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# THE LABOR SECTOR AND U.S. FOREIGN ASSISTANCE GOALS

MEXICO LABOR SECTOR ASSESSMENT  
EXECUTIVE SUMMARY

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# EXECUTIVE SUMMARY

## MEXICO'S LABOR SECTOR

In the last three decades, Mexico has undergone a dual transition to a more market-oriented, globally integrated economy and a more pluralist, democratic political system. This transition has been accompanied by dramatic shifts in Mexico's labor market, which has become increasingly heterogeneous and informal. Despite these broad changes, however, Mexico's labor sector is characterized by a striking degree of institutional continuity, with negative consequences for worker rights.

### Legal Framework

Mexico's system of labor relations is founded on two key documents which have undergone very few changes since their creation: the 1917 Mexican Constitution (Article 123) and the 1931 Federal Labor Law (LFT). Both documents grant generous rights and privileges to workers and unions and also empower the state to intervene in labor affairs.

In general, among the most controversial examples of state intervention are (1) control over the process of union registration (*registro*); (2) authority to intervene in disputes between groups of workers vying for control of a collective contract through participation in a survey (*recuento*) to determine which group is supported by the majority of workers and thereby has title to the contract; (3) requirement that union leaders be certified by the labor authorities (*toma de nota*) before they can sign collective contracts; and (4) authority to regulate strike activity.

Freedom of association is further compromised by a provision of the LFT that allows for the incorporation of "exclusion clauses" into collective contracts that require every worker who is hired to join the existing union and every worker who is dismissed (or resigns) from the union to be fired by the employer. Besides controlling internal dissent, these clauses are one of several legal mechanisms that allow the negotiation of "protection contracts" whereby union leaders promise employers labor peace (and sometimes flexible work rules) in exchange for control of the collective contract, which is negotiated without the workers' knowledge or participation.

Mexico has ratified 70 International Labor Organization (ILO) Conventions (but only six out of eight Core Conventions) and is a signatory to the North American Agreement on Labor Cooperation (NAALC), which was negotiated as a side agreement to the North American Free Trade Agreement (NAFTA). The ILO Conventions are largely symbolic, however, and the NAALC is very weak with regard to collective rights. Nor has the Mexican Congress been able to pass a labor law reform, which is a necessary but insufficient condition for a significant improvement in labor rights in Mexico. Numerous proposals have been drafted since the late 1980s (including one currently before the Mexican Congress), several of which have included provisions to improve freedom of association, but they have all floundered in the face of competing priorities and resistance by vested interests. The most promising, albeit limited, avenue for modifying the legal framework has been the judiciary, which has recently become a more independent actor in Mexico's political system. Since the mid-1990s, the National Supreme Court (SCJN) has issued several rulings in favor of freedom of association.

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### **Government Institutions**

The authorities responsible for labor administration and inspection are divided into federal and local jurisdictions, each of which covers different industries and sectors as established by the Constitution. The key actors are the Ministry of Labor and Social Welfare (STPS) for federal jurisdiction enterprises and state labor offices for local jurisdiction enterprises. Although the STPS has a professional, technically proficient staff at the highest levels, labor administration is often criticized for lacking transparency or accountability, failing to enforce the labor laws, and using the state's legal authority to privilege employers and/or compliant unions. Some believe that labor inspection suffers from a range of problems at both the federal and local levels, including inadequate resources and capacity, weak enforcement, and a weak culture among workers of reporting abuses or violations of the law.

Like labor administration and inspection, labor justice is divided into federal and local jurisdictions. The most important actors are the Federal and Local Boards of Conciliation and Arbitration (JFCA and JLCA), each of which is composed of representatives from the government, business, and labor. They are responsible for resolving conflicts between labor and capital and within the labor movement. The vast majority of claims involve individual disputes, particularly over unjustified dismissals, but the Labor Boards also handle collective disputes, including the granting and organizing of *recuentos*. While they provide an important channel for individual grievants to dispute unjust and/or illegal practices in the workplace, they are widely criticized for being biased, inefficient, and / or corrupt. One such criticism is that it empowers the state to influence the distribution of benefits through its presence on tripartite bodies such as the JFCA and JLCA, which are responsible for ruling on labor disputes, and the commissions mandated to set minimum wages, administer workers' housing, and regulate profit sharing.

### **Labor Sector Organizations**

Mexico's trade unions can be divided into four categories: (1) official unions and confederations, historically affiliated with the Institutional Revolutionary Party (PRI), that continue to dominate tripartite institutions, collaborate with the government and/or employers, and exercise veto power over labor law reform despite a dramatic decline in membership; (2) independent unions that are more autonomous from the state and potentially offer more genuine representation to their workers; (3) company unions promoted by the employers but independent from the state; and (4) protection unions that exist on paper but serve no representative function because their primary purpose is to protect the employer from worker demands.

Despite the growing influence of independent unions since the 1980s, Mexico's labor movement is currently facing a serious crisis of representation. First, a shrinking share of the workforce is unionized or employed by an establishment that engages in collective bargaining. Second, the majority of unions that do exist are either severely discredited as corrupt and self-serving or have no presence at all in the workplace. This lack of legitimacy has contributed to public support for anti-union initiatives by the government. Third, and related to the second issue, union leaders have not prepared a next generation of leadership and continue to wield power despite being increasingly distant from working-aged union rank and file.

Other key actors in Mexico's labor sector are business associations, particularly the Employer Confederation of the Mexican Republic (Coparmex), and civil society organizations (CSOs) concerned with labor rights. Founded in 1929, Coparmex is formally registered with the STPS, has an important presence on tripartite institutions, and has played a key role in all of the negotiations regarding labor law reform since the 1980s. Labor-rights CSOs are newer actors, reflecting the recent opening of political space for pluralist, issue-based groups. They emerged in the early 1990s, largely in response to the NAFTA negotiations, and have remained committed to advocating for *maquiladora* workers, pushing for multinational codes of conduct, exposing the issues raised by outsourcing and subcontracting, and promoting the formation of new, more democratic unions. They face numerous obstacles, however, to scaling up their programs and having a broader impact on labor relations.

## Labor Market

Since the late 1980s, Mexico has experienced slower growth in output and productivity than other emerging market economies, with negative consequences for the country's living standards. While Mexico is criticized for having employment protection legislation (EPL) that raises the costs of creating jobs in the formal sector and inhibits the competitiveness of some formal-sector firms, the Mexican labor market is nonetheless quite flexible overall because of growing levels of informality, flexible interpretation of provisions written into collective contracts, and weak enforcement. The high costs of compliance with the EPL combine with very low costs of non-compliance to create perverse incentives that work against the expansion of high-quality jobs in the formal sector. Among the consequences are job insecurity, low productivity, stagnant wage growth, and heavy reliance on informal social safety nets.

Although Mexico has historically had low rates of unemployment, these figures conceal serious problems with the quality of employment. Not only are a growing share of workers either underemployed or overworked, but Mexican wages have grown only intermittently (while minimum wages have fallen dramatically) since the 1980s. Some experts believe that precarious employment and low wages are accompanied by a fragmented and inadequate social safety net and insufficient investment in human capital. Partly as a consequence of the poor quality of employment and social protection in Mexico, millions of Mexicans have migrated to the United States, contributing to the consolidation of a transnational labor market.

## ROLE OF THE LABOR SECTOR IN OVERARCHING DEVELOPMENT THEMES

Today, Mexicans have more choices in the marketplace and at the ballot box, but the positive impact of these choices is diluted by at least four challenges: (1) weak rule of law; (2) crisis of representation; (3) obstacles to competitiveness; and (4) highly inequitable distribution of economic gains. These challenges are especially acute in the labor sector, which continues to operate under many of the same rules, incentive structures, and leaders as before the dual transition. If progress on these fronts can be made in the labor sector, there should be valuable spill-over effects for the rest of Mexican society.

One of the most persistent legacies of Mexico's dominant-party regime is the lack of effective and efficient institutions for upholding the rule of law. Although the balance of power among the executive, legislative, and judicial branches has changed dramatically in Mexico since the PRI began to lose its grip on the political system in the 1980s, the judiciary and law enforcement agencies continue to be plagued by inefficiency, corruption, and the arbitrary exercise of authority. Many of these same problems plague Mexico's labor sector, resulting in violations of labor rights, inadequate access to labor justice, and serious obstacles to the modernization and democratization of the labor movement. The development of stronger mechanisms of transparency, accountability, and enforcement in the labor sector would not only limit the opportunities for malfeasance and enable workers to defend their rights more effectively, but would also have implications for the rule of law more generally.

Another challenge that has not been resolved by Mexico's market opening or transition to a more robust multiparty system is a serious crisis of representation in institutions that are supposed to provide intermediation between leaders and their constituent bases. While Mexico's elections are much more free and fair than in the past, they still serve as inadequate mechanisms of representation, largely because of the persistence of clientelism and the many failings of Mexico's political parties. The crisis of representation is even more severe in the labor movement, both within labor organizations and among workers in general. Lacking a meaningful "voice" in either the political arena or the labor sector, workers are highly susceptible to less democratic forms of interest intermediation (if not outright coercion). The persistence of these practices and power relations in the labor movement constitutes a major gap in Mexico's democracy and speaks to a broader need to democratize the *institutions* as well as the procedures of democratic governance.

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A third critical challenge is Mexico's inadequate adaptation to the pressures of a more competitive, globalized economy. Although the country's protective labor regulations have contributed to this outcome, more significant obstacles include inadequate investment in infrastructure and human capital, a lack of innovation and upgrading, weak sectoral policy, concentration of ownership, and widespread corruption. The failure to overcome these obstacles is related to (1) an over-reliance on low wages to promote competitiveness; and (2) insufficient attention to the perverse incentives created by Mexico's *de facto* weak protections for workers. In combination with appropriate government policies and changes in union culture, a stronger voice for labor could force companies to remain competitive by improving quality and efficiency rather than holding down wages. In the process, it would encourage employers to share the costs of investing in human capital, innovation, and upgrading, thereby easing the burden on the state.

A fourth challenge is Mexico's highly inequitable distribution of income, which affects not only economic well-being but also access to social and political resources. Historically, Mexico's labor institutions have had an ambiguous impact on income distribution. While they helped raise the standard of living of thousands of workers, they also created a labor aristocracy that enjoyed privileged access to well-paying jobs and good benefits. In some key sectors, union jobs are still hereditary or for sale. This "insider unionism" has gotten worse in the face of economic crisis and declining rates of union membership, as union leaders and unionized workers cling jealously to their remaining privileges, using their wealth and political positions for pro-union purposes. Although the democratization of the labor movement would not immediately lead to more equitable conditions for workers, it would expand access to collective rights which, especially if combined with a cultural shift among workers towards demanding their rights and greater engagement in solidaristic activities, could create more favorable conditions for improving the living standards of workers currently excluded from the labor aristocracy.

## **STRATEGIC CONSIDERATIONS FOR USG**

Although transformative change in Mexico's labor sector will require labor law reform and improvements in enforcement, this report recommends two types of strategic interventions by the USG that promise to generate multiplier effects in favor of rule of law, democratic interest intermediation, competitiveness, and equity. The first type focuses on increased monitoring of labor administration and labor justice by unions and/or civil society organizations (CSOs) to support freedom of association. Specifically, the report recommends that independent unions and CSOs (1) launch a campaign to support a recent Supreme Court ruling on secret ballots in *recuentos* and the unconstitutionality of the exclusion clauses; (2) lobby the state and federal governments to make information about unions and collective contracts available and accessible to the public, thereby exposing protection contracts and other violations of labor rights; and (3) monitor and evaluate disputes related to freedom of association (e.g., denial of union registration, dismissal of workers trying to form a union) and how they are resolved by the labor authorities.

The second type of strategic intervention targets union governance and strategy, particularly among independent unions, to enhance union democracy and capacity, promote grass-roots organizing and solidarity with labor-rights CSOs, and encourage greater collaboration with employers to pursue mutually beneficial strategies to enhance competitiveness and equity. Internally, unions are encouraged to adopt statutory reforms aimed at democratizing leadership selection and to engage in leadership training to promote internal democracy and a new culture of organizing. Externally, they are encouraged to develop stronger networks and alliances, particularly with non-unionized workers and CSOs. Finally, the report advocates for greater dialogue and collaboration between unions and employers regarding the search for solutions to Mexico's weak competitiveness.

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