



International Commission for Labor Rights
Critical Assistance for Working People and Trade Unions Worldwide

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Dear Parliamentary Coordinators of the Mexican Congress,

I am writing to you representing the Board of the International Commission for Labor Rights (“ICLR”) and on behalf of the more than 300 lawyers around the world, who are part of the ICLR network, to express our serious concern about the recent announcement by out-going president Felipe Calderón that he has designated a labor law “reform” proposal, which violates international law, for your consideration under a new “preferential” fast track process.

ICLR is an international organization of lawyers and legal experts dedicated to the realization of international, regional and national core labor standards in protecting the rights of workers.

As lawyers and jurists with expertise in international labor law, we believe that the procedure embodied in the fast track process will infringe well established international labor standards.

Provisions of this proposed legislation violate the requirements of International Labor Organization (ILO) conventions 87 and 98 on Freedom of Association and Collective Bargaining, the mandate in Article 2 of the North American Agreement on Labor Cooperation (NAALC) that the parties “provide for high labor standards... and shall continue to strive to improve those standards,” as well as many other international covenants protecting freedom of association:

1. American Convention on Human Rights: Article 16
2. Universal Declaration of Human Rights: Articles 20 and 23
3. International Covenant on Economic, Social and Cultural Rights: Article 8
4. International Covenant on Civil and Political Rights: Article 22
5. Declaration of Lima. Interamerican Democratic Charter: Article 10

We note that Mexico is a signatory to ILO Convention 87 and is bound by core Convention 98 as customary international law as well as *jus cogens*.

The proposed law reform would dramatically curtail existing worker rights and protections, particularly the right to freedom of association. The universal principle of freedom of association protects the right of workers to obtain representation by the union of their choosing, a choice which we believe would be abridged by the “reform” proposal. Among other things, the law would violate rights of freedom of association by making the procedural requirements for obtaining a representation hearing or exercising the right to strike so onerous that they effectively negate such rights.

The new proposals would also severely undermine union security by removing existing protections for workers that limit sub-contracting, temporary and short term contracts. In addition, they would undercut worker protections against unjustified discharge, limiting back pay to one year and further penalizing workers for delays in legal proceedings for reinstatement that are beyond their control.

The Committee on Freedom of Association (“CFA”) (with approval from the ILO’s Governing Body in the spring of 2011) made recommendations regarding the prevalence of “protection” contracts where employers select the unions representing their workers and workers have no choice in which union represents them. It has been estimated that some 90% of union contracts in Mexico are protection contracts, where an employer selects the union that it prefers and workers have no choice. The widespread use of such contracts and their violation of fundamental union rights were raised by IndustriALL, then International Metalworkers’ Federation, in complaint no. 2694 submitted to the ILO in 2009.

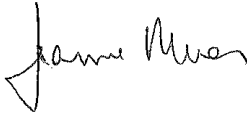
Specifically, the ILO called on Mexico to investigate and report back to the Committee regarding: “(1) the questions relating to the trade union security clauses, “exclusion clauses”, which were declared unconstitutional by the Supreme Court and which may give rise to the kind of situations contemplated in the complaint; (2) questions relating to the minimum representativeness of trade unions in order to bargain collectively; and (3) the alleged lack of impartiality of the conciliation and arbitration boards (JCAs) and the allegedly excessive length of their proceedings.”

The Committee stated that it “firmly expects that a dialogue will take place with the most representative national workers’ and employers’ organizations, as well as the six organizations that are complainants in this case or that have supported it.” It also stated clearly that it “trusts that legislative and other measures will be taken in the near future to strengthen protection against anti-trade union practices in breach of collective bargaining principles.”

The International Commission for Labor Rights urges the Mexican government to adopt and implement the recommendations of the CFA and the ILO, particularly with regard to ensuring that legislation is fully consistent with the mandate to respect the right to freedom of association of workers.

We believe that consistency with international law and practice will lead to removing the fast track designation from the proposed legislation and entering into dialogue with Mexican workers and all of their unions to entertain the social dialogue which is the keystone of core international labor law and standards.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Mirer". The signature is fluid and cursive, with a large initial "J" and "M".

Jeanne Mirer
President

cc: Hilda Solis, U.S. Secretary of Labor
Carol Pier, Acting Deputy Undersecretary for International Affairs, U.S. Dept. Of Labor