

WILL MEXICO'S NEW GOVERNMENT MAKE ADVANCES ON LABOUR JUSTICE?

BRIEFING PAPER SEPTEMBER 2018

Red de
Solidaridad de la
Maquila
Solidarity Network

An unprecedented election took place in Mexico on July 1, 2018. More than 63% of voters went to the polls to choose the largest number of elected officials in Mexican history (3,400 at all levels of government), voting for the President of the Republic, governors of eight states, the mayor of Mexico City, all seats in both houses of the Federal Congress, most State legislatures, and municipal level offices across the nation. It was also one of the most violent electoral races in recent history, with 130 political figures assassinated in the lead-up to the ballot.

The election resulted in a landslide win for Andrés Manuel López Obrador (known as AMLO) and his party, the National Regeneration Movement (MORENA). No other candidate has won an absolute majority since 1988. It also marked the worst electoral defeat ever for the Institutional Revolutionary Party (PRI), which will now be for the first time in history the minority party in both houses of Congress.

MORENA's win signals a new political context for the implementation of the 2017 Constitutional Reform to the labour justice system. While pro-labour cabinet officials are slated to lead the Secretariat of Labour and Social Welfare (STPS), it remains unclear to what degree AMLO will deliver on upholding the spirit and intent of the Reform. Meanwhile, other labour related policies and programs that could promote and protect workers' rights in Mexico have been put forward as part of the new administration's agenda.

As a backdrop to the domestic reforms, NAFTA negotiations are at a crucial stage, and pressure is on Mexico to eliminate legal impediments to freedom of association and authentic collective bargaining prior to signing any agreement. In addition, pressure to comply with international standards on freedom of association came from the International Labour Organization's (ILO) Committee on the Application of Standards (CAS) at the International Labour Conference in June, when Mexico was once again selected for review over compliance with worker's rights to organize.

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The Maquila Solidarity Network (MSN) is a labour and women's right organization based in Toronto, Canada that supports the efforts of workers in global supply chains to win improved wages and working conditions and greater respect for their rights.

For more information on MSN's work on freedom of association in Mexico, visit: <http://www.maquilasolidarity.org/supporting-freedom-association-foa-mexico>.

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MEXICANS VOTE FOR CHANGE

Mexicans voted for profound change in the political system when they voted for AMLO, MORENA, and the Together We'll Make History coalition in the July 2018 general election.¹ MORENA's landslide win means that the party and its allies in the coalition, which includes the Labour Party (PT) and the Social Encounter Party (PES), will dominate both houses of Mexico's federal legislature. The electoral results also delivered near total gender equality in both chambers of Congress for the first time in history.

In the lower house, the Chamber of Deputies, MORENA now holds 256 of 500 seats, while the PT has 27 seats, and the PES 30, after some legislators from other parties switched parties to MORENA.² This means that MORENA now takes control of the Political Coordination Council in the Chamber, which allows the party to set the legislative agenda. In the Senate, MORENA and its coalition partners won 70 of 128 seats, meaning the coalition now holds the simple majority needed to pass most bills if it votes together, but falls short of the 2/3 majority threshold of 86 seats needed to make unilateral changes to the Mexican Constitution.³

MORENA also gained important representation at the state level. Of the eight states that elected governors, MORENA and its coalition partners won four, as well as the Mayor's office of Mexico City (now also considered a state), all first time state-level electoral wins for MORENA.⁴ MORENA holds the majority in 23 of 32 state assemblies.⁵ In seven states, the MORENA vote was so strong that plurinominal (proportional representation) seats for MORENA candidates were reassigned to other parties in accordance with Mexican electoral law, in order to avoid overrepresentation in those state legislatures.⁶

The decisive MORENA win strips the PRI of its legislative majority in Congress, which re-convened on September 1. The PRI coalition, which includes the Green Party (PVEM) and the New Alliance Party (PANAL), now holds only 19 seats in the Senate, and 58 in the Chamber of Deputies. The PAN-led coalition, which includes the National Action Party (PAN), the Party of the Democratic Revolution (PRD) and the Citizens Movement, became the second most powerful bloc in both houses, with 127 seats in the Chamber of Deputies and 37 in the Senate.

¹ AMLO won the election with 53% of the Presidential vote. These, and all electoral results in this report, are final results published by the National Electoral Institute (*Instituto Electoral Nacional, INE*) on August 23, 2018. See "Así queda conformado el próximo Congreso de la Unión," *El Financiero*, August 23, 2018, <http://www.elfinanciero.com.mx/nacional/congreso> and "Trueque de legisladores: Morena, PAN y PRI los que más ganaron," *Político.mx*, September 5, 2018, <https://politico.mx/minuta-politica/minuta-politica-congreso/trueque-de-legisladores-morena-pan-y-pri-los-que-m%C3%A1s-ganaron>.

² In the Chamber of Deputies, MORENA won 247 seats in the election, but now has 256 after defections of five Deputies from the Green Party and four from the PT. "Trueque de legisladores: Morena, PAN y PRI los que más ganaron," *Político.mx*, September 5, 2018, <https://politico.mx/minuta-politica/minuta-politica-congreso/trueque-de-legisladores-morena-pan-y-pri-los-que-m%C3%A1s-ganaron>; Canchola, Alejandra and Horacio Jiménez, "PT da 4 diputados a Morena; bancada sube a 256," *El Universal*, September 9, 2018, <http://www.eluniversal.com.mx/nacion/politica/pt-da-4-diputados-morena-bancada-sube-256>.

³ MORENA won 59 seats, while the PT has six seats and the PES has five.

⁴ These states include Chiapas, Tabasco and Veracruz. MORENA Candidate Claudia Sheinbaum won the Mexico City mayoral race.

⁵ Montes, Juan. 2018. "Mexico's New President-elect Close to Supermajority in Congress," *Wall Street Journal*, 5 July 2018, <https://www.wsj.com/articles/mexicos-new-president-elect-close-to-supermajority-in-congress-1530832886>.

⁶ López Cruz, Antonio. "Morena pierde 19 curules en litigios por sobrerrepresentación," *La Razon*, August 27, 2018, <https://www.razon.com.mx/morena-pierde-19-curules-en-litigios-por-sobrerrepresentacion>.

Coalitions formed at election time do not, however, automatically transfer to votes once bills come through either house, and in past Congresses, parties have tended to vote together based on ideology rather than coalitions.⁷ This means that MORENA may in fact have much greater legislative power than electoral results show. The Citizens Movement, which has voted with the left in past Congresses, has pledged to vote with the MORENA bloc on certain bills, rather than with its coalition partners, and PANAL will likely vote with MORENA, not the PRI, which has been its coalition partner since the formation of the party.⁸ However, while the PT and MORENA are likely to vote together on bills in Congress, it is not clear whether the socially conservative PES will vote with its coalition partners on all issues. For

its part, the PRD, which in the past has voted with the left, is already looking to formally break with its centre-right coalition.⁹ Finally, members of other parties may switch parties to join MORENA now that Congress is underway, as some elected representatives of the Green Party and PT have already done.

Members of Congress took their seats on September 1, and will serve in one legislative session with President Enrique Peña Nieto. The newly elected Senators will serve for six years, while the newly elected Deputies will serve for three. On December 1, AMLO takes office for a period of 5 years and 10 months (commonly referred to as a “sexenio”). The second session of the new Congress begins under the new President.

Mexico Political Parties:

AMLO: *Andrés Manuel López Obrador, Mexico president elect*

MC: *Citizens Movement / Movimiento Ciudadano*

MORENA: *National Regeneration Movement / Movimiento de Regeneración Nacional*

PAN: *National Action Party / Partido Acción Nacional*

PANAL: *New Alliance Party / Nueva Alianza*

PES: *Social Encounter Party / Partido Encuentro Social*

PVEM: *Partido Verde: Green Party*

PRD: *Party of the Democratic Revolution / Partido de la Revolución Democrática*

PRI: *Institutional Revolutionary Party / Partido Revolucionario Institucional*

PT: *Labour Party / Partido de Trabajo*

⁷ Personal communication, Dr. Yann Kerevel, Professor of Political Science at Louisiana State University and noted researcher on the Mexican legislature, August, 12, 2018.

⁸ MC has 35 seats in total and the PANAL three seats. Zavala, Misael. “Daremos a AMLO todos nuestros votos: MC,” *El Universal*, August 2, 2018, <http://www.eluniversal.com.mx/nacion/politica/daremos-amlo-todos-nuestros-votos-mc>; Saldaña, Iván E. “Nueva Alianza da la espalda al PRI en el Senado; se va con Morena,” *Excelsior*, August 31, 2018, <https://www.excelsior.com.mx/nacional/nueva-alianza-da-la-espalda-al-pri-en-el-senado-se-va-con-morena/1262181>.

⁹ García, Karina. “Dirigencias del PRD buscan cancelar el Frente,” *El Universal*, 31 July 2018, <http://www.eluniversal.com.mx/nacion/politica/dirigencias-del-prd-buscan-cancelar-el-frente>.

POTENTIAL SCENARIOS FOR LABOUR JUSTICE REFORM



The MORENA victory marks a different political context and a potentially favourable legislative climate for the ongoing process to implement the Constitutional Reform to the labour justice system, which MSN first reported on in our July 2017 Briefing Paper.¹⁰ As we noted in our May 2018 Update,¹¹ prior to the July elections, the fate of the implementing legislation was uncertain, as five different bills had been submitted to the Senate.

Of those competing bills, the two most likely to gain support were those submitted by PRI Senators Tereso Medina Ramírez of the Confederation of Mexican Workers (CTM) and Isaías González Cuevas of the Revolutionary Confederation of Workers and Peasants

(CROC), and another by the PRD and the independent union confederation National Workers' Union (UNT). A third proposal was submitted at the end of the session by Senator Alejandro Encinas Rodríguez, a long-time member of the PRD and now a political independent. Instead of allowing the various bills to be considered, lawmakers on the PRI-controlled Senate Labour and Social Welfare Commission introduced a version of the PRI-CTM-CROC proposal as a "*proyecto de dictamen*" (draft legislation) to Commission members as the only document to be debated prior to a Senate vote. That proposal threatened to reverse the most important gains of the Constitutional Reform.

¹⁰ Labour Justice Reform in Mexico, July 2017, <http://www.maquilasolidarity.org/en/labour-justice-reform-Mexico>

¹¹ Debate on Mexican Labour Justice Reform Continues as Counter-Reform Bill Suspended, May 2018, http://www.maquilasolidarity.org/en/debate_mexican-labour-justice-reform-continues-counter-reform-bill-suspended

¹² Jiménez, Horacio, Alejandra Canchola, and Juan Arvizu. "Congreso dará prioridad a 12 iniciativas presidenciales," *El Universal*, September 1, 2018, <http://www.eluniversal.com.mx/nacion/congreso-dara-prioridad-12-iniciativas-presidenciales>. Morales, Alberto, and Misael Zavala. "AMLO enlista ante legisladores electos las próximas iniciativas," *El Universal*, July 11, 2018. <http://www.eluniversal.com.mx/elecciones-2018/amlo-enlista-ante-legisladores-electos-las-proximas-iniciativas>.

While the PRI backed away from a vote on the bill in the final days of the legislative session prior to the July election, it was never formally withdrawn from consideration. Without a PRI majority in both the Senate and the Chamber of Deputies, and with no support from MORENA, the PRI-CTM-CROC *dictamen* for implementing legislation is unlikely to be reviewed in Congress.

Meanwhile, labour experts have been meeting to monitor these developments and discuss possible responses. Proposals are reportedly now being developed by the incoming government for implementing legislation that could be supported by the independent union sector and their political allies in the legislature in either the first or second session. However, it is also possible that the business sector and/or the official unions might once again put forward one or more new proposals.

It is unclear whether the implementing legislation will be on the legislative agenda for the lame-duck session under Peña Nieto, or will be taken up in December or later, once AMLO has assumed the Presidency. While MORENA has already begun discussing a legislative agenda for the current fall session that is expected to

focus on 12 signature promises in the party's electoral platform, it does not yet include implementing legislation for the labour justice reform.¹² These priority proposals include the reduction of salaries for high-level government officials, setting the legal framework for the reduction of the size of the civil service, and implementing other parts of the party's broad austerity plan.

There is some indication that MORENA may not be waiting for the new President to take office before beginning to address some aspects of a new labour agenda. Federal Deputy for MORENA, Roberto Alejandro Cañedo Jiménez, filed a bill in July with the Permanent Commission of the Congress¹³ that would introduce reforms to the labour code and criminal law that would prohibit employers from forcing workers to sign blank documents upon hiring, a common practice among employers that outsource their workers.¹⁴ The same bill includes modifications on the legal definition of unjust firings and is a separate effort from the proposal for the implementing legislation for the Constitutional Reform. Submitting the bill to the Permanent Commission means that the measure could be placed on the legislative agenda during the fall session.

¹² Jiménez, Horacio, Alejandra Canchola, and Juan Arvizu. "Congreso dará prioridad a 12 iniciativas presidenciales," *El Universal*, September 1, 2018, <http://www.eluniversal.com.mx/nacion/congreso-dara-prioridad-12-iniciativas-presidenciales>. Morales, Alberto, and Misael Zavala. "AMLO enlista ante legisladores electos las próximas iniciativas," *El Universal*, July 11, 2018. <http://www.eluniversal.com.mx/elecciones-2018/amlo-enlista-ante-legisladores-electos-las-proximas-iniciativas>.

¹³ The *Comisión Permanente* meets during recesses to manage the legislative agenda for Congress, and accepts proposals for laws to be taken up for review when Congress reconvenes.

¹⁴ "Buscan prohibir esquema outsourcing," *El Universal*, July 15, 2018. <http://www.eluniversal.com.mx/nacion/sociedad/buscan-prohibir-esquema-outsourcing>.

UNIONS PREPARE FOR CHANGE

Unions in Mexico are gearing up for the change in President, and the potentially favourable political context for labour. The UNT and other independent trade union organizations are supporting the new administration, as they see the electoral success of MORENA as a “window of opportunity” to work towards implementing new regulations and overseeing practices that will promote freedom of association in Mexico, and limit the ability of corrupt unions to sign protection contracts with employers.¹⁵ To this end, UNT member unions, led by the General Secretary of Mexico’s Telephone Workers Union (*STRM*), Francisco Hernández Juárez, met with MORENA legislators on July 18. In that meeting, Martí Batres Guadarrama, who leads the MORENA bloc in the Senate, told union leaders that during this new administration, AMLO intends to promote union autonomy and democracy, the right to strike, freedom of association and the right to bargain collectively.¹⁶ The CTM was also seeking its own meeting with AMLO in the hopes of finding either areas to cooperate with the incoming administration on labour policy, or alternatively, to minimize the political isolation the CTM now faces in Congress.¹⁷

Significantly, the new Congress features fewer representatives of the official unions tied to the PRI than in 2012, when 40 union representatives held seats.¹⁸ While Carlos Aceves del Olmo, General Secretary of the CTM, will join the Senate in a plurinominal seat for the PRI, Isaías González Cuevas, General Secretary of the CROC, leaves the Senate to serve in the Chamber of Deputies, also for the PRI, where he will be joined by another plurinominal Deputy, Carlos Pavón Campos, Secretary General of the National Union of Miners and Metal Workers Front (SMNM).

Meanwhile, Napoleón Gómez Urrutia, Secretary General of the National Union of Mine, Metal, Steel and Allied Workers of the Mexican Republic (*Los Mineros*), the rival union to the SMNM, returned to Mexico at the end of August from exile in Canada to serve in the Senate for MORENA, in a plurinominal seat. Gómez Urrutia’s return comes on the heels of the victorious June 28 *recuento* election at Teksid Hierro de México in Monclova, Coahuila.¹⁹ Los Mineros defeated the CTM over representation rights after union-motivated dismissals by the company and a four-year struggle to force the local Junta to call the union representation election.²⁰

¹⁵ Martínez, María Del Pilar. “UNT busca pronto encuentro con AMLO,” *El Economista*, July 8, 2018. <https://www.eleconomista.com.mx/empresas/UNT-busca-pronto-encuentro-con-AMLO-20180708-0103.html>.

¹⁶ Rivero, Arturo. “Los privilegios sindicales se acabaron: MORENA,” *El Pulso Laboral*, July 23, 2018. <http://www.elpulsolaboral.com.mx/mercado-laboral/14389/los-privilegios-sindicales-se-acabaron-MORENA>.

¹⁷ Martínez, María Del Pilar. “Cooperaremos con el nuevo gobierno: CTM,” *El Economista*, July 9, 2018, <https://www.eleconomista.com.mx/empresas/Cooperaremos-con-el-nuevo-gobierno-CTM-20180709-0043.html>.

¹⁸ Martínez, María Del Pilar. “Sindicatos pierden espacios en el Congreso,” *El Economista*, July 11, 2018, <https://www.eleconomista.com.mx/gestion/Sindicatos-pierden-espacios-en-el-Congreso-20180711-0140.html>.

¹⁹ United Steelworkers. 2018. *Steelworkers Congratulate Los Mineros on Organizing Victory at Teksid in Mexico*. <https://m.usw.org/news/media-center/articles/2018/steelworkers-congratulate-los-mineros-on-organizing-victory-at-teksid-in-mexico>.

²⁰ IndustriALL. July 5, 2018. *Los Mineros wins right to represent workers at Teksid Mexico after 4-year struggle*. <http://www.industrialunion.org/los-mineros-wins-right-to-represent-workers-at-teksid-mexico-after-4-year-struggle>.

The Los Mineros win strips control over the facility that produces iron parts for industrial vehicles from Tereso Medina Ramírez, CTM General Secretary in Coahuila, former Senator for the PRI, and promoter of the PRI-CTM-CROC plan for implementing legislation.²¹ Beyond the legislative agenda, these developments could inspire other workers to organize and demand to be represented

by independent unions in Coahuila, and potentially in other Mexican states. Significantly, Gómez Urrutia's first act as a Senator was to propose that ratification of ILO Convention 98 Right to Organize and Collective Bargaining be brought to a vote on September 20, which resulted in the ratification of the Convention.²²

NEW POLITICAL CONTEXT

Changes at the Secretariat of Labour and Social Welfare (STPS), once the new administration takes power, could prove favourable for the promotion of labour rights in Mexico. AMLO has chosen labour lawyer and public policy expert Luisa María Alcalde Luján to head STPS; she once served in the Chamber of Deputies for the Citizens Movement and is a long-time ally to the independent and democratic union movement in Mexico. Joining her as Undersecretary for Labour will be Alfredo Domínguez Marrufo. Domínguez Marrufo is a lawyer, and most recently was the lead lawyer for of the Autonomous University of Mexico City (UACM).²³ Domínguez Marrufo

will be in charge of important initiatives for STPS, including wage issues, labour inspections, and social provisions that include state benefits. He will also be in charge of labour justice issues and union registries.²⁴ Horacio Duarte Olivares, a lawyer and MORENA's current representative to the Mexican elections institute, is to join STPS as the Undersecretary of Employment.²⁵ Duarte Olivares will be charged with implementing the youth apprenticeship program, described below.

²¹ "Se queda 'Napo' con Teksid," *Periódico Zócalo* (Saltillo), June 29, 2018, http://www.zocalo.com.mx/new_site/articulo/se-queda-napo-con-teksid.

²² Arvizu Arriola, Juan, Alberto Morales y Suzzete Alcantara, "Senado alista aprobar convenio de derecho de sindicación, 69 años después," *El Universal*, September 18, 2018, <http://www.eluniversal.com.mx/nacion/politica/senado-alista-aprobar-convenio-de-derecho-de-sindicacion-69-anos-despues>

²³ Alcalde Luján is the daughter of Berta Luján, former leader of the national coordination group of the Authentic Labour Front (FAT), and current President of the National Council for MORENA. Her father is the labour lawyer Arturo Alcalde Justiniani. Domínguez Marrufo is the son of labour leader Alfredo Domínguez Araujo, co-founder of the FAT.

²⁴ Méndez, Enrique, and Fabiola Martínez. "En mi gobierno 'no habrá programas electoreros': AMLO," *La Jornada*, August 14, 2018, <http://www.jornada.com.mx/ultimas/2018/08/14/en-mi-gobierno-no-mas-programas-electoreros-amlo-341.html>.

²⁵ "Luisa Alcalde destapa a miembros de su equipo en la Secretaría del Trabajo," *El Financiero*, August 8, 2018, <http://elfinanciero.com.mx/nacional/luisa-alcalde-destapa-a-integrantes-de-su-equipo-de-trabajo-en-la-stps>.

MORENA'S LABOUR AGENDA

MORENA has announced that STPS is to play a key role in implementing eight priority labour policies as part of its *Proyecto de Nación 2018-2024* (National Project 2018-2024, known as Proyecto 18), which will seek to implement social and economic policies in favour of economic development and the redistribution of wealth.²⁶

Some of the priority areas for labour in that proposal include:

- **Increasing the minimum wage.** MORENA's plan to increase the Mexican minimum wage foresees gradual increases over time, so that in the first stage it would be adjusted to exceed the official poverty line, which for June of 2018 was 2,958 pesos a month (US\$155) in urban areas and 1908 pesos a month (US\$100) in rural areas.²⁷ Additional increases of 15.6% plus the rate of inflation would follow each year, reaching 171 pesos per day (US\$9.00) by the end of the six-year term.²⁸ The proposal also includes evaluating new minimum pay rates for a newly expanded category of professional workers -- which currently includes some garment workers, like sewers -- and pay raises for public sector workers, including teachers, police and soldiers, and nurses and doctors in Mexico's public

health system.²⁹ An investigation into the feasibility of doubling the minimum wage for workers living in communities in the US-Mexico border region is also under consideration.³⁰

- **New policy for workplace inspections.** STPS is planning to hire an additional 500 inspectors over the six-year term to reach 1,500 inspectors, raising the number of inspectors to half of the level suggested to Mexico by the ILO.³¹ Priority issues under consideration include improving inspection of health and safety and enforcing payment of legally-mandated profit sharing bonuses. Along with plans to increase the capacity to inspect workplaces and implement new inspection protocols with the assistance of the ILO, MORENA is discussing charging inspectors with investigating collective agreements to identify protection contracts, although there is no clear information yet on what would happen once they were found.³² Also in the works is a plan to reduce the number of unregulated and unregistered places of employment and promote the registration of workers at the Mexican Social Security Institute (IMSS), to facilitate the transition of unregulated firms out of the informal sector.³³

²⁶ Martínez, María Del Pilar. "Próximo gobierno intensificaría inspección laboral," *El Economista*, July 10, 2018. <https://www.eleconomista.com.mx/empresas/Proximo-gobierno-intensificaría-inspeccion-laboral-20180710-0019.html>.

²⁷ Data from CONEVAL, <https://www.coneval.org.mx/Medicion/MP/Paginas/Lineas-de-bienestar-y-canasta-basica.aspx>.

²⁸ MORENA. 2018. *Proyecto de Nación 2018-2024*. <http://proyecto18.mx>, pp 227. Exchange rate of 19.04 pesos to the US dollar estimated on September 12, 2018

²⁹ Currently in Mexico there is a national minimum wage and a minimum wage for selected professions.

³⁰ Muñoz, Alma E., and Néstor Jiménez. "Contempla AMLO duplicar el salario mínimo en la frontera norte," *La Jornada de Baja California*, July 11, 2018, <http://jornadabc.mx/tijuana/11-07-2018/contempla-amlo-duplicar-el-salario-minimo-en-la-frontera-norte>.

³¹ MORENA. 2018. *Proyecto de Nación 2018-2024*. <http://proyecto18.mx>, pp 219.

³² Martínez, María Del Pilar. "Próximo gobierno intensificaría inspección laboral," *El Economista*, July 10, 2018. <https://www.eleconomista.com.mx/empresas/Proximo-gobierno-intensificaría-inspeccion-laboral-20180710-0019.html>.

³³ Martínez, María Del Pilar. "Los ocho ejes de la política laboral del gobierno electo," *El Economista*, July 8, 2018. <https://www.eleconomista.com.mx/gestion/Los-ocho-ejes-de-la-politica-laboral-del-gobierno-electo-20180708-0033.html>.

- **Certifying businesses for “Decent Work”.**

STPS is considering establishing a new program to certify businesses that pay fair wages, as defined in consultation with stakeholders including union representatives, experts, academics and members of civil society. The new certification plan would include a logo that businesses can use in advertising as a program participant, as well as make certification part of the process to award government procurement contracts.³⁴

- **Incorporating young workers in training and employment.** STPS intends to work with public and private partners to promote job training, including the insertion of young people into the labour market. The new program, part of the “Young People Building the Future” initiative, would seek to incorporate as many as 2.3 million young people into their first jobs, through an apprenticeship program managed by STPS. The program would expand a current STPS program for on-the-job training for young people, and would provide government funds to them during the year they were completing that training.³⁵

Also on the labour agenda for STPS is the revision of subcontracting regulations and practices. The labour reform bill of 2012 officially opened the door to

subcontracting in Mexico by regulating the expanding practice for the first time. However, regulations on subcontracting are often ignored. It is estimated that 900 firms currently engage in subcontracting, yet only 100 report registering their workers at IMSS, and just 40 pay full taxes to the Mexican tax bureau Hacienda.³⁶ Employers often flout legal obligations to their subcontracted workers, which affects women in Mexico disproportionately.³⁷ The Network of Women Unionists (RMS) argues that the types of work more often subcontracted out are jobs done by women that are lower paid, undervalued, and carry higher risks to health and safety. The plan for STPS is to increase inspections of subcontracted firms to guarantee that the regulations on subcontracting already in the law are respected.³⁸

While MORENA could implement these changes to Mexican labour regulations and practices through the labour advocates appointed to cabinet positions at STPS, or through its control of the legislature, whether AMLO follows through on the labour platform, and how fundamental these changes are remains an open question that may depend on other political factors, including the ability of the CTM and other official unions, and/or the business sector and their representatives, to push back on any changes to current labour law and practice.

³⁴ *Idem.*

³⁵ “¿Qué haría AMLO si gana la presidencia? Aquí su plan,” *Animal Político*, November 20, 2018. <https://www.animalpolitico.com/2016/11/plan-amlo-2018-proyecto-presidencia>; MORENA. 2018. *Proyecto de Nación 2018-2024*. <http://proyecto18.mx>, pp 404-406.

³⁶ Torreblanca, Eduardo. “Menuda bronca la de Luisa María Alcalde,” *El Financiero*, July 16, 2018, <http://www.elfinanciero.com.mx/opinion/eduardo-torreblanca-jacques/menuda-bronca-la-de-luisa-maria-alcalde>.

³⁷ De la Garza, Enrique, “Antiguas y Nuevas Formas de Subcontratación,” <http://sgpwe.izt.uam.mx/pages/egt/publicaciones/capituloslibros/3camara%20de%20diputados.pdf> and CEPAL, *Procesos de Subcontratación y Cambios en la Calificación de los Trabajadores, Estudios de Caso en Mexico* <https://www.cepal.org/publicaciones/xml/4/4604/indice.htm>

³⁸ MORENA. 2018. *Proyecto de Nación 2018-2024*. <http://proyecto18.mx>, pp 213.

NAFTA LABOUR CHAPTER

NAFTA negotiations reached a critical juncture at the end of August, with the US and Mexican governments, without Canada, coming to agreement in principle on most of the remaining central issues in NAFTA. In an attempt to sign a deal before Peña Nieto leaves office, negotiators from Mexico and the US had been meeting almost daily since July 26, in order to get through the remaining controversial issues in a bilateral format before extending proposals to Canada. However, the US and Mexican negotiators went beyond the binational issues, reaching agreement on some critical issues of importance to all three countries, such as the Chapter 19 dispute settlement mechanism.

While the Peña Nieto administration continues to lead the negotiations until the end of the term, AMLO's trade advisor, Jesús Seade Kuri, has joined the negotiation team.³⁹ In an interview with leading business paper *El Financiero*, Seade Kuri noted that he supports the negotiation positions taken by Mexico thus far by the current team, led by Secretary of the Economy Idelfonso Guajardo. His statement gave assurances to the Mexican business community and the US government that the agreement would be respected by the new administration once AMLO takes office.⁴⁰

At the time of this writing, the Canadian negotiation team was back at the table, seeking to negotiate agreement with the US on issues it views as being of critical

importance to Canada, such as Chapter 19, preservation of its supply management system for dairy products, and protection for its cultural industries, rather than accepting the proposals extended unilaterally as “take it or leave it” deals by the Trump administration. The extension of the timeline now puts into question whether any final agreement will be signed by Peña Nieto and approved by Congress before AMLO takes office. The Office of the US Trade Representative (USTR) filed notice with the US Congress on reaching a US-Mexico accord, but it is still unclear whether the Trump administration has fulfilled its obligations under “fast track” rules to qualify for expedited voting procedures, in that NAFTA does not yet include Canada. The US Congress could choose to reject extending “fast track” voting (which includes limits on timelines for debate, and no amendments) to an agreement without Canada. Meanwhile, the incoming Mexican team is publicly disagreeing with the Peña Nieto negotiators that an agreement with the US alone is sufficient, insisting that Canada must be included in any trade deal, for economic, social and foreign policy reasons.⁴¹ Lastly, legislators in all three countries will have to sign-off on any final deal once approved by their heads of state.

The labour chapter of NAFTA was part of the US-Mexico agreement announced on August 27. Though the text has not yet been released, and it is not clear whether it is

³⁹ Seade Kuri has considerable experience leading Mexico through international trade issues, having served as the Mexican envoy to the General Agreement on Tariffs and Trade (GATT) in 1985, as negotiator for the Uruguay round of the GATT, which created the World Trade Organization (WTO), and as subdirector at the WTO for more than 10 years. Ortiz, Guillermina. “¿Quién diablos es Jesús Seade, el negociador para el TLCAN propuesto por AMLO?,” *HuffpostMexico.com*, March 20, 2018. https://www.huffingtonpost.com.mx/2018/03/20/quien-es-jesus-seade-el-negociador-para-el-tlcan-propuesto-por-amlo_a_23390821.

⁴⁰ Blanco, Daniel. “Elegido de AMLO para negociar TLCAN ‘toca base’ en Washington,” *El Financiero*, May 28, 2018, <http://www.elfinanciero.com.mx/economia/elegido-de-amlo-para-negociar-tlcan-toca-base-en-washington>. Rodriguez, Sabrina. “POLITICO’s Morning Trade: NAFTA back in the spotlight – U.S., EU agree to trade cease-fire, talks on new deal – Lighthizer talks \$\$\$ on the Hill,” *Politico.com* trade newsletter, July 26, 2018. <https://www.politico.com/newsletters/morning-trade/2018/07/26/nafta-back-in-the-spotlight-297803>.

⁴¹ Nolen, Stephanie. “Top trade Official in Mexico’s New Government says he wants Canada in any Future Deal – and Mexico did not sell Canada out,” *Globe and Mail*, August 31, 2018, <https://www.theglobeandmail.com/world/article-top-trade-official-in-mexicos-new-government-says-he-wants-canada-in>.

even completed, some details on the tentative agreement are known. The USTR issued a press release stating that the labour clause will be integrated into the free trade agreement as a labour chapter, not a side agreement, and refers to core labour standards of the ILO as the rights to be protected. Current protections for migrant workers were retained, and new prohibitions on importing goods made with forced labour were incorporated, as were new protections for workers subjected to violence for exercising freedom of association rights. Most importantly for Mexican workers, US and Mexican officials also incorporated a new *Annex on Worker Representation in Collective Bargaining in Mexico* that would commit Mexico to specific legislative changes to guarantee workers' rights to bargain collectively.⁴² It is unclear yet what the details of any legislative package might be, whether Mexico would be required to pass implementing legislation by a specific date, or prior to ratifying NAFTA, or if the *Annex* would commit Mexico to also reviewing current collective agreements to root out protection contracts, and what would happen when protection contracts are found, among other key issues.

The new US proposal for the labour chapter likely includes more flexible rules on the current US guideline that any claim of labour rights violations must meet a "trade-related" standard estimating the monetary value of damages to trade to qualify for a formal review, which would open the dispute resolution system to a wider range of labour cases.⁴³ Finally, the proposal to include wage rates in the calculation of rules of origin in

the automotive sector was included in the US-Mexico negotiation. The proposal, which is not related to the labour chapter but is part of the rules of origin section, expects car manufacturers to certify that 40 to 45% of a vehicle built in North America is assembled by workers that are paid more than US\$16 per hour.⁴⁴ Far from representing a push to raise salaries in the Mexican auto sector, the proposal could potentially shift much auto assembly work back to the US and Canada, where workers largely meet the wage threshold.

Meanwhile, although Canada's proposal for the labour chapter reportedly goes beyond the US proposal or the existing TPP labour chapter, recent statements by Foreign Affairs Minister Chrystia Freeland suggest that Canada is generally satisfied with what has been agreed to between the US and Mexico on the labour chapter. It remains to be seen whether Canada will push for the inclusion of additional proposals for the labour chapter as they work out remaining issues with the US and Mexico. News reports published in the fall of 2017 described Canada's proposal as including specific provisions on gender rights, and strong guarantees on freedom of association and collective bargaining.⁴⁵ The Canadian proposal reportedly had the support of unions in Canada and the US, as well as US Democrats.⁴⁶ US negotiators strongly reject the Canadian proposal that challenges "right to work" laws in 27 US states that allow workers to avoid paying union dues where they have opted out of joining a union, but enjoy the benefits of union representation at work.⁴⁷

⁴² Office of the US Trade Representative. *United States-Mexico Trade Fact Sheet: Modernizing NAFTA to be a 21st Century Trade Agreement*, August 27, 2018. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/modernizing-nafta-be-21st-century>.

⁴³ Behsudi, Adam. "Labor rules still remain elusive in NAFTA talks," *Politico Morning Trade Pro*, August 9, 2018.

⁴⁴ Office of the US Trade Representative. *United States-Mexico Trade Fact Sheet: Modernizing NAFTA to be a 21st Century Trade Agreement*, August 27, 2018. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/modernizing-nafta-be-21st-century>.

⁴⁵ Bryden, Joan, and Joanna Smith. "Canada pushes inclusion of strong, progressive labour standards in NAFTA," *The Canadian Press*, September 26, 2017, <https://www.cbc.ca/news/politics/nafta-labour-dias-union-1.4307099>.

⁴⁶ Smith, Joanna, and Joan Bryden. "Democrats would prefer Canadian labour chapter in new NAFTA," *The Canadian Press*, September 27, 2017, <https://globalnews.ca/news/3771350/canadian-labour-chapter-nafta>.

⁴⁷ Fife, Robert. "US proposals on labour standards fall short of Canada's NAFTA goals," *The Globe and Mail*, September 27, 2017, <https://www.theglobeandmail.com/news/politics/us-proposals-on-labour-standards-miss-canadian-goals-in-nafta/article36407212>.

MEXICO UNDER FIRE AT ILO



In addition to the NAFTA negotiations, Mexico has also been facing pressure in other international forums to take action on its stated commitments to labour justice reform. Mexico was selected for review by the ILO's Committee on the Application of Standards (CAS) once again this year at the International Labour Conference in June. The focus of the review was Mexico's application of the standards enshrined in Convention 87 on Freedom of Association and the Right to Organize, and included discussion on labour justice, union representivity and transparency, as well as the implementation of practical measures to eliminate protection contracts. Mexico had been reviewed previously regarding freedom of association in 2016 and 2011, suggesting that the ILO is taking its violations of freedom of association seriously.

To reach its conclusions, the CAS examined written submissions and oral statements provided by representatives of the Mexican government, employer

and worker organizations, as well as representatives of governments, employer and worker organizations from around the world. It also reviewed observations from the Committee of Experts on the Application of Conventions and Recommendations (CEACR), and comments and recommendations from the CAS in previous years. The conclusions encourage the Mexican government to enact the Constitutional Reform, reinforce social dialogue through the adoption of complementary legislation, tackle the prevalence of anti-union violence, and address "employer protection agreements" and the complicity of the labour authorities in the registration of such agreements.

The report concludes that the Mexican government should consult with national level employer and worker associations in its pursuit of implementing legislation for the Constitutional Reform, and that it should ensure that all implementing legislation conforms to Convention 87.⁴⁸ It also recommended that Mexico continue to fulfil

⁴⁸ ILO, Report of the Committee on the Application of Standards, Part Two (R), pp. 74, https://www.ilo.org/ilc/ILCSessions/107/committees/standards/WCMS_632917/lang--en/index.htm.

its existing legal obligation to publish the registration and by-laws of trade unions and their collective agreements. Lastly, it urges Mexico to ensure that trade unions are able to exercise their right to freedom of association in law and practice. The government of Mexico will be expected to report in detail on the measures taken to implement these recommendations at the next meeting of the CEACR in November 2018. Employer and worker organizations usually also submit updates for this

meeting. Although these recommendations were made to an outgoing administration that subsequently lost its executive and legislative power, they should, in theory, be taken forward by the new administration. The historic vote by the Mexican Senate on September 20, 2018 to ratify ILO Convention 98 not only signals a new commitment by Mexico to freedom of association and the right to bargain collectively, but could also usher in a more cooperative relationship with the ILO.

CONCLUSION

A number of factors have converged in the weeks after MORENA's landslide electoral victory to push for the promotion of labour justice reform in Mexico, potentially paving the way for the adoption of implementing legislation that reinforces the letter and spirit of the Constitutional Reform. The election marks a sea change in Mexican political leadership, passing political power to new political forces that could act to uphold labour rights in Mexico, while isolating groups that have historically worked to undermine worker's freedom to organize, their voice in collective bargaining, and their access to justice. The election resulted in a new balance of forces in Congress that could potentially favour the drafting and passing of a bill for the implementation of authentic labour justice reform, while the new administration is already bringing labour allies into important positions at STPS. These new players are expected to attempt to put forth an ambitious set of policies that will look to expand legal protections for workers and improve labour rights practices. This is the hope of independent unions and labour rights advocates in Mexico, even as AMLO is expected to continue to court the business sector by identifying initiatives that also support employers and their interests.

International events are reinforcing these tendencies as well. The negotiation of the labour chapter of the NAFTA accord, as well as the *Annex on Worker Representation in Collective Bargaining in Mexico*, could lock in commitments from Mexico to strengthen guarantees for freedom of association and collective bargaining along the lines of the Constitutional Reform as part of the price of maintaining trade benefits. At the ILO, Mexico has once again been criticized over its unwillingness to promote these rights, showing again the need to find new ways to concretize its stated commitments to improved labour standards and new mechanisms to ensure their enforcement.

This unprecedented convergence of national and international events and forces means that the next few months of 2018 and the early months of 2019 will be a critically important period in which the future legal and institutional framework for labour justice and worker rights in Mexico will be determined. Will the new administration rise to the occasion and make fundamental changes that guarantee the right of workers to labour justice, freedom of association and authentic collective bargaining, or will it make strategic compromises with official unions and the private sector that preserve the long-standing institutional barriers to workers' ability to seek justice and exercise their rights?