

Registering Trade Unions and Collective Bargaining Agreements in Mexico

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MSN continues to monitor the profound transformation of Mexico's labour justice system initiated by the Constitutional Reform of 2017, and the adoption of secondary legislation reforming the Federal Labour Law (LFT) in 2019. In this briefing paper, the third in our *Catching Up on the Labour Reform* series, we profile the creation of Mexico's new federal institution for the registration of trade unions and collective bargaining agreements, the Federal Centre for Conciliation and Labour Registration (CFCRL in Spanish). The focus of this briefing paper is on the labour registration role of the Federal Centre leaving the analysis of the conciliation role for a later stage shortly before the federal and the local conciliation bodies are in operation.

In Mexico, the registration of trade union functions has been a tool used strategically by governments to control the labour movement.¹ One reason governments have been able to do so is that the official registration bodies have lacked the necessary political, budgetary and operational independence to appropriately carry out their functions. The General Directorate for the Registration of Associations, at the Ministry of Labour and Social Welfare (STPS), has registered unions under federal jurisdiction. For unions under state jurisdiction, the Local Conciliation and Arbitration Boards (*juntas*) have held registration authority. The tripartite nature of these institutions concentrated decision making in the hands of government, employer and "official union" representatives.²

A similar situation has occurred with the registration of collective bargaining agreements (CBAs), which has been managed by tripartite bodies that lack independence and neutrality: the Federal Conciliation and Arbitration Board for CBAs under federal jurisdiction, and the Local Conciliation and Arbitration Boards for CBAs under state jurisdiction. Their lack of independence and neutrality has been a central factor in the proliferation of employer protection contracts,³ favouring their registration while putting obstacles in the way of the registration of authentic collective bargaining agreements.

For these reasons, one of the fundamental objectives of Mexico's Labour Justice Reform is to modify the institutions and procedures for the registration of trade

unions and collective bargaining agreements, including through the creation of a new institution, the Federal Centre for Conciliation and Labour Registration (CFCRL or Federal Centre). The Federal Centre will replace the system of Conciliation and Arbitration Boards, and will establish new registration procedures that are intended to better guarantee freedom of association and authentic collective bargaining. This institution will have sole responsibility for carrying out all labour registration functions, regardless of federal or state jurisdiction.

The Federal Centre for Conciliation and Labour Registration

On January 6, 2020 the government published the *Organic Law of the Federal Centre for Conciliation and Labour Registration* (LOFCRL in Spanish) in the Official Gazette.⁴ This law created the Federal Centre, defined its functions, and established the basic principles that guide its work. The governing board of the Centre will determine its organizational structure and operational policies and practices, and manage its day-to-day operations.⁵

The Federal Centre has a dual role. As mentioned above, it will have the sole authority to register all collective bargaining agreements, *contratos-ley*,⁶ internal union by-laws and all trade union-related functions in the entire country.⁷ It will also have a pre-trial conciliation role in cases of labour relations conflicts, but only for conflicts under federal jurisdiction. For industrial relations conflicts under local jurisdiction, the Local Labour Conciliation Centres will play this conciliation role.⁸ Local Labour Conciliation Centres are being created in three stages for different Mexican states.

The principles established to orient the new Federal Centre are in alignment both with the Constitutional reform and the United States-Mexico-Canada Agreement (USMCA). The Centre's operations will be guided by the principles of certainty, independence, legality, impartiality, equality, reliability, efficacy, objectivity, professionalism, transparency and publicity.⁹ The new Organic Law establishes the Centre as a decentralized public institution of the Federal Public Administration, with its

own legal status and assets with full technical, operational, budgetary, decision-making and management autonomy.¹⁰ The Centre's headquarters will be in Mexico City, but it will also have offices in every state in order to guarantee diligent attention to matters under its jurisdiction.¹¹

An important focus of debate within the Mexican labour movement has been on the appropriate internal governing structure of this new institution. Traditional labour and employer organizations wanted to retain the tripartite structure, similar to that of the existing Conciliation and Arbitration Boards. Whereas democratic labour actors, civil society organizations and academics called for the elimination of the tripartite structure in order to guarantee the independence and impartiality of the institution. As mentioned above, the form of tripartism that operated in practice in Mexico prior to the reform did not promote a balance of interests between workers and employers, but rather encouraged complicity between non-representative trade unions, companies and governments, resulting in the signing and recognition of protection contracts.

Ultimately, the Mexican Congress decided not to replicate the tripartite model. The Organic Law establishes that the Governing Board of the Centre will be composed of the heads of the Ministry of Labour and Social Welfare (STPS); the Ministry of Finance and Public Credit; the National Institute for Transparency, Access to Information and Protection of Personal Data; the National Institute for Statistics and Geography; and the National Electoral Institute.¹² A Director General, chosen by vote in the Mexican Congress, is charged with managing the operations of the Federal Centre.¹³ The law creates two new entities for the oversight, control and evaluation of the Centre: a Public Commissioner, and an Internal Control Entity (ICE) under the Ministry of the Civil Service, which is in charge of coordinating and monitoring the federal government's operations and is responsible to Cabinet, and therefore subject to the priorities of President. The Federal Centre will have its own personnel, creating a professional civil service whose duty will be to incorporate gender and human rights perspectives.¹⁴ Labour relations for Centre employees will be regulated under the Federal Law for Public Service Employees.¹⁵

The civil servants employed by the Federal Centre will begin to carry out their responsibilities one year after the entry into force of the Organic Law, by January of 2021. Over the remainder of 2020, the authorities will gradually select, hire and train new staff. Once it is fully operating with a protocol in place, the Centre will be the sole body responsible for overseeing the procedures established in the 2019 reform to the Federal Labour Law for the authentication of existing collective bargaining agreements. In the meantime, the Ministry of Labour and Social Welfare (STPS) will handle this essential process for the eradication of fraudulent collective bargaining agreements (protection contracts). Despite the impact of the COVID-19 pandemic on the economy and public finances, the STPS has reiterated its commitment that the Federal Centre will begin operations in the timeframe established by the labour justice reform.¹⁶

On June 22, Mexico's President López Obrador submitted to Congress three candidate options for the title of Director General of the Federal Centre. The candidates included Rafael Chong Flores, Maria Estela Ríos González, and Alfredo Domínguez Marrufo, the Subsecretary of Labour and Social Welfare at the time of the vote.

Despite some criticisms about the candidate selection process,¹⁷ on July 29, the Senate elected Domínguez Marrufo as the first Director General of the CFCRL, with 79 out of 97 votes.¹⁸ While the vote was by secret ballot, making it impossible to know who voted for which candidate, prior to the vote, those senators present had approved a motion unanimously declaring that all three candidates satisfied the requirements for the position.

Strengths and Concerns

As noted above, the new legislation (the Organic Law) was drafted based on a set of principles that aligns the proceedings of the Federal Centre not only with the Constitutional Reform of 2017, but also with the commitments made by Mexico in the USMCA trade agreement. The authors rejected tripartism in order to reinforce the independence of the new institution.

By resisting the pressure to reproduce Mexico's traditional tripartite system, the new law created an opportunity to establish an impartial and objective process for the registration of trade unions and collective bargaining agreements.¹⁹ Moreover, by placing stringent requirements on the selection of the Director General, the need for independence and credible impartiality of the Centre's registration process was reinforced.

There are some elements in the legislation creating the Federal Centre, as well as the process for its creation to date, that raise concerns. Rather than being composed of independent experts, the governing board is made up exclusively of heads of public institutions. Although the current government has reiterated its commitment to respect for freedom of association, under a future government without that commitment, the executive branch could subordinate the Centre according to its priorities on labour matters.

An additional concern is that the law establishes two mechanisms for oversight of the Centre that are both under the authority of the Ministry of the Civil Service. This Ministry's operational and political subordination to the priorities of the executive branch of the Federal Government could result in a lack of institutional independence required to oversee the Centre. It risks reducing the operational autonomy of the Centre, as it could become a tool for control or political-administrative subordination.

Lastly, the delays in the creation of the Federal Centre suggest that despite the commitments to carry out the reform process in the established timeframe, there is a genuine risk of further delays in implementation of the reform. The government published the organic law two months later than expected, and the COVID-19 pandemic may delay implementation of the labour reform as a whole even further.

Conclusion

Mexico took a very positive step forward with its passing of the Organic Law on January 6 of this year. The new law created the Federal Centre for Conciliation and Labour Registration. This new institution's operations, particularly in its labour registration role, is of critical importance to achieve the objectives of democratizing labour relations and eradicating the practice of protection contracts, as well as other practices that violated the rights to freedom of association and collective bargaining.

The Organic Law strives to guarantee independence and impartiality in the operation of the Federal Centre. However, outstanding issues, such as the composition of its Governing Board and its supervisory bodies could be problematic under a future government that may not respect its functional autonomy to the same degree. The newly acclaimed Director General is knowledgeable and eminently qualified for the position, given his experience in the trade union and labour relations field. However, it is essential that he makes clear his commitment to fully comply with the initial decisions of the board to respect the autonomy of the new institution and to the centrality of the Centre's primary role to protect workers' rights.

The report from the first meeting of the Governing Board of the Federal Centre on August 7 offered promising signs concerning the priorities of the Centre. The meeting affirmed that the Centre will protect and enhance freedom of association by building a model of labour relations that eliminates employer protection contracts and puts in place personal, direct, free and secret ballot votes as a way to validate collective agreements.²⁰ Domínguez Marrufo reinforced this message by emphasizing that the centre's priority will be to democratize labour relations so that workers and employers can engage in authentic collective bargaining. Ultimately, it will be up to workers, independent unions, civil society organizations and society as a whole to monitor the operations of this new institution in order to ensure that it fulfills the high expectations of the labour justice reform.

MSN provides periodic updates of key issues and developments as Mexico implements commitments under its 2019 labour law reform. The outcome of this process and its impact on the exercise of freedom of association, the right to collective bargaining and improving transparency in the regulation of industrial relations is crucial to gaining justice for workers in Mexico. For a listing of MSN publications on Mexico's labour justice reform, see: <https://www.maquilasolidarity.org/en/msn-publications-analyzing-mexicos-ongoing-constitutional-reform-labour-justice>.

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ENDNOTES

- ¹ These functions include the formation of trade unions, updates to trade union membership records, leadership elections, internal by-law changes and approvals for these changes.
- ² In Mexico, the term “official unions” refers to trade union organizations affiliated with the country’s historical ruling party, the Institutional Revolutionary Party (PRI), and closely integrated within the corporatist state that was formerly administered by the PRI.
- ³ Protection contracts are simulated collective bargaining agreements signed by official unions, or sometimes labour lawyers, without the knowledge or consent of the affected workers, but with the complicity of the employer. Often such contracts are signed, and an initial payment is made by the employer to the union, before any worker is hired. In some cases, a contract has been signed by a lawyer without the presence of a union. These contracts are commonplace in Mexico, representing an estimated 80% of all collective agreements signed.
- ⁴ Government of Mexico. “Decreto por el que se expide la ley orgánica del Centro Federal de Conciliación y Registro Laboral.” Official Gazette, January 6, 2020. https://www.dof.gob.mx/nota_detalle.php?codigo=5583502&fecha=06/01/2020. According to the initial timeline for the labour reform of 2019, the Federal Centre for Conciliation and Labour Registration was to have been created in November 2019. For original timeline see: <https://www.maquilasolidarity.org/en/timeline-implementation-labour-reform-mexico>.
- ⁵ Article 12, Organic Law of the Federal Centre for Conciliation and Labour Registration (LOFCRL).
- ⁶ A *contrato ley* is a sector-wide collective bargaining agreement that applies to a number of related workplaces.
- ⁷ Article 5, LOFCRL.
- ⁸ The creation and role of the Local Labour Conciliation Centres will be assessed in a future MSN briefing paper.
- ⁹ Article 6, LOFCRL.
- ¹⁰ Article 1, LOFCRL.
- ¹¹ Article 4, LOFCRL.
- ¹² Article 11, LOFCRL.
- ¹³ Articles 20-22, LOFCRL.
- ¹⁴ Article 7, LOFCRL.
- ¹⁵ Article 8, LOFCRL.
- ¹⁶ *Pulso Laboral*, “Aplicación de la reforma laboral cumplirá con los tiempos, STPS,” July 13, 2020. <https://elpulsolaboral.com.mx/mercado-laboral/22584/aplicacion-de-la-reforma-laboral-cumplira-con-los-tiempos-stps>.
- ¹⁷ Neither of the two prominent labour leaders in the Senate, Senator Napoleón Gómez Urrutia, President of the Labour Commission of the Senate and Secretary General of the *Los Mineros* union, and Senator Carlos Aceves del Olmo, head of the Confederation of Mexican Workers (CTM), attended the Senate session, in protest of how the candidate selection process was carried out.
- ¹⁸ Hernández, Gerardo. “Alfredo Domínguez liderará nueva era de la conciliación laboral en México” *Factor Capital Humano*, July 29, 2020. <https://factorcapitalhumano.com/leyes-y-gobierno/alfredo-dominguez-marrufo-liderara-nueva-era-de-la-conciliacion-laboral-en-mexico/2020/07>.
- ¹⁹ Tripartite mechanisms are accepted as a model for labour relations around the world. However, in Mexico these mechanisms have worked in a distorted way, becoming obstacles to the exercise of the rights to Freedom of Association and Collective Bargaining by Mexican workers.
- ²⁰ Ministry of Labour and Social Welfare. “El Centro Federal de Conciliación y Registro Laboral, pilar en la construcción del nuevo modelo laboral,” Boletín 061/2020, August 9, 2020. <https://www.gob.mx/stps/prensa/el-centro-federal-de-conciliacion-y-registro-laboral-pilar-en-la-construccion-del-nuevo-modelo-laboral>.
- ²¹ Ministry of Labour and Social Welfare. “Centro Federal de Conciliación y Registro Laboral terminará con simulación que perjudica a trabajadores y empleadores: Luisa Alcalde,” *Boletín* 059/2020, 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>.