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Chairman Neal, Ranking Member Brady, and members of the House Ways and Means Committee, thank you for your leadership and for this opportunity to share observations on the complex and evolving labor rights situation in Mexico.

As the Solidarity Center's country program director in Mexico, I work with the independent labor movement, labor academics and lawyers, who work courageously every day to support fledgling worker organizing efforts in one of the most complex labor rights environments in this hemisphere. The Solidarity Center is the largest U.S.-based international worker rights organization, helping workers attain safe and healthy workplaces, family-supporting wages, dignity on the job and greater equity at work and in their community. The Solidarity Center is allied with the AFL-CIO, also testifying today, and has over 20 years of uninterrupted presence working in Mexico. We have deep ties based on trust with democratic unions that have been at the forefront in the struggle for worker rights in Mexico.

The Solidarity Center is appreciative of the broad focus of this hearing on Mexico's labor reform, as discussion of labor issues in Mexico is too often limited to the stark wage disparity between Mexico and the United States. While the wage gap is significant--according to the Bureau of Labor Statistics, Mexican manufacturing workers earn, on average, only a tenth of what U.S. workers do--it is critical to understand that Mexico's stubbornly low wages are the intentional outcome of state policies and practices designed to attract foreign investment. They are enforced by a complex industrial relations system that denies Mexican workers their right to freedom of association and robs them of the ability to demand better wages and working conditions. As we discuss Mexico's labor reform today, it is important to understand that this system has relied for decades on deeply entrenched practices designed to suppress workers' voices; the collusion of government institutions and corrupt business and union leaders; and serious consequences for workers who attempt to exercise their rights.

Mexico is a middle-income country, fully integrated in the global economy, a member of the OECD and G20, and by some estimates, the U.S.'s top trading partner.¹ Mexico's open elections and peaceful transfers of political power have contributed to a façade of functional civil society that belies long-standing collusion among significant civil society institutions, including many of the largest trade unions in Mexico and the Revolutionary Institutional Party (PRI) that controlled Mexico for 71 years. Rather than representing the interests of workers, these trade unions work at service to the party and the state and enjoy a privileged position, maintaining vast control over

¹ According to recent estimates. See, for example, Forbes contributor Ken Roberts, "Mexico Is Now Top U.S. Trade Partner, Ahead of China, Canada". April 26, 2019. Online at: <https://www.forbes.com/sites/kenroberts/2019/04/26/mexico-is-now-top-u-s-trade-partner-ahead-of-china-canada/#441782c649fb>

labor relations in the country still, even though the PRI lost control over Mexico in the mid-1990s. Though PRI-allied unions operate with varying degrees of independence, on the whole, the Mexican labor relations system exists to control workers and suppress their rights, including freedom of association. In practice, Mexico's labor system is more analogous to that of China or Vietnam, rather than Argentina or Brazil.

Consequently, only 1 percent to 2 percent of Mexican workers are members of an independent trade union, and just 1 percent of Mexico's workers are covered by authentic collective bargaining agreements (CBAs) that were reviewed and ratified by workers.² Instead, the vast majority of workers are covered by "employer protection contracts," or secret agreements negotiated between a non-democratic union and a complicit employer without the knowledge or consent of the workers. In most cases, workers never know that a negotiation took place. Indeed, many are never informed that they are members of a union at all, and do not negotiate, approve or even receive a copy of the protection contract that dictates their wages and working conditions. Experts estimate that 75 percent to 90 percent of all current legally registered collective agreements are likely protection contracts.³

Many of the powerful, old-guard, PRI-aligned unions in Mexico that participate in this practice are "protection unions," and are emblematic of a labor relations system that privileges the interests of companies, political elites and compliant union leaders. The largest national union organization in Mexico is the Confederation of Mexican Workers (CTM), which dates to 1936 and whose unions control just over 1,000 CBAs,⁴ many of which are effectively protection contracts.

For example, at a BMW vehicle assembly plant in the central Mexican state of San Luis Potosi, BMW management signed a protection agreement with a CTM-affiliated union in 2014, setting wages *five years* before the plant began operations or hired workers.⁵ BMW formally inaugurated the plant and began production just three weeks ago, on June 6, 2019.

When workers decide to organize a new independent union, it is not uncommon for an employer to announce that the workplace is already covered by an agreement and that the workers already have a (protection) union. If no protection union is in place, employers can quickly find one to sign a contract and thwart the independent organizing effort. Ousting a protection union is extremely difficult. Workers must present a formal challenge to the incumbent protection union,

² Dr. María Xelhuantzi, quoted in "Los sindicatos independientes son en realidad palero y botín de caciques: especialistas," Sin Embargo, Dec. 12, 2018: <https://www.sinembargo.mx/12-12-2018/3508228>

³ Different methodologies to estimate the extent of this phenomenon render slightly different figures. Joyce Sadka, a researcher at the Mexico Autonomous Institute of Technology (ITAM) estimates 75% of all CBAs in Mexico are likely protection contracts. Labor experts Dr. Alfonso Bouzas and Carlos de Buen estimate up to 90 percent of CBAs are protection contracts. "Tres de cada cuatro contratos sindicales en México favorecen a las empresas: estudio." El Financiero - Bloomberg, Nov. 20, 2018. <https://www.elfinanciero.com.mx/economia/3-de-cada-4-contratos-sindicales-en-mexico-favorecen-a-las-empresas-estudio>

⁴ "Languidece la CTM en su 75 aniversario," La Jornada, Feb. 24, 2011. <https://www.jornada.com.mx/2011/02/24/politica/025n1pol>

⁵ It can be found online at: <https://www.bloomberg.com/news/articles/2017-05-05/how-mexico-s-unions-sell-out-autoworkers>

petitioning labor authorities for an election to vote out the existing union and gain bargaining rights over the contract. In such labor disputes, employers often hire violent goons to intimidate, harass and attack workers. The cases presented below vividly illustrate these patterns.

This repression of independent worker organizing is often abetted by local or state governments via Mexico's tripartite system for adjudication of labor justice by local Conciliation and Arbitration Boards ("CABs" *juntas de conciliación y arbitraje*) and other official institutions and procedures. CABs are comprised of representatives from protection unions, employers and government, and actively facilitate undemocratic workplace control, for example, by delaying elections for workers seeking to oust protection unions. In the case of PKC Group's wire harness plant in Ciudad Acuna, Coahuila, labor authorities took six years to schedule a union challenge vote requested by the independent mineworkers' union, Los Mineros. When the election finally took place, on November 29, 2018, the vote was suspended after just a few hours because hired goons entered the company premises and destroyed a special ballot box. The case remains in dispute.

Protection unions participate in all of Mexico's tripartite labor agencies, including the national commission for minimum wages (known by its acronym CONASAMI), where they play an active role alongside employers and government appointees in setting and maintaining Mexico's low wages. For years, Mexico's minimum wages were among the lowest in the hemisphere, only higher than those of Haiti and Nicaragua, until Venezuela also recently fell behind.⁶ Minimum wage earners can only expect to see their wages increased by the percentage CONASAMI dictates, which in recent years has only reflected the inflation rate of the prior year. CONASAMI's minimum wage increases are often used as a point of reference to index wage increases in other professional sectors and to calculate benefits, such as profit-sharing payments and annual bonuses. In practice, the wage levels set by CONASAMI serve as a ceiling for other sectors, which rarely increase wages significantly beyond CONASAMI's increase—keeping Mexican wages low across industries and sectors. In the last 30 years, Mexicans have lost 80 percent of their purchasing power,⁷ and the poverty rate has remained largely unchanged, with 50 percent of Mexico's population living in poverty or extreme poverty.⁸ The new Lopez Obrador government has announced that recovering wages and purchasing power is a priority, yet despite a 16 percent hike as of January 1, 2019, the legal national minimum in Mexico is only 102.68 pesos or \$5.35 per day.

Proposed Labor Reform

As members of the Committee are aware, on April 30, 2019, the Mexican Senate approved a long-awaited labor law reform, capping off more than two years of proposals and debate to bring the country's 2017 constitutional reform to fruition. The package of legal changes brought by the

⁶ "Mexico to Give Minimum Wage Another Boost," Wall Street Journal, Dec. 17, 2018.

<https://www.wsj.com/articles/mexico-to-give-minimum-wage-another-boost-11545085238>

⁷ According to a 2018 study published by the National Autonomous University of Mexico's (UNAM) Economics Institute, online at: http://www.dgcs.unam.mx/boletin/bdboletin/2018_016.html

⁸ According to Mexico's Center for Evaluation of Social Development Policy (CONEVAL). Online at: <https://www.coneval.org.mx/Medicion/Paginas/Pobrezalnicio.aspx>

reform has the potential to be transformative for the country's labor relations system, if properly implemented, appropriately resourced and vigorously defended.

The labor law reform rests on two major pieces, both tied to the delivery of labor justice to workers, that stem from the abolition of the problematic CABs. First, labor disputes and legal matters will be referred to specialized labor courts for the first time in Mexico, under the judicial branch, to make labor justice an impartial exercise. Second, the administrative functions of the CABs, which include registration of unions and collective bargaining agreements and matters of conciliation, will fall under the purview of a new, decentralized, independent body, the Center for Conciliation and Union Registry. Each state will then have to amend its structures consistent with the changes at the federal level. While the government structures themselves will change, there will also be significant changes in union structure and practice. For the first time, workers will be guaranteed a secret, individual, direct vote for electing their union leaders. For purposes of collective bargaining, union organizations will be required to demonstrate representation and support of the workers they claim to cover as a condition of eligibility to bargain. When a union negotiates a contract, the covered workers will have to ratify the contract, again through a secret ballot with direct, individual vote.

Although promising on paper, the reform faces serious challenges. The business sector and some protection unions have already begun to manifest their concerns with the labor reform, and many have joined government allies in states with strong business chambers, like Nuevo León and Jalisco, to reaffirm their commitment to "labor peace"--a veiled reassurance to foreign investors that they will not let the status quo be easily disrupted. These affirmations surfaced in response to a worker uprising earlier this year in the industrial border city of Matamoros, Tamaulipas, a key manufacturing hub in the North American supply chain for auto manufacturing, medical supplies and other goods.

Last week a national Mexican newspaper reported that the CTM has prepared a legal challenge to the labor law reform, claiming that the new requirements for secret ballot elections and individual votes constitute government overreach into sovereign union affairs because unions have the autonomy to establish their own internal practices in their bylaws.⁹ Regardless of the outcome of the CTM's constitutional challenge, however, protection unions will not fold easily. They have spent decades establishing a hold on the industrial relations system in Mexico, perfecting techniques for coercing votes, crafting secret agreements with employers and colluding with local authorities, all while participating in national and international labor bodies and dialogue spaces.

Reshaping national and local labor institutions steeped in malpractice and constructing new independent labor structures requires a major investment of time, financial and human resources. Mexico will have to hire and train labor inspectors, judges and ministry staff to grasp the sophisticated mechanics of protection contracts, detect and stop corrupt labor practices, and promote respect for workers' fundamental rights and the rule of law. However, the Mexican

⁹ "Tiene listo CTM amparo en contra de reforma laboral," *El Economista*, June 16, 2019.

<https://www.economista.com.mx/empresas/Tiene-listo-CTM-amparo-en-contra-de-reforma-laboral-20190616-0109.html>

government is facing serious resource challenges. The new López Obrador administration has pursued a policy of lean government and financial austerity, applying across the board budget cuts to federal agencies, including the Ministry of Labor. In the meantime, the government has said that the CABs will continue to operate for another two years, while full implementation of the reform has a four-year timeline.

Practical challenges to implementing the reform

Independent Mexican unions claim they were not fully included in consultations about the reform, and raise questions about whether the government has the resources and capacity to fulfil its promises. Most consultations and discussions on the substance of the labor reform was held in Mexico City among groups of specialists. Few working people, especially those outside of the capital city, know about the reform, its content or implications. Meanwhile, workers face daunting obstacles when challenging the protection union system, and Mexico's independent labor movement is already stretching its limited financial resources, political capital and capacity for mere survival. As the cases below illustrate, independent unions rarely succeed in defeating protection unions with the presence, political ties and financial capacity to continue to exert influence over workers.

I. AHMSA: Denial of independent union's bargaining rights

AHMSA, a major steel producer located in Monclova, Coahuila, exports about 450,000 tons of steel annually to the U.S. In 2008, AHMSA's management unilaterally withdrew recognition from the national mining and steelworkers' union, Los Mineros, and signed labor contracts with a pro-company union. Ten years later, in November 2018, the Federal Conciliation and Arbitration Board ruled that the company-backed union had been illegally constituted, voiding its statutes and legal registration.¹⁰

AHMSA has so far refused to bargain with Los Mineros and continues to deal only with its preferred union. AHMSA has also withheld millions of dollars in dues owed under its original contract with Los Mineros. AHMSA previously refused to recognize an election conducted by the federal CAB at the Hercules Mine, which Los Mineros won in 2016 by a vote of 585-375 against the employer-sponsored union.¹¹ Workers at Hercules Mine have consistently complained of threats and intimidation, but the federal CAB has taken no action to secure enforcement of the outcome of the union election under its supervision.¹²

¹⁰ "Declara Junta de Conciliación nulo a sindicato de AHMSA," *El Siglo Coahuila*, Nov. 29, 2018, <https://www.elsiglocoahuila.mx/coahuila/noticia/250808.declara-junta-de-conciliacion-nulo-a-sindicato-deahmsa.html>

¹¹ "Gana 'Napo' contrato colectivo de trabajo de la sección 265 en Hércules," *Vanguardia*, April 14, 2016, <http://www.vanguardia.com.mx/articulo/gana-napo-contrato-colectivo-de-trabajo-de-la-seccion-265-enhercules>

¹² "No entregan recinto a napistas en Hércules," *La Voz*, April 29, 2016, <http://periodicolavoz.com.mx/no-entregan-recinto-napistas-hercules>;

"LA SECRETARÍA DEL TRABAJO FRENA LA DEMOCRACIA SINDICAL EN EL CASO DE LA MINA HÉRCULES", Aug. 21, 2016, <http://www.frecuencialaboral.com/minaherculessecretariadeltrabajoobstruyelademocracia2016>

II. Bridgestone Firestone: Attacks on democratically elected union leaders

Bridgestone Firestone has systematically fought the independent union of metalworkers, SNTIHRP, that represents workers at its plants in Cuernavaca, Morelos, and Monterrey, Nuevo Leon. In Cuernavaca in October 2017, the employer fired the union's secretary-general and executive committee. In March 2018, all the workers at the Cuernavaca plant were summoned by company management and surrounded by riot police and CTM-hired goons and ordered to renounce their SNTIHRP membership and join a CTM-controlled union led by a PRI senator. However, the workers resisted this pressure and refused to accept the protection contract, eventually winning reinstatement of their executive committee.

In Monterrey in 2016, the company fired 70 union members, including the SNTIHRP leadership, and attempted to bring in a CTM protection union. The federal CAB scheduled an election for April 16, 2019, during Easter vacation for workers.

On April 15, workers from the Cuernavaca plant set off in four buses to support the union in Monterrey. Attackers traveling in three separate vehicles fired shots at the buses.¹³ The Federal Police then escorted the buses to the border of the state of Nuevo León, where state police detained the buses, and interrogated and searched the workers, arresting one worker before allowing the buses to proceed to Monterrey. Also on April 15, unknown persons broke into the home of a union executive committee member in Monterrey. The same member received a threatening phone call around the same time, warning that things would be worse if he showed up for the union election. In a separate incident, another union leader and two advisers driving by the plant were pursued by six armed men who pulled them over and tried to force them out of their car. The leader and his advisers escaped and flagged down a police patrol who pursued the armed men back to the plant grounds.

On the scheduled day of the election, April 16, two federal labor inspectors entered the plant while SNTIHRP election observers were not allowed to enter. Workers reported to the observers that they were being held inside the plant and pressured to vote for the protection union. At about 8:50 a.m., the labor inspectors informed SNTIHRP observers that the election had been suspended because there was no one present from the federal CAB.

III. Goodyear: Employer retaliation against striking workers

At the Goodyear plant in San Luis Potosí, most of the workers are under 30 years old. They were lured to Goodyear with promises of professional growth opportunities, higher wages than comparable plants and a decent work environment in a reputable company. But after a months-long hiring process, many workers were forced to sign work contracts for lower wages than they had been promised, starting at 220 pesos per day and topping out at a base wage of 280 pesos per day, roughly \$2.17 per hour.

¹³ "Balean unidades de transporte de personal," El Sol de San Luis, April 18, 2019, <https://www.elsoldesanluis.com.mx/local/balean-unidades-de-transporte-de-personal-3339858.html>

On April 24, 2018, workers staged a one-day wildcat strike to protest wages of less than \$2 per hour, safety violations and the lack of support from the CTM union that had signed a protection contract with the company before the plant opened.¹⁴ Nearly 600 of the 800 workers in the plant participated in the strike. The workers' demands included authentic representation by a democratic union.

In response, the company hired a union-busting law firm and fired 57 workers it had identified as strike leaders. Workers reported that plant managers allowed CTM goons into the factory premises to intimidate the workers on the day of the firings. Most of the fired workers accepted severance pay, but a small group filed lawsuits for unjust dismissal and have continued to organize with support from Los Mineros and an independent union at the Continental Tire plant in San Luis Potosí. Workers report that the CTM union did nothing to support them during their strike, and say they still do not have not seen a copy of the CTM union's protection contract with Goodyear.

IV. Teksid (Fiat Chrysler): Tripartite collusion

In April 2014, workers at three industrial plants in Monclova, Coahuila—Teksid, Gunderson and PyTCO--joined Los Mineros and held work stoppages to demand that employers recognize Los Mineros as their bargaining representative.¹⁵

The employers signed agreements recognizing Los Mineros while the union filed legal demands for elections. However, the CTM, which had control over the protection contracts at all three plants, blocked these demands in the local CAB. The companies began systematically intimidating and firing the union's supporters. On March 7, 2015, a fired worker leader from Gunderson, Jesús Antonio Campos, was severely beaten by CTM goons. Campos won a demand for reinstatement, but the local CAB has so far not enforced the decision. In June 2015, the federal CAB assumed jurisdiction over the conflict at Teksid.¹⁶

On November 3, 2015, the Coahuila CAB dismissed Los Mineros' demand for bargaining rights at Gunderson, asserting that the union's claim lacked "procedural legitimacy" (i.e. jurisdiction) because, as a union of mining, metal and steelworkers, Los Mineros could not represent workers at Gunderson, who produce railroad cars. On the same day, the local Monclova CAB dismissed a similar demand for the legally recognized bargaining rights at PyTCO, a manufacturer of steel

¹⁴ "Disputan sindicatos control de Bridgestone en Ciénega," Reforma, April 17, 2019, <https://www.reforma.com/aplicacioneslibre/articulo/default.aspx?id=1656271&v=6&md5=6528c3478df e10d3730a05e4f00e38e1&ta=0dfdbac11765226904c16cb9ad1b2efe4>

¹⁵ "Fin a paro en Teksid; avanza grupo minero," Zócalo, April 23, 2014, <http://www.zocalo.com.mx/seccion/articulo/fin-a-paro-en-teksid-avanza-grupo-minero-1398238072> ; "Ahora para Gunderson; amenaza con dejar a la CTM," Zócalo, April 30, 2014, <http://www.zocalo.com.mx/seccion/articulo/ahora-para-gunderson-1398843310> ; "Ahora paran 400 obreros de Pytco," Zócalo, May 3, 2014, <http://www.zocalo.com.mx/seccion/articulo/ahora-paran-400-obreros-depytco-1399102101>

¹⁶ "Se deslinda la JLCA de pugna en Teksid," Zócalo, June 23, 2015, <http://www.zocalo.com.mx/seccion/articulo/se-deslinda-la-jlca-de-pugna-en-teksid-1435040303>

tubes, profiles and connectors, using the same argument. Los Mineros appealed these rulings to the 8th Collegiate Tribunal of the Federal Judiciary, which reversed the CAB's decision and ordered the CAB to proceed with the elections. (It should be noted that in a demand for bargaining rights, the only parties are the two or more unions disputing control of a collective agreement. Employers are not parties to the dispute and have no legal right to intervene. Nonetheless, CABs frequently allow such intervention. In this case, the rejection of Los Mineros' claim was based on the employer's petition.)

On June 28, 2018, after more than four years of procedural delays and three days before the presidential election, the federal CAB held an election at Teksid. Los Mineros defeated the CTM by a vote of 238-145. However, the CTM immediately filed a legal appeal to the courts, allowing it to maintain control of the collective bargaining agreement. Despite losing the election, the CTM was then able to negotiate a new contract and profit-sharing agreement with the company. When workers protested the company's refusal to show them its financial statement (the basis for profit sharing), the company fired 176 supporters of Los Mineros in April 2019. On May 9, 2019, the federal CAB issued a resolution upholding the Mineros election victory and awarding bargaining rights to Los Mineros.¹⁷ However, the CTM has threatened further litigation.

Challenges to the new labor law reform

As in the cases above, it is not a single factor that prevents Mexican workers from exercising their rights, but multiple layers of both legal and illegal tactics, violence, collusion and corruption that, compounded, repress worker demands for freedom of association and improved wages and working conditions. The recent example of Matamoros—where workers demanded bonuses and salary increases that their own union would not fight for—is illustrative of what can happen when workers begin to develop higher expectations for their treatment, their incomes and the behavior of their own unions. The wave of worker strikes resulted in concrete gains for workers, who received their bonuses and wage increases, and spurred a movement that has inspired the country. Workers must be positioned to imagine new possibilities and develop new expectations if they are to invoke the new legal framework and serve as the agents to apply these changes.

Mexico's labor reform may seem simple, but the proposed changes are potentially transcendental. The reforms speaks to the persistent, dire lack of democracy in labor relations and the inability of workers, in most cases, to freely choose their representation and effectively negotiate their terms of employment. For the reform to succeed, workers must be placed at the center of implementation. They must be sufficiently knowledgeable and empowered, and given concrete guarantees that their attempts to exercise these newly enshrined rights will not be met by the usual responses from employers and government. Only when workers, through their efforts in the workplace, can exercise and invoke these new laws will the legal changes be made real and reach their potential to improve working conditions and wages.

¹⁷ "Sindicato Minero gana titularidad del Contrato Colectivo de Teksid," El Siglo de Torreón, May 22, 2019, <https://www.elsiglodetorreon.com.mx/noticia/1579012.sindicato-minero-gana-titularidad-del-contratocolectivo-de-teksid.html>