

Report

International Fact-finding Mission

MEXICO THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA): EFFECTS ON HUMAN RIGHTS

Violations of Labour Rights

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INTRODUCTION

The economy of Mexico has changed dramatically since the early 1980's. In 1986, Mexico joined the GATT and through the 1980's and 1990's, the World Bank and the IMF encouraged further liberalization. The process of trade liberalization ultimately led to the ratification of the North American Free Trade Agreement (NAFTA) in 1994.

Since then, the political economy of Mexico underwent a complete change in content and perspective. The NAFTA was not and is not responsible for all of these changes, far from it, but the NAFTA has certainly been a major factor in changing the employment structure of Mexico, and has also impacted the quality of life of its people.

The preamble of the NAFTA states that parties to the Agreement are resolved to "create new employment opportunities and improve working conditions and living standards in their respective territories". Nevertheless, it is clear that the social and legal structure were not prepared to address the enormous impacts of trade liberalization.

Mexico holds obligations under the NAFTA, but it is also a party to various international human rights instruments and is committed to respect, protect and realize human rights. Moreover, a number of legal arguments do support the primacy of human rights law over trade law.¹ While implementing the provisions of the NAFTA, Mexico is thus obligated to make sure that its policies do not harm human rights.

In particular, Mexico has been a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 1981, in which the member states recognize, among other rights, the right to work (Article 6), the right of everyone to the enjoyment of just and favorable conditions of work (Article 7), and undertake to ensure the right of everyone to form trade unions and to join the trade union of his choice (Article 8).

Mexico has also ratified a number of International Labour Organisation (ILO) Conventions, including six of the eight conventions considered as fundamental by the Governing Body of the ILO:

- Convention No. 87 on Freedom of Association and Protection of the Right to Organize,
- Convention No. 29 on Forced Labour,
- Convention No. 105 on the Abolition of Forced Labour,
- Convention No. 111 on Discrimination (Employment and

Occupation),

- Convention No. 100 on Equal Remuneration,
- Convention No. 182 on Worst Forms of Child Labour.

In the context of regional integration in the Americas and the path towards a free-trade area in the Americas, the impacts of the NAFTA on labour rights in Mexico are a good example of what free trade agreements could mean in the future for human rights.

After over ten years, it seems possible and necessary to evaluate the impacts of the NAFTA.

In order to assess the human rights impacts of the NAFTA in Mexico, the FIDH mandated a fact-finding mission to Mexico. Three delegates mandated by the FIDH, Kathy Zeisel, jurist, New York University, United States, Natalia Paredes, economist and Magister in Political Studies, Bogotá, Colombia, and Dorval Brunelle, Director of the Observatory of the Americas, University of Québec, Montreal visited Mexico between 22 and 31 of August 2005 to gather all relevant information on the impacts of the NAFTA on human rights.

The FIDH mission aimed at looking at the outcomes of the NAFTA in terms of working conditions in Mexico. The mission looked specifically at levels of employment and labour rights in the northern part of Mexico, especially in the maquiladora industry and in the informal economy. It drew particular attention to the impacts of the Treaty on women and children.

The mission visited Mexico City, Puebla and Ciudad Juárez. The FIDH delegates were able to meet with NGOs active on workers rights and women's rights, as well as trade unions. They interviewed workers in the maquilas in Ciudad Juárez, and met with federal and state authorities (see the list of persons met by the mission in annex).

The FIDH wishes to thank its member organizations in Mexico, the Liga Mexicana por la Defensa de los Derechos Humanos (LIMEDDH) and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH) for their help in organizing the mission. The FIDH also thanks all the people that agreed to meet with its delegates during the mission.

This report presents a multidisciplinary examination of the effects of the NAFTA on human rights, and particularly on labour rights in Mexico.

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We will first examine the direct and indirect impact of the NAFTA on the Mexican economy and society. We will then analyse Mexico's international human rights obligations in the context of both international law and national constitutional and labour law, and the proposed amendments to the Federal Labour Law by the Fox Administration in the context of human rights protections. Finally, we will discuss the maquiladora industry through a case study of that industry in Ciudad Juárez.

1. See FIDH, *For the Primacy of Human Rights, For Human Rights Impact Assessment of WTO Agreements*, position paper for the 5th WTO Ministerial Conference Cancun, 10-14 September 2003 www.fidh.org

I. THE EFFECTS OF THE NAFTA ON THE MEXICAN ECONOMY AND SOCIETY

1. The NAFTA and the Mexican development

For over ten years, the NAFTA has proven flexible enough to adapt itself to multiple asymmetrical integrations within the North American continent and sturdy enough to withstand any serious setbacks. This is quite an achievement when one compares this to the floundering of the talks surrounding the Free Trade Area of the Americas (FTAA) or to the standstill now affecting the European Union (EU) integration process since the "NO" vote on the European Constitution following the referendums held in France and the Netherlands, in the Spring of 2005.

Not only did NAFTA have a considerable impact on the levels of economic integration within North America, but it had a considerable impact on trade orientation for both United States (U.S.) partners, Mexico and Canada. As Hakim and Litan have underlined:

"Trade between the US and Mexico exceeds \$250 billion per year, more than four times that of a decade ago. Mexico ships almost 90 % of its exports to the US, and obtains some 70 % of its imports from the US. Mexico has become the second largest trading partner of the US, and if the growth of its bilateral commerce continues at its current rate, Mexico could soon be challenging Canada's number one ranking".²

Intra-zone trade by origin as well as by destination grew by close to 300% between 1990 and 2003. Mexico's exports to the U.S. accounted for 70, 45% of total exports in 1990, and for 88,91% in 2003.

These progressions are even more impressive when one looks at bilateral trade with the U.S. as a percentage of GDP. In the case of Mexico, exports to the U.S. stood at 7% of GDP in 1990, and at 23, 9% in 2003, while in the U.S., exports to both Canada and Mexico stood at 1.9% in 1990 and 2.5% of GDP in 2003. Between 1995 and 2003, the percentage of intra-zone trade by origin actually fell from 43% to 39% for the U.S., and from 39% to 37% for Canada, while growing from 18% to 24% in Mexico's case.

If economic specialization in intra-zone trade did in effect provide Mexico with a greater access, in relative terms, to world markets (from 3% of total trade in 1995 to 6% in 2003) this increase in extra-zone importations is basically attributable to the strategy applied by U.S. firms in Mexico, and not to that of Mexican firms.

In short, the nature of economic integration in North America is quite different from that of economic integration in the EU,

and in other regional contexts as well.

Whereas in other regions, economic integration operates first and foremost through trade between firms and between sectors, in North America, intra firm trade, as well as activities of majority owned foreign affiliates (MOFAs) represent two dominant features of continental integration.³

The Mexican economy is today irremediably linked to that of the U.S. These elements all point in the same direction to wit, contrary to what some analysts contended at the time, continental integration did not act as a springboard for Mexican firms, since its economy as a whole is much more dependent on U.S. firms and their strategy of expansion today than it was previously.

These results are at the same time quite interesting and quite revealing of a particular paradox as far as integration theory is concerned. And the paradox is this: if the Mexican economy is more and more closely tied to that of the U.S., how and why is it that, contrary to economic predictions, instead of moving closer in terms of overall socio-economic conditions, the spill over of economic integration on employment and wages has been so detrimental to Mexican workers? Is this an effect of the NAFTA, or is it, as the World Bank contends, attributable to the fact that "the NAFTA is not enough"? Or could it be that the NAFTA has little to do with these outcomes which should be attributed to structural causes and to national institutions responsible for the management and governance of the Mexican economy before as well as after the NAFTA came into effect?⁴

Clearly, the NAFTA does play a more dominant role in Mexico than it does in either Canada or the U.S. for three reasons at least. First, because Mexico was the less developed partner; second, because the Mexican authorities failed to live up to the promises that were made either in terms of investment in infrastructure or in terms of protection of economic and social rights; and third, because, contrary to the European model, the North American model of continental integration failed to provide its less developed partner with the means to adapt its economy, society and institutions to the expectations of a first world economy.

This is a very controversial issue in Mexico today. Positions are quite polarized on whether the agreement should be credited for its positive effects or denounced for its negative impacts. What is at stake here is not only the economics of free trade *per se* but the philosophy of liberalization as well in a socio-

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political context where nationalism, statism and public redistribution of welfare are rooted in the public value system since the revolution of 1910, despite political mores and practices which have led the country farther and farther away from the implementation of these values over the years.

In turn, this polarization has had a most detrimental political as well as analytical effect in pitting two sides against each other, one contending that the NAFTA is the only solution, the other, it is the only impediment to sustained development. Thus, Lederman, Maloney and Serven in the opening pages of *Lessons From NAFTA for Latin America and the Caribbean Countries: A Summary of Research Findings*, published by the World Bank, in December, 2003, have this to say about the agreement:

"(The NAFTA) instantly gained global notoriety since the formal negotiations started in 1991 mainly because the initiative would become not only one of the most comprehensive trade agreements in history, but also because it seemed to be a breakthrough by leading to free trade in goods and services among developed countries and a developing country. The high expectations were that trade liberalization would help Mexico catch-up with its northern neighbours. (...)

The high expectations for NAFTA were supported by neoclassical growth and trade theories. (...) the neoclassical Hecksher-Ohlin trade models predict that as the prices of goods and services converge, so will factor prices, including real wages".⁵

On the other hand, Rodolfo Ulloa Bonilla, a sociologist from Costa Rica contends that :

"In its first nine years of existence, the NAFTA has led to the creation of 8 million new jobs. This figure, however, does not suffice as there is a 46.6% deficit in the number of jobs that need to be created for the people reaching working age. In Mexico, 1.4 million new jobs are needed every year. The formal sector of the economy has only created 3 million new jobs since NAFTA, forcing people to seek survival strategies in the informal sector. Moreover, 55.3% of new jobs do not comply with legal conditions, of which there are only three: social security, Christmas bonuses and 10 days of annual leave. At the close of 2002, only 36% of workers, men and women, benefited from social security. There are 81,000 less jobs in the export-manufacturing sector than before the signing of NAFTA (-9.4%). While there are jobs being created in the high-end export sector, but less that are lost by former Mexican suppliers simply because most inputs are now imported. Between 1994 and 2002, only 500,000 jobs were created in the manufacturing sector, an average of 62,000 jobs per year.

Productivity in manufacturing plants during NAFTA rose by 53% per working hour. This productive labour, however, costs 36% percent less due to the lowering of salaries, services and indirect costs such as contributions to the social security system. The type of jobs that are created are highly dependant on the economic cycle in the United States. During the course of the seventeen-month period that ran from November 2000 through March 2002 the United States went through major difficulties, consequently Mexico lost 287,000 jobs in maquiladoras and only 40,000 of those jobs were recovered".⁶

Clearly, the NAFTA cannot be credited with more than it can account for, nor can it be faulted for shortcomings that do not come under its purview. But this being said, and in order not to either overestimate or underestimate the effects of the NAFTA, it is probably best to establish a methodological distinction between three types of effects according to the nature of their connection or relation to the agreement itself.

We could then distinguish between direct, indirect or systemic effects. A direct effect is an effect proceeding immediately from the provisions of the agreement, while an indirect effect would be one proceeding by an intervening cause. Both these effects could and should be traced back to a given provision or to given provisions in the agreement itself. But clearly these approaches are not sufficient since they fail to take into account the larger picture, that is to say the fact that the NAFTA, besides being a legal document with its immediate and mediate effects on other laws, norms, regulations or agreements, or lack thereof, is also part and parcel of a policy, of an economic programme, and of a political philosophy. In this regard, theoretically as well as methodologically, a clear distinction should be established between a free trade agreement whose intent, meaning and overall objectives pervade other norms and institutions as it seeps through the economic fabric of a nation, and a international convention that has limited impact in Mexico as, for instance, the International Labour Organization (ILO) Convention No. 87 (1948) on the Freedom of Association and Protection of the Right to Organize. These broader effects and impacts which cannot be traced back, either directly or indirectly, to the provisions of the Agreement itself will be identified as systemic effects.

2. Winners and losers in free trade

During the administration of Carlos Salinas, the NAFTA negotiations were promoted as being a motor for economic growth and subsequently development.

However, what the Treaty did impact the most was transnational capital and big national capital, which in turn affected micro,

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small and medium industries. The social agenda was left out of the Treaty, and parallel agreements were unable to guarantee worker's right or the social and environmental rights of the people.

Clearly, the main beneficiaries of the free trade agreement are big transnational capitals. Proof of this is that the largest firms in Mexico generate 15% of GDP:

"Sales from the Mexican affiliates of the world's largest multinational firms add up to 93.707 billion dollars, the equivalent of 15% of GDP [...] total sales for these firms are 6.5 times higher than annual oil exports in Mexico".⁷

Low wages have been the main competitive advantage for investors, along with control over trade unions, which has resulted in a continuous decline in real income and a loss of the guarantees protecting the right of association against foreign and national firms; with a high social cost.

According to Arturo Alcalde, an interviewed labor lawyer:

"The Government claims that there are achievements that can be credited to the NAFTA, but the truth is that it has not even achieved economic growth, let alone social benefits [...]. The impoverishment of millions of Mexicans proves that the free-trade agreement [signed] with the United States and Canada has not been beneficial for the majority.

Because of the crisis in the Mexican countryside, thousands of farmers, men and women, have moved to the cities looking for work while at the same time the Mexican State has opened its borders to foodstuff from the United States, a country that subsidizes farming and uses crop protection measures, as well as other types of measures, to close its borders to agricultural products from Mexico. This practice has led to the displacement of thousands of Mexicans whose human and labour rights are not provided for under the trade agreement".

Instead of implementing agreements alongside the NAFTA, which would cover labour and environmental issues, things are moving backwards, for example, increasingly flexible hourly-wage jobs. Workers do have social security coverage, but the quality of the services is very poor. Work in maquilas is draining because the same tasks are performed over hours, with consequences on eyesight, the back and mental disorders, among other negative effects on the workers' health.

Analyst Rosa Albino Garavito has pointed out that, according to data provided by Sedesol, 53 million persons are currently living in poverty, and 25 million of that 53 million live in extreme

poverty: their income does not cover basic needs, including basic nutritional needs.

Rosa Albino Garavito also reports that:

"On 18th June 2003, Vicente Fox announced that 3.4 million persons were no longer food-poor, according to the information provided by the Encuesta Nacional de Ingreso y Gasto de los Hogares (ENIGH) [the national survey on household income and spending] from 2002. Furthermore, while policies are starting to bear fruit, just as significant growth in the financial aid sent from expatriate family members is bearing fruit (from 4 billion dollars for 2000 through 2002, to 10 billion dollars this year), economic policies continue to function like a poor people factory with wage schemes that have borne such good fruit that they have served to concentrate wealth (...).

The fact is that 20% of the wealthiest households have 50% of total income. Between 1984 and 2000, instead of the concentration declining, it worsened: 20% of households with the lowest incomes do not represent even a twentieth of total income".⁸

According to Congressman Víctor Suárez, of the Partido de la Revolución Democrática [Party of the Democratic Revolution] (PRD) and advisor for the Asociación Nacional de Empresas de Trabajadores del Campo (ANEC) [the National Association of Worker-Owned Firms], the objective of the NAFTA is the continuance and deepening of neoliberal policies in the economy. From that point on, the idea that the justice system favors major economic interests above those of the people has strengthened. The premise being that otherwise, the ensuing instability would affect investment. Consequently, the State is not seen as being obliged to guarantee rights and the concept that prevails is that it has the obligation to provide a minimum level of security and respect for the goods belonging to individuals. All else is the responsibility of each individual.

The Free Trade Agreement does not provide a perspective on development. The object of the Agreement is not people but rather a model for mergers whereby corporations can increase their earnings.

The aim of the signing of the Treaty was to make economic policy irreversible by transforming it into constitutional law approved by the Congress.

This goes against the Declaration on the Right to Development adopted by the United Nations in 1986, which reads that:

"Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement

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of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom."

One argument that has been put forward is that, given the comparative advantages Mexico has, the only remaining alternative is to reinforce the maquiladora model by providing cheap labour and precarious working conditions. Moreover, because it is impossible to develop the agricultural and manufacturing industries as they are not competitive with the U.S, the industries that should be strengthened are services (financial services, tourism, social services, commercial services, and services related to natural resources) that could be used to tap into Mexico wealth in natural resources (water; genetic diversity of animal and plant resources, regions with high scenic and tourism value) and into a secure, reliable and cheap energy market for the U.S., even if this implies using up oil reserves.

The neoliberal economics model affects all economic and social structures. Industrial development is intrinsically linked to the negative consequences of free trade in rural areas.

Because of the pressure from competition with China, the maquiladora system has had to count on new waves of young workers who are able to adapt to precarious working conditions. Most of these young people come from rural areas, most are farmers and members of the indigenous population who are willing to accept precariousness because they have been forced to leave their native lands because of the importation of cheap agricultural products.

In the ten years since the signing of the NAFTA, approximately two million persons living in rural areas have been forced to move. The current system requires cheap labour and workers who are willing to accept greater precariousness.

The Sub-Secretary in charge of Trade Negotiations has acknowledged that fact, although it sees the situation from a positive perspective, explaining that: "98% of white corn farmers are subsistence farmers. This has nothing to do with the external sector. Their incomes are insufficient and they prefer to work in maquiladoras in order to have higher incomes. They are a generation with opportunities".

There were maquiladoras before, but there was also a strong manufacturing industry with a future. From 1982 to the present, 80 to 90% of imports are consumer goods and intermediate goods. National manufacturing production

capacity has been dismantled; and 400,000 jobs have been lost in that sector in the last four years. The Mexican economy is becoming a completely dependent consumer economy.

As for the promise of higher consumption and better quality, the claim warrants an analysis by social strata. Who has access to a global consumption? Buying is for a small percentage of the population. On the other end of that continuum are the people living in poverty. As the values that are promoted are those linked to consumption, the same values that add to social standing, in the face of a lack of money people resort to the informal economy for income. Today, almost 60% of jobs are in the informal economy.

3. Some effects of the NAFTA on the economic, social, and cultural rights

a. Effects of the NAFTA on the right to food and to an adequate standard of living

Mexico has become the dustbin of the U.S. agri-food industry

According to Article 11 of the ICESCR, the States Parties to the Covenant take steps to ensure the realization of the right to an adequate standard of living, including adequate food. Moreover, the General Comment 12 of the ESCR Committee specifies that, for the food to be adequate, it must be *free from adverse substances*.

Contrary to what the Covenant requires, with open borders and corruption at customs, there are no health inspections. The food entering the country is what has been rejected for consumption in the US market and the prices are targeted for the poorest segment of the population. An example of this is maize sold with *aspartosina*, which produces a fungus that causes cancer. Maize with *aspartosina* may be sold in the U.S for animal consumption, but above certain levels it can only be used for industrial purposes. This same product is exported to Mexico, where it is sold at cheap prices, and as the population is very poor they inevitably consume this type of cheap food.

The same statements can be made about meat with *Quelbuleterol*, chickens with high concentrations of antibiotics, milk with growth hormones made with milk substitutes, or plant whey. There, we can see a population fed on waste, refuse, harmful chemicals, etc., and a simulation in what people eat, with serious effects on nutrition and on health in the medium term: a large percentage of the population suffering from malnutrition and yet another large percentage suffering from obesity, with illnesses that are

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prevalent in the first and in the third world.⁹

The import liberalization and the failure of the reorganization process

When Canada signed the NAFTA, it excluded eggs and milk products from the Agreement, while Mexico included all its products. A 15-year tax relief plan was agreed, during which import quotas would be operated, with high taxes being levied above these levels. During that period a process of productive reorganisation would be achieved, so that the 2.5 million producers who were unable to compete would specialise in other areas such as flowers and vegetables. However, it did not happen like this. Liberalisation occurred in the first two years, there was no investment for reorganisation, taxes were not levied on large imports. However, the National Agreement for the Countryside, the result of pressure exerted by the movement 'the countryside will take no more' and signed in 2003, achieved prohibition of the importation of white corn beyond the quota or, alternatively, the collection of tax, which has allowed the price of internal production to rise.

Moreover, the free importation of corn has not meant a drop in prices for tortilla consumers. In 1983 it cost 80 cents a kilo, and now it costs 6 pesos mexicanos, since importers and manufacturers have increased their profits. When the price of imported corn increases, the price of tortillas increases. But, when the international price drops, the price of the tortilla does not fall. Thus, fixed prices are high. We now have a system of inefficient trading for consumers with great gains for intermediaries.

The impacts of the NAFTA, according to the civil servants responsible for economic issues

The interview with the Under-Secretary for Commercial Affairs revealed the vision of civil servants who are directly responsible for key economic issues. In the face of concerns raised by the mission with regard to the NAFTA's impact on human rights, and in particular on the well being of workers and of the population in general, it is evident that there is a feeling that the effects have been positive in terms of growth, employment and well being, considering that it is foreign investment which generates most jobs and that competition has allowed an improvement in access through prices and quality of products for most Mexican consumers.

It is thought that free trade and the international integration of the Mexican economy is the only way to achieve development and that any alternative would have a detrimental effect on the advances achieved in the area of exports and growth of foreign investment. Equally, interviews

with other sectors reveal great fears of job losses or loss of investment if alternatives to the model for free trade and the conditions required by it are chosen.

Regarding the other obvious problems of agrarian crisis or the failure of small and medium-sized businesses, while they accept that these phenomena do exist, they do not recognize that these are the result of free trade policies and, much less so, of specific commercial agreements. Instead, they believe them to be the result of underdeveloped sectors, which are incapable of adapting to the current conditions of international competition.

What does stand out is the way in which the civil servants interviewed separate technical aspects from social ones, indicating that the participation of civil society is extensive and constant, but that it is clearly differentiated. On the one hand, there is the participation of social organizations in general aspects, in society and environmental issues, and, on the other hand, there is the participation of the unions and business organizations, which are assigned the issues of economic investment, trade agreements, signature of treaties and defining the conditions of the economy. The rationale is that these are technical issues and not social ones and that therefore only those 'directly involved' should participate, that is, big businessmen and not other social sectors.

Thus, for example, if we do not listen to 'the side room meetings', there are no negotiations, they produce documents on the stances within sectors as agreed with their members, and this worked during the NAFTA adoption process. During that 'side room meetings' experiment, the unions basically participated, because it is very technical, on the subject of social organizations: issues relating to work, human rights, etc. affect the context of negotiation in general and they are not as specific. There was a fourth example, the Advisory Council where there were trades unions, environmentalists, legislators, academics and the press. With the trades unions the issues are very technical, while with social organizations they are more global.¹

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b. The effects of the NAFTA on women's rights

As with the more general analysis, the NAFTA itself has not been directly responsible for many of the social changes that affect women, rather, it represents the codification of the opening of the Mexican economy that began in the 80's. The effects of the globalization on women are more measurable with the upward and downward changes of the economy rather than the entry into force of the NAFTA.

Exhausting and precarious working conditions

Contrary to the right recognized in Article 7 of the ICESCR, according to which women should benefit from conditions of work not inferior to those enjoyed by men, the commercial Agreements have had particularly discriminatory and negative effects on women, who find themselves obliged to work in maquilas in exhausting conditions, with long hours during the night, and very low pay. In other cases, women who migrate from the country or whose husbands do not manage to find jobs, find themselves having to find self-employment or 'informal' work with precarious conditions and extremely low pay. Women end up working some days more than 18 or 20 hours a day and their day is exhausting, with predictable, negative results, not only for their own health and well being but also for that of their family in general.

Women in maquilas

Perhaps the most notable effect of the globalization of the Mexican economy is in the *maquila industry*. Most transnational corporations preferred to hire women as the low-level workers in their factories, with the result that until the past few years, the composition of the workforce in the factories was over eighty percent female.

There were several reasons for this practice. First, women were considered more careful and more compliant workers than men. Second, women were generally willing to accept lower wages, overtime and longer working days than men.

In the 80's, the factories began to hire more men and more children as workers, resulting in a current balance of approximately 60 to 70% women in the factories currently. While women make up the majority of workers in factories, they continue to hold only low-level positions and are only rarely promoted to supervisory or other management roles.

Discrimination against pregnant women

Article 10(2) of the ICESCR provides that women should be accorded special protection during a reasonable period before and after childbirth. Contrary to that provision however, and in

addition to the low wages, women still face gender discrimination in the factories. In spite of the pledge by the local, state and federal governments to combat the rampant discrimination against pregnant women in the factories, workers report that the discrimination continues. In many factories, women still must pledge not to become pregnant while working at the factory, and if they do become pregnant, then they are fired.

A change in traditional social roles

One significant effect of this migration of women into the factories was a change in traditional social roles. This change was characterized as one of the most important changes resulting from globalization and codified by NAFTA by several of the persons interviewed.

In many families, both spouses work in order to make sufficient income to support the family. This is a break from the traditional role of the woman in the home and has caused conflict among certain elements of society. It is not clear whether the result of the increased presence of women in the workplace has resulted in an increased voice for women in society. It is clear however, that much of the current social structure does not regard these changes as a positive development. Further, women are often in the lowest paying positions, which does allow for the social mobility necessary to change their role in society.

c. The effects of the NAFTA on children's rights

The effects of globalization and its codification through NAFTA have caused both direct and indirect effects on children.

Child labour in factories

The primary effect in these areas has been that children under the minimum work age of 16 are working in factories as labourers. These children enter the workforce largely in order to help support their families because the low wages their parents earn are insufficient to support the family. Some of the children working in factories attend school, but many are unable to balance the workload.¹⁰ During the boom years, children easily obtained employment using badly falsified documents or without documents at all. In recent years, with the decline in industry, fewer children are able to obtain employment because there is more competition for the existing jobs.¹¹

The consequences of the destruction of the agricultural industry

The destruction of the agricultural industry has also impacted

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children.

Children in the areas directly affected are living in higher levels of poverty.

In addition, their families often move to cities with a high level of industry in search of work and then live in extreme poverty in these cities. The homes in which many of these families live have relatively high rents, but have no electricity, running water or other basic necessities.¹² The existence of these communities, mostly on the outskirts of towns and cities with a large number of factories, has increased since the implementation of the NAFTA.

Reaction of the Mexican Government

The States Parties to the ICESCR undertook to take special measures of protection and assistance on behalf of all children and young persons, and to protect them from economic and social exploitation (Article 10(3)).

In spite of this commitment, it is not clear that the Mexican Government, at the federal, state or local level, is doing anything to combat child labour in factories.

In fact, while child labour in the formal economy has declined as a result of the downturn in the economy, many of these children are now working in the informal economy. There is no clear evidence, either statistical or anecdotal, that indicates that the situation of children who are members of families in the lowest income brackets have benefited in any way from the implementation of the NAFTA.

d. Effects of the NAFTA on the right to work and on fundamental rights at work

According to the articles 6 and 7 of the ICESCR, everyone has a right to work, and to the enjoyment of just and favourable conditions of work, including fair wages, decent living, and safe and healthy working conditions. Mexico is committed to take the appropriate steps to safeguard those rights. Contrary to these commitments however, the NAFTA has had various negative impacts on the employment and on working conditions in Mexico.

Integration and migration

In an analysis on labour market integration, Raymond Robertson writes:

"While there has been significant increase in trade and foreign direct investment in Mexico following NAFTA, this paper finds surprisingly little evidence of increased integration of labour markets. (...) The Mexican border region remains more integrated with the United States than the Mexican interior, but there is little change in this pattern following NAFTA. Furthermore, neither the border nor the

interior seems more integrated. (...) There is some evidence that the overall rate of convergence in Tijuana and Ciudad Juarez increased, but this effect seems more closely tied to a non-tradable industry (construction).

These results may contribute to the debate about what factors integrate labour markets in North America. Theory tells us that trade, capital flows, and migration can all integrate labour markets. NAFTA liberalized trade and capital flows, but did not relax restrictions on migration. To the extent that there is very little evidence that integration increased- especially in trade and FDI-intensive industries lends at least circumstantial support towards the migration hypotheses".¹³

In its report quoted above, the World Bank had this to say about the NAFTA and the Mexican labour markets: "it is often difficult to isolate what is a function of demand shifts due to trade reform, and what is a result of migration flows".¹⁴

Hakim and Litan, point to the importance of migratory flows to understand the nature and scope of integration between the U.S. and Mexico:

"Economic integration among the three countries already goes considerably beyond trade and investment. Mexicans continue to migrate in large numbers to the US, principally in search of jobs and higher wages. Upwards of 21 million persons of Mexican origin now reside in the US. Some 9 million of these were born in Mexico, and 4 million are in the US illegally. Mexicans and Mexican-Americans now send some \$8 billion annually back to their communities".¹⁵

Migration to the United States is historic. What we have seen more recently is an acceleration of migration, particularly from the countryside to the city. Previously, it was very localized in just a few states, and now it is generalized throughout the country. The next step is to seek to reach the north.

Employment

If NAFTA, as well as the political economy implemented by governments over the years, have had positive effects on trade, in turn, growth in trade has not spurred employment.

Many sectors of society were in favour of signing the Agreement, arguing that this would enable high investment and production levels to be maintained, capable of sustaining employment growth and thus organizing long-term economic development within the framework of international competition.

After ten years, it can be confirmed that this hypothesis is partially correct, since in fact foreign direct investment (FDI) in Mexico has increased greatly, with Mexico becoming the

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fourth highest recipient of investment among developing countries, and the highest in Latin America. However, in the manufacturing sector, which is the big exporter, there were 4.2% fewer jobs in 2001 than in 1993.

The deterioration of working conditions

Trade agreements deteriorated still further workers' rights and working conditions. The jobs created are of poor quality, many of them without social security or holidays, among other benefits prescribed by law.

The global context of work confirms this situation:

"... in Mexico 6,481,166 people earn up to the minimum wage, that is, 16% of the working population, while 9,875,748 people earn up to two minimum wages, that is, 24.4% of the working population. On top of the very high percentage of people who earn up to one or two minimum wages... other indicators can be used to reveal the degree of deterioration of working conditions. While 21.3% of the working population work longer than the weekly 48 hours, a use of the workforce which indicates a high degree of exploitation, 5.4% work less than 15 hours a week, corresponding to precarious work... Both the hours worked above the legal limit and the amount of workers without benefits (62.7%) are indicators of the high degree of irregularity within the workforce in our country. Similarly, 17.8% and 20.6% work in micro businesses with and without premises, respectively. According to INEGI, the Mexican Institute for Statistics, the Economically Active Population (EAP) in the 'informal' sector is as high as 56%. That more than half of the EAP works in that sector may be explained by the economy's inability to generate sufficient jobs, which has led to an enlargement of the occupational deficit (around 18 million jobs from 1982 to 2003)...

On the subject of job insecurity, it is necessary to highlight the fact that 44.5% of salaried workers have no contract and that 25.6% work in non-farming micro businesses. This high degree of insecurity is also linked to a high level of exploitation as measured by unconstitutional working hours and salaries."¹⁶

While production jobs did move to Mexico, they primarily moved to maquiladora areas just across the border. As Carlos Salas of La Red de Investigadores y Sindicalistas Para Estudios Laborales (RISEL) reports, these export platforms, in which wages, benefits, and workers' rights are deliberately suppressed, are isolated from the rest of the Mexican economy. They do not contribute much to the development of Mexican industry or its internal markets, which was the premise upon which the NAFTA was sold to the Mexican people. It is therefore no surprise that compensation and working conditions for most Mexican workers have deteriorated. The share of stable, full-time jobs has shrunk, while the vast majority of new entrants to the labour market must survive in the insecure, poor-paying world of Mexico's informal sector.¹⁷

Free trade agreements can be valued if they are established on overall logic. In general, it is ever worsening, with the conclusion that there have been unequal results and the expectations in the world of work of improvements in salaries and working conditions have not been met. Even in exporting companies salaries are faced with the logic of selling more cheaply than in the United States, where conditions are also becoming more uncertain and in general, on a structural level, conditions for workers are worsening.

The stagnation of salaries in the maquilas in recent years is evidence of the deterioration in the real purchasing power of the Mexican working class, since this also indicates the average income of workers in the country which, according to the interviews carried out and to future projections, is not improving but is deteriorating substantially, since with each passing day transnational capital demands better conditions to remain, including, principally, labour flexibility and cheap manpower.

2. Hakim, Peter and Robert Litan, *The Future of North America: Beyond Free Trade*, Washington, The Brookings Institution, 2002. On line : www.brookings.edu

The prediction did not hold since China bumped Mexico out of second place in 2003 and could overtake Canada's position as first partner within the next decade.

3. On the issue of MOFAs in North America, see Christian Deblock and Éric Jasmin, *Mondialisation et régionalisation des investissements : les investissements directs des Etats-Unis dans les Amériques*, Cahier de recherche Continentalisation 05-03, February 2005. On line : www.ceim.uqam.ca

4. It is worth noting, in passing, that the NAFTA does not hold such eminent position in public debates in either the US or in Canada. In fact, in its assessment of the impact of the NAFTA on the U.S. economy, the U.S. International Trade Commission had this to say about the agreement : " (...) it is quite clear that the major multilateral agreements (the Tokyo and Uruguay Round Agreements) have had more important effects on the economy than have the preferential agreements (U.S.-Israel, U.S.-Canada, and the NAFTA) ".

U.S. International Trade Commission, *The Impact of Trade Agreements : Effect of the Tokyo Round, U.S.-Israel FTA, U.S.-Canada FTA, NAFTA, and the*

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5. Lederman, Daniel, William F. Maloney and Luis Servén, *Lessons From NAFTA for Latin America and the Caribbean Countries: A Summary of research Findings*, World Bank, Mexico, 2003, 376 pages, p. 2.
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8. Rosa Albina Garavito, "Salarios y empleo en el pacto social del siglo XXI". En: *La Reforma Laboral que necesitamos*, México, junio de 2004. Pág. 72
9. Interview with Víctor Suárez, Federal Deputy for the PRD and Asesor of the ANEC, Ciudad de México, on the 29th of August 2005.
10. CETLAC
11. CETLAC
12. CETLAC
13. R. Robertson, *Did NAFTA Increase Labor market Integration Between the United States and Mexico?* World Bank, 2003.
On line : <http://lnweb18.worldbank.org/external/lac/lac.nsf/Sectors/ChiefEconPres/>
See also : *Mexican Employment, Productivity and Income a decade after NAFTA*, by Sandra Polaski, Carnegie Endowment, 2005.
On line: www.carnegieendowment.org/publications/index.cfmfa=view&id=1473&proj=zted
14. Lederman, *et alii*, *op.cit.*, p. 166.
15. Hakim and Litan, *op.cit.*
16. Rosa Albina Garavito, "Salarios y empleo en el pacto social del siglo XXI". En: *La Reforma Laboral que necesitamos*, Mexico, June 2004. Pp. 79 - 81
17. Jeff Faux, *et alii*, *NAFTA at Seven. Its Impact on Workers in All three Nations*, Economic Policy Institute, April 2001. On line: http://www.epinet.org/content.cfm/briefingpapers_nafta01_index. For a detailed analysis of the Mexican labour market, see Alcalde Arturo, Graciela Bensusán, Enrique de la Garza, Enrique Hernández Laos, Teresa Rendón, and Carlos Salas, *Trabajo y Trabajadores en el México Contemporáneo*, México, D.F.: Miguel Ángel Porrúa, 2000.

II. LABOUR RIGHTS IN MEXICO

1. Mexico's obligations under international labour rights law

a. General labour rights

The ICESCR was ratified by Mexico in 1981 and it provides for workplace protections that must be respected by Mexico. Specifically, under Article 7 of the ICESCR, a fair living wage that ensures a decent living for the workers and their families must be ensured. Article 11 provides that States recognize the right of everyone to make a living to support himself and his family. While this may not be a uniform wage for the country, it can clearly be assessed regionally. It should guarantee that it is not necessary for children to work, in either the formal or informal economy, in order to support the family.

Article 7 also ensures safe and healthy work conditions. The Government must ensure that private industry provides working conditions that meet a basic level of safety for the workers, including safety equipment and proper training.

Based on the statements made by workers in Ciudad Juárez, even this minimum level of protection is not provided by employers in the maquilas.

b. Trade union rights

Article 8 of the ICESCR creates the obligation for States to undertake to ensure the right to form and join trade unions and the obligation to prevent interference with such union membership.¹⁸ The right to free association is enshrined in the International Covenant on Civil and Political Rights (ICCPR), which specifically recognizes its importance for the creation of trade unions, but fails to provide broad and explicit protections for the right.¹⁹ However, the ICESCR provides more protection in that it also prohibits the State from interfering with unions.²⁰ The close parallels between the two conventions are potentially attributable to the political context in which they were created, since the right to free association and unionisation was seen as essential in a free market, democratic society, but was also considered important to the protection of the right to work and other fundamental economic rights enshrined in the ICESCR. Moreover, the similarities are an illustration of the difficulties in drawing an absolute line between civil and political rights and economic, social and cultural rights.

Under the ICESCR, Member States are obligated to ensure protection of the right to unionise and to protect against interference with that right. When Mexico acceded to the ICESCR, it formulated an interpretative statement to establish that the provisions of Article 8 would be implemented under the conditions and in conformity with the procedure established in the Constitution and the relevant implementing legislation. This statement however does not limit the obligation for Mexico to guarantee workers labour rights and trade union rights. The right to organize is the foundation of other labour rights since it allows workers to bargain collectively, voice concerns and generally create alliances.²¹ Both the ICCPR and the ICESCR have derogation clauses, but they have been construed narrowly and the presumption has generally been that the State is obligated to protect these rights.²²

States Parties are responsible for guaranteeing appropriate legislation, judicial remedies and for taking action to ensure the progressive realization of the rights.²³ States are expected to use the maximum available resources to implement rights protections.²⁴ Under international law, governments also are generally considered to have an obligation to provide an effective remedy for any interference, whether by the State or by other private parties.²⁵

Mexico is also party to the International Labour Organization (ILO) Convention 87,²⁶ to the Declaration on Fundamental Principles and Rights at Work (Worker's Rights Declaration),²⁷ and to the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Tripartite Declaration).²⁸

However, its national legislation is not in accordance with the principles upheld in the Agreements, since it fails to guarantee adequate protections to unionists. Convention 87, the Freedom of Association and Right to Organize Convention, guarantees the right to organize and creates an obligation on the part of the State to prevent interference by individuals, organizations or public authorities with the right to freely organize.²⁹

In addition, the ILO Committee on Freedom of Association found that:

"The level of protection for exercising trade union rights which results from the provisions and principles of Conventions Nos. 87 and 98 constitutes a minimum standard which may be

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complemented, and it is desirable that other supplementary guarantees should be added resulting from the constitutional and legal system of any given country, its traditions as regards labour relations, trade union action or bargaining between the parties".³⁰

The Committee also found that violations by individuals are imputable to the State since it is responsible for guaranteeing human rights protections.³¹ Thus, this Convention further reinforces the obligation to prevent violations of the right to unionise and to provide remedies for victims and sanctions for violators.

Both the Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy were adopted by the Governing Body of the ILO and are considered to be guidelines for States to adhere to the ILO conventions and fundamental principles. The Worker's Rights Declaration reinforces the obligations of Member States to respect core ILO principles and provides new mechanisms for holding governments responsible, though these mechanisms do not apply to corporations.³² The Tripartite Declaration reiterates the obligation to prevent discrimination against unionists and forbids states from allowing restrictions on the right to free association or the right to organize in order to entice foreign corporations.³³ It also provides for resolution of conflicts between states or labour unions and corporations to first be decided at the state level, but if that is unsuccessful, parties may appeal to the ILO's Tripartite Subcommittee on Multinational Enterprises.

Furthermore, the Tripartite Declaration requires all ILO members to adhere to core principles of the ILO, including Convention 87.³⁴

Mexico's membership in the ILO, and particularly its ratification of Convention 87 require it to prevent violations against the right to organize, to remedy such violations and to sanction the perpetrators.

Thus, under the ICESCR and the ILO treaties, Mexico is required to establish adequate national legislation designed to protect trade union rights and to ensure an atmosphere to exercise them freely. These obligations also entail investigating and sanctioning the perpetrators of the violence against unionists. In addition, they require the Government to ensure that it does not violate rights and that third parties, do not do so.

2. Mexico's obligations under the Inter-American system treaties

a. General labour rights

The Inter-American system protections for human rights broadly must be considered. Article 7 of the Protocol of San Salvador requires States to ensure that the right to work exists in just, equitable, and satisfactory conditions. Like the ICESCR, the Protocol requires states to provide a living wage that allows workers to provide for their families. It also requires that workplaces be safe and hygienic.

Current work conditions do not meet those standards, and the Mexican Government is failing in its obligations to protect these rights. While these rights have not been fully litigated in the Inter-American Human Rights Court, it is clear on its face from the document that Mexico has an obligation to enact domestic legislation to protect these rights.

The NAFTA itself provides a mechanism for the enforcement and protection of certain labour rights. The North American Agreement on Labour Cooperation (NAALC) promotes compliance with, and effective enforcement by each Party of its labour law. Mexico ratified the NAALC in 1993, and is obligated to ensure that its labour law is protective enough for workers and is effectively enforced.

Mexico has to continue to promote high labour standards notably the eleven labour principles of the NAALC.³⁵ The Labour side agreement guarantees that workers whose rights are violated should have an appropriate access to administrative, quasi-judicial and judicial or labour tribunals. It requires each party to take procedural guarantees such as equitable and fair proceedings and independent and impartial tribunals. The Canadian and United States National Administrative Offices are competent to receive public communications about Mexican labour law violations.

b. Trade union rights

The American Convention on Human Rights creates protections for freedom of association, particularly with relation to trade unions.³⁶ This Convention has a specific provision, article 26, which addresses the implementation of economic, social and cultural rights.³⁷ Article 26 requires the progressive realization of these rights, in a similar way as the Committee on Economic and Social Rights General Comment.³⁸ The Convention, however, does not create any specific obligations on the part of the State to prevent interference with these rights from private individuals. While this could be implied from other jurisprudence, it is

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unnecessary to analyze the question from that perspective because the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the San Salvador Protocol) creates protections for trade union rights beyond the traditional civil and political rights enshrined in the American Convention on Human Rights.³⁹ While most of the rights included in the Protocol are not directly enforceable under the terms of the Agreement, claims regarding violations of trade union rights can be brought in the Inter-American System.⁴⁰ The scope of the rights specified in the Protocol are relatively broad in that they provide the right to join a union, to strike and to be free from being required to join a union, and requires the State to ensure that unions can function freely.⁴¹ The Protocol also sets forth specific obligations of the State to create adequate national legislation and to adopt measures to the full extent possible to guarantee protections of these rights.⁴²

For a State to fulfil this obligation, it must not only refrain from violating trade union rights itself, but it must prevent private actors from them as well. In *Baena Ricardo* the Inter-American Court of Human Rights held that, with respect to labour union rights, "...freedom of association is of the utmost importance for the defence of the legitimate interests of the workers, and falls under the *corpus juris* of human rights."⁴³ In its Advisory Opinion 18, the Inter-American Court of Human Rights held that the State has an obligation to respect and guarantee the labour rights of all workers, and that the State cannot permit violations of these rights by private employers.⁴⁴ The Court went on to specify that States were obligated to have judicial and administrative guarantees for labour union rights because these rights are necessary to guarantee basic dignity.⁴⁵

While neither *Baena Ricardo* nor the Advisory Opinion specifically discuss inference with these rights by private parties, the Velázquez Rodríguez principle, that States are obligated to prevent, investigate and sanction human rights violations by non-state actors,⁴⁶ can be applied to trade union rights. The fact that they are one of the few enforceable rights under the Protocol of San Salvador reinforces the centrality of trade union rights, and certainly the extension of the principle that States are obligated to prevent third party violations.

Therefore, under the Inter-American system, as well as under the United Nations treaties, Mexico is obligated to prevent the violations of trade union rights and to react appropriately, through investigation, sanctions and reparations, when those rights are violated. An examination of the current situation of unionists in Mexico shows that not only is the Mexican Government failing to prevent violations by private actors, but

it is encouraging and in some cases directing violence by these groups against unionists.

3. Constitutional and legal protections for labour rights

Mexican law and the Mexican Constitution contain strong protections for human rights generally, and labour rights specifically. Even labour rights advocates acknowledge that current laws would protect the rights of workers if they were enforced.⁴⁷ However, in practice, these protections are ineffective, and neither the Government, nor the judicial system or private enterprises comply with the letter or the spirit of the laws.

a. The Mexican Constitution

The 1917 Mexican Constitution is considered one of the most progressive of its time. It contains extensive protection for workers and requires that the federal and state governments create labour laws to protect workers.⁴⁸ It also guarantees the freedom to choose a profession or industry, unless the chosen work is illegal.⁴⁹

Article 123 specifically states that all people have a right to dignified and socially useful work.⁵⁰ It specifically requires the Congress to create laws limiting the work day to eight hours, limiting the employment of minors, protecting pregnant women and setting a minimum wage by geographic region and profession.⁵¹ Article 123 then outlines the requirements for occupational health and safety,⁵² the right to form unions and professional associations and the right to strike.⁵³

b. The federal labour legislation

There are two separate bodies of federal labour law, the Federal Labour Law (*Ley Federal del Trabajo*) and the Law of the Public Service Workers (*Ley de los Trabajadores al Servicio del Estado*), also known as the Bureaucratic Law (*Ley Burocrática*).

The Federal Labour Law (FLL) is most relevant to this report as NAFTA almost exclusively affects the private sector workers. The FLL establishes basic minimum protections with respect to maximum hours of work, pregnant women and the establishment of a minimum wage, as well as limitations on child labour.

Maquilas are regulated by the FLL. They pay the minimum wage but in reality this is not the minimum required by a

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family. The salary is 46.85 pesos mexicanos a day in comparison with the US where 60 pesos per hour are paid. All members of a family have to work in order to survive.

Companies fulfil their legal requirements. The problem is that the salary is very low. With 60 pesos a day, you cannot pay for basics. For transport alone, you pay 26 pesos. The Government is not going to allow wages to rise since that would increase migration.

Since coming into power, President Vicente Fox has tried to further weaken labour law protections. In 2000, he signed the "Twenty Commitments to Freedom of Association and Union Democracy", which condemned the mechanisms by which official unions control workers. Labour leaders report that these promises have not been honoured, and the Administration itself argues that these were campaign promises only and that the President cannot be held responsible for them. In addition, at the same time he nominated a minister of Labour who has repeatedly proposed legislation to strip Mexican workers of their rights. These proposals have been opposed by the National Worker's Union (UNT), which has pushed for improved legal protections to counteract the push for cheaper labour.

The NAFTA did not mandate increased labour flexibilization, and, in fact, contains protections for labour rights in the side agreement. However, one of the effects of the NAFTA in Mexico was proposals by both state and federal governments to increase labour flexibilization and generally make Mexico more appealing to corporations. Although the NAFTA was not solely responsible for these proposals to limit labour rights, it intensified the pressures on all levels of government to decrease labour rights protections to attract investment.

Labour law reforms proposed by the Fox government are frozen for the moment, but they stay in the legislative agenda. These reforms are known as the *Abascal Project* for the Secretary of Labour, Carlos Abascal. The Government developed the proposal with the CTM (Confederación de Trabajadores de México), the CROC (Confederación Revolucionaria de Obreros y Campesinos), which are official unions, and the several industry representatives.

The main purpose of the proposed law is to give business increased flexibility, allowing them to hire temporary and part-time workers without benefits packages. This would represent a significant change in labour policy as employers may not currently hire employees with temporary contracts and are required to provide benefits for most employees.

Furthermore, the proposed reforms have serious consequences on the right to strike. Workers would be required to obtain several certified documents from the Tribunal before they would be allowed to strike. Similar requirements already exist, and there have been very few strikes in recent decades as a result.

Additionally, the proposed reforms not only continue the existing regulations that permit a union monopoly on the workplace, but would increase the bureaucratic requirements to change unions. Labour authorities would be permitted to consider requests for only one union at a time; therefore, companies that collude with existing unions or create their own unions could effectively prevent an independent union from entering the workplace.

Finally, businesses would be permitted to hire through labour contracting agencies. Neither the agency nor companies would be required to pay into social security or other programs for employees hired through contracting agencies, thereby increasing the already significant number of Mexican workers who are not eligible for many social security benefits.⁵⁴ Although this practice is not currently legal, labour activists in Ciudad Juárez report that the practice is already common in that city and in other industrial border cities.⁵⁵

The proposal led to formal objections by human rights groups and independent unions on a national and international level. Further, over twenty unions from the United States, Mexico and Canada filed a complaint on February 17, 2005 with the U.S. National Administrative Office under the North American Agreement on Labour Cooperation (NAALC).⁵⁶ The complaint stated that the *Abascal Project* would significantly weaken labour rights protections in Mexico, thereby violating Mexico's obligations under the NAALC. On the 21st of February 2006, the Office of Trade Agreement Implementation (OTAI) of United States, rejected the claim, arguing that the Abascal Law was uncertain, since it had not been voted yet. According to the procedural rules of the Office, it cannot examine the claim in this case. Unfortunately, this rejection conveys the idea that the Office is reticent to examine law projects, although this would help prevent future violations of human rights.

If the *Abascal Project* is approved by the legislature, it would represent a decline in labour rights protections in Mexico. Many of the existing illegal practices would be codified, thereby depriving labour rights advocates and workers themselves of important legal tools to protect rights.

4. Organisms to protect labour rights in Mexico

a. National and state commissions to protect human rights

The Constitution establishes the National Commission of Human Rights as an independent body to hear complaints about human rights violations.⁵⁷ However, the Constitution specifically forbids the National Commission of Human Rights from hearing cases relating to labour rights.

Each state constitution also establishes a state wide Commission of Human Rights, each of which is also forbidden to hear labour rights cases.

In spite of these restrictions, some state commissions have tried to hear cases that affect labour rights indirectly by allowing complaints about the right to health. The Federal Commission has shown little interest in expanding its jurisprudence in this way for two significant reasons: First, the attitude exists among many of the lawyers at the Commission that only states can violate human rights, and in the case of labour rights the violations are perpetrated by private businesses. Second, the Commission believes that there are other organisms competent to hear these complaints, but does not consider the efficacy or fairness of these other mechanisms.⁵⁸

Generally, since the Constitution prohibits the Commission from hearing labour rights cases or cases against non-governmental entities, and since there are a large number of existing cases against the Government, the impetus for innovation with respect to these cases has been lacking.

b. The Arbitration and Reconciliation Tribunals

The only organs with initial jurisdiction over labour rights complaints are the Arbitration and Reconciliation Tribunals (Junta de Conciliación y Arbitraje). There is a federal Tribunal as well as state tribunals in each state, each of which has jurisdiction over local complaints.

Complaints may be brought by workers to a committee that includes a representative for the worker, for the company and for the Government. While this composition is theoretically unbiased, there was almost universal agreement among independent unions and labour rights advocates and attorneys that in practice the representatives rarely represent the workers interests. If the worker is from a unionised workplace where the union is the CTM, the FROC-CROC or a

"sindicato blanco", the worker's official representative is more likely to represent the interests of the business than the worker. Additionally, the local governments have a strong interest in protecting the businesses to ensure that they stay in the region, and therefore there are serious doubts about their impartiality on the tribunal insofar as the decisions may have negative consequences for businesses. As a result of these considerations, these tribunals are rarely impartial.

In addition, there is an insufficient number of public lawyers to represent the workers in front of the tribunals. As a result, workers are often referred to private lawyers.⁵⁹ These lawyers often charge 30% of any verdict, and who often rush to settlements that are far less than what the worker is owed.⁶⁰ While workers have the right to decline a settlement and insist the case go forward, they are often unaware of this right since their lawyers frequently do not give them the option of declining the settlement. The official statistics state that 90% of the decisions in the tribunals are for the worker, but any settlement where the worker gets any amount of money is counted as a victory for the worker.

The tribunals are also the body which, under the FLL, must approve requests to strike. One of the effects of the lack of impartiality of the representatives on the tribunals is that very few requests to strike have been approved.⁶¹ Strikes undertaken without approval are considered illegal.

Finally, while any type of labour rights case can be brought to the tribunal, the vast majority of cases are for wrongful discharge from the job. This is largely due to the fact that workers fear retribution at their job for bringing a case, and so are unlikely to bring a case while they are still working for a company.⁶²

The combination of the lack of impartiality of the judicial component of the tribunal with the lack of effective legal council for many of the workers has created a system wherein it is extremely difficult for workers to try to protect their rights in the tribunals.

c. The courts

Decisions of the tribunals may be appealed to the courts, but few litigants have the resources necessary to pursue such an action. It is only in recent years that courts have begun to enter into labour rights disputes at all, and those decisions were largely the result of a concerted, organized strategy by labour lawyers. Decisions from the court will be highlighted in a subsequent section.

5. Mexican unions at the core of the labour rights problem

At the core of the inability to protect labour rights is the complete lack of effectiveness of the union structure in Mexico. While there is a fledgling independent union movement, official or virtually non-existent unions, known as *sindicatos blancos*, control most unionised workplaces. Existing laws allow for a single union to hold a monopoly at any workplace, and changing from the existing union to another union requires a process that is not only burdensome from an administrative sense, but also often entails significant physical danger for proponents of the change.

The right to unionise was recognized in the first Federal Labour Law in 1931⁶³. Public sector workers are obligated to join the *Federación de Sindicatos de Trabajadores del Estado* (FSTSE), the only union permitted to operate in the public sector.⁶⁴

The current Federal Labour Law explicitly permits collective bargaining in the private sector, but if there is more than one union in a workplace, then an employer needs only negotiate with the majority union.⁶⁵ This is one of the provisions that creates perverse incentives for employers to create their own union and which serves to limit the ability of workers to organize and create new unions. Strikes are also permissible under the Law, but it allows for strikes to be suspended or declared illegal by the Conciliation and Arbitration Board (*Junta de Conciliación y Arbitración*).⁶⁶ In addition, strikes may only be called for specific objectives, which are extremely limited under the law.⁶⁷

Repression of worker's rights by their union representatives is standard, at least in the industries surveyed in this report. Where collective bargaining agreements exist, they are frequently created before the workplace has any workers. The union and the company create a mutually beneficial agreement, and then force workers to agree to the pre-determined contract when they are hired.

One worker described the hiring process at three maquilas in Juárez where he worked. He stated that he was brought into a room with a company representative for an interview. After he was hired, he was sent into another room to meet with a union representative who gave him papers to sign in which he agreed to pay a yearly quota of 10-20 pesos. He was not given an opportunity to read the papers from the union representative or the contract.⁶⁸

Lawyers who represent workers in front of the *Junta de Conciliación y Arbitraje* report that these practices are frequent and that it is virtually impossible to obtain a copy of the collective bargaining contracts.⁶⁹ While the Federal *Junta* officials claim that any worker can obtain a copy of the contract by requesting it from their central depository of contracts,⁷⁰ this claim was disputed by several labour rights activists in the Federal District, Puebla and Ciudad Juárez.

a. Official unions

The most dominant of the official unions is the *Confederación de Trabajadores de México* (CTM). The CTM is formally linked to the *Partido Revolucionario Institucional* (PRI), the party that ruled Mexico for over sixty years. The companies most affected by the NAFTA, particularly the maquilas on the border, are approximately 16-20% unionised. While the exact numbers are not clear, a significant number of those maquilas have the CTM as their monopoly union.

It is of concern that the CTM has ties with a political party, particularly when it is clear that the union's activities are heavily influenced by politicians and the agenda of attracting new business investment at the expense of labour rights.

The FROC-CROC is the other main official union that dominates workplaces, and in maquilas in particular. Though slightly less prevalent than the CTM, it is a significant presence in factories and other workplaces and, like the CTM, fails to protect worker's rights in any meaningful way.

In one paradigmatic example, one worker reported that he was an elected CTM leader in his maquila. He began to disagree with official union policy and to demand that the union protect workers who had been wrongly fired. After his complaints to union officials, he was fired from the factory. He then told his superiors that they could fire him from his job, but not as a union leader because he was elected by his fellow workers. In spite of these protests, he was not allowed to return to his job and he was blacklisted and prevented from working at other maquilas in the city. Stories of wrongful firings and other labour rights violations and the failure of the CTM to protect its workers were consistently reported by labour lawyers, independent unions and workers themselves.

In addition to extensive control of the formal sector, official unions or unions loyal to the Government control much of the informal sector. Vendors in local markets reported that they paid dues to a union whose leadership rarely changed and which was unresponsive to their needs. Some reported that

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in spite of being part of a municipal market where the local government receives federal funds to provide renovations and electricity, their stalls had no electricity for over three years and there was severe damage to the common areas and stalls that had not been repaired. These vendors reported that they had formed a parallel group to try to resolve these issues and to act as an alternate union.

b. New trends in union control: sindicatos blancos

Rather than affiliate with either the CTM or the FROC-CROC, many companies opening new branches in Mexico are choosing to create their own unions. The companies file the official paperwork to create a new union and then "negotiate" with that union to create a collective bargaining agreement prior to hiring workers. Subsequently, the union vanishes except in the official records. No leaders are ever elected and workers are often not even aware of the existence of the union.

These types of unions are commonly known as *sindicatos blancos* (white unions) or *sindicatos golodrinás* (swallow syndicates) because they exist only on paper and then vanish after the negotiation of the contract. While unions are not required under the law, many companies find it advantageous to create *sindicatos blancos* for three reasons. First, it allows the companies to exert total control over the union and the resulting contract. Second, and a particularly relevant reason for international corporations, is that they can say that they allow a unionised workplace and thereby meet international human rights standards. Third, it prevents other unions, and particularly independent unions, from entering the workplace as it is harder to change unions than to enter the workplace initially.

This type of union control is of particular concern because of the increase in their use. They provide no accountability and calls for reform of a particular union are useless since there is no leadership. This practice is also problematic because it allows companies to claim to abide by international human rights standards while undermining the spirit of those norms and putting their legitimacy into question.

c. Independent unions

Independent unions do exist in Mexico, particularly for public employees and utility workers.⁷¹

In the industrial sector, the most prominent independent union is the FAT (*Frente Auténtico del Trabajo*). The FAT has

approximately forty thousand members nationwide and has the goal of increasing membership and providing a viable alternative to official unions in the workplace. In addition to trying to educate and mobilize workers in the formal sector, the FAT has helped form an independent centre in Ciudad Juárez, the Labor Workshop and Studies Center (*Centro de Estudios y Taller Laboral A.C., CETLAC*), that works to organize both the formal and informal sectors with the goal of increasing independent union representation in all sectors. The CETLAC is working to organize shoe shine workers (*boleros*) and market vendors into formal and informal groups to advocate for their rights. The Centre concentrates on these informal sectors because official unions, the local government and business have successfully collaborated to make independent union activity impossible in the formal sector.

In addition, efforts by unions from outside the country to aid independent union growth, particularly by the AFL-CIO (American Federation of Labour - Congress of Industrial Organizations) and the International Brotherhood of Teamsters specifically, have been met with hostility by local and federal governments and the business community, as illustrated by the August 26 story in *El Diario* of Ciudad Juárez entitled, "Denunciation of union infiltration by the United States in the Entity".⁷² The independent unions that currently exist do work closely with unions in the United States, and solidarity efforts by Government and businesses between them will likely impede the growth of the independent union movement.

d. Barriers to independent union activity

Legal regulations on the process to changing unions are a significant obstacle to the activities of independent unions. Not only is the process administratively burdensome, but at least twenty workers must sign a document indicating that they are in favour of calling a vote for a new union. These names are not kept confidential, thereby leaving these workers open to retaliation. Workers report that if their name is on the list calling for a new vote, there is a serious risk of being fired. In addition, companies frequently hire workers who will support the new union immediately before the vote in order to ensure the status quo continues. These workers often never actually work for the union and are taken off the official employment roles after the vote.

Even if a vote between the current union and a new union is allowed, official unions and the business often collude either to prevent the vote from actually occurring or to intimidate

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workers. Workers report the presence of armed men, known as *golpeadores*, in the days immediately prior to the vote and the day of the vote. These men intimidate workers prior to the vote and, if the vote goes forward, will assault workers hostile to corporate interests. In one such recent incident prominent labour lawyer, Arturo Acalde, was attacked and injured by *golpeadores*. The *golpeadores* and the businesses and unions who hire them operate with virtual impunity in spite of widespread acknowledgement of their existence.

In addition to manipulation of voting through legal and extra-legal mechanisms, international investors exert a significant amount of pressure on government at all levels, local, state and national, to ensure that existing regulations are not enforced and that further pro-union laws are not passed. Independent unions report that local government officials often find excuses not to register new unions or to delay such registration. Notably, although governments were not receptive to independent unions prior to 1994, the pressure on the Government to regulate unions has increased since the NAFTA went into effect.

As with other effects of the NAFTA, the structural problems existed prior to the Treaty, but significantly intensified after it went into force.

e. Unions and litigation

Labour rights activists are pursuing litigation at the national and international level.

Within the framework of the NAFTA, the most important case was the *Kuk Dong Case* in which local labour rights groups, such as the Centre for the Support of the Worker (*Centro de Apoyo al Trabajador, CAT*), student activists from the United States and labour unions from the United States and Mexico joined together to file a complaint that the conditions in the Kuk Dong factory in Puebla, Mexico.⁷³ The complaint alleged that the factory owners prevented the formation of an independent union, *el Sindicato Independiente de la Empresa de Matamoros Garment (SITEMAG)*. The brief stated that this was a violation of Principles 1 and 2 of the NAFTA, and went on to allege other workplace violations of labour rights standards in the NAFTA and its side agreements.

Complaints were filed in front of the labour tribunals in Canada and the US, and the United States panel made recommendations in May of 2005. The United States tribunal found that there were severe and widespread violations of the right to free association both in this case and in Mexico in general.⁷⁴ While the tribunal held that in this case, the petitioners had not sufficiently exhausted domestic resources, it also found serious concerns with the procedures for changing unions. One of the primary findings of the tribunal was that there was a lack of impartiality of the tribunal panels and the impediments of these tribunals.⁷⁵ Unfortunately, these recommendations have no binding effect on Mexico and, thus far, no action has been taken to conform to them by the Government.

18. Article 8 specifically guarantees: 1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the Org. concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-unions;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (Dec. 16, 1966), art. 8, 993 U.N.T.S. 3, 1976.

19. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), art. 22, 999 U.N.T.S. 171.

20. ICESCR, *op.cit.*, art. 8.

21. HUMAN RIGHTS WATCH, UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS, Aug, 2000, at <http://www.hrw.org/reports/2000/uslabor/>.

22. Sarah Cleveland, Beth Lyon, Rebecca Smith, *Inter-American Court of Human Rights Amicus Curie Brief: The United States Violates International Law when Labour Law Remedies are Restricted based on Workers' Migrant Status*, 1 SEATTLE J. FOR SOC. JUST. 795, 846.

23. Comm. on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties obligations (Art. 2, para.1 of the Covenant) (Fifth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.

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HRI\GEN\1\Rev.1 at 45 (1994).

24. *Id.*

25. UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS, OP.CIT.

26. Freedom of Association and Right to Organize Convention, July 4, 1950, art. 11, reprinted in Int'l Labour Organisation, Int'l Labour Conventions and Recommendations: 1919-1981, at 4 (1982) [hereinafter Convention 87].

27. ILO Declaration on Fundamental Principles and Rights at Work, Int'l Labor Conference, 86th Sess, June, 1998, CIT/1998/PR20A [hereinafter Worker's Rights Declaration].

28. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Int'l Labor Office, 279th Sess., Nov. 2000, at 42-48, OB Vol. LXXXIII, Series A, No. 3 [hereinafter Tripartite Declaration].

29. Convention 87, *op.cit.*, art. 3 and 8.

30. Int'l Labor Org., Comm. on Freedom of Ass'n, 259th Report, Case No. 1403, 74

31. Int'l Labour Org., Comm. on Freedom of Ass'n, 275th and 278th Reports, Case No. 1512, 398 and 3

32. Worker's Rights Declaration, *op.cit.*

33. Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Int'l Labour Org., 204th Sess., Nov. 16, 1977, at <http://www.ilo.org/public/english/85multi/tridecl/index.htm>.

34. Christopher Coxson, *The 1998 ILO Declaration on Fundamental Principles and Rights at Work: Promoting Labour Law Reform Through the ILO as an Alternative to Imposing Coercive Trade Sanctions*, 17 DICK. J. INT'L L. 469, 496.

35. Labour Principles of the NAALC:

Freedom of association and protection of the right to organize.

The right to bargain collectively.

The right to strike.

Prohibition of forced labor.

Labor protections for children and young persons.

Minimum employment standards.

Elimination of employment discrimination.

Equal pay for women and men.

Prevention of occupational injuries and illnesses.

Compensation in cases of occupational injuries and illnesses.

Protection of migrant workers.

36. American Convention on Human Rights, Nov. 22, 1969, at art.16, at <http://www.cidh.org/Basicos/basic3.htm>. [hereinafter American Convention].

37. *Id.* at art. 26.

38. General Comment 3, The nature of States parties obligations, *op.cit.*

39. Mexico ratified the Protocol in 1996. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Nov. 17, 1988, O.A.S.T.S. No. 69 (1988), 28 I.L.M. 156 (1989), [hereinafter Protocol of San Salvador], at <http://www.cidh.org/Basicos/basic5.htm>, reprinted in: BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 17, OAS Doc. OEA/SerL.V/I.71, doc 6.rev.1 (1988) [hereinafter BASIC DOCUMENTS].

40. Per Art. 19, only violations of trade union rights (art. 8) and the right to education (art. 13) may be litigated in the Inter-American system. *Id.* at art. 19.

41. *Id.* at art. 8.

42. *Id.* at arts. 1-2.

43. Inter-Am. Ct. H.R., *Baena Ricardo Case*, Judgment of Feb. 2, 2001, (Ser. C) No. 72, 158 [hereinafter Baena Ricardo].

44. Juridical Condition and Rights of Undocumented Migrant Workers, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R., Opinion of Sept. 17, 2003 (Ser. A) No. 18 at 148.

45. *Id.* at 155-57.

46. *Velázquez Rodríguez*, Inter-American Court of Human Rights, Judgment of July 29, 1988, series c, No 4.

47. Interview with Pastoral Obrero, Ciudad Juárez, August 25, 2005.

48. MEXICAN CONST. (1917) art. 123.

49. *Id.*, at art. 5.

50. *Id.*

51. *Id.*, at art. 123(I)-(VI).

52. *Id.*, at art. 123(XII).

53. *Id.*, at art. 123(XVI)-(XVIII).

54. According to the Secretary of the Economy, only approximately twelve million of forty-four million Mexican workers are eligible for social security. Interview with Representatives from the Secretary of the Economy, Distrito Federal, August 30, 2005.

55. CETLAC, Ciudad Juárez, August 25, 2005.

56. The submission can be found at: <http://www.dol.gov/ilab/media/reports/nao/submissions/Sub2005-01.htm>.

57. MEXICAN CONST., OP.CIT, at art. 102(b).

58. Interview with attorney from the National Commission of Human Rights, Distrito Federal, August 30, 2005.

59. The Federal Junta reported that it is illegal to make referrals to private lawyers. Interview with Legal Advisor, Junta Federal de Conciliación y Arbitraje, August 29, 2005. However, this regulation is clearly not enforced according to local labor rights advocates.

60. Interview with Pastoral Obrero, Ciudad Juárez, August 25, 2005.

61. Interview with Arturo Alcalde, Distrito Federal, August 30, 2005.

62. Interview with Pastoral Obrero, Ciudad Juárez, August 25, 2005.

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63. KurczynPatricia & Maria Carmen Vazquez, *Libertad Sindical: Clausula de Exclusion 2* (2002).
64. *Id.*, at 1.
65. Federal Labour Law, Article 386-88.
66. *Id.*, in Article 44-448.
67. *Id.*, in Article 450.
68. Interview with worker, Ciudad Juárez, August 25, 2005.
69. Interview with *Pastoral Obrero*, Ciudad Juárez, August 26, 2005.
70. Interview with the *Junta Federal de Conciliación y Arbitraje*, Distrito Federal, August 30, 2005.
71. Two such independent unions are the *Unión de Telefonistas* (Union of Telephone Workers) and the *Sindicato Unico de Trabajadores Municipales* (The Only Municipal Workers Syndicate). Interviews in Ciudad Juárez, August 25, 2005.
72. Manuel Quezada, "Denuncian infiltración sindical de EU en la entidad" *El Diario*, Aug. 30, 2005, p. 3F.
73. CITE Comunicación Pública A La Oficina Administrativa Nacional Según el Acuerdo de Cooperación Laboral de América del Norte sobre Asuntos de Legislación Laboral Surgidos en México
74. NAALC Panel
75. NAALC Panel, p 82.

III. THE MAQUILADORA SYSTEM IN MEXICO: A CASE STUDY OF CIUDAD JUÁREZ

The maquiladora system of production was initially set up May 20th, 1965 in order to facilitate the implementation of a subcontracting industry of exportation (Politica de fomento a la industria maquiladora de exportacion, IME) in the North of Mexico. The main objective of this Programme of border industrialization (Programa de Industrializacion Fronteriza, PIF) was to counter the effects of the suspension of the Bilateral Convention on guests workers (Convenio Bilateral sobre Trabajadores Huespedes, better known as the Programa Braceros) set up after World War Two in order to repatriate workers that had crossed the border during the war at a time when domestic supply of labour in the US was short. The programme was therefore set up basically to attract Mexicans working in the US and to create jobs for them in Mexico.

The maquiladora system is a free trade zone of production coming under a special legal regime. According to this regime, a firm enjoys a special fiscal treatment on the condition that its production is exported or re exported. A maquila could not produce for the home market. It was an exceptional and a temporary regime that had been set up for particular reasons in order to attain specific objectives. Today, the system acts in a totally different way, since it attracts workers from the interior of Mexico who use the maquiladora system as a gateway to the US.

To understand how this reversal came to be, we must look at the evolution of the system through the years. Quite modest by any standard at the beginning, the number of maquilas grew to 3047 employing a total of 815 290 workers by 1996. The system has been so successful that by 2001, maquilas accounted for 51% of total exportations, up from 40% in 1992. This is one of the reasons why a temporary regime was made into a permanent feature of the Mexican political economy, driving out the old political economy based on import substitution that had been implemented in Mexico since the thirties.

In this sense, the maquiladora system was a forerunner of the NAFTA and, in turn, since its implementation, the NAFTA has locked the system in.

The *maquila* system⁷⁶ seems to act as a revolving door, attracting cheap labour from the countryside and the less developed areas within Mexico, and, soon after, essentially because of the poor working conditions prevailing in the maquiladoras, expelling its manpower towards the U.S. job market.

Given the 'volatility' of this type of industry, the result for

women is labour insecurity, employment and unemployment depending on the state of the companies. Other aspects considered to have an impact are those relating to labour rights such as freedom to join a union, denial of benefits and social security and the difference in contract requirements, such as pregnancy tests which were not considered when maquilas were established in the country.

The sustained increase in poverty has forced many women into informal work which in Mexico is 40% of the EAP, generally carrying out subcontracted work at home or itinerant. Women are overrepresented in the percentages of low salaries and in the statistics of informal work.⁷⁷

1. Some antecedents to the maquilador model in Ciudad Juárez

The following account is the result of two of the interviews conducted in Ciudad Juárez (State of Chihuahua) with public workers and former maquila workers.

There have been different stages in the history of the maquilas in Juárez since the industry commenced in the 60s. When the first maquilas were established,⁷⁸ they were cited as a response to the need for work in the city, since at that time the 'Brasero' programme was finishing, which comprised the United States making it easier for Mexican peasants to cross the border with a special permit to work in their fields. When the peasants began to return to the border cities, the Government, with private initiatives, created Pronaf, the National Border Programme. Within the framework of the Programme it was decided to promote the tourism sector, creating a special hotel zone with restaurants and bars, with the expectation of generating jobs in the service sector. However, this was insufficient and it was decided to attract foreign investment through a programme offering industry the infrastructure necessary to install itself, cheap labour and, the main point, control of the workers through trade union control by the CTM and the CROC.

This latter 'guarantee' is evidenced in the following statement: "As for strikes between 1994 and 2003, there were only three, one in 1995 and two more in 1996. That is to say, quite a stable labour climate with totally white trade unionism".⁷⁹

Local contractors benefiting from the maquilas were a very strong group of property developers. This group leased the infrastructure where companies were established, since foreigners could not buy real estate in Mexico. It has been in

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the power of the city and has planned urban growth for its own benefit.

Multinationals arrived after the Treaty. They increased investment in high consumption services and goods, putting an end to the micro businesses which existed. They do not guarantee the quality of the products, unlike those originating in the US.

The Secretary for Trade is very flexible towards foreign companies which become established here and which are mainly from the US and Canada. Products from other countries are not legal, even if they are cheaper.

When the first maquilas were being set up, the electronics industry arrived. This absorbed female workers, with little male participation until the 80s, when there was wide scale migration to the city. This was the second stage of maquilador growth.

People from neighbouring states began to arrive. Unemployment increased and it was decided to promote the Programme more strongly with the construction of more industrial estates: an area with buildings (factory units) was built in accordance with the needs of companies, when the companies arrived, all that was left to do was bring in their machinery and contract staff.

There was an increase in male labour and the conditions for obtaining a job in the maquiladora industry were eased, with the only requirements being a copy of your birth certificate, easily falsified even for children of 13 who stated that they were 16, the minimum age to work fixed by law.

From the 80s, greater benefits or conditional bonuses began to be implemented, since the maquilas began to offer certificates for production, for contracts (to retain workers), for attendance, for punctuality, etc. These were given to avoid the high turnover of workers who constantly resigned due to the high demand for labour at that time. Lorries started to be sent to Veracruz, Chiapas and Guajaca to hire people and countrywide migration commenced.

Then, following the implementation of the NAFTA, there was another 'maquiladora boom'. The borders were opened with greater opportunities for the flow of capital. Economic benefits for firms increased, such as more tax exemptions. Before the Treaty was signed, it was for the first two years and then, the time frame was extended. During this growth the demand for labour increased so the city's average population growth was insufficient, at 50,000 people a year. Between

1994 and 1995, more than 100.000 people arrived.

However, this growth was held back by the economic recession in the United States. Approximately 80% of industry was established using US capital. As sales of products fell in the US, (particularly between October and November 2000 but lasting until 2003), companies started to reduce costs in terms of personnel, with massive dismissals, closure of shifts, particularly special and night shifts, mostly carried out by women.

"In net terms, the unemployment arising in the maquilador sector during 2003 affected only women, with 13,671 female workers dismissed from this type of establishment".⁸⁰

There was very strong repression of women, so that workers should give up their jobs voluntarily, there being cases of women who asked for leave for family matters being refused and thereby put under to resign, thus avoiding redundancy pay.

Contracts changed substantially with companies becoming more selective. They now asked for original documents, study certificates (some up to secondary education), official identification with a photograph, electoral credentials, over 18s and below 30s, and the labour environment within the maquila continued in the same way, despite the greater demands for contracting staff.

Following the crisis, people remained in informal trade. Many problems arose from this: large, precarious shanty towns, crimes and insecurity.

The effects of the establishment of maquilas have been: family disunity, infrastructure problems, uncontrolled urban growth, a lack of public and social services and insecurity, since the city grew at an accelerated rate. Subsequently, maquilas have left people unemployed and uprooted, with a growth in vandalism, leaving a wish to go and work on "the other side", in the US.

Currently Ciudad Juárez is to stop receiving 50 million pesos tax on street lighting, since ten maquilas won their request not to pay for this service in the Supreme Court of Justice, and there are 100 more who are now in dispute for the same reason.

2. Working conditions in maquilas

Labour conditions in assembly plants

The following characteristics and working conditions inside assembly factories have been identified through interviews with workers and former workers of plants in Ciudad Juárez.

Generally, these companies apply the Federal Labour Law, yet not to all services which it recognises.

Concerning labour safety, related to aspects of occupational health, witness statements from those interviewed highlight infringements to basic work safety and hygiene aspects:

"We do not have the appropriate tools to handle chemical products, for example when using sodium sulphate or ethyl alcohol we do not have face masks, and the inhalation of these products affects one's health, or where there are no air conditioning filters, workers burn themselves because they choke on the product and they do not wear gloves; some days, the oven needs to be cleaned with a polisher and some parts need to be brushed without safety gloves or goggles, the job is 'raffled' because it has to be done, because if the work isn't done, because I don't have the equipment then there are break sanctions or we get fired; there isn't an extraction system for the smoke released by the soldiering either, and where there are extractors, they aren't right, generally in assembly plants there is no labour safety, and the workers need to subject themselves to these conditions, with a few exceptions, and although there are safety and hygiene programmes within the companies, these do not take the workers' needs into account".

According to a study by the Mexican Institute of Social Security, reported in the press in June 2004, in the State of Chihuahua:

"An average of 50 accidents at work was reported daily over the period 1999-2003, for a total of 90.471 cases... 40.7 per cent of accidents at work occurred in Ciudad Juárez... (of these, the sector...), of the industry of transformation with 36,028 cases, followed by commerce (16,500), services for companies (10,788), and construction (8,788)".⁸¹

The working day is eight hours from Monday to Saturday, but agreements between the Government and employers have led to a nine and a half hour working day so that there is no work on Saturday. The working day runs from 6 am to 3.30 pm, and there are normally 2 to 3 shifts, but in some, there are up to 5.

"In some assembly plants, the worker is forced to be in the same position during his entire working day. If they need to go to the toilet, they have to ask the supervisor for permission and they can only be gone for a maximum of 10 minutes. The production standard varies greatly, but everyone is given standards, if it is possible to generate more then it's done, but they cannot generate less, and if there is less, then they must report the reason, when production is low downtime must be reported, if there are meetings these must be reported and this control is done on a weekly basis, meetings only concern production, meetings concerning union organization are not allowed.

When production falls behind, the supervisor says that it can be recovered the following day, and standards are fulfilled, normally more is done than what is actually asked. Workers cannot speak openly, only with the person next door, if this is ignored then you get given a written warning in which you are told that you have disobeyed the orders, and if it is repeated, it is pointed out that this behaviour is unstable and you are given notice to leave. Telephone calls are not allowed. The only training provided is on the product, technique, packaging and inspection, and the risks to production if it is not done properly; there is no training in work safety or risks, only through announcements with the safety measures that the worker needs to follow, but nothing else. People are aware that we are being exploited, but even knowing it while not being able to make demands, the company tells them that the doors are open; the greatest fear is losing the job. The alternative is union organization, but if the boss finds out, the supervisor or group leaders warn people not to do it".⁸²

Below is the description of a former worker of assembly plants, who witnessed very difficult conditions at work:

"There is a constant pressure to product, there is a serious and unrecognised problem of sexual harassment, from the psychological pressure of measuring the time spent going to the toilet, which if not done is subject to a caution, and which is logged on file and after a certain amount, you can be given notice from one day to one week to leave your job".

In many companies, workers are fully exposed to labour illnesses, which are not recognised by any institution. It is difficult to prove that an ailment was caused by work, including the cases of accidents at work, they are taken to a private place and are not reported to the Mexican Institute of Social Security so that the safety quotas of risks are not increased; it is only at the time of the accident that an investigation is launched, but there is no permanent State-led programme that oversees the conditions of labour safety, and if not, it is arranged with money, it is totally corrupt".⁸³

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We have the case of a highly contaminating company, dedicated to the production of hydrofluoric acid, and is certified as a clean company despite the presence of an enormous mountain of production waste (anhydrite) outside their plant, as recognised by the state and municipal governments.

The uncommon visits or inspections, are announced prior to the day, and in these cases, production stops and everything is cleaned, painted or more. If work was being done with toxic solvents that tend not to have identifying labels, everything is arranged so that they feature with a name of the accepted chemicals.

Some companies have been forced to fulfil some standards, those with certified quality control related to production processes, identifying production tools and materials, cleaning processes and so forth, and not directly with safety conditions for the worker, even the smallest box needs to state what the function and content is, and though the situation has not changed much, at least there is some knowledge as to what is being used. Previously the ISO 9,000 process was unknown, albeit there are few companies that have entered the certification process initiated in the 1990s.

"Swallow" companies (*empresas golondrinas*)

There have been various cases of "empresas golondrinas", of which one of the most recent not publicly known ones is "Interplax empaque", which was part of a larger company and suggested that workers rest for which they were paid 50% of their wages without bonuses. They were then told to come and collect their pay on a certain day and when the workers arrived they notice machinery being removed and when they return there was no company, the site was empty and the boss out of the country. The State offers no comment.

In another case, when it was suspected that the company was about to leave, demands were lodged before the board of conciliators, which proceeded to perform a precautionary embargo. When the company is about to go, the workers are left with the machinery which they sell on to get their payment. This was the case with E.M.I. International, a company of aromatic candlesticks and decorative items. There has never been a case where the workers were left with the company and continued with its running.

Sub-contracting employment agencies

After the signing of the TLCAN, one of the novel phenomena was the arrival of large sub-contracting employment agencies (Manpower), dedicated to recruiting workers hired out to assembly factories, thereby avoiding a direct employer relationship, so that when they want to dismiss staff, they are free of the responsibility. These

companies hire the person for 30 days and every 30 days, the contract is renewed if the work is available. If not, the working relationship finishes there and then.

These labour intermediaries are part of an accelerated expansion process that is related to the growth in demand of workers for this type of contract from assembly factories. In these cases, the basic principles of equal wages for equal work are contravened, as are the legal benefits established both by federal law and international human rights law.

The ongoing reform project, known as the Abascal Law, aims at "legalizing" these labour intermediaries agencies and provide them with greater working and broadening tools.

The example related in one of the interviews witnesses this situation:

"The Thompson assembly factory in the last few years decided to employ an agency to provide them with the necessary staff, with the new workers performing exactly the same tasks but without the same benefits or wages. While those employed directly by the company are given vouchers for attendance, timekeeping and transport, agency staff have lower wages and cannot participate in the voucher scheme or use the transport system. These agencies came about 10 years ago, but their growth was really felt from 2000 until now with national and international investment. The main promise of free trade were more and better jobs, but just as many more companies were established, they have become lost in the Mexican industry, which in the country's global terms, generated twice the workforce than it does today.

The Diesel Record of Mexico company did not have a union but did have poor working conditions with high risks and accidents due to the size of their machinery. When the workers began coming together and demanding a collective union, they fell into the hands of the CTM, which promised to help them get union registration. It asked for all the names of those calling for a union to be presented to the board of conciliators, which passed the list on to the company and everyone was dismissed. That is why people are scared of coming together, because there is no trust in union leaders, who are supposedly there to help the worker, and the history is lost. Starting over again in an assembly factory is the risk run by every worker who wants to be part of a union".

Vouchers, wages and funds

The minimum that is offered by an assembly factor, without a collective contract but with an individual contract and without union, is the following:

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- Voucher for timekeeping: for arriving on time, which varies between 30 and 35 pesos a week.
- Voucher for attendance: for coming in every day, which is around 40 pesos. This attendance voucher automatically goes to payment at the canteen - the only thing that is paid is the difference of what is consumed, the company does the transfer directly and this is not explained to the workers. In practice, this voucher is deducted and the worker finds out later that he has earned less.
- Canteen subsidy: breakfast and food are provided by the canteen, and they pay an average 45 pesos a week for this subsidy.
- Voucher for food stock: a weekly voucher for food stock of 90 pesos, which increases up to 110 pesos depending on how long the worker has been with the factory. These are vouchers to buy a basic consumption basket in any supermarket and is not deducted.
- Voucher for perfect attendance: 60 pesos a month.

Saving is compulsory and this is kept in a company fund. It is deducted yearly and the worker contributes a percentage, while the company provides the other equal proportion.

Benefits for payment of utilities are arranged for workers, which is equivalent to 10% of a company's earnings. Approximately 50% of assembly factories fulfil this requisite through bonuses given to active employees, while workers who have worked for at least 60 days in the declared tax year and who have left the company are not recognised.

On average, a worker earns a daily wage of 64.48 Mexican pesos, which is 328 a week with the discounts. This amount is not enough to buy basic food, since the weekly cost of this for 4 people is around 500 pesos, without including the costs for education, health, housing, clothing, among other.

The other benefit is the housing fund, the accumulated savings of which later offer the possibility of asking for a credit against a direct payroll discount. However, because of the low wages, the discounts performed and the accommodation costs, the worker tends to receive such a low income that in 2004 there was a crisis over the high charges to the accommodation fund.

As reported by "El Diario" in June 2004:

"In some cases, the wages of the employees of some assembly factories is five pesos due to the charge of their credits... The vast majority of those affected are enduring charges of more than 20% of their wages... With the crisis,

some lost their jobs and others suffered massive decreases in earnings. Although workers now earn less (in some cases, up to 25% of what they previously earned), the INFONAVIT maintains charges at the same level".⁸⁴

3. The right to unionise in Ciudad Juárez

The main problem with the Mexican work system is the worker-owner relationship. There is a very specific model, different to that of other countries, whereby methods of worker representation were closely linked to the State. They were a form of control but also of benefit for the worker, and were a result of the 1917 Constitution, which guaranteed a minimum wage, labour stability and, later on, social security and the right to accommodation. This model was perceived as a collaboration between the State and workers but, as the State withdrew and allowed companies to take over, it became a method of control and pretence. It is now a model of failure to protect workers' rights, its most harsh expression being State control of unionism.

According to Arturo Alcalde, a renowned employment lawyer, more than 90% of collective contracts are false. The common practice is that the boss chooses his union. For example, new airlines do not yet have workers but already have a union. Workers are controlled by a process of pretence, like a piece of theatre, a type of co ownership between lawyers who 'own' unions and company lawyers. If the boss chooses his union, he then sets about preventing any other union from entering the company.

This situation leads to false contracts and the control of union records. It does not take into account the union's resources and it limits the scope of the union's activities and the sphere of its jurisdiction. It means no secret ballot and makes collective bargaining impossible. Conciliation councils or tribunals, supposed to reduce labour disagreements, are prejudiced towards the owner. Theoretically, they are tripartite in character, but that is another pretence, since a judge and the plaintiff are present in all collective conflicts: a company representative, a representative of the Government and the union leader co opted by the Government all attend the tribunal.

In general, these conciliation councils prevent new unions from registering. In many places you are not allowed to know who is the leader of your union, nor the name of the secretary general. That is to say, there is not a right to transparency. Records relating to collective bargaining and the model of justice are confiscated, so it is impossible to exercise labour rights.

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The maquiladora sector is one of the many work sectors affected by this type of practice. As described by the United Nations High Commissioner for Human Rights in 2003:

"In these cases, the federal and local authorities try to promote and ease the worker-boss relationship to the advantage of the owners, with the aim of maintaining and attracting foreign investment. This brings many violations of workers' human rights and a totally discretionary and corrupt violation of labour law. By tradition and without a single change to this current administration, the human right to free unionism is being violated systematically. The election of leaders of the organisations takes place without respect for free, secret ballots, and the right to strike is permanently infringed. Labour authorities maintain strict control by registering union organisations. At all levels of workers' organisations, there is subordination to the old workers' leaders who in their turn maintain a relationship with the authorities responsible for applying labour law, which they use to punish dissident workers".⁸⁵

For Beatriz Lujan, head of the FAT, Authentic Labour Front, an organisation of independent Mexican unionism, the serious restrictions to the right to join a union are at the root of the difficulties achieving union rights:

"In the state of Chihuahua there is a policy of non-unionisation: the policy of Government and businessmen is not to allow unions but to build up a direct relationship between worker and company. There are no unions but there is organised activity within the maquila. When this is over, the ringleaders are fired and then, the workers are forced to complete a form to join the CTM union. The policy can be checked in state of Chihuahua economy documents in the profits section, where the three international ports, cheap manpower, non-unionisation and the 19 industrial estates are shown".

En Ciudad Juárez there are, on average, 300 to 320 maquilas, and 17% of these have unions. Most are in the CTM or in CROC, Revolutionary Confederation of Workers and Peasants. These two unions dispute the places of recording unions in the maquilas. The worker does not have the right to decide which union is to represent him but automatically becomes a member of the Confederation decided by the boss. Each maquila has, on average, 1,000 workers but some firms have as many as 3,000, and some only 500 people.

In Tamaulipas, nearly 100% of maquilas are officially unionised. In Baja California, there is 12% unionisation.

States have different policies but all offer union control as a comparative advantage for foreign investment.

Approximately 40% of the current economically active population is unionised, but 90% of this figure are in official unions, most of them being called unions of 'protection' because, in reality, they do not exist to protect workers' interest but those of the employers.

The fact that people want to join a union is very difficult when this practice has served only to raise monthly fees and not to defend workers' grievances. Nor are collective bargaining agreements negotiated, although in many companies it is compulsory to belong to a union.

The union of 'protection' is one which protects bosses through practices such as remaining hidden, hiding the fact that there is a union by not deducting fees, or deducting fees but keeping the leaders secret, or keeping bargaining agreements secret, among others. When workers decide to set up an independent union, it turns out that there is in fact already a union. For that reason, one of the big battles is for transparency in union information, particularly in registration, since this union of 'protection' is the owner of the collective contract and it is a hindrance not to give this contract to the new, independent union. In this way they directly control the union organisation. Often, official unions or unions of 'protection' have a collective contract with the company even before this is set up and operational, even before workers have contracts.

Among the practices used by the unions of "protection" to prevent changes in independent unions, are: the hiring of mafias specialized in "golpear". If, for example, the vote-counting date is already set, one day before that date, the "golpeadores" are sent. The votes are counted with an actuary's help, the manager of the concerned company and the representatives of the unions, and the workers are to vote publically. In general, the vote-counting is carried out in the company's facilities.

After the NAFTA, those historical practices deepened. The Government, in order to attract foreign investment, authorized companies to establish themselves without even having a trade union, among other forms of violations of labour rights as for example, subcontracting, temporary contracts, contracts on a trial basis, contracts with inadequate working hours, contracts subjected to pregnancy evidence.

"The organs, tribunals and juntas are integrated to the

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executive federal and local powers. They do not enjoy any autonomy, and present a high level of corruption in the exercise of their activity. The possibility to freely form and join a union and the democratisation of union life is still limited, because of the support brought to old corporative leaderships that have managed to maintain their privileges... The circle of the labour rights violations is closed by the limitations imposed by the Mexican State, through a reserve to the rights accounted for in Article 8 of the International Covenant on Economic, Social, and Cultural Rights, concerning the freedom to form and to join a union, the exercise of free and secret vote, and the right to strike. Even today, after the important processes of political democratisation, the big workers stations and worker unions are still maintained under control... The rate of unionization has decreased, although the shares keep being deducted from the payments to the workers. Union leaders keep dealing with the deposits of these shares with total discretion and without being answerable to anyone".⁸⁶

In the informal sector, workers are starting to gather with leaders similar to the unions of "protection". The majority are in the Confederación Nacional de Organizaciones Populares - CNOP, the social arm of the PRI, subject to great corporativism. The workers in this sector, are chased from the areas they occupy. The control and coercion system is based on the delivery of working permits that is achieved only if the workers are connected to a workers station controlled by the Government.

The opinions of the majority of the persons interviewed towards the phenomenon of cooptation of syndicalism by the Government, according to the interests of the private capital, coincide. The direction of the Sindicato de Trabajadores del Municipio de Ciudad Juárez (the Syndicate of Workers from the municipality of Ciudad Juárez) reported daily conditions and practices at the union level that are quite illustrative of the corporative model:

"Some maquilas have unions that subscribe to the CTM, which is an organization at the national level, to the service of the Government, that has been coopting almost all trade unions for 70 years. There are very few independent unions, like the unions of the telephonists from the DF, for example. The freedom of association formally exists, but they are not permitted to develop. They have to affiliate to the Government. There is a permanent conflict between official trade unions and independent ones".

The new unions are to be affiliated to the CTM and the

Government, through those unions, protects the employers. When they want to constitute another union, it is put to the vote and the new union always loses.

It has been extremely difficult to manage to organize the workers from the maquilas. There are many inhabitants from Vera Cruz, from Guajaca, from Chiapas, who have no political and no labour rights interest, they are exploited and their conditions are deplorable. The situation is so critical that conditions are better in the industrial parcs than in their own homes. In the *colonias*, they live in cardboard houses with no services, and they rather have two jobs than going back home.

Official trade unions have the experience to support the leaders that they want to be in alliance with the employer. If someone wants a job, one of the requirements is to be affiliated to the union. The Government designates one representative for the Junta de Conciliación, one other for the employer, and a last one for the unions. Usually they reach a conciliation agreement and there is no arbitration. Arbitration does work, but it benefits to the employer and the worker prefers to negotiate rather than wait for arbitration, which is indefinite. The union persuades the worker to accept the conciliation conditions. An attorney for the defence of workers, is responsible for the supervision and the defence of the worker, but he is designated by the Government.

"When you sign the contract, you only sign the last page and they never give you enough time to read the contract, and they never give you a copy of the contract, and if you ask for one, they start suspecting you. When a maquila is affiliated to a workers station, you need to sign a register paper for the union, that is only used to charge the employer's shares, the employer pays 6 pesos per worker a month, plus an annual share of a minimal salary for each worker, the employer pays the trade union into protecting the company in case the workers raise their demands".

The *Junta de Conciliación* is made up of the Government representative, who exercises the function of president, the employers' representative, and the unions' representative. Every 6 years, in the "Diario oficial", the workers are summoned to present, in a convention, the persons elected to represent them in front of the Junta. These representatives help the president. The federal law gives them specific functions, one of which is that at the end of the trial they have to emit an arbitration, signed by the three representatives. If there is at that point any kind of irregularity, like the Government representative being in favour of the employer

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for example, the workers' representative has to immediately declare it in writing and put his vote, denying and stating the reasons of his opposition to the result of the arbitration. This procedure, democratic in appearance, would not have any inconvenient, if the Mexican unionism was not articulated so strongly with the employers', parties' and Government's interests. As it has been demonstrated, this is an organization that totally serves the employers' interests, contrary to the aspirations of the workers they are supposed to represent.

The power of the workers' sector after the agreements on free trade is lower, and it is not given any importance in the national agenda. Unionism in Mexico and in the US fails because regressive rules have been imposed.

One illustration of that, is a campaign of discredit of the independent unionism, because it has been in contact with trade unions from the US.

The *Union Nacional de Trabajadores* (National Workers Union) and the *Frente Nacional Mexicano* (the National Mexican Front), managed to break the monopoly of the CTM and the PRI. These two unionist organizations have restrained a number of regressive reforms in terms of guarantees of rights, like the Abascal law (which sanction has been delayed for

years), the generalization of the value added tax on all basic goods, the establishment of a tax on the income from workers' provisions, among others. The logic is to lower the public expenses, but the whole tax system falls on the workers because the employers are untouchable.

Pro-government unionism has been eroding and has lost initiative. Independent unionism has not increased, although its attraction capacity is greater and has headed the fights that official unions have had to join, but simultaneously the "sindicatos blancos", which are extensively described in other parts of this report, have increased. The Government supports more the "sindicalismo blanco" than the official unionism, because it serves the corporate interests.

76. Hualde Alfaro, Alfredo, On line :<http://www.izt.uam.mx/amet/debate/modelomaquilador.html>

77. Aida Concha, Leonor, A los diez años del Tratado de Libre Comercio de América del Norte y los derechos de la mujeres mexicanas, Monterrey, 14-16 October 2004, On line: www.cimacnoticias.com/especiales/redes/tlcanmexico.doc

78. Between 1962 and 1965 maquilas started to be established. The first was in Parque Industrial Antonio J. Bermúdez, 7 km from the urban area, then called RCA, and contracted mainly women for work. The maquila boom began, particularly for the production of chassis for televisions, harnesses for cars and clothing.

79. In the newspaper "Norte de Ciudad Juárez", Thursday 29 July 2004, p. 7A

80. In El Diario, March 2004, Cd. Juárez, section F.

81. In El Diario, 24 June 2004, Cd. Juárez. Local Section.

82. Interview of a maquila worker, Ciudad Juárez, 25 August 2005.

83. Interview of a female worker in a maquila, Ciudad Juárez, 25 August 2005.

84. In El Diario, June 2004, Cd. Juárez, Section F.

85. Office of the United Nations High Commissioner for Human Rights Analysis of the human rights situation in Mexico. 2003.

86. Office of the United Nations High Commissioner for Human Rights Analysis of the human rights situation in Mexico. 2003.

IV. CONCLUSIONS: THE NAFTA TODAY

Today, the NAFTA is still strong as ever, and negotiations within its ambit, particularly in the agricultural sector, are advancing according to the schedule agreed on in 1993, in spite of a mounting social opposition in Mexico.⁸⁷ In addition, upon entering its second decade, there is now mounting pressure from Mexico in favour of upgrading the accord in order to move toward "deep integration". This expression bears little resemblance in the North American context to the classical definition according to which "deep integration" refers to an economic integration that goes beyond the removal of barriers to trade towards the mutual recognition and subsequent harmonization of regulation and norms. Rather, in the present instance, deep integration has little to do with harmonization, understood as an agreement between parties to adapt their respective norms to a common rule or principle, but rather with the unilateral adjustment, on the part of both partners, to U.S. norms and standards.

The unilateral implementation of requirements coming out of U.S. rule makers has met with greater urgency since September 11, 2001, as the spirit and content of the *Trade Act of 2002*,⁸⁸ and the *National Security Strategy of the*

United States of America of September 2002 show all too well. Pressure in this regard has been quite forceful in North America. These remarks evoke two related questions: the first has to do with the terms of economic integration as they are interpreted and applied by the U.S., for the U.S., on one hand, and these same terms as they are implemented in Mexico, on the other hand. In this regard, inwardly looking, continental integration is not only an asymmetrical process opposing economies of different sizes and levels of development, but continental integration should increase the might and advance the well-being of one to the detriment of the other. At the same time, outwardly looking, economic integration should promote U.S. dominance in world affairs, while restraining Mexico's international manoeuvrability.⁸⁹ These effects should have important consequences in the future for the maquila system, the national political economy and the implementation of labour rights in Mexico.

87. See John Skorburg, NAFTA 2003 : What's on the Horizon?, April 19, 2002, American Farm Bureau Federation : " All agricultural tariffs between Mexico and the United States will be eliminated by January 1, 2008 ". On line : www.fb.com/issues/analysis/NAFTA_2003.html

88. Enacted, August 6, 2002.

89. Arturo Guillen R. uses the expression " integrated subordination " to describe the nature of the relation between *Mexico and the US*. See: *Mexico hacia el siglo XXI. Crisis y modelo economico alternativo*, Mexico, Plaza y Valdes, 2001, pp.86.

V. RECOMMENDATIONS

To the Federal Government:

Concerning trade unions:

A deep reform of the trade union model is necessary in order to eliminate corruption and to create an autonomous unionism that protects the rights of its members.

The FIDH calls upon the Mexican Government to withdraw its reservation (interpretative statement) to Article 8 of the ICESCR, in accordance with the earlier concluding observations of the Committee on ESCR.

It is also necessary to examine the different instances responsible for the regulation of trade unionism, and to ensure the independence of this system from the different corporative interests. It is also necessary to examine the impartiality of the instances responsible for rendering justice.

The recommendations made by the independent syndicates and the social organisations should be taken into account, in particular the instructions in the "Twenty Commitments to Freedom of Association", to which the President, Vicente Fox, agreed in June 2000.

The FIDH calls upon Mexican authorities to draw all the conclusions from the situation described and especially the Mexican specificities of the maquiladora system and the informal sector. They are characterized by a weak or inexistent unionisation leading to a deterioration of working conditions and subsequent human rights' violations. The Mexican authorities have to make sure that the trade union structure in Mexico is effective in the protection of workers' rights by ensuring that:

- Unions are independent, representative, transparent and accountable to workers. Unions should not be affiliated with political parties or any official governmental organization.
- The Federal Government provides legal protections to ensure independent unions. Specifically, the Government must eliminate laws that provide for union monopolies at a workplace and must promote, through laws and enforcement of laws, the ability of workers to choose which union or unions will represent them.
- The Government better defines union requirements under the law to prevent sindicatos blancos. The law should require that unions continue to exist and that they provide actual representation to the workers.

- The Government improves the current grievance and enforcement mechanisms. Workers lack adequate mechanisms to register complaints. The Government both lacks the independent mechanisms and the political will to protect workers through viable unions.

Concerning the reform of labour law, including the Abascal Project:

The Federal Government must reform the current labour law to ensure that workers are in fact protected and are able to meet a basic standard of living.

Specifically, the Government should raise the minimum wage to ensure a basic living wage.

The Government must refrain from legalizing the practice consisting of hiring through labour agencies, and which allows employers to hire employees without providing benefits that would otherwise be required under the law.

The Government also must prevent the operation of the current agencies.

Further, the Government must make sure the labour law does not limit the ability of workers to strike even further than it is already limited.

We recommend the realization of a participative analysis of the Abascal Project, that, according to the opinion of the Mexican workers who are the most affected by it, would be damaging to human rights, particularly labour rights.

Concerning the enforcement of labour law

Federal States have to guarantee that appropriate judicial organs apply labour law and enforce it effectively. In this regard, many obstacles can be stressed such as the cost of justice access, the lack of impartiality of the judicial component of the arbitration and reconciliation tribunals, and the lack of effective council.

The Junta de Conciliación y Arbitraje is insufficiently independent and the government must work to develop an effective and independent mechanism for the protection and enforcement of labour rights.

In spite of its long existence, the maquiladora model in Mexico is a closed system, without any type of state or social

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surveillance. Because of its strong influence on all the economic, social, and cultural aspects, at the national level, but particularly at the regional level like in Ciudad Juarez, we recommend that the necessary mechanisms be created to prevent and sanction the violations to the workers' labour rights.

Concerning the enforcement of human rights by the Federal Government:

It is of utmost importance that the labour and union rights be recognized as human rights by the Mexican State, as provided by international human rights, and that the appropriate political and legal steps be taken for the national and state commissions to be able to hear complaints about violations of labour rights.

The Federal Human Rights Commission charged with protecting human rights, while constitutionally prohibited from addressing labour rights specifically, should protect economic and social rights that are being violated in the workplace. Human rights violated in the workplace are not automatically labour rights and the absence of protection of these rights in a workplace context is a significant gap in the protections by national and local human rights bodies. The rights enumerated in the International Covenant on Economic and Social Rights and other international and Inter-American instruments should be protected by this body and not simply disregarded because they are violated in a labour context.

The Secretaries of the government ought to ensure that human rights norms are considered in their work. In documenting federal statistics on employment, the informal sector must be accounted for in order to properly assess the effects of government policies and account for the true condition of labour rights in the workplace.

To the national and multinational businesses

Concerning Unions

Employers must ensure independent unions are accessible in the workplace. Employers must end the practice of sindicatos blancos.

Concerning the Workplace

Employers must ensure an open workplace where monitoring groups have access and are able to speak with workers. The current practice prevents effective monitoring by independent organizations and prevents adequate protections for worker's rights.

To the NAFTA and NAALC organs:

The NAFTA and NAALC organs should increase their cooperation concerning working conditions in Mexico. They should pay particular attention to the existing union structure as this area has been significantly neglected.

To civil society:

The majority of traditional human rights organizations in Mexico lack a comprehensive understanding of economic and social rights, with the result that organizations that work on labour rights are isolated from the mainstream human rights dialogue. Important changes will be effected only if a broader cross-section of civil society cooperates to work on these issues.

The deep ignorance of the wider Mexican society regarding the impacts of liberalization and the NAFTA on the national development and well being, highlights the necessity to promote a large and participative debate to analyze the adopted development model and its implications for the full guarantee of human rights, and to consider alternatives to guarantee the primacy of international human rights treaties.

VI. ANNEX: LIST OF THE PERSONS MET BY THE MISSION

Banco Mundial, Mureya Olivas

BASC Zona Norte- Coalición Empresarial Pro Libre Comercio , Ciudad Juárez, Lic. Oscar Kurl Amendariz

Camara de Diputados, Comité del Centro de Estudios para el Desarrollo Rural Sostenible y la Soberanía Alimentaria, Diputado Victor Suárez Carrera

Centro Agustín Pro Juárez

Centro de Estudios y Taller Laboral, A.C. (CETLAC), Ciudad Juárez, Félix L. Pérez V

Centro del Apoyo al Trabajadores (CAT), Puebla

Centro de Acción y Reflexión Laboral (CEREAL)

Comisión de derechos humanos del Distrito Federal, Fernando Coronado

Comisión Mexicana de Defensa y Promoción de Derechos Humanos (CMDPDH), Distrito Federal

Comisión Nacional de Derechos Humanos, Distrito Federal, Ulises Ruiz-Lopart

Frente Autentico del Trabajo (FAT), Distrito Federal, Beatriz Lujan, Hilda Ramírez García

Junta Federal de Conciliación y Arbitraje, Distrito Federal, Lic. Arturo Alcalde Justiniani, Distrito Federal

Junta Federal de Conciliación y Arbitraje, Lic. Oralia Vásquez Coutiño, encargada de asuntos jurídicos de la Junta

Parlamento, Distrito Federal, Víctor Suarez, Miembro de Parlamento, Diputado Federal por el PRD y Asesor de la Asociación Nacional de Empresas de Trabajadores del Campo (ANEC)

Pastoral Obrero, Ciudad Juárez, Lic. Victor Hugo Carlos Banda, Lic. María Elizabeth Flores, Aniceto Corona Mendoza, h.c.

Secretaria de Gobernación (SEGOB), Subsecretario de Asuntos Jurídicos y Derechos Humanos, Lic. Arturo Chávez Chávez

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141 organisations

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Algeria-Ligue algérienne de défense des droits de l'Homme
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Argentina-Centro de Estudios Legales y Sociales
Argentina-Comite de Accion Juridica
Argentina-Liga Argentina por los Derechos del Hombre
Austria-Österreichische Liga für Menschenrechte
Azerbaijan-Human Rights Center of Azerbaijan
Bahrain-Bahrain Human Rights Society
Bangladesh-Odhikar
Belarus-Human Rights Center Viasna
Belgium-Liga Voor Menschenrechten
Belgium-Ligue des droits de l'Homme
Benin-Ligue pour la défense des droits de l'Homme au Bénin
Bhutan-People's Forum for Human Rights in Bhutan (Nepal)
Bolivia-Asamblea Permanente de los Derechos Humanos de Bolivia
Brazil-Centro de Justicia Global
Brazil-Movimento Nacional de Direitos Humanos
Burkina Faso-Mouvement burkinabé des droits de l'Homme & des peuples
Burundi-Ligue burundaise des droits de l'Homme
Cambodia-Cambodian Human Rights and Development Association
Cambodia-Ligue cambodgienne de défense des droits de l'Homme
Cameroon-Maison des droits de l'Homme
Cameroon-Ligue camerounaise des droits de l'Homme (France)
Canada-Ligue des droits et des libertés du Québec
Central African Republic-Ligue centrafricaine des droits de l'Homme
Chad-Association tchadienne pour la promotion et la défense des droits de l'Homme
Chad-Ligue tchadienne des droits de l'Homme
Chile-Corporación de Promoción y Defensa de los Derechos del Pueblo
China-Human Rights in China (USA, HK)
Colombia-Comite Permanente por la Defensa de los Derechos Humanos
Colombia-Corporación Colectiva de Abogados Jose Alvear Restrepo
Colombia-Instituto Latinoamericano de Servicios Legales Alternativos
Congo Brazzaville-Observatoire congolais des droits de l'Homme
Croatia-Civic Committee for Human Rights
Czech Republic-Human Rights League
Cuba-Comisión Cubana de Derechos Humanos y Reconciliación National
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Democratic Republic of Congo-Association africaine des droits de l'Homme
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French Polynesia-Ligue polynésienne des droits humains
Georgia-Human Rights Information and Documentation Center
Germany-Internationale Liga für Menschenrechte
Greece-Ligue hellénique des droits de l'Homme
Guatemala-Centro Para la Accion Legal en Derechos Humanos
Guatemala-Comisión de Derechos Humanos de Guatemala
Guinea-Organisation guinéenne pour la défense des droits de l'Homme
Guinea Bissau-Liga Guineense dos Direitos do Homen
Iran-Centre des défenseurs des droits de l'Homme en Iran
Iran (France)-Ligue de défense des droits de l'Homme en Iran
Iraq-Iraqi Network for Human Rights Culture and Development (United Kingdom)
Ireland-Irish Council for Civil Liberties
Israel-Adalah
Israel-Association for Civil Rights in Israel
Israel-B'tselem
Israel-Public Committee Against Torture in Israel
Italy-Liga Italiana Dei Diritti Dell'uomo
Italy-Unione Forense Per la Tutela Dei Diritti Dell'uomo
Ivory Coast-Ligue ivoirienne des droits de l'Homme
Ivory Coast-Mouvement ivoirien des droits de l'Homme
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Jordanie-Jordan Society for Human Rights
Kenya-Kenya Human Rights Commission
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Kyrgyzstan-Kyrgyz Committee for Human Rights
Laos-Mouvement lao pour les droits de l'Homme (France)
Latvia-Latvian Human Rights Committee
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Lebanon-Foundation for Human and Humanitarian Rights in Lebanon
Lebanon-Palestinian Human Rights Organization
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Lithuania-Lithuanian Human Rights Association
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Mexico-Comisión Mexicana de Defensa y Promoción de los Derechos Humanos
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Morocco-Association marocaine des droits humains
Morocco-Organisation marocaine des droits humains
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Turkey-Insan Haklari Derneği / Ankara
Turkey-Insan Haklari Derneği / Diyarbakir
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United States-Center for Constitutional Rights
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