affairs by laying the groundwork for transforming the pillars of the state-corporatist institutional arrangements forged and consolidated after the Mexican Revolution and in operation for almost a century. Nevertheless, once the constitutional reform had passed, a period of uncertainty began that lasted almost two years, during which several attempts were made to reverse the reforms. These efforts emanated from various traditional labor organizations and business groups that tried to ensure a tripartite structure of the new union and contract registration body created by the reform.⁸

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The second key moment began when a new federal Congress came to office following the July 2018 general elections. The Senate ratified ILO Convention 98 in September 2018. President López Obrador’s administration then finally proposed a comprehensive set of Federal Labor Law reforms that reflected the new constitutional principles, which were passed by the Congress on April 30, 2019. The adoption of these reforms had been a central issue in the negotiations that led in to the USMCA and a requirement for its eventual ratification by the U.S. and Canadian national legislatures.⁹

The USMCA protocol adopted in December 2019 also included a provision for a so-called rapid response mechanism to address complaints regarding violations of freedom of association and collective bargaining in designated priority economic sectors. This mechanism strengthened the commitments Mexico made in

⁸ See Alcalde 2020: 8-9.

⁹ The 2019 reforms also included measures aimed at protecting the rights of the 2.3 million people employed as domestic workers (Bensusán 2019). This reform was a further example of the legislative activism to regulate workers’ rights embodied by the 2019 Federal Labor Law and a new minimum wage policy (García, Carrillo, and Bensusán 2020).

Annex 23-A¹⁰ of the USMCA and in the new Federal Labor Law. With the adoption of these measures, the USMCA was finally approved in both Canada and the United States.¹¹

A Profile of the New Mexican Labor Model

The following are comments on nine of the most important aspects of Mexico's recent labor reforms, starting with foundational issues and taking into account their possibly transformative effects on established state-union relations.

Creation of the Federal Center for Conciliation and Labor Registry (*Centro Federal de Conciliación y Registro Laboral, CFCyRL*)

The CFCyRL was created as a decentralized body within the federal public administration, with national jurisdiction over the registry of unions and their leaderships. It is charged with issuing confirmations of leadership representativity and registering collective bargaining agreements, "contract laws" (*contratos ley*, collective contracts that set uniform wages and working conditions across selected industries, such as textiles and rubber production), and union by-laws. Its director is appointed by the federal Senate (requiring the support of at least one-third of the Senators in attendance) from among three candidates proposed by the President. The CFCyRL's main goal is to end the arbitrariness and favoritism that previously characterized union and contract registration and reduce the number of conflicts that must be handled by the judicial branch. The artificial distinction between registry authorities with local (state-level conciliation and arbitration boards) and federal (Ministry of Labor and Social Welfare / Secretaría del Trabajo y Previsión Social, STPS) jurisdiction, which itself caused artificial divisions within union organizations and impeded the construction of value chains, was eliminated.

The CFCyRL has legal standing, with its own assets and full technical, operational, budgetary, decision-making, and managerial autonomy.¹² It will have authority at the federal level to implement the new mandatory conciliation procedures designed to resolve worker-employer disputes before they reach the new labor courts that will replace the conciliation and arbitration boards. Its governing board is comprised by the heads of the STPS, the National Institute of Transparency, Access to Information, and Personal Data Protection (INAI), the National Institute of Statistics, Geography, and Informatics (INEGI), and the National Electoral Institute (INE) and their deputies. This composition is important because the board is responsible for guaranteeing the operation of the Center according to the constitutional and legal principles of "certainty, independence, legality, impartiality, equality, trustworthiness, efficacy, objectivity, professionalism, and transparency."

Creation of Labor Courts within the Judicial Branch, Independent of the Executive Branch

The elimination of conciliation and arbitration boards and the shift of the labor justice system to the judicial branch is one of the most important structural reforms. The prior integration of the tripartite juntas into the executive branch did not guarantee the necessary impartiality and independence required for resolving worker-employer or inter-union conflicts. In addition, it is important to recall that local-jurisdiction boards handled union registration and conflicts over legal title of collective work agreements,

¹⁰ See the Spanish-language text of USMCA Annex 23-A in Government of Mexico 2019.

¹¹ The agreement passed the U. S. House of Representatives in December 2019 and the Senate on January 16, 2020, with 89 votes in favor and 10 against (Guimón 2020). The Canadian Parliament passed the USMCA implementation law on March 13, 2020 (*El Financiero* 2020).

¹² Ley Federal del Trabajo, Art. 590 B.

meaning that these important decisions were left to the government and the representatives of employers and unions linked to it. Research has repeatedly shown the negative consequences this arrangement had both in terms of the duration of labor conflicts and the inability to implement board rulings, not to mention the undemocratic practices employed to select worker representatives on the boards (Bensusán 2006; Bensusán and Alcalde 2013; CIDE 2015). As the new courts and the CFCyRL begin operations, the boards and the STPS will continue handling ongoing registration procedures and unresolved individual and collective labor conflicts, as well as those initiated after the 2019 Federal Labor Law came into effect.¹³

Strengthening of the Principles of Freedom of Association and Collective Bargaining

Several different articles of the Federal Labor Law (357, 357 bis, and 358) incorporate the principles contained in ILO Conventions #87 and #98 on, respectively, freedom of association¹⁴ and the right to collective bargaining, which was recognized for the first time at the constitutional level. This was fundamental for their effective application. Autonomy *vis-à-vis* the power of employers is a central element of the new labor model, including the right of unions to be protected from employer interference in union activities or their manipulation of collective rights. It is worth remembering that, as noted above, the 2012 Federal Labor Law reform had already banned the separation exclusion clause from collective contracts.

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Protection of the Democratic Rights of Union Members

Article 358 of the new Federal Labor Law acknowledges freedom of association or disassociation; union participation and procedures for electing union leaders through personal, free, direct, and secret suffrage; gender equality rules; the duration of union leaders’ tenure in office (indefinite reelection is banned), and union leaders’ mandatory accountability to their members. What is most important is that the workers’ assembly must approve leaders’ reelection through a secret, personal, and direct vote, and that leadership tenure cannot be indefinite. Rather, it must be limited to the number of reelections permitted in the union statutes (Article 371, Fraction X, which should read in conjunction with Article 358, Fraction II).

The Free Scope of Union Action

The typology of worker associations established by law (for example, enterprise-level, national, national-industrial, and so forth) is not exhaustive, so workers have the right to decide how to organize themselves according to their interests. This opens the opportunity for transforming those union organizational structures that no longer correspond to the characteristics of a globalized economy constructed around value chains. Another important aspect is that, given the elimination of the requirement that members must be active workers, the new labor law allows the unionization of workers who are either unregistered or who are registered in atypical ways (for example, those employed in the digital economy or informal workers). Of course, these are opportunities the realization of which will depend on unions’ capacity to adopt strategies that win them greater credibility and expand their presence among the most vulnerable groups of workers and those participating in the digital economy, especially younger workers.

¹³ Ley Federal del Trabajo (2019), Transitory Articles 7, 8.

¹⁴ Convention #98 was ratified by Mexico in September 2018 and deposited on November 23, 2018. It has therefore been in effect since November 2019, twelve months after its ratification was registered by the ILO.

Autonomy *vis-à-vis* the Government

Along with union democracy, union autonomy *vis-à-vis* the government is another of the most important elements in the transformation of the old labor model. The new Federal Labor Law establishes: (a) a new procedure for union registration and the selection of union executive committees (364 bis) under the principles of autonomy, equity, democracy, legality, transparency, certainty, costlessness, immediacy, impartiality and respect for freedom of association and its guarantees; (b) fixed deadlines (10 days) for labor authorities to respond to union registration requests; (c) the principle that the will of the people and the interest of the group are more important than formalities; and (d) guarantees that strengthen labor organizations *vis-à-vis* the government by limiting discretion in union registration procedures. In this regard, it is extremely important that the 2019 law establishes two different kinds of procedures to verify the election of union executive committees: voluntary verification that is requested by the committees themselves or by 30% of the affiliated members, and mandatory verification by labor authorities when there exists a reasonable doubt concerning the veracity of the documentation submitted to them (Alcalde, Villarreal, and Narcia 2019). Consequently, these two forms of electoral auditing should make it possible to prevent violations of the political rights of union members, which will in turn effectively guarantee union democracy.

Guarantees for Union Democracy

The new labor law also establishes a series of guarantees for the exercise of individual rights by creating rules and procedures regarding the expulsion of members; the convocation of a union general assembly and the election of both executive committees and section representatives through secret, personal, free, and direct voting; the inclusion of gender-based proportionality criteria; the duration of the tenure of union leaders and section representatives, and the reelection of leadership bodies when so directed by the general assembly with due suffrage guarantees; and rules and procedures concerning leadership accountability and consultation of workers on the approval of collective contracts, which were designed to end employer protection contracts. In addition, Article 378 prohibits participating in acts of simulation aimed at evading responsibilities and manipulating union affairs and labor relations.

Accountability and Transparency

The rules regarding accountability are aimed at promoting union transparency and guaranteeing that workers have real knowledge about the management of union assets. In addition to procedures that seek to guarantee the principle of transparency, the possibility exists for the workers themselves, if any irregular management of union assets is suspected, to initiate a process in which the employer suspends the payment of union dues. This measure can be a double-edged sword because it could be used to deprive the more combative unions of their financial resources. It will therefore be necessary to adopt guarantees to ensure that this mechanism is not abused in practice by, for example, requiring that contract administration fees be mandatory for all beneficiaries.

Representativity Certificates, the Approval of Initial Collective Contracts, and the Legitimation of Collective Contracts

Finally, two highly important aspects of the reform for ensuring authentic collective bargaining are the requirements for “representativity certificates” (proving that the union in question has the support of at least 30% of the workers who will be covered by a collective bargaining agreement) in order to solicit the negotiation of a contract, and approval of the proposed contract by a majority of workers (Arts. 390 bis, 390 ter., and Transitory Article 11). This certificate (which is regulated by Article 390 bis) constitutes the most effective way of guaranteeing true bilateralism in the negotiation of working conditions, most especially concerning wages, because the prior expression of workers’ support through a personal, free,

and secret vote is recognized as a matter of “public and of social interest.” The certificate is essential for ending the nefarious protection contracts that had led to total employer unilateralism when it came to determining working conditions. The informality of the workplace should not be an obstacle to exercising this right. If two or more unions each have the support of 30% of the workers covered by the contract, there will be a vote so that the workers can decide which of them has more support to proceed with signing of the collective agreement. Although it is true that requiring a representativity certificate could entail complications in collective bargaining, without it—or something similar to it—employers would continue to choose their own negotiating counterpart.

Furthermore, for the first time in history, Article 390 ter. creates a true process of certifying the will of the majority of workers as a requirement for initial approval of a collective bargaining agreement. If the contract does not have majority support, it cannot be legally deposited. Transitory Article 11, in turn, demands majority approval to legitimate all existing collective contracts, which, as a requirement set by USMCA Annex 23-A, must be validated no more than four years after the proclamation of the law. An existing contract that fails to meet this standard is terminated, although all existing benefits and working conditions are maintained until a new collective contract can be signed.

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In sum, under these principles and rules, a new balance was set between collective rights, individual liberties, and worker autonomy that opens the way for the true democratization of relations among the state, unions, workers, and employers. In addition, if these rules and procedures are fully implemented, the negotiating capacity of workers will be greatly improved, countering the structural weakness inherent in a labor market in which almost six out of every ten workers are in the informal sector.

The Current Situation and Perspectives on the Implementation of the New Labor Model

Passage of the 2019 labor reform elicited adverse reactions in various spheres, mostly from the long-dominant Confederation of Mexican Workers (Confederación de Trabajadores de México, CTM), which filed over 400 judicial appeals (*juicios de amparo*) against it. The most important ones were rejected by the Supreme Court of Justice, including those against secret and direct suffrage for electing union executive committees, the initial approval of collective contracts and contract revision by a majority of workers, mandatory accountability in union asset management, and workers’ right to request that union dues not be deducted from their salaries.¹⁵ Business groups and the employees of local-jurisdiction conciliation and arbitration boards also questioned the loss of boards’ authority to register unions and collective contracts and to resolve labor conflicts (Maquila Solidarity Network 2019).¹⁶ Yet despite this

¹⁵ On November 25, 2020, the Supreme Court dismissed four appeals concerning twelve 2019 Federal Labor Law articles (Grupo Reforma 2020). See also the statements by senior STPS officials and CTM leaders concerning the fate of the appeals (Xantomila 2019).

¹⁶ In addition to the provision for direct suffrage in certain procedures (a criterion that had not been considered in the 2017 constitutional reform) and in union elections (which challenged the practices of many unions, under whose statutes union members chose delegates, who then conducted indirect elections to choose union leaders), another new rule that was questioned by a significant number of unions—including democratic and independent ones—was the one that gave workers the right to request that union dues not be deducted from their salaries. However, the law did allow for making the payment of union dues a requirement of union membership. The problem lay in the

opposition and the effects of the COVID-19 pandemic, the deadlines established for the implementation of the new labor model have generally been met. Only in a few cases have extensions been granted, and in other instances, steps have actually been taken ahead of schedule. Unions have adapted to the new set of rules and gradually have begun abiding by them, with union leaders designing strategies to win the support of their members through democratic processes.

In June 2019, before the set deadline, the Inter-institutional Coordination Council for the implementation of the labor justice system on a national scale was established. It is presided over by the head of the STPS, who consults, plans, and coordinate policy aimed at implementing this process.¹⁷

With regard to the creation of the main institution established by the reform (in addition to the new labor courts), the Organic Law of the CFCyRL had to be drafted within 180 days after May 2, 2019, when the new Federal Labor Law came into effect. That occurred on January 20, 2020, a couple of months behind schedule.¹⁸ Taking into account budgetary constraints, it was decided that the body would begin its registration duties no more than two years after the 2019 Federal Labor Law took effect. However, the Center actually began operating sooner than anticipated (on November 18, 2020), once its general director had been appointed by the Senate on July 29, 2020.¹⁹ The first session of its governing board took place within the established timeframe.²⁰ Similarly, competitions were held to select CFCyRL personnel, as well as staff for the local conciliation centers and labor courts that were set to begin operating in the first stage of the reform implementation.

In accordance with the reform's Implementation Plan, labor courts and conciliation centers in the Mexican states were to begin operating in three stages. The first stage began on November 18, 2020, with seven Mexican states.²¹ On that day, local conciliation centers and local courts began operations, as did the CFCyRL's registration and conciliation activities of in those states. Beginning in May 2021, its registration duties will extend to the entire country within a period two years, as stipulated in the new Federal Labor

fact that all workers, not just unionized ones, would benefit from collective bargaining, even when they did not contribute to toward the union's operating expenses (Maquila Solidarity Network 2019).

¹⁷ In addition to the head of the STPS, the Council is comprised of the head of the Ministry of Finance and Public Credit (SHCP), a representative of the federal judicial branch appointed by the president of the Supreme Court of Justice, a representative of the National Governors' Conference, a representative of the National Commission of Superior Courts of Justice and a representative of the National Conference of Ministers of Labor (Transitory Article 17 of the 2019 Federal Labor Law). It was supposed to be created within 45 days; the first session took place on July 5, 2019 (Boletín 130, Secretaría del Trabajo y Previsión Social; <https://www.gob.mx/stps/prensa/se-realiza-primerasesion-del-consejo-de-coordinacion-para-la-implementacion-de-la-reforma-al-sistema-de-justicia-laboral-207733>).

¹⁸ "Ley Orgánica de Creación del Centro Federal de Conciliación y Registro Laboral," Diario Oficial de la Federación, January 20, 2020 (http://www.diputados.gob.mx/LeyesBiblio/pdf/LOFCRL_060120.pdf).

¹⁹ The person appointed as the General Director of the CFCyRL was Alfredo Domínguez Marrufo, then Undersecretary of Labor and Social Welfare, with 79 votes in favor out of the 97 Senators present (Senado de la República, July 29, <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/48743-designa-senado-a-alfredo-dominguez-marrufo-como-titular-del-centro-federal-de-conciliacion-y-registro-laboral.html>).

²⁰ The first session took place on August 7, 2020 (Secretaría del Trabajo y Previsión Social, August 7, 2020, <https://www.gob.mx/stps/prensa/centro-federal-de-conciliacion-y-registro-laboral-terminara-con-simulacion-que-perjudica-a-trabajadores-y-empleadores-luisa-alcalde>). The deadline was within 90 calendar days after the Center's director had been appointed (Ley Federal del Trabajo, Transitory Article 14).

²¹ These states were Campeche, Chiapas, Durango, the State of Mexico, San Luis Potosí, Tabasco, and Zacatecas. Hidalgo was originally included on this list, but the state government requested an extension of the deadline. The second phase is set to begin in October 2021 with 13 states, and the third in May 2022 with the remaining ones.

Law.²² Conciliation centers and labor courts operating under the states' judicial branches have up to three years to begin their work, whereas the federal ones have four.²³

Labor unions have had to adjust their statutes to the new democratic rules. Among other required modifications, they were given up to 240 days, starting from the entry into effect of the 2019 reform, to include requirements for free, direct, and secret worker suffrage in the electoral processes employed to select their leaderships.²⁴ It was also stipulated that labor organizations would have no more than a year in which to adapt their membership consultation procedures with regard to voting to obtain the representativity certificates that are a necessary condition for the negotiation and approval of collective contracts and their revision. The 2019 reform established this condition for the first time as a way of blocking complicity between union leaders and employers and preventing them from negotiating contract terms behind the backs of the worker beneficiaries.²⁵ This rule became enforceable on May 2, 2020.²⁶ However, because to the COVID-19 pandemic, it was necessary for labor authorities to grant extensions in both cases.²⁷

With the same goal of placing fundamental decisions affecting their working conditions in the hands of workers themselves, there is a four-year deadline for unions to carry out the process of legitimating all existing contracts. This is in accordance with both Article 123 and the international commitment that Mexico accepted in USMCA Annex 23-A. The same procedures hold as for the initial approval and subsequent revision of collective bargaining agreements. The process is carried out through the STPS website and until the CFCyRL is operational. To this end, the STPS established a legitimation protocol on July 31, 2019, which was within the required timeframe of three months after the new Federal Labor Law came into force. Between then and November 6, 2020, a total of 211 collective contracts in various sectors were legitimized, and there a total of some 130 further legitimizations were scheduled by December 14. Thus, with the reopening of some nonessential activities after the pandemic-related closure between March and July 2020, the pace increased substantially.²⁸

When the 2020 federal budget was approved in November 2019, the funds allocated to the STPS and the judicial branch, the bodies responsible for implementing the new labor justice system, significantly increased. This was read as a sign that the Mexican federal government was taking seriously the international commitments it had made in order to ensure approval of the USMCA (Martínez 2019).²⁹

²² Ley Federal del Trabajo, Transitory Article 3.

²³ *Ibid.*, Transitory Articles 5, 6.

²⁴ *Ibid.*, Transitory Article 23.

²⁵ *Ibid.*, Transitory Article 22.

²⁶ According to the STPS, in February 2020, 85% of federal-jurisdiction unions had adapted their regulations to the new rules (STPS, Bulletin 024/2020, February 23, 2020, <https://www.gob.mx/stps/prensa/la-reforma-laboral-devuelve-el-poder-de-los-sindicatos-a-las-y-los-trabajadores-de-mexico-235663?idiom=es>).

²⁷ For membership consultation processes, the extension was 45 calendar days; for the revision of union statutes regarding electoral procedures, the extension was until 17 business days after the day on which public health authorities authorized a return to normal working conditions in the public sector, and after all union and contract registration authorities in a particular jurisdiction had resumed their work ("Acuerdo de la Comisión de Coordinación e Implementación de la Reforma Laboral," STPS, Bulletin 038/ 2020, April 20, 2020, <https://www.gob.mx/stps/prensa/acuerda-ccirjl-ampliacion-de-plazos-establecidos-en-la-reforma-laboral-para-modificar-estatutos-sindicales>).

²⁸ STPS legitimization list, accessed on November 6, 2020 (https://legitimacioncontratoscolectivos.stps.gob.mx/Listado_Legitimaciones.aspx).

²⁹ The 2020 budget included a total of 1,401.9 million pesos (US\$69,336,589 at the contemporary exchange rate) for STPS implementation of the labor reform (Ortega 2019). These funds were separate from the regular STPS budget

Conclusions

Despite resistance and judicial appeals against the reforms, the evidence shows that its implementation is proceeding as legally stipulated. It is, however, still too soon to determine whether the expectations the reforms have raised will be met, and whether trade unionism in Mexico will indeed be able to transition toward democratization and fulfil its representational role, which is what is required for unions to regain the credibility they lost during decades of neglecting workers' interests. The key point is for workers to take back the exercise of rights that their leaders controlled. This labor transition was a missing element in the post-1980s democratization of the Mexican political regime and a necessary condition for workers to benefit from national economic development. Its success will depend not just on the degree to which the unions that benefited from the old legal order can adapt to the multiple reforms included in the new Federal Labor Law, but also on the ability of independent unions, their international allies, and workers themselves to take advantage of the new organizational and political opportunities it presents.

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For employers, the labor reforms entail an acknowledgement of dialogue with authentic trade unions and meaningful collective bargaining regarding working conditions, leaving behind the virtually unilateral mode of conduct engaged in by most private companies. There is evidence that some companies, both national and international, are willing to adapt to a new reality in labor relations. However, the process of change will be slow and hardly devoid of challenges. The significant amount of international attention that has focused on the labor reform process in Mexico will be an important incentive for employers to acknowledge and abide by rules that are aligned with international labor standards.

Many factors favor an optimistic view on this process. They include both the promising operation of new autonomous institutions and the use of various resources (including the electronic conciliation and registration platforms operated by the CFCyRL) designed to make easier and more transparent various processes linked to union democracy. However, because this transformation is a complex process, it will take time, and it will inevitably encounter significant obstacles.

The legacies of many decades of simulation in the world of labor affairs are not going to disappear at once simply because of institutional changes, no matter how optimal the designs or how sincere the efforts to enforce the reforms and accelerate the transition process. It is therefore important to value the steps that have been taken so far, despite the restrictions imposed by the COVID-19 pandemic, and ensure that implementation of a new set of rules can in fact change the incentives of all the actors in the field of labor affairs, thereby constructing new scenarios of labor governance in which everyone can win.

so they were not affected by the budget cuts suffered by other Ministry programs. A total of 197.3 million pesos (US\$9,098,203) of these funds were directed to the creation of the CFCyRL, which required hiring conciliation (320) and registration (321) specialists. The remainder went to the federal labor courts and to financial transfers to the states' local courts and conciliation centers. The STPS itself received almost 200 million pesos (US\$9,986,661) for training programs and to legitimize existing collective contracts. Overall, it was calculated that over the course of four years of the implementation program would cost a total of 2,223 million pesos (US\$119,348,461) (Maquila Solidarity Network, “Mexico Budgets for the Transition,” December 2019).

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Professor Bensusán is author of *El modelo mexicano de regulación laboral* (2000, Miguel Ángel Porrúa-UAM) and co-author of *Sindicatos y Política en México: cambios, continuidades y contradicciones* (2013, UAM, FLACSO and CLACSO); *Diseño legal y desempeño real: instituciones laborales en América Latina* (2006, UAM-Miguel Ángel Porrúa), and editor or co-editor of twenty other books. In addition, she has published 180 chapters of books and articles in journals such as *Estudios Sociológicos*, *Revista Latinoamericana de Estudios del Trabajo*, *Revista Mexicana de Sociología*, *Revista Perfiles Latinoamericanos*, *Revista Foro Internacional*, *Journal of Sociology*, *Comparative Labor Law and Policy Journal*, *Journal of Industrial Relations and Theoretical Inquiries in Law*. She has recently published the chapters *Trade Unions and Politics in Latin America*, published in *Oxford Research Encyclopedia of Politics* (2019). Professor Bensusán's current research focuses on the comparative analysis of labour policies, institutions and organizations in Latin America.

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