

Norms, Practices and Perceptions: Labour Enforcement in Mexico's Garment Industry

English Summary
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Normas, Hechos y Percepciones: La Situación Laboral en la Industria del Vestido en México. The full research report was presented in March 2007. A lengthy 63 page executive summary was presented in July 2007 and is available in Spanish at: www.maquilasolidarity.org/sites/es.maquilasolidarity.org/files/NormasHechosPercepciones.doc. The English translation of the Executive Summary is available at: www.maquilasolidarity.org/sites/maquilasolidarity.org/files/NormsFactsPerceptions.doc. This short document is a resume of that summary. The project was funded by the Levi Strauss Foundation and carried out under the auspices of the Universidad Antónoma Metropolitana, Mexico.

I.

INTRODUCTION

This is a translated resume of a larger in-depth study of current institutional problems in labour standards enforcement in the Mexican clothing industry which was completed in June 2007. Based on a variety of sources (e.g., documents, bibliographies and interviews with key witnesses), the full report analyzes the gap between national and international norms for the protection of workers' rights, both public and private, referencing the Mexican garment industry, with an emphasis on the following institutional factors:

- (1) **The design and application of national labor legislation and its application** (e.g., IT¹ and JCyA²);
- (2) **The design of international instruments** (e.g., NAALC³, international agreements and codes of conduct);
- (3) **Implementation strategies of national and international worker protection** (e.g., IT, JCyA, and NAALC, international agreements and codes of conduct); and
- (4) **The role and perceptions of various key actors in the implementation process.**

The Conclusion suggests ways and means of improving the labor situation in the Mexican clothing industry.

¹ Inspección del Trabajo (IT) / Labor Inspection is the Mexican institution that tracks compliance with labor laws.

² Junta de Conciliación y Arbitraje / Conciliation and Arbitration Board

³ The North American Agreement on Labor Cooperation is a side-agreement on labor compliance, negotiated following the negotiation of the free trade agreement between Canada, Mexico and the United States (NAFTA).

II.

LABOR PROBLEMS IN THE INDUSTRY

The situation of the industry

The North American clothing industry is a major source of employment, impacted in recent years by the North American Free Trade Agreement (NAFTA) and international sourcing practices. During the first seven years of NAFTA, Mexico became the leading international supplier of textiles and clothing to the United States. In 2001, the Mexican clothing industry employed almost 700,000 workers in 14,000 establishments. Over 75% of these jobs were in *maquiladoras*⁴ or “submaquilas” (small workshops) in the chain of production. The textile and clothing industry was Mexico’s fourth largest manufacturer in 2001.

The Mexican clothing industry combines “traditional” aspects (*i.e.* sewing workshops where work is carried out under conditions of extreme exploitation) with “ultramodern” aspects (*i.e.*, global networks linked to advanced forms of information technology). Local government policies, intent on attracting investment and curbing migration, have generally favored the clothing industry. In Mexico, clothing manufacturing is based in a few key centers, for instance in La Laguna (Torreón and Gómez Palacios); Aguascalientes, the Yucatán, and Puebla (Tehuacán, Puebla, Cholula and Atlixco).

Although plagued by poor working conditions and the absence of democratic associational rights, the textile and clothing industry once offered the promise of eliminating poverty and unemployment in Mexico. However, the clothing industry’s main advantages were not sufficient to withstand the combined impact of the entry of China in the World Trade Organization (WTO) in 2001 and termination

of the Multi-Fibre Arrangement at the end of 2004. Indeed by 2002, China had usurped Mexico’s number one position as provider of textiles and clothing to the United States. Many companies in Mexico subsequently closed down and clandestine *maquila* (workshops and home-based labor) resurged.

Today, the Mexican clothing industry primarily produces “basics” with little “value added” for international brands, and as a result, the industry has little or no long-term stability. Very few companies manage “full-package” production, instead relying upon imported machinery, fabrics, and other supplies, which impedes internal industrial development.

Worldwide future trends show a greater concentration of textile and clothing production in the more “efficient” countries (*i.e.* countries with greater technological development, a qualified labor force, and an education system which makes rapid training possible). Greater opportunity could also be enjoyed by countries that respect fundamental labor rights based on international norms.

This report recommends that Mexican companies invest in these areas, as well as becoming involved in manufacturing more high-end fashion as well as in the creation of their own brands. Also, rather than viewing China as a threat, Mexican companies should develop strategic alliances with that country, rooted in a solid industrial policy. It further recommends that Mexican companies pay greater attention to the domestic market, including the improvement of worker conditions. Groups and company networks of varying sizes can be formed with positive results, allowing companies to increase credit access opportunities, improve worker training, and evolve towards “full-package” production.

⁴ A *maquiladora* (or *maquila*) generally refers to a factory that imports materials and equipment on a duty-free and tariff-free basis for assembly or manufacturing and then re-exports the assembled product (in this case, clothing), usually back to the originating country.

The structure and characteristics of the sector

The clothing industry is a branch of the Mexican economic sector known as the “textile and clothing industry,” which is part of the manufacturing industry. The clothing sector accounted for 46% of total production in the textile and clothing industry in 2003, with an average annual income of \$M48,815 per capita (\$US4,608.09)⁵. The textile and clothing industry represented 6.7% of the manufacturing industry in 2003 and 2.2% of Mexico’s total production. The productivity level⁶ for the textile and clothing sector is low compared to that of the manufacturing industry as a whole, primarily due to Mexico’s geographic position and the garment and textile sectors’ links to global production.

Characteristics of textile and clothing *maquiladoras*

The *maquiladora* export industry (MEI) contributes 44% of total production in the textile and clothing industry. The United States is the most important market for the clothing industry. During the ten-year period from 1990 to 2000, Mexico became the main supplier of the United States, overtaking China and Hong Kong. Mexico began losing ground in 2000. In 2003, China again surpassed Mexico to become the primary supplier of the United States.

The use of *maquiladoras* in the clothing industry

In 2003, the MEI provided employment for more than half of all personnel working in the clothing sector. Average pay for workers in the MEI clothing sector is 6.7% greater than for the entire clothing sector, but remains very low when compared with the average for the manufacturing sector (43.7% less) as a whole.

Between 2000 and 2005, Mexico’s MEI recorded an overall decrease in personnel (with a loss of almost 125,000 jobs). Employment declined most significantly in the clothing sector (with a loss of almost 87,700 jobs). For every ten jobs lost in the MEI, seven were in the clothing sector. In 2000, the clothing sector accounted for 22% of personnel employed by the MEI, but by 2005 this figure had fallen to 17%.

Characteristics of MEI Division II in the state of Puebla

Division II, which comprises textiles, clothing and leather, is the most important sector within Puebla’s MEI. The number of workers in Division II rose continually between 1991 and 2000. In 2001, Division II employed 91.2% of the state’s total MEI personnel. The number of workers decreased significantly in subsequent years, as more than 14,000 jobs were eliminated from 2001 through 2004. This represents the equivalent of 40% of total workers employed in 2000. Productivity was stagnant over this period, taking ten years to increase 10 points over its 1993 index.

⁵ Exchange rate at Sept 13, 2008.

⁶ The efficiency with which available resources are used to generate a determined level of production.

III.

THE LABOR SITUATION

Report of the International Labor Organization (ILO)⁷

The clothing industry is generally characterized by (1) high labor turnover, (2) the use of poorly trained workers, (3) low salaries, and (4) little or no genuine trade unionism. Workers constitute a vulnerable group for which there is a wide gap between the standards and the reality, mainly with respect to the exercise of collective rights. This then translates into precariousness and social exclusion. This is particularly true for workers located in the weaker links of the production chain (*i.e.* the small workshops, many of them underground, and home-based labor).

The main problems identified in the clothing sector in Mexico are:

- Child labor: Informal subcontractors and workshops tend not to comply with legal restrictions prohibiting children under 14 years of age from performing wage-earning work.
- Freedom of association is legally guaranteed but not adhered to in practice: This problem is evident in all sectors, but particularly in the clothing industry.
- Gender discrimination in relation to wages: While this is less of a problem generally, this continues to be of concern because of the growing presence of clandestine workshops and home-based labor.
- Clandestine workshops can involve forced labor⁸. This situation seems generalized through the industry in spite of the presence of strong regulations prohibiting forced labor.

⁷ILO (2000) Las practicas laborales de las industrias calzado, el cuero, los textiles y el vestido. Informe para el debate de la Reunión tripartita. OIT. Ginebra.

⁸Force labor examples include the forced extension of the work day whereby workers are obligated to stay within the workshop over many days in order to meet an order deadline.

A number of factors contribute to these problems, including the constant pressure to lower prices and shorten delivery deadlines, the demands imposed on contractors by United States clothing buyers, the weakness of state enforcement of labor rights, and the absence, poor quality or limited power of the trade unions.

Local studies in Mexico⁹

A socio-demographic profile of clothing industry workers in Puebla shows the following:

- A predominantly female work force (63.2 % female vs 36.8 % male);
- A high percentage of young employees (57%);
- A strong presence of family workshops where men, women and children take part in production, combining domestic and school work with sewing; and
- Very low levels of education (seven years of school is the average, with 50% failing to complete their primary education).

Significantly, the companies surveyed often over-report membership in trade unions. For example, in a 2002 survey carried out in Aguascalientes, 59% of establishments affirmed trade union membership, but only 33% of workers confirmed this to be so. This difference is likely due to the fact that many workers don't know that they are unionized and are not familiar with the union "representative."

⁹Juárez, Huberto, "Las Maquilas del vestido en México," En *Trabajadores en linda*, Numero 33, 2002 y Consulta en línea en enero de 2006. www.uom.mx; Martínez de Ita et al, 2006, El trabajo en la industria textil y del vestido en México: 2000-2003; in Enrique de la Garza y Carlos Salas, La situación del trabajo en México, 2006, México, UAM/ Editorial Plaza y Valdés, pp. 277-292 y Rueda Piero, Isabel y Nadima Simón Domínguez, 2006, El dilema de la industria del vestido en México. Los casos de Aguascalientes y Yucatán, Ed. Miguel Angel Porrúa, México.

The weakness of state protection

i. The connections between national and international instruments

Labor authorities and Mexican trade unions have proven ineffective in utilizing national instruments of labor protection to benefit workers. Strategies geared to overcoming company resistance and achieving impartial government intervention must be adopted to improve opportunities for collective action. The report suggests more can be done to take advantage of the valuable experience acquired by non-governmental organizations (“NGOs”) in the daily defense of workers’ rights – in securing severance payments in cases of unjustified layoffs and company closures, in pressuring labor authorities to carry out their functions, and in promoting the formation of independent unions. Unfortunately these efforts rarely meet with much success.

ii. New actors in the world of labor

Since the 1980s, the growing presence of NGOs has impacted the Mexican labor situation in the clothing industry to such an extent that practically no collective actions have been taken by trade unions without the involvement of NGOs. NGOs involvement has been most significant in the clothing and electronics sectors. NGOs dedicate a large part of their efforts to presenting workshops on topics related to labor rights, however, to date, NGOs’ participation in the public area and the debate concerning the reform of labor legislation remains limited.

iii. The root causes of failure to comply

The knowledge and experience acquired by NGOs and academic organizations with respect to labor standards has led to a new focus on the “root causes of failure to comply.” To date, most interest has centered on causes rooted in the “business model” of the clothing industry. Although the business model is undoubtedly significant, taken alone it is insufficient to explain the labor situation

in Mexico. Accordingly, this study focuses on the institutional context in which the clothing industry operates, an aspect which has received little attention.

iv. The business model

The clothing industry continues to resist evaluation of its business model, which is characterized by low prices, ever-changing fashion, and high mobility. However, there are indications that suppliers may be prepared to accept a more cooperative approach going forward in which, with the participation of the brands, assistance is provided to construct a comprehensive system of compliance with labor rights.

However, this study assumes that any advances in the business model will not have an industry-wide effect if the overall institutional context does not foster compliance with labor rights. Scant progress has been made in Mexico partly because the political transition to democracy has been unequal in scope, but also because the prominence of the MEI, with its international implications, has had a greater influence than national political factors.

Power and business in Mexico

i. Pro-management and anti-trade union bias

The current Mexican government takes a “company view” of the country’s labor problems. The close links of ex-president Vicente Fox with corporate interests inhibited widespread compliance with labor rights. Resistance to the presence of democratic and representative trade unions is historic (*e.g.* the repressive politics during the Porfiriato regime), but previously corporations needed to maintain controlled negotiation with trade unions regarding salaries and fringe benefits, which benefitted workers. Today, government authorities tolerate the mere simulation of trade unions via “protection contracts.”¹⁰

¹⁰ Contracts between employers and “ghost unions” which are used to deter genuine unionization.

ii. Puebla “businessman” Kamel Nacif

The case of Kamel Nacif offers an extreme, but illustrative, example of the relative inequality between workers and employers in the clothing industry. Nicknamed “the Denim King,” Nacif promised support for government projects and political campaigns in return for institutional protection to promote his business activities. Many of Nacif’s companies received substantial state contributions and access to free labour (*ie. maquiladora* work performed by women prisoners). Nacif also sought support from labor institutions to avoid his responsibilities to workers. As illustrated by Nacif’s successful business network, the power imbalance between workers and employers goes well beyond what is determined by the “business model” of the clothing industry. This further demonstrates the need to build a political and institutional context more favorable to the development of a culture of legality in the world of work.

iii. *An exception to the rule: the success in Kukdong*¹¹

Labor conflicts in the clothing industry generally produce negative results for workers, but in a recent case involving Kukdong, a Korean company situated in Puebla, workers managed to gain company recognition of a democratic and representative trade union. Strong international pressure on Kukdong was a key to the success—which most likely would not have occurred if the workers had relied solely upon official government channels. Years later, an internal dispute in the union was used by a PRI-affiliated organization, Antorcha Campesina, to intervene in the factory and impose Antorcha supporters as the new leaders of the union.

¹¹ The Kukdong factory is now know as Mexmode.

IV.

NATIONAL REGULATIONS

The Evolution of the Internal Institutional Framework

i. From the Mexican Revolution to the New Labor Culture

Current Mexican labor law, derived from Article 123 of the 1917 Federal Constitution and its 1931 regulations (collectively, the Federal Labor Law, LFT¹²), reflects the context in which it was forged, *i.e.*, the Mexican Revolution. It was developed to correct social inequalities by protecting the vulnerable worker confronted with his or her presumably more powerful employer. The rights granted to wage earners were inspired by those offered by more developed countries, without taking into account the comparative backwardness of Mexico's productive forces. The generous constitutional guarantees presented government authorities with the immediate problem of finding a means of implementation that allowed capitalist development, without openly breaking with the 1917 Constitution and going back on social protections, as company owners demanded.

The ample margin of discretion allowed to government authorities by the LFT proved to be a key "security valve" for employers. Indeed, the government's strict control of trade union leadership and cast-iron restrictions on individual liberties prevails ninety years later in spite of the democratization progress. Employers also remain somewhat shielded by corporate arrangements, such as the pact signed by the employers' association COPARMEX and the Confederation of Mexican Workers (CTM) in 1995. The agreement, titled "Toward a New Labor Culture," ultimately served to defer institutional reform... In practice, this change favoured the interests of the employer.

¹² Ley Federal del Trabajo / Federal Labor Law

ii. The contradiction within the Mexican model of regulation

The Mexican model of labor regulation has been undermined by the high cost of compliance¹³ and the low cost of failure to comply. As a practical matter, poor monitoring and enforcement of regulations effectively annul the cost of failure to comply by leaving an employer's violations unpunished.

Legal protection of workers

i. Scope of constitutional and legal (LFT/LFTSE) protection

On paper, workers in the clothing industry enjoy the same rights as other workers. However, throughout the last two decades, Article 123 of the Mexican constitution has been unable to curb abuses in the clothing industry, as evidenced by the fact that 62% of wage earners engaged between 2000 and 2004 did not receive legal benefits.¹⁴ In practice, companies in the clothing industry often avoid Article 123's requirements through the use of clandestine workshops and home-based labor.

Individual Rights

i. Employment contracts

Mexican labor law imposes severe restrictions on contractual freedom, promoting permanent

¹³ The amount it costs an employer to adhere to the rules in matters of contracting, dismissal, labor conditions, collective rights, and social security.

¹⁴ See Salas Carlos y Eduardo Zepeda, *Ocupación e ingresos en México: 2000-2004*, en Enrique de la Garza y Carlos Salas (coord), *La Situación del Trabajo en Mexico*, Editorial Plaza y Valdés, Mexico. 2006, p. 62 and 133.

employment by seeking to eliminate the employer's discretion with respect to its duration. The general rule, in theory, is that labor relations continue indefinitely. However these principles have little to do with actual practice. For example 20% of the jobs registered with Mexico's social security system between April 2004 and April 2008 were of a contingent nature.

ii. Turnover

Mexican labor law is one of the strongest in Latin America in regards to protecting rights related to employment security. Paradoxically, the turnover rate in Mexico is among the highest in Latin America, exceeding 40% annually. The turnover rate in Mexico's clothing industry is even higher, reaching an annual average of 60%. This statistic suggests legal mechanisms to provide employment security simply do not function in an industry dependent upon international brands and characterized by high geographic mobility and poor working conditions.

iii. Cost of dismissal and collective termination (closures)

Almost 95% of all individual labor disputes stem from arbitrary dismissal. Mexican labor law does not require a "notice" period for termination, although a written letter of dismissal should be provided.

Research shows that severance pay is one of the biggest issues in factory closures or reduction of a company's activities. Workers are entitled to 20 days pay for each year of employment in those cases where workers do not have the right to be reinstated, as well as three months salary.

The highest severance sum established by legislation (four months' salary plus 20 days a year) applies when termination is due to introduction of machinery or new labor procedures, which may discourage innovation. In Aguascalientes and Yucatan, employers have often reached agreements with workers allowing them to avoid severance payments, on the understanding that the workers would be reemployed at some later point.

iv. Evading legal obligations

Companies may thwart workers' legitimate severance claims by requiring workers to sign resignation letters (when commencing their employment contract) and changing registered corporate names, which in turn allows them to evade labor and fiscal responsibilities by creating uncertainty as to the legal identity of the employer. Subcontracting regulations, designed to avoid the evasion of labor responsibilities by contractors, are difficult to enforce due to the deficiencies in the labor justice system.

v. Regulation in matters of working conditions

Mexican labor law includes guarantees against the unilateral modification of working conditions by employers, however, as with many other workers' rights, enforcement is weak or non-existent. A survey in Aguascalientes and Yucatan found business owners generally covered the legal minimum salary payments, but at least 15% of workers received neither bonuses nor holiday pay. The survey also identified a significant number of companies with serious deficiencies in health and safety conditions and no functioning worker/management health and safety committees (*Comisiones mixtas de seguridad e higiene*).

vi. Female labor and gender equity

Women are a growing presence in the labor force, but occupational segregation and salary differences continue to negatively impact women's work situations and opportunities. Although payment of maternity leave benefits and nursery services are provided by the government social security program (*Seguro Social*) based on an employer's previous contributions, independent of a specific maternity occurrence, the perception remains that women saddle employers with female-specific costs, such as maternity leave. As a result, although this practice is illegal, some employers do still demand proof a woman is not pregnant at the time of hire and throughout the employment relationship.

A study estimating actual labor costs associated with maternity in Mexico confirmed the cost to companies is, in fact, quite insignificant, which contradicts the argument that women are not hired or are paid a lower salary because of potential maternity costs.

vii. Home-based labor

Home-based labor is meticulously regulated in Mexico, however, due to the absence of a strong and effective enforcement apparatus, good regulations have not resulted in better protection for homeworkers. Numerous studies document the deplorable conditions of home-based labor. For instance, in Yucatan, pay for home-based workers does not meet individual needs and fails to meet the legal minimum.

viii. Salaries

Mexican labor law provides considerable flexibility with respect to the means of setting salaries (*e.g.* unit of time, unit of work, commissioned work). The National Committee of Minimum Salaries (CNSM) sets minimum salaries through a tri-partite structure, which includes representatives from government, employers and labor unions. The union representatives are typically from the large union federations allied to both the employers and the government so as to make worker representation illusory.

Salary policy has been restrictive since 1976, and according to different estimations, real wages have declined more than 70%. Salaries in the MEI's clothing sector tend to fluctuate between one and three minimum salaries and are lower than those in the textile sector. Home-based workers are paid per item and in practice can earn less than one minimum salary.

ix. Non-salary compliance costs

Mexico's non-salary labor costs (payroll taxes, severance pay, bonuses) are on the high end when compared to those in other Latin American

countries. Brazil is the only country with higher labor costs. Because non-salary costs generally outweigh productivity in the clothing industry, companies tend to subcontract production to clandestine or home-based workshops, which offer workers no fringe benefits or social security.

Protection of collective rights

Mexican labor law supposedly favors trade unions and collective action as the primary means for the improvement of workers' situations, however, state control over trade union registration and recognition has effectively impeded the development of independent unions, particularly in the last 10 years.

i. Trade union power and collective bargaining

Mexican trade unions, once registered and recognized, possess powers allowing them to expand and impose collective negotiation on their employers. However, "protection contracts" with ghost unions, a widespread practice in the *maquiladora* clothing industry, effectively undermines independent trade unions and true collective action.

ii. Union autonomy vis-à-vis the state and employers

Mexican labor law does not fully guarantee union autonomy. Indeed, the registration procedure for trade unions gives governments considerable discretion in the recognition of trade unions and in the granting of prerogatives which derive from registration and recognition. Employers also have a great influence in choosing their counterparts in collective negotiation.

iii. Democracy within trade unions

Generally trade unions have been designed to concentrate power at the leadership level rather than to guarantee internal democracy for workers

at all levels. To improve the quality of union representation, workers must be provided with the means to freely choose their leaders, demand transparency, manage resources, and influence strategy.

iv. Scope of the right to strike

The Mexican Constitution guarantees the workers' right to strike. Strikes may last indefinitely and no obligatory arbitration exists, but a JCyA with relevant jurisdiction may declare a strike "illegal," "unjustified" or "non-existent" on a thin pretext, thus requiring workers to return to their jobs or face dismissal.

v. Scope of union participation

Mexican labor law grants institutional power to trade unions, as well as ample representation in the state apparatus, but it does not allow for significant participation within company administration or management systems.

Need for a multi-pronged approach to defending workers rights

Our research shows the importance of a multi-pronged approach, utilizing national and international instruments, both public and private, to defend workers in this highly competitive context.

i. The Protection of human rights

The 2003 diagnostic of the United Nations High Commissioner's Office on Human Rights (OACNUDH) on labor-related human rights showed that diverse factors work to obstruct these rights in Mexico. In addition to economic obstacles -- Mexico's productive structure, (with the overwhelming presence of micro and small enterprises), the slow growth rate of formal employment, or the impact of the world economy via low salaries -- the diagnostic notes the

problematic design and implementation of Mexican labor laws, the poor quality of trade union representation, and the existence, in its fundamental features, of a corporatist system.

OACNUDH proposed a series of changes, including: (1) the creation of an autonomous public register of trade union and collective contracts, (2) the introduction of a new procedure for setting minimum wages, and (3) the granting of authority in labor questions to the National Commission of Human Rights.

ii. The ILO Conventions and complaints before the Committee on Freedom of Association

The 1919 ILO Constitution, the Philadelphia Declaration (1944) and ILO Declaration on Fundamental Principles and Rights at Work (1998) establish four fundamental principles: (1) freedom of association; (2) elimination of the worst forms of child labor; (3) prohibition of forced labour; and (4) and equality of opportunities and treatment. Unfortunately, the ILO (like the United Nations) lacks real power to enforce compliance with international principles, limiting itself essentially to persuasion.

An analysis of ILO complaints over a 15-year period reveals plaintiffs are typically independent trade union organizations demanding respect for freedom of association. Violations of the rights of association, collective bargaining and strike have been constant throughout history and have become an almost insurmountable hurdle to a truly representative and autonomous trade unionism. As a result, there is little to discourage government and company policies geared to promote competitiveness by deminishing salaries and employment.

iii. The rules for the multinational companies of the OECD

In 1976, the Organization for Economic Cooperation and Development (OECD) adopted guidelines for multinational companies with

respect to labor-related human rights. The guidelines address the right of workers to be represented by trade unions, or other legitimate representatives, and to take part in “constructive negotiations” on labor conditions.

Two key OECD guidelines are: (1) in cases of factory closure or collective dismissal, before a final decision, the workers’ representatives and competent authorities should be given reasonable notice and be allowed to collaborate with the company to minimize the adverse effects; and (2) in good faith negotiations with the workers’ representatives concerning labor conditions or when the workers exercise their right to organize, the company should not attempt to unjustly influence negotiations or hinder the exercise of the associational rights by threatening transfer of production or workers.

The OECD guidelines benefit workers who seek to organize in industries with no trade unions or other genuine forms of worker representation. However, to date, public guidelines such as those propagated by the OECD have been less effective than private guidelines (discussed further below).

iv. NAFTA - NAALC¹⁵

The design of NAALC reflects the need to achieve approval by the United States more than it does the need to achieve regional integration which respects workers’ rights. NAFTA’s principles incorporate investor rights which trump fundamental labour rights, recognized by the ILO and others, and NAALC includes provisions for imposing sanctions — via a complex and prolonged procedure that has never been put into practice during its 15 years of existence — only for violations with respect to child labor, minimum wages, and health and safety.

v. Codes of Conduct and Monitoring

In the 1990s, transnational corporations increasingly moved to adopt arbitrary codes of conduct (CoCs) covering a wide range of topics,

including labor and environmental rights. The content of CoCs varies widely across industries. For example, textile and clothing companies emphasize issues of child labor and forced labor, while other sectors highlight health and safety. A 1999 review by the ILO of 215 codes and by the OECD of 182 codes found that only 15% dealt with themes of free association and even fewer with collective bargaining.¹⁶ Multi-stakeholder initiatives such as the Ethical Trade Initiative in the UK, which include more than one corporation and seek to set standards across industries, tend to set higher standards and provide a common bar for labor rights compliance,

The credibility of CoCs depends upon (1) whether they are unilaterally adopted or negotiated with trade unions and/or NGOs; (2) whether they are used to evade unionization; and (3) whether the means of monitoring and enforcement indicates the CoCs are serious instruments to modify company behavior or simply exercises in public relations.

Hepple identified three types of monitoring with respect to labor-related human rights pursuant to the CoCs: (1) those carried out by the company itself or by an internal body; (2) those carried out by the international brand with respect to its suppliers or contractors; and (3) those carried out by an external body, such as specialized social auditing firms or NGOs.

Obvious limitations of promoting labor rights via CoCs include:

- This strategy can only be geared to certain products (*i.e.* products with an identifiable origin, stemming from recognized international brands);
- Consumers, primarily consumers in highly developed countries, determine which rights are given priority;
- If challenged, corporations can simply opt to cancel orders which can then result in factory closures, with the result that

¹⁵ North American Agreement on Labor Cooperation (NAALC)

¹⁶ Hepple, Bob (1999): “A Race to the Top? International Investment Guidelines and Corporate Codes of Conduct”, in *Comparative Labour Law & Policy Journal*, n° 20, pp. 347-363.

wrongs are not remedied and jobs are lost; and

- CoCs do very little to push improvement of the state's capacity to defend labor-related human rights through national systems of protection.

Recent research in Mexico by the Maquila Solidarity Network and MUTUAC affirms these limitations and emphasizes the importance of formulating a more effective combination of these worthwhile efforts. Some companies are changing

the focus of standards compliance by researching and seeking to address the root causes of persistent problems. The cooperation and collaboration of companies, NGOs and trade unions is critical to achieving this goal. Greater efforts also should be made to encourage worker participation in these efforts. In addition, companies should offer incentives to suppliers or factories that fulfill or exceed compliance with labor standards.

V.

MECHANISMS OF NATIONAL VIGILANCE AND APPLICATION

Labor Inspection (IT)

Labor Inspection is the Mexican institution that keeps track of compliance with labor laws. Because Mexico did not have any obligation under NAFTA-NAALC to achieve greater compliance with labor norms, unlike Central American countries under CAFTA, and because none of the NGOs or labor unions that would ordinarily push the IT to be more vigilant have done so, the IT is, in a practical sense, non-existent.

i. Federal and local inspection

Inspections are carried out by both federal and local inspectors. Federal inspectors are the only ones with authority for carrying out health and safety inspections. They also carry out general labor rights inspection in industries under federal jurisdiction (including the textile sector). Local inspection agencies are responsible for all labor rights inspection in the garment sector, EXCEPT health and safety.

ii. Division of labor: IT, IMSS, and fiscal authorities

In many Mexican states there is no cooperation among the different agencies that are supposed to enforce labor laws. There is also a division among agencies with respect to enforcement of social security enrollment laws and the payment of taxes. The IMSS¹⁷ is the agency charged with ensuring workers are enrolled in the social security system, but it does not always coordinate with the other agencies enforcing labor laws.

iii. Workplaces subject to inspection

The definition of workplaces subject to inspections is very general, and as such includes workshops and home-based work. The IT could widen the scope to include facilities in which the most vulnerable employment is found, however refrains from doing so for various reasons. One of these being that it does not want to close illegal workshops so as not to affect employment.

¹⁷ Instituto Mexicano del Seguro Social (IMSS) / Mexican Institute of Social Security

iv. Types and modalities of inspections

Inspections can be classified as either “ordinary” or “extraordinary.” Extraordinary inspections are carried out on request of a worker, however because in some jurisdictions the owner may have access in the documentation to the name of the worker making the complaint, the worker is left vulnerable to retaliation from the owner. Retaliation is less common in jurisdictions where the name of the worker complainant is not included in the documentation.

Strategies, procedures, and sanctions

The state intervention process can lead to two outcomes: (a) sanctions, when violations are detected; or (b) technical assistance (primarily regarding legal compliance). However, what is lacking is any strategy oriented to achieving real remediation of non-compliance with labor laws.

i. Federal Labor Inspection (IFT)

Steps were taken beginning in 1997 to privatize the inspection process. However, no mechanism has been identified to prevent the inspectors, who would be paid by the companies they inspect, from showing partiality toward those companies.

With the arrival of the new federal government in 2000, the number of inspections decreased significantly. For example, out of 804,000 companies registered with the IMSS in 2001, only 14,325 visited, or 1.77%. According to state authorities, 98% of companies claimed a lack of knowledge of labor laws. From this perspective, the new IFT prioritized orientation and training over leveling sanctions. *“The problem is ignorance of the law. The sanction is not so important, the employer should first know what his obligations are.”*

ii. Local Labor Inspection

Over the last decade enforcement in Mexico City has gone through three phases: the strategy of

sanctions, 1988 through 1996, prevention and orientation, 1997 through 1999, and sanctions again, 2000 through the present. Since 2005 Puebla has relied on a system of prevention, consultation, and voluntary compliance, as has Sonora.

Results of Labor Inspection: effectiveness and efficiency

i. Activities

Few inspections are carried out by the inspection authorities, and those that are conducted are unlikely to result in the application of sanctions. Workers feel that the inspection authorities lack credibility and therefore do not pursue actions through them.

ii. Deterioration of resources

Since 1994 the number of inspectors has decreased by more than 50%, a decrease that was reversed in 2007 with the hiring of 100 new federal inspectors in 2008. This measure was related to the serious accident at the Pasta de Conchos mine in February 2006, in which 65 miners lost their lives. Even though many inspectors have college degrees, the pay is low. Overall budgets for inspectorates have decreased in recent years, sometimes as much as an 80% reduction from prior levels.

iii. Investigation Process

The inspection process can take two to three months in cases of violations of general labor conditions and three to six months in cases of health and safety violations. In IFT the average time from inspection to resolution was 166 working days, while the maximum was 486 days, not including the time involved in applying any sanctions – something which occurs in very few cases.

iv. Sanctions

From 2002 to 2003, the federal labor inspectors imposed 6,640 sanctions on 14,270 companies inspected, imposing fines of over 6 million pesos (\$US 561,046,073). Mexico City inspectors during the same period applied 37 sanctions to 912 inspected companies, with 140,000 pesos (\$US 13,091) levied in fines. In general, the fines imposed against each company were not significant enough to deter similar conduct in the future.

v. Tragic ineffectiveness

The lack of coordination among the various inspection agencies and the poor quality of inspections may have contributed to the tragic deaths of 65 miners at the Pasta de Conchos mine in Coahuila in 2006. Inspectors had noted deficiencies at the mines, but they had not taken steps to cause the owners to comply with applicable laws until after the deaths occurred. Only after the incident did the authorities increase mine inspections and issue additional notices of violations. One report concluded that the fines levied by governmental authorities were generally lower than the cost to comply, so it represented a cost savings to companies to pay fines rather than comply with applicable laws.

Conciliation and Arbitration Boards (JCyA)

Conciliation and Arbitration Boards are fundamental for the defense of workers in the clothing industry. JCyAs are tasked with resolving conflicts of interest between labor and capital, as well as trade union registration, conflicts between different trade unions, and conflicts between employers and employees. In the clothing industry, the relevant board is called the Local Conciliation and Arbitration Board, while the textile industry relates to the Federal Conciliation and Arbitration Board.

Sources for the Study of the Boards

- Study of ILO-STPS, which studied local boards in twelve states;
- The Pearson Study, which studied the Federal Conciliation and Arbitration Board (JFCyA); and
- Research carried out on several state boards before and as part of this study.

i. ILO-STPS¹⁸

The main problems with the Boards identified by this study were low salaries, inadequate training and experience of civil servants, limited number of representatives, lack of interest in the selection of representatives, lack of legal knowledge, and failure of employers to comply with Board decisions. In addition, many Board proceedings are not public or are not published. There are many appeals due to the lack of legal basis in decisions. Some Boards are perceived as being corrupt, and time periods for resolution can be very long and vary from jurisdiction to jurisdiction. Also, employers often fail to comply with the decisions of Boards. Boards in Hidalgo, Toluca, Nuevo Leon, and Zacatecas are seen as high performers, Boards in Baja California, Puebla, Queretaro, San Luis Potosi, and Yucatan are seen as medium performers, and Boards in Chiapas, Jalisco, and Veracruz are seen as low performers. The study recommended procedural improvements to promote settlements.

ii. The Pearson Study on the JFCyA¹⁹

Federal and local Boards are seen as lacking credibility and as being corrupt, there is a lack of standardization, and decisions are often capricious and arbitrary. The Federal Board is seen as more problematic than the local Boards referenced above. This study recommended preventing corruption by increasing salaries, education, and

¹⁸ OIT-STPS, *Las Juntas de Conciliación y Arbitraje*, 2005.

¹⁹ Pearson Report on the Federal Conciliation and Arbitration, MIMEO, 2003 limited by the fact that it is based only 10 interviews with informants taken from a list provided by the authority itself.

supervision, together with fines, suspensions, and dismissals for corruption.

iii. Our Research²⁰

Ninety-six percent of the individual complaints in the garment industry involve unjustified dismissals. In 2 of 3 cases, the principal action requested by the worker was not granted, and only 22% of resolutions were actually resolved. Because of the time it takes to find a new job and the length of time these resolutions take, it is clear that the Board's intervention is often too little, too late. The report contains many statistics regarding the workers who file complaints and what the outcomes of their cases are.

NATIONAL ENFORCEMENT MECHANISMS: PERCEPTIONS OF THE ACTORS

Labor Inspection

i. What is the purpose of inspection? How does its performance compare with that of the IMSS?

Generally, employers do not see the IT as having any teeth to enforce labor laws in Mexico. The IT has also generally been seen as being quite corrupt. There exists a great deal of skepticism as to whether any method of enforcement by the IT, whether punitive or collaborative and educational, will lead to increased compliance. In Puebla, the IMSS for example, is seen as being much stronger and more effective, however employers claim that the robust enforcement leads to the closure of companies and the loss of jobs.

ii. An unfavorable institutional and political context: the "New labor culture"

The former director of the ILTDF²¹ believes that the tactics of prevention and voluntary fulfillment of labor requirements by companies undermines the role of the ILTDF and makes it ineffective. However, most federal inspectors, many of whom come from a business background, believe that the strategies of prevention and technical assistance, primarily regarding legal compliance requirements of the companies is the correct one, even with the lack of evidence that these strategies are improving the behavior of the businesses. Some lawyers in Puebla believe dealing with the ILT²² is futile because the Secretary of Labor and Competitiveness of Puebla²³ is an important business lawyer who protects his "advisors and buddies." Some inspectors, however, come from a labor background and are in favor of unions and workers' rights.

iii. Limitations in scope and effectiveness of Labor Inspection (IT)

The following are factors contributing to the ineffectiveness of the IT: lack of a reliable list of companies, requirements that the companies receive notice prior to audits, inappropriate procedures for small companies, inadequate sanctions, superficiality of inspections, inspectors' lack of power to close workplaces when they detect serious violations, lack of coordination among authorities at the federal and local levels, and the lack of a central database of information on companies. Because of all these factors, it is impossible to determine which companies systematically evade their labor obligations, nor is it possible to determine the total sanctions made against companies.

Workers do not often contact the IT with complaints. They do not believe that their claims will be solved, and they fear dismissal if their

²⁰ First stage, 2004 (JFCyA; JLCyADF; JLCyAS), Second stage: 2006 (JLCyADF); JLCyA Puebla and especially Tehuacan. (Labor statistics, files, interviews).

²¹ Inspección Local del Trabajo del Distrito Federal / Mexico City Local Labor Inspection

²² Inspección Local del Trabajo / Local Labor Inspection

²³ Secretario de Trabajo y Competitividad de Puebla

employers discover that they contacted the IT. The IT does nothing to detect clandestine workshops or home-based businesses, either, even though the location of such workplaces is often not a secret.

Sanctions are not applied against employers for several reasons. The requirement to give a 24 hour warning of an inspection and the lack of local handbooks regarding inspections are two of such reasons. In many cases, inspections are superficial and bureaucratic acts which have no effect on violations of labor laws. Inspectors do not possess the authority to close down shops that are in violation of labor laws, no matter how serious these violations may be. In any event, inspectors often do not exercise the authority they do have. The lack of union representation and the lack of pressure a union would ordinarily put on local authorities also hurts enforcement efforts.

The lack of resources, information, training of personnel and the dispersed authority with respect to inspection are among the most serious problems of implementation of the IT. Inspectors state that they have poor equipment, insufficient budgets, degrading salaries, no resources, no organization, and no leaders with experience. Inspectors feel that the low priority placed on these items is a political decision.

iv. Corruption

Corruption in the IT was high in the past. Now that the IT has moved to an advisory and preventive approach, many believe that corruption will decrease. However, some believe that the corruption argument, as an alleged reason to move to the advisory and preventive approach, was merely a pretext to inject the IT with a business-friendly spirit to allow businesses to continue labor law violations because that was the only way to compete with other countries, like China, that do not respect workers' rights. Corruption may in fact have decreased under this approach in that it is difficult to fathom why an employer would pay a bribe to an inspector to avoid penalties when penalties are rarely levied in the first place.

v. IT effects on the conduct of business owners

In some countries, like the Dominican Republic, changing the approach of the labor authorities to prevention and education has improved the working conditions, but the same has not been the case in Mexico. Many inspectors seem to believe that having any jobs available is the most important goal, so they minimize how strictly they enforce labor laws so that companies will not simply close and head elsewhere where they will not be "hassled" as much.

vi. Labor Inspection: a non-existent institution in the clothing industry

For the IT to make a meaningful difference in the lives of workers, it would have to experience a radical transformation in concept, operations, and resources. In addition, a wider acceptance of the legitimacy of labor rights would go a long way toward improving labor conditions. NGOs, trade unions, international brands and multi-lateral institutions such as the WTO, the World Bank and the ILO, etc. could take on this role to develop a better enforcement strategy with respect to labor laws.

PERCEPTIONS ON THE DESIGN AND PERFORMANCE OF LABOR JUSTICE

The ineffectiveness of the Conciliation and Arbitration Boards decreases the likelihood that workers will make demands for their rights and increases the likelihood that they will sacrifice their rights. Access to an impartial labor justice system would increase the certainty of workers regarding their rights.

The Boards as seen by their users

i. Visibility and credibility

The reputation of the Conciliation and Arbitration Board (JCyA) is largely as negative as the

reputations of the other labor institutions, such as the IT. The JCyA, however, does seem to have more visibility and credibility than the IT, even if its structure and performance is not actually superior.

ii. Structural Factors

Three aspects of the structure of the labor legal system gave rise to the most severe criticism among interviewees: the degree of dependency of the Conciliation and Arbitration Boards on federal or local executive power, the tri-partite composition of these boards, and the distribution of duties between federal and local jurisdictions.

iii. Other factors that affect performance

In addition to the structural factors affecting the impartiality and independence of the Boards, the slow nature of the procedures and the subsequent backlog in processing claims constitute additional weaknesses. Interviewees stressed that the lack of personnel and training thereof, together with deficient infrastructure, were factors causing such situations. Many interviewees stated that justice delayed is justice denied.

iv. Change of context

Some interviewees believe that with political democratization the Boards would have become more autonomous and financially independent. However, the great deal of discretion held by local governments and their intervention in labor matters continues in matters related to individual and collective rights, which does not help workers. This is especially evident in Puebla and Sonora.

v. Who benefits from the Conciliation and Arbitration Board?

As stated previously, the percentage of workers successful in their claims is low, and many times companies do not comply with the rulings on the claims, which, when compliance occurs, is too late to help workers survive during unemployment.

However, company representatives claim that workers enjoy excessive protections and that enforcement is driving companies out of business, especially smaller firms. The data does not back up this assertion, but company lawyers claim that the allegedly excessive enforcement justifies practices such as compiling lists of plaintiffs to prevent them from getting new jobs or demanding that workers sign blank resignation letters.

vi. The access to justice of clothing industry workers: the case of Puebla and Tehuacan

Lawyers representing the clothing companies' state that the new approach of conciliation by the labor authorities has helped attract investment to Mexico. However, the state Secretary of the labor authority, a lawyer with ties to five of the most important companies, is not seen as able to cause the authorities to carry out their duties impartially. Those defending workers claim that the Secretary protects the interests of the employers, and that the Conciliation and Arbitration Boards therefore do so as well.

The Boards as seen by those responsible

The civil servants generally believe that the Boards must improve, although many of them avoided individual responsibility with respect thereto. However, many believed structures and strategies must change, especially in Sonora where, ironically, performance by the governmental authorities was at its highest level according to the study of the ILO/STPS.

i. The JFCyA

The government claims that the low performance of the federal labor authorities is due to a large backlog of cases, many of which arise out of large, state-run companies such as PEMEX, IMSS, and CFE(Comisión Federal de Electricidad). Thousands of claims arise from the failure of IMSS to comply with its social security obligations. Administrative

tribunals are supposed to handle many of these claims, but they are referred to the JFCyA instead. As previously mentioned, there are deficiencies of budget, personnel, and infrastructure, all of which impede the functioning of these authorities.

ii. *The JLCyADF*²⁴

This was the only case in which an openly pro-employer attitude was not detected among the civil servants. However, workers' lawyers claim that in reality employers have a strong influence on the performance of this Board. The authorities are attempting to combat corruption and poor management by instilling better organization, improve salaries of full-time staff and reduce salaries of high-ranking officials, and therefore stabilize the Board's workforce.

iii. *The JFCyA in Sonora and the JLCyA*²⁵ *in Hermosillo*

In this state, the state government has a high degree of interference in trade union activities via its representative on the Conciliation and Arbitration Board. The state government is also very close to business interests, which threatens the rights of workers set forth in national legislation and international agreements.

iv. *The Local Conciliation and Arbitration Board in Puebla*

Like Sonora, Puebla encourages a favorable atmosphere for investors, granting privileges to conciliatory unions and discouraging conflicts.

The Boards as seen by the magistrates

According to magistrates interviewed, the Boards' wide range of discretion and their lack of professionalism are two of the most important problems. The magistrates also believe that reforms have not been adopted because maintenance of labor peace has been the goal. With respect to large, state-owned companies, the Boards favor the employers, and they tend to not get involved in smaller conflicts. Magistrates believe that corruption does exist, but that it is not widespread. More specialization of the various tribunals would allow for better distribution of the workload, and improvements are being made on this front.

The need for a thorough restructuring of labor justice

The labor justice system in Mexico should be restructured to offer improved access to justice for workers facing untimely or unjustified dismissal. Companies ignoring workers' rights generate perverse incentives reducing adaptation and innovation.

²⁴ Junta Local de Conciliación y Arbitraje del Distrito Federal / Mexico City Local Settlement and Arbitration Board

²⁵ Junta Local de Conciliación y Arbitraje / Local Settlement and Arbitration Committee

VII.

GENERAL CONCLUSIONS

Mexico initially adopted a “low-road” economic strategy in the early 1990s, which was quickly defeated by other countries, especially Asian countries which combined low wages with better industrial, educational, scientific, and technological policies and more favorable exchange rates.

Mexico needs to attract and maintain investments designed to generate high value-added products and services, compatible with better working conditions.

Many in Mexico believe that lost jobs are due to even lower salaries in China, while some believe that the failure to comply with labor standards is an important factor. For this reason, it is important that brands make it more evident that they are committed to improving working conditions in their supplier factories, and that complying with labor standards is one way to improve competitiveness, and not the contrary.

Mexico’s labor regulation system must be redesigned and reformed to change the incentives motivating the actors and determining strategies. Improved quality in regulation, a more effective system of vigilance and enforcement (including fines and sanctions), and a “state of well-being” attending to the needs of all citizens of Mexico will promote an increase in the country’s competitive potential. The role of the Labor Inspection, an institution that to date has been absent from the garment industry, and the system of conciliation and arbitration boards that has been partial to the employers and the unions linked with them, is crucial to bridging the gap between labor standards and what takes place in practice.

Pressure from the international community will serve to motivate employers and the labor authorities to respect trade unions and comply with local law.

The use of codes of conduct and monitoring procedures can help in specific situations, but they

may not enforce workers’ rights at a more widespread level. Promotion of trade unions and redefining the role of the labor authorities should be a central focus of pressure by brands and civil society actors. This is a starting point to achieving better compliance on other issues. Larger budgets for local and federal authorities would help enforce policies favoring workers’ rights as well. Most important is that labor authorities act with impartiality and recognize fully freedom of association.

Workers throughout the supply chains need access to social security and to be able to benefit from collective bargaining negotiations. Enrollment in social security also opens up the possibility of inspection of the company in which the worker offers his services, an inspection involving compliance with labor norms in a wider sense inasmuch as it increases its invisibility. This has occurred in other countries such as Uruguay, Chile and Ecuador, where today – thanks to recent legal reforms, there are stronger restrictions on the use of sub-contracting and third-party employment agencies (*agencias de colocación*). And the transnational companies are responsible, together with authorities, for the legal compliance by their suppliers. Reform of this nature may strengthen relations between clothing companies and suppliers, which has been seen as a crucial factor in the enforcement of labor standards, and may also reduce high transaction costs. Both private and public mechanisms must be used to control where and in what manner production is carried out, detect clandestine workshops, and ensure that home-based work complies with labor laws as well.

What could prove useful in the fight to protect workers’ rights is the design and implementation of a permanent labor monitoring group in which national and international organizations dedicated to the defense of labor rights, including trade

unions, academics, and international experts, would all take part. This type of organization would be instrumental in compiling quality information about compliance with labor laws and enforcement thereof. Inside and outside Mexico there exists sufficient energy, creativity, and social experience to create such a body to improve competitiveness based on a commitment to employee training, productivity, and a just distribution of benefits.

This report will have a favourable impact if it at least calls attention to the problems facing the different instruments of worker protection in this industry in Mexico and, as soon as possible, helps start the process of creating the indicators and mechanisms needed to put the monitoring body discussed above into operation.

Throughout this study, we have presented evidence concerning the actual performance of institutions responsible for ensuring that standards are complied with. Nevertheless, the lack of transparency inherited from corporativism, the poor quality of records, and the resistance of authorities to sharing consistent information are problems that were difficult to overcome in our research. Without a doubt, today there are greater opportunities and resources to obligate the authorities to disclose information on the situation of trade unions, collective agreements, salaries and other conditions of vulnerable social groups, such as garment industry workers, which have not been sufficiently utilized.

If we bear in mind that workers in developing countries are increasingly going to become consumers of the products made for the domestic market, improvements in labor practices, industrial

innovation policies, training for employers and workers, and the creation of national brands and supply chains will be necessary conditions for the future of the industry.

Finally, it will be important to ensure that the evidence gathered in this report on the poor functioning of national or international regulations, including codes of conduct, or concerning their deficiencies, doesn't lead to paralysis, but rather serves as a resource to better orient the actions of NGOs, trade unions, international brands, and other allies of the workers.

Quite to the contrary, the results of this research point to the need to more effectively combine the use of these different instruments, while continuing to attempt to perfect them. At the same time, it's important to take into account that in the new global context the focal points of social mobilization have changed radically and, as a result, the relative importance of struggles based on traditional identities (class, occupation, industrial sector, etc.) are giving way to other forms of identity, such as gender, age and sexual orientation.

Nevertheless, this investigation found that, at least in this sector, the dominant view is that role of trade unions to improve the terms of redistribution in developing countries, and to act as an authentic counterweight, could not be satisfactorily played by the new actors without collaborating with trade union allies. For that reason, we need to reflect on the actual possibilities in Mexico to achieve a recuperation of these organizations, given the deterioration of their credibility after decades of corporativism and subordination to business interests.