

NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

PUBLIC REPORT OF REVIEW OF  
U.S. SUBMISSION 2015-04 (MEXICO)



OFFICE OF TRADE AND LABOR AFFAIRS  
BUREAU OF INTERNATIONAL LABOR AFFAIRS  
U.S. DEPARTMENT OF LABOR

JULY 8, 2016

**PUBLIC REPORT OF REVIEW OF  
U. S. SUBMISSION 2015-04 (MEXICO)**

**Executive Summary**

Purpose of the Report

This report responds to U.S. Submission 2015-04 (Mexico), filed with the Office of Trade and Labor Affairs (OTLA) of the U.S. Department of Labor’s Bureau of International Labor Affairs pursuant to Article 16.3 of the North American Agreement on Labor Cooperation (NAALC) on November 12, 2015, by the United Food & Commercial Workers Local 770, the Frente Auténtico del Trabajo, the Los Angeles Alliance for a New Economy, and the Project on Organizing, Development, Education, and Research, with research assistance from Change to Win. The submission alleges violations of articles 2, 3, and 5 of the NAALC, which entered into force on January 1, 1994, immediately after entry into force of the North American Free Trade Agreement (NAFTA). On January 11, 2016, the OTLA accepted the submission for review, after having considered the relevant factors articulated in the OTLA’s Procedural Guidelines. Under the Procedural Guidelines, the OTLA shall issue a public report within 180 days of the acceptance of a submission for review, unless circumstances as determined by the OTLA require an extension of time.

The OTLA conducted its review to gather information about and publicly report on the issues raised by the submission. During the review period, the OTLA consulted with the Office of the U.S. Trade Representative (USTR) and the U.S. Department of State (State Department).

Summary of U.S. Submission 2015-04 (Mexico)

U.S. Submission 2015-04 (Mexico) alleges that the Government of Mexico (GOM) has failed to meet its obligations under the NAALC. The submission focuses primarily on Chedraui stores in Mexico, and in particular alleges the GOM failed to effectively enforce its labor laws with respect to freedom of association, collective bargaining, employment and workplace discrimination, and minimum employment standards. Specifically, the submission asserts that: (A) so-called “protection contracts” (see below) are prevalent at Chedraui stores, and workers lack effective access to copies of their collective bargaining agreements (CBAs); (B) older adults and youth working pursuant to government-sponsored volunteer programs at Chedraui stores have been used beyond the scope of these programs and treated as *de facto* employees without compensation, in violation of Mexican labor law; and (C) Chedraui stores have unlawfully subjected female employees and job applicants to pregnancy discrimination.

Findings

Protection Contracts

Mexico’s legal framework governing collective bargaining creates the possibility of negotiation and registration of initial CBAs without the support or knowledge of the covered workers. These are commonly known as “protection contracts”, as they can “protect” against collective

bargaining by independent, democratic workers' organizations. The submission alleges that protection contracts are used at Chedraui stores and are prevalent throughout Mexico. Protection contracts, and their prevalence in Mexico, have been an issue of serious concern for the OTLA for years and have been noted repeatedly in U.S. government reports and by academics, worker and civil society organizations, and the International Labor Organization (ILO), among others.

The OTLA's review confirmed four primary factors that appear to facilitate employers' and unrepresentative unions' use of protection contracts in Mexico: (1) the lack of a requirement to demonstrate worker support for an initial CBA or for the union that negotiated it; (2) the lack of worker awareness of initial CBAs governing their workplaces; (3) the burdensome election process (*recuento*) unions must follow to challenge a CBA to gain bargaining rights, often characterized by prolonged delays; and (4) the structural bias in the tripartite Mexican Conciliation and Arbitration Boards (CABs), which are charged with adjudicating and resolving individual and collective labor cases in Mexico, including overseeing and administering the *recuento* process and registration of unions and CBAs, as well as transparency requirements governing the release and publication of related materials, among other responsibilities.

In the present case, the OTLA analyzed the submitters' allegations that the GOM has failed to meet its obligations under the NAALC with respect to the alleged prevalence of protection contracts at Chedraui stores in Mexico. The OTLA's review did not reveal any evidence that workers, worker representatives, or others affiliated with Chedraui stores filed a request with a CAB for a *recuento* to challenge alleged protection contracts at Chedraui stores, or brought to the GOM's attention any alleged failure by Chedraui stores to meet legal requirements to post and disseminate CBAs to employees at their workplaces. In that context, considering the additional information presented in the submission and obtained during the review process related to Chedraui stores, and further noting that the negotiation and registration of a CBA without worker awareness of or support for the CBA, or the union that negotiated it, is not illegal under Mexican law, the OTLA finds that, at this time, there is insufficient evidence to support specific conclusions regarding the GOM's application of Mexican labor law in this area with respect to Chedraui stores.

Nonetheless, protection contracts, as well as the above-articulated factors that appear to facilitate them, are long-standing concerns for the OTLA. In this context, the OTLA takes note that the GOM recently has taken the following steps, which if effectively implemented, could fundamentally address such underlying factors appearing to facilitate the use of protection contracts to undermine labor rights, particularly the right to bargain collectively:

- The Mexican Secretariat of Labor and Social Welfare (STPS) has developed a new inspection protocol, as part of its 2016 labor inspection strategy, to enhance enforcement efforts to ensure that workers have received copies of and are aware of the terms of the CBAs that cover their workplaces.
- On April 28, 2016, President Peña Nieto presented to Mexico's Congress a proposal to reform Mexican Federal Labor Law to:
  - Require, as preconditions for registering a CBA, a demonstration that the workplace is operating and that the covered workers at that workplace have seen the CBA and support the union that negotiated it; and

- Establish clear, short timelines governing the process for a union to challenge a CBA and gain bargaining rights at that workplace, prioritizing the *recuento* vote and limiting the number of legal challenges that can result in election delays.
- On April 28, 2016, President Peña Nieto also presented to Congress a constitutional reform proposal that would fundamentally restructure the labor justice system in Mexico, including by transferring responsibility for registration of unions and all CBAs to a new, independent, specialized federal entity and transferring labor disputes, including the *recuento* process to challenge CBAs, to Mexico’s judiciary.

### Minimum Employment Standards

The submission alleges that volunteers at retail stores working pursuant to government-sponsored volunteer programs are at times required by employers to do work beyond the scope of these programs and are treated illegally as *de facto* employees but without compensation, in particular at Chedraui stores. Specifically, the submission alleges that volunteers are sometimes required by Chedraui to perform non-designated tasks and to “volunteer” for additional hours beyond the terms of their agreements, without pay.

The OTLA’s review did not reveal any evidence that the GOM was notified or aware of any such alleged misuse of these government programs at Chedraui, specifically, or in the Mexican retail sector, more generally, including any evidence that workers, worker representatives, or others had attempted to bring these issues to the GOM’s attention. In this context, and considering the additional information presented in the submission and obtained during the review process, the OTLA finds that, at this time, there is insufficient evidence to support specific conclusions regarding the GOM’s application of Mexican labor law with regard to Chedraui stores’ use of these government programs. However, the OTLA will continue to monitor concerns in this area.

### Pregnancy Discrimination

The submission alleges that Chedraui stores have engaged in pregnancy discrimination, including by unlawfully inquiring about female employees’ pregnancy status and requiring them to submit to pregnancy testing as a condition of employment. The OTLA’s review did not reveal evidence that the GOM was notified or aware of such activity at Chedraui, including any evidence that workers, worker representatives, or others had attempted to bring these issues to the GOM’s attention. In such context, and considering the additional information presented in the submission and obtained during the review process, the OTLA finds that, at this time, there is insufficient evidence to support specific conclusions regarding the GOM’s application of Mexican labor law in this area with respect to Chedraui stores.

Nonetheless, pregnancy discrimination in Mexico, as well as barriers and intimidation workers may face in alleging such conduct, has been a concern of DOL under the NAALC since 1997 and also has been raised regularly as a concern in academic studies. After the GOM reformed its labor law in 2012 to explicitly prohibit pregnancy discrimination, the OTLA and the STPS worked closely to design and implement a \$1.389 million project to help ensure that labor inspectors have the tools they need to effectively inspect for gender discrimination, including pregnancy discrimination, and that workers are aware of their rights with respect to employment

and workplace discrimination, including pregnancy discrimination, and how to claim them. The project began in 2015 and is currently operating in Estado de México, Jalisco, and the Federal District. The OTLA will continue to monitor concerns regarding pregnancy discrimination in Mexico, including at Chedraui stores.

### Recommendations and Next Steps

The submitters have made allegations regarding issues that have generally been of serious concern to the OTLA. In particular, the OTLA has expressed long-standing concerns about the widespread use of protection contracts in Mexico to undermine workers' right to freedom of association and collective bargaining, as well as each of the factors that appear to facilitate their use, including a burdensome *recuento* process and the structural bias in the CABs. The OTLA offers the following recommendations to the GOM regarding these concerns:

- Expediently pass and effectively implement the proposed constitutional reforms that would fundamentally transform and modernize the labor justice system in Mexico.
- Expediently pass and effectively implement the proposed legislation that would establish requirements for registration of CBAs and new timelines and rules governing the *recuento* process.
- Fully implement the new inspection protocol intended to more effectively enforce the requirement that employers post and disseminate to workers copies of CBAs governing their workplace; ensure that the targeting of such inspections takes into account public information related to at-risk sectors, including retail stores.

Additionally, the OTLA will continue to monitor the issues raised in the submission, in particular allegations of pregnancy discrimination and of employers' misuse of government-sponsored volunteer programs in retail stores, including Chedraui stores.

**Table of Contents**

Executive Summary ..... i  
    Purpose of the Report ..... i  
    Summary of U.S. Submission 2015-04 (Mexico) ..... i  
    Findings ..... i  
    Pregnancy Discrimination ..... iii  
    Recommendations and Next Steps ..... iv  
I. Introduction ..... 1  
II. Labor Law and Practice ..... 2  
    A. Protection Contracts ..... 2  
    B. Minimum Employment Standards ..... 9  
    C. Pregnancy Discrimination ..... 11  
III. Findings ..... 11  
    A. Protection Contracts ..... 11  
    B. Minimum Employment Standards ..... 14  
    C. Pregnancy Discrimination ..... 14  
IV. Recommendations and Next Steps ..... 15

## **I. Introduction**

The United States, Mexico, and Canada signed the North American Agreement on Labor Cooperation (NAALC) on September 14, 1993. The agreement came into force on January 1, 1994, immediately after entry into force of the North American Free Trade Agreement (NAFTA). The NAALC states that each Party shall establish a National Administrative Office (NAO) at the federal level to serve as a contact point with the other Parties.<sup>1</sup> For the United States, the U.S. Department of Labor's (DOL) Office of Trade and Labor Affairs (OTLA) was most recently designated as this contact point in a *Federal Register* notice published on December 21, 2006.<sup>2</sup>

Under the NAALC, each Party's contact point provides for the submission, receipt, and consideration of communications on matters related to the Agreement and reviews such communications in accordance with domestic procedures.<sup>3</sup> The same *Federal Register* notice that designated the OTLA as the U.S. contact point also set out the Department of Labor's Procedural Guidelines for the receipt and review of such public submissions.

Article 2 of the NAALC states that each Party "shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light."<sup>4</sup> Article 3 states that each Party "shall promote compliance with and effectively enforce its labor law through appropriate government action" and "shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law."<sup>5</sup> Article 5 states that each Party "shall ensure that its administrative, quasijudicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent" and "shall provide that final decisions on the merits of the case in such proceedings are ... made available without undue delay to the parties to the proceedings and, consistent with its law, to the public."<sup>6</sup> Article 49 defines labor laws as "laws and regulations, or provisions thereof, that are directly related to: (a) freedom of association and protection of the right to organize; (b) the right to bargain collectively; ... (f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; [and] (g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws..."<sup>7</sup>

---

<sup>1</sup> North American Agreement on Labor Cooperation, Art. 15, 16, available at: <https://www.dol.gov/ilab/reports/pdf/naalc.htm> [hereinafter "NAALC"].

<sup>2</sup> 71 Fed. Reg. 76691 (December 21, 2006); The OTLA retains the functions of, and designation as, the National Administrative Office to administer Department of Labor responsibilities under the NAALC. 71 Fed. Reg. 76694 (December 21, 2006).

<sup>3</sup> NAALC Art. 15, 16.

<sup>4</sup> NAALC Art. 2

<sup>5</sup> NAALC Art. 3.1, 3.2.

<sup>6</sup> NAALC Art. 5.1, 5.2(b).

<sup>7</sup> NAALC Art. 49.

On November 12, 2015, the OTLA received a public submission under the NAALC from the United Food & Commercial Workers Local 770, the Frente Auténtico del Trabajo, the Los Angeles Alliance for a New Economy, and the Project on Organizing, Development, Education, and Research, with research assistance from Change to Win.<sup>8</sup> U.S. Submission 2015-04 (Mexico) alleges that the Government of Mexico (GOM) has failed to meet its obligations under the NAALC. The submission focuses primarily on Chedraui stores in Mexico, and in particular alleges the GOM failed to effectively enforce its labor laws with respect to freedom of association, collective bargaining, employment and workplace discrimination, and minimum employment standards. Specifically, the submission asserts that: (A) so-called “protection contracts” (see below) are prevalent at Chedraui stores, and workers lack effective access to copies of their collective bargaining agreements (CBAs); (B) older adults and youth working pursuant to government-sponsored volunteer programs at Chedraui stores have been used beyond the scope of these programs and treated as *de facto* employees without compensation, in violation of Mexican labor law; and (C) Chedraui stores have unlawfully subjected female employees and job applicants to pregnancy discrimination.

On January 11, 2016, the OTLA accepted for review U.S. Submission 2015-04 (Mexico) after having considered the factors articulated in its Procedural Guidelines.<sup>9</sup> Under the Procedural Guidelines, the OTLA shall issue a public report within 180 days of the acceptance of a submission for review, unless circumstances as determined by the OTLA require an extension of time.<sup>10</sup>

The OTLA conducted its review from January 2016 to July 2016 to gather information about and publicly report on the issues raised in the submission. Throughout the review process, the OTLA consulted with the Office of the U.S. Trade Representative (USTR) and the U.S. Department of State (State Department). The OTLA carefully reviewed all information provided by the submitters and the GOM, including pursuant to multiple rounds of questions and supplemental information, as well as by others with knowledge of the relevant issues.

## **II. Labor Law and Practice**

### **A. Protection Contracts**

Mexico’s legal labor framework currently creates the possibility of negotiating and registering CBAs without the support or knowledge of the covered workers. These are commonly referred

---

<sup>8</sup> “Joint Public Communication to the Office of Trade and Labor Agreements (OTLA) of the United States under the North American Agreement on Labor Cooperation (NAALC) regarding effective enforcement of labor law related to conduct by the Mexican multinational company Grupo Comercial Chedraui in its Mexican operations,” United Food & Commercial Workers Local 770, the Frente Auténtico del Trabajo, the Los Angeles Alliance for a New Economy, and the Project on Organizing, Development, Education, and Research (November 12, 2015), available at: [http://www.dol.gov/ilab/media/pdf/ChedrauiNAFTAComplaint\\_12November\\_English.pdf](http://www.dol.gov/ilab/media/pdf/ChedrauiNAFTAComplaint_12November_English.pdf) [hereinafter U.S. Submission 2015-04 (Mexico)].

<sup>9</sup> The decision to accept the submission was published in the Federal Register on January 12, 2016. 81 Fed. Reg. 1445 (Jan. 12, 2016), available at: <https://www.federalregister.gov/articles/2016/01/12/2016-00436/north-american-agreement-on-labor-cooperation-notice-of-determination-regarding-review-of-submission>.

<sup>10</sup> 71 Fed. Reg. 76691 (Dec. 21, 2006).



to as “protection contracts,” and the submission alleges that they are prevalent in Mexico, including at Chedraui stores.

Under the Mexican Federal Labor Law (FLL), when no CBA is present at a workplace, an employer is required to negotiate and ultimately sign a CBA upon the request of a union claiming to represent the workers.<sup>11</sup> Mexican law does not require the requesting union to demonstrate representativeness of the workers that would be covered by the initial CBA.<sup>12</sup> Mexican law also does not require that covered workers ratify or otherwise demonstrate support for the negotiated agreement. Once an initial CBA is signed and registered with the appropriate Conciliation and Arbitration Board (CAB), the CBA has legal effect, granting exclusive bargaining rights to the union that holds title to the agreement.<sup>13</sup>

In practice, protection contracts can be and often are concluded before enterprises have hired workers and begun operations, or shortly thereafter, often by unrepresentative, corporatist unions. In most cases, these agreements provide only the minimum benefits already required by the FLL.<sup>14</sup> Once an initial agreement is registered at a workplace, another union cannot bargain with the employer unless it affirmatively demonstrates that it represents the majority of covered workers through an official election process (*recuento*, described below).<sup>15</sup> Since the official election process can be lengthy and burdensome, initial CBAs with unrepresentative unions often, in practice, serve to “protect” against meaningful bargaining with independent, democratically elected, representative unions.

The existence of and concerns about protection contracts in Mexico have been well-documented by the State Department, the International Labor Organization (ILO), academics and labor law experts, and Mexican worker and civil society organizations and think tanks, among others.<sup>16</sup>

---

<sup>11</sup> FLL Art. 387.

<sup>12</sup> FLL Art. 388, 389.

<sup>13</sup> FLL Art. 389, 390.

<sup>14</sup> See “Country Reports on Human Rights Practices for 2015 – Mexico,” U.S. Department of State (April 13, 2016), available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253027#wrapper>; see also ILO CFA Case 2694 (Mexico), Report 359, para. 735 (March 2011), available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2911806](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2911806).

<sup>15</sup> FLL Art. 388, 389, 895, 931.

<sup>16</sup> See, e.g., U.S. Department of State, Mexico “Country Reports on Human Rights Practices - 2015,” (June 25, 2015), available at:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253027#wrapper>; ILO Committee on the Application of Standards, 104th Session, (2015), p. 71-78, available at:

[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_375764.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_375764.pdf);

De Buen Lozano, Nestor, “Los Contratos Colectivos de Trabajo de Protección,” UNAM (2015), available at:

<http://biblio.juridicas.unam.mx/revista/pdf/DerechoSocial/20/cmt/cmt4.pdf>; De Buen Unna, Carlos, “Los contratos

colectivos de trabajo de protección patronal en México” (2011), available at:

[http://www.fesmex.org/common/Documentos/Ponencias/Paper\\_AP\\_los\\_ccpp\\_Carlos\\_DeBuen\\_Ago2011.pdf](http://www.fesmex.org/common/Documentos/Ponencias/Paper_AP_los_ccpp_Carlos_DeBuen_Ago2011.pdf);

“Contratación Colectiva de Protección en México: Informe a la Organización Regional Interamericana de Trabajadores” ORIT (2007), available at: <http://ru.iiiec.unam.mx/1779/1/ContColecDeProtecEnMex.pdf>; AFL-CIO,

“Mexico: Labor Rights Concerns” (Aug. 19, 2015), available at:

<http://www.aflcio.org/content/download/114991/3280941/Mexico+Labor+Rights+Concerns+-+19+Aug+2015.pdf>;

“Contestación de la UNT a las Memorias que el Gobierno Federal Mexicano Debió Presentar sobre la Aplicación de los Convenios 87 y 135 de la OIT, Ratificados por México,” Unión Nacional de Trabajadores (Aug. 29, 2014)

Such reports describe protection contracts as undermining workers' right to freedom of association and collective bargaining, in particular to establish and join representative and independent organizations of their own choosing to bargain collectively on their behalf.

Four main factors in Mexico's labor system appear to facilitate protection contracts: (1) the lack of a requirement to demonstrate worker support for an initial CBA or for the union that negotiated it; (2) the lack of worker awareness of initial CBAs governing their workplaces; (3) the burdensome *recuento* process for challenging a CBA, often characterized by prolonged delays; and (4) the structural bias in the federal and state CABs, which adjudicate and resolve individual and collective labor cases, including overseeing and administering the *recuento* process and registration of unions and CBAs, as well as transparency requirements governing the release and publication of related materials, among other responsibilities.

1. Lack of a requirement to demonstrate worker support for an initial collective bargaining agreement or for the negotiating union

Mexican law currently does not require, as a pre-condition for CBA registration, a demonstration that covered workers at a workplace support an initial CBA or the union that negotiated it. As a result, the first CBA to cover a workplace can be, and often is, negotiated, signed, and registered without the support of the covered workers,<sup>17</sup> at times even before that workplace has begun operations or even been constructed.<sup>18</sup>

---

(comments by the UNT sent to the ILO); see also ILO CFA Case 2919 (Mexico), available at: [http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001\\_COMPLAINT\\_FILE\\_ID:3056436](http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:3056436); ILO CFA Case 2694 (Mexico), available at: [http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001\\_COMPLAINT\\_FILE\\_ID:2897749](http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:2897749).

<sup>17</sup> See, e.g., "Country Reports on Human Rights Practices for 2015 - Mexico," U.S. Department of State (April 13, 2016), available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253027#wrapper>; ILO Committee on the Application of Standards, 104th Session, pp. 71-78 (2015), available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_375764.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_375764.pdf); De Buen Lozano, Nestor, "Los Contratos Colectivos de Trabajo de Protección," UNAM, p. 2 (2015), available at: <http://biblio.juridicas.unam.mx/revista/pdf/DerechoSocial/20/cmt/cmt4.pdf>; De Buen Unna, Carlos, "Los Contratos Colectivos de Trabajo de Protección Patronal en México," Friedrich Ebert Stiftung, pp. 6, 16, 17 (2011), available at: [http://www.fesmex.org/common/Documents/Ponencias/Paper\\_AP\\_los\\_ccpp\\_Carlos\\_DeBuen\\_Ago2011.pdf](http://www.fesmex.org/common/Documents/Ponencias/Paper_AP_los_ccpp_Carlos_DeBuen_Ago2011.pdf); "Contratación Colectiva de Protección en México: Informe a la Organización Regional Interamericana de Trabajadores" ORIT, pp. 28, 34, 37, 39 (2007), available at: <http://ru.iiec.unam.mx/1779/1/ContColecDeProtecEnMex.pdf>; "Mexico: Labor Rights Concerns," AFL-CIO, pp. 1, 2 (Aug. 19, 2015), available at: <http://www.aflcio.org/content/download/114991/3280941/Mexico+Labor+Rights+Concerns+-+19+Aug+2015.pdf>; "Contestación de la UNT a las Memorias que el Gobierno Federal Mexicano Debió Presentar sobre la Aplicación de los Convenios 87 y 135 de la OIT, Ratificados por México," Unión Nacional de Trabajadores (Aug. 29, 2014) (comments by the UNT sent to the ILO).

<sup>18</sup> "CTM logra contrato con BMW," *Pulso* (July 6, 2014), available at: <http://pulsoslp.com.mx/2014/07/06/ctm-logra-contrato-con-bmw/>.

## 2. Lack of worker awareness of initial collective bargaining agreements governing their workplaces

Similarly, Mexican law also does not require a demonstration that covered workers at a workplace are aware of an initial CBA or the union that negotiated it before the CBA can be registered and take effect. According to the submitters, at many Chedraui stores, workers are unaware of registered CBAs or of the existence of the unions controlling them.<sup>19</sup> In a series of three sets of interviews spanning November 2015-March 2016, researchers hired by the submitters interviewed a total of 70 workers at Chedraui stores across Mexico.<sup>20</sup> Of those interviewed workers, 56 said there was no union at their workplace, nine said they were unsure, and four said that a union was present.<sup>21</sup>

In an attempt, in part, to address such lack of awareness, Mexico's 2012 labor law reforms included increased transparency requirements related to CBAs, and union documentation.<sup>22</sup> The reforms require that information related to CBAs, and the registration materials of the unions that negotiated them, be made publicly available for review by any person. The entity responsible for registering unions and CBAs, in most cases the CABs, must also produce copies of these documents in accordance with the Federal Law on Transparency and Access to Information.<sup>23</sup>

---

<sup>19</sup> See supplemental information provided by submitters: "Summary of Surveys of Chedraui Employees and Baggers in Mexico City" (March 25, 2016); "JLCA Visits and Chedraui Worker Interviews" (December 17, 2015); "Entrevistas a empleadas de tiendas Chedraui" (Nov. 25, 2015). One of the four workers who responded affirmatively, however, also indicated that the union was headquartered in Human Resources.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, Art. Único (at Art. 365 Bis, 395 Bis), (Nov. 30, 2012), available at: [http://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT\\_ref26\\_30nov12.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT_ref26_30nov12.pdf).

<sup>23</sup> FLL Art. 365 Bis and 391 Bis. The STPS is responsible for publishing union registrations for unions under federal jurisdiction. The relevant text of each article follows:

**Artículo 365 Bis.** Las autoridades a que se refiere el artículo anterior harán pública, para consulta de cualquier persona, debidamente actualizada, la información de los registros de los sindicatos. Asimismo, deberán expedir copias de los documentos que obren en los expedientes de registros que se les soliciten, en términos del artículo 8o. constitucional, de lo dispuesto por la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental y de las leyes que regulen el acceso a la información gubernamental de las entidades federativas, según corresponda.

El texto íntegro de las versiones públicas de los estatutos en los sindicatos deberá estar disponible en los sitios de Internet de la Secretaría del Trabajo y Previsión Social y de las Juntas Locales de Conciliación y Arbitraje, según corresponda. ...

**Artículo 391 Bis.** Las Juntas de Conciliación y Arbitraje harán pública, para consulta de cualquier persona, la información de los contratos colectivos de trabajo que se encuentren depositados ante las mismas. Asimismo, deberán expedir copias de dichos documentos, en términos de lo dispuesto por la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental y de las leyes que regulen el acceso a la información gubernamental de las entidades federativas, según corresponda.

De preferencia, el texto íntegro de las versiones públicas de los contratos colectivos de trabajo deberá estar disponible en forma gratuita en los sitios de Internet de las Juntas de Conciliación y Arbitraje.

The full public versions of union bylaws must be published online, and under the law, it is preferable for the full public versions of CBAs to be published online, as well.<sup>24</sup>

The submitters allege and reports from the ILO, among others, assert that these reforms have not been fully implemented and that workers continue to lack effective access through the CABs to their CBAs, as well as to the bylaws of the unions claiming to represent them.<sup>25</sup> In many cases, for example, CABs have not set up online databases to post union bylaws or CBAs, and in cases where such databases have been established, they are often difficult to access.<sup>26</sup> Such reports also indicate that obtaining CBAs through the federal transparency law is often difficult and time-consuming.<sup>27</sup>

Researchers hired by the submitters report that in 2015 and 2016, they attempted to obtain CBAs for Chedraui stores directly from state CABs in four different states, after first unsuccessfully searching for functioning websites for those CABs.<sup>28</sup> The researchers received requested Chedraui CBAs from CABs in two states, but despite follow-up visits and requests, as of April 20, 2016, researchers had still not received any requested Chedraui CBAs from CABs in the other two states. According to submitters, rather than explicitly denying researchers' requests for CBAs, the CABs instead insisted that the researchers repeatedly return to renew such requests, in some cases asserting that the person in charge of responding was not present.<sup>29</sup> Researchers described returning a total of six times to one state CAB before accessing the requested Chedraui CBAs.<sup>30</sup>

---

<sup>24</sup> FLL Art. 365 Bis, 391 Bis.

<sup>25</sup> See, e.g., "Observation, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Mexico (ratification: 1950)," ILO CEACR (2015), available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3190235](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3190235); Gimenez Cacho, Luis Emilio, "La Transparencia Sindical, Otra Larga Marcha," Fredrich Ebert Stiftung (2013), pp. 12-13, available at: [http://www.fesmex.org/common/Documentos/Libros/Paper\\_AP\\_Transparencia\\_Sindical\\_GimenezCacho\\_Jul2013.pdf](http://www.fesmex.org/common/Documentos/Libros/Paper_AP_Transparencia_Sindical_GimenezCacho_Jul2013.pdf).

<sup>26</sup> See Annex 2 of the Unión Nacional de Trabajadores' comments to the ILO on Aug. 29, 2014.

<sup>27</sup> "Observation, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Mexico (ratification: 1950)," ILO CEACR (2015), available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3190235](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3190235); Alcalde Justiniani, Arturo, "La Transparencia Sindical," Fredrich Ebert Stiftung, p. 141, available at: <http://www.fundar.org.mx/mexico/pdf/pdfsderechoasaber/sec3%20arturo%20alcalde.pdf>; Gimenez Cacho, Luis Emilio, "La Transparencia Sindical, Otra Larga Marcha," Fredrich Ebert Stiftung, pp. 12-13, available at: [http://www.fesmex.org/common/Documentos/Libros/Paper\\_AP\\_Transparencia\\_Sindical\\_GimenezCacho\\_Jul2013.pdf](http://www.fesmex.org/common/Documentos/Libros/Paper_AP_Transparencia_Sindical_GimenezCacho_Jul2013.pdf).

<sup>28</sup> Supplemental information from submitters: "JLCA Visits and Chedraui Worker Interviews," p. 1, (Dec. 17, 2015). The state CABs were in Tlaxcala, Puebla, Estado de México, and the Federal District.

<sup>29</sup> Supplemental information from submitters: "JLCA Visits and Chedraui Worker Interviews," p. 1-2, (Dec. 17, 2015); "Results of Revisiting State JLCAs: February-March, 2016", p. 2, (Mar. 25, 2016)

<sup>30</sup> Supplemental information from submitters: "JLCA Visits and Chedraui Worker Interviews," p. 2, (Dec. 17, 2015); "Results of Revisiting State JLCAs: February-March, 2016," p. 2, (Mar. 25, 2016)

### 3. Burdensome process to challenge a protection contract (*recuento*)

In order to challenge a CBA, including a protection contract, and ultimately gain exclusive bargaining rights at a workplace, workers must affiliate with a union and file a challenge to the contract with the relevant CAB, requesting a *recuento* election to demonstrate that their union is supported by the majority of workers at the workplace. The CABs presently oversee this official election process.<sup>31</sup> In practice, the filing of a request for a *recuento* election often launches an extended pre-election period during which workers can face intimidation, firing, threats, and pressure from their employer, or protection unions, to cease efforts to independently organize.<sup>32</sup> Employers and unions controlling CBAs also use tactics to prolong the pre-election period and delay the vote, including filing repeated, largely procedural objections to the *recuento* process. As has been well-documented by the OTLA under the NAALC since 1998, as well as the State Department, the ILO, academics and labor law experts, and Mexican worker and civil society organizations, among others, these tactics can cause delays that last months and even years, effectively undermining workers' right to freely establish and join organizations of their own choosing and contributing to the existence of protection contracts.<sup>33</sup>

In 2008, the Mexican Supreme Court ruled that voting during a *recuento* election must occur through a secret ballot process and that the CABs must avoid external forces that could result in an outcome contrary to the will of the workers, including by ensuring that all workers voting in a *recuento* were employed when the written request for the *recuento* was filed with the CAB, as legally required.<sup>34</sup> Despite the Supreme Court decision, irregularities in *recuento* elections

---

<sup>31</sup> FLL Art. 388, 389, 893, 895(III), 931.

<sup>32</sup> See ILO CFA, Report 359, para. 739-740; see also "Country Reports on Human Rights Practices for 2015 - Mexico," U.S. Department of State (April 13, 2016).

<sup>33</sup> "Public Report of Review of NAO Submission No. 9702," U.S. Department of Labor, pp. 14, 25 (Apr. 28, 1998), available at: <http://www.dol.gov/ilab/reports/pdf/Public%20Report%209702%20%28Han%20Young%29.pdf>; "Public Report of Review of NAO Submission No. 9703," U.S. Department of Labor, pp. 69-70 (July 31, 1998; revised Aug. 21, 1998), available at: [http://www.dol.gov/ilab/reports/pdf/US\\_97-03\\_ITAPSA\\_report.pdf](http://www.dol.gov/ilab/reports/pdf/US_97-03_ITAPSA_report.pdf); "Country Reports on Human Rights Practices for 2015 - Mexico," U.S. Department of State (April 13, 2016), available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253027#wrapper>; De Buen Unna, Carlos, "Collective Bargaining Agreements for Employer Protection ("Protection Contracts") in Mexico," Friedrich Ebert Stiftung, p. 15 (2011), available at: [https://www.academia.edu/7879996/Collective\\_Bargaining\\_Agreements\\_for\\_Employers\\_Protection\\_in\\_Mexico](https://www.academia.edu/7879996/Collective_Bargaining_Agreements_for_Employers_Protection_in_Mexico); Otis, John, "How Mexico's Pro-Industry Unions Undermine Workers' Rights," *Global Post* (Mar. 21, 2012), available at: <http://www.globalpost.com/dispatch/news/regions/americas/mexico/120320/no-protection-how-mexicos-pro-industry-unions-undermine>; "Contratación Colectiva de Protección en México: Informe a la Organización Regional Interamericana de Trabajadores," ORIT, pp. 34, 39, 109, 209 (2007), available at: <http://ru.iiec.unam.mx/1779/1/ContColecDeProtecEnMex.pdf>; AFL-CIO, "Mexico: Labor Rights Concerns," AFL-CIO, pp. 9-11 (Aug. 19, 2015), available at: <http://www.aflcio.org/content/download/114991/3280941/Mexico+Labor+Rights+Concerns+-+19+Aug+2015.pdf>; ILO CFA Case 2919 (Mexico), available at: [http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001\\_COMPLAINT\\_FILE\\_ID:3056436](http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:3056436); ILO CFA Case 2694 (Mexico), available at: [http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001\\_COMPLAINT\\_FILE\\_ID:2897749](http://ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:2897749).

<sup>34</sup> Supreme Court, Second Chamber, Jurisprudential Opinion 2a/J. 150/2008 (Oct. 1, 2008), available at: <http://www.jurisconsulta.mx/index.php/JurisprudenciaSCJN/ViewTesis?iD=222646>. The only workers who are allowed to vote in a *recuento* are those who were employed when the written request for the *recuento* was filed with the CAB. FLL Art. 895(III) (prescribing the procedures laid out in Art. 931(III)-(IV)).

reportedly continue, including employer intimidation and manipulation of eligible voter lists to allow the unlawful participation of supervisors, administrators, and workers hired after the request for a *recuento*.<sup>35</sup> In September 2015, the federal CAB adopted criteria that codify and add further detail as to how to comply with the 2008 Supreme Court decision.<sup>36</sup>

#### 4. Structural bias of the CABs

The federal and state CABs are responsible for the administration of labor justice in Mexico. They adjudicate and resolve individual and collective labor cases, including overseeing and administering the *recuento* process and registration of unions and CBAs, as well as transparency requirements governing the release and publication of related materials. The submitters allege an inherent structural bias of the CABs as another underlying factor perpetuating protection contracts, in particular their alleged use at Chedraui stores.

Mexico's CABs are executive branch entities outside the judiciary and only nominally under the authority of the STPS and state labor authorities, respectively.<sup>37</sup> The CABs are tripartite entities composed of one government representative and equal numbers of business and labor representatives.<sup>38</sup> Worker representation on the CABs is determined at CAB election conventions held every six years, attended by union delegates from the corresponding geographic areas, sometimes further divided by subject matter.<sup>39</sup> The number of votes allotted to each union delegate is based on the number of workers covered by CBAs controlled by the delegate's union. Thus, the unions whose agreements cover the most workers have the most votes and, correspondingly, the greatest representation on the CABs.<sup>40</sup> Employer representatives are elected at similar CAB election conventions.<sup>41</sup> Alternates to worker and employer representatives also are elected through this process. The government representatives that lead each operative unit within the CABs (called "special boards") are appointed by the STPS for the federal CABs and by a state minister of labor for the state CABs.<sup>42</sup>

Due to the geographic nature of the CABs' jurisdiction, it is not uncommon for employers' and workers' representatives, and their alternates, to be directly or indirectly parties to the labor matters or disputes before the CABs. In particular, as representatives of the largest employer and

---

<sup>35</sup> See also, e.g., Otis, John, "How Mexico's pro-industry unions undermine workers' rights," *Global Post* (Mar. 21, 2102), available at: <http://www.globalpost.com/dispatch/news/regions/americas/mexico/120320/no-protection-how-mexicos-pro-industry-unions-undermine>; "Country Reports on Human Rights Practices for 2015 - Mexico," U.S. Department of State (April 13, 2016), available at:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253027#wrapper>.

<sup>36</sup> "Recuento Para Determinar la Titularidad de un Contrato Colectivo de Trabajo. Buenas Prácticas Dirigidas a Garantizar que, en su Desahogo, los Trabajadores Emitan Voto Personal, Libre, Directo y Secreto," Federal Conciliation and Arbitration Board (Sept. 29, 2015), available at:

[http://www.stps.gob.mx/bp/secciones/junta\\_federal/secciones/documentos/CRITERIO%20APROBADO%202015.pdf](http://www.stps.gob.mx/bp/secciones/junta_federal/secciones/documentos/CRITERIO%20APROBADO%202015.pdf).

<sup>37</sup> FLL Art. 614, 621, 622, 623.

<sup>38</sup> FLL Art. 605, 623.

<sup>39</sup> FLL Art. 648, 651.

<sup>40</sup> FLL Art. 648, 660.

<sup>41</sup> FLL Art. 648.

<sup>42</sup> FLL Art. 633.

worker organizations in their geographic areas, their constituents' interests and power are often directly or indirectly challenged and would be negatively impacted by a change to the status quo, including a shift in control over and renegotiation of contracts, in particular protection contracts.

The independence and objectivity of the CABs are thus undermined and compromised. Concerns about the CABs' lack of impartiality have been well documented in DOL reports under the NAALC, as well as in reports from the State Department, the ILO, Mexican labor law experts, worker and civil society organizations, and think tanks, among others.<sup>43</sup> Such reports note the CABs' bias reflected, in particular, in unfavorable treatment of independent unions' petitions that could challenge protection contracts, including with respect to the *recuento* process, registration of CBAs, and the release and publication of CBA-related materials.

## B. Minimum Employment Standards

The submission alleges that volunteers working at retail stores in Mexico, in particular Chedraui, pursuant to government-sponsored volunteer programs are at times required by employers to do work beyond the scope of the programs and treated illegally as *de facto* employees but without compensation. The National Institute for Older Adults (*Instituto Nacional de Personas Adultas Mayores*, INAPAM), a federal decentralized entity serving the elderly,<sup>44</sup> runs an outreach program called the "Volunteer Merchandise Packing System" (*Sistema de Empacado Voluntario de Mercancias*), connecting more than 21,000 older adults with volunteer positions at retail stores.<sup>45</sup> Some states in Mexico have similar programs for youth. Both the INAPAM and youth-focused volunteer programs are administered in coordination with state and local branches of the Family Development Agency (*Desarrollo Integral De La Familia*, DIF), as well as state labor

---

<sup>43</sup> See, e.g., Public Report of Review of NAO Submission No. 9703, U.S. Department of Labor, pp. iv, 70 (July 31, 1998; revised Aug. 21, 1998), available at [http://www.dol.gov/ilab/reports/pdf/US\\_97-03\\_ITAPSA\\_report.pdf](http://www.dol.gov/ilab/reports/pdf/US_97-03_ITAPSA_report.pdf); Public Report of Review of NAO Submission No. 9702, U.S. Department of Labor, p. 19 (Apr. 28, 1998), available at [http://www.dol.gov/ilab/reports/pdf/Public%20Report%209702%20\(Han%20Young\).pdf](http://www.dol.gov/ilab/reports/pdf/Public%20Report%209702%20(Han%20Young).pdf); Report of Public Submission 9901, U.S. Department of Labor, p. 28 (July 7, 2000), available at [http://www.dol.gov/ilab/reports/pdf/Public%20Report%209901%20\(TAESA\).pdf](http://www.dol.gov/ilab/reports/pdf/Public%20Report%209901%20(TAESA).pdf); Report of Public Submission 2003-01, U.S. Department of Labor, p. 83 (Aug. 3, 2004), available at <http://www.dol.gov/ilab/reports/pdf/Sub2003-01.pdf>; "Country Reports on Human Rights Practices for 2015 - Mexico," U.S. Department of State (April 13, 2016), available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253027#wrapper>; "Justicia Cotidiana: Informe de resultados de los Foros de Justicia Cotidiana," Centro de Investigación y Docencia Económicas, pp. 33-35 (2015), available at: [http://imco.org.mx/wp-content/uploads/2015/04/Documento\\_JusticiaCotidiana\\_.pdf](http://imco.org.mx/wp-content/uploads/2015/04/Documento_JusticiaCotidiana_.pdf); ; Alcalde, Arturo & Bensusán, Graciela, "El Sistema de Justicia Laboral en México: Situación Actual y Perspectivas," Friedrich Ebert Stiftung (June 2013), pp. 12-13, available at: [http://www.fesmex.org/common/Documentos/Libros/Paper\\_AP\\_Justicia\\_Laboral\\_Bensusan-Alcalde\\_Jun2013.pdf](http://www.fesmex.org/common/Documentos/Libros/Paper_AP_Justicia_Laboral_Bensusan-Alcalde_Jun2013.pdf); "Mexico: Labor Rights Concerns," AFL-CIO, pp. 10-11 (Aug. 19, 2015) available at: <http://www.aflcio.org/Issues/Trade/Trans-Pacific-Partnership-Free-Trade-Agreement-TPP/Labor-Rights/Mexico-Labor-Rights-Concerns>.

<sup>44</sup> "Conoce INAPAM," INAPAM, available at: [http://www.inapam.gob.mx/en/INAPAM/Conoce\\_INAPAM](http://www.inapam.gob.mx/en/INAPAM/Conoce_INAPAM).

<sup>45</sup> "Vinculación Laboral para Personas Adultas Mayores," INAPAM, available at: [http://www.inapam.gob.mx/en/INAPAM/Empleo\\_para\\_adultos\\_mayores](http://www.inapam.gob.mx/en/INAPAM/Empleo_para_adultos_mayores); Rivera, Astrid, "Despues de una Vida Trabajando... Buscan Empleo," El Universal (Apr. 25, 2015), available at: <http://archivo.eluniversal.com.mx/nacion-mexico/2015/impreso/despues-de-una-vida-trabajando-buscan-empleo-225365.html>.

ministries.<sup>46</sup> Volunteers placed through these programs are not considered to have formal employment relationships with the businesses at which they are placed and, as a result, are not paid by those businesses or provided other employment-related benefits and are only compensated by customer tips.<sup>47</sup> The volunteers are required to follow set schedules and to perform only specifically designated tasks (e.g., packing bags).<sup>48</sup> For INAPAM participants, general schedules, tasks, and other requirements are established under agreements between the INAPAM and the businesses that host volunteers.<sup>49</sup> In the case of youth volunteers, agreements about hours, tasks, and other obligations are at times verbal and at times formal written agreements, as in the case of the Agreement for the Protection of Youth Baggers in the Federal District (*Convenio de protección a menores empacadores en el Distrito Federal*) between government and business representatives in the Federal District.<sup>50</sup> The submitters allege, and certain reports similarly assert, that despite these agreements, youth and elderly volunteers are sometimes required to perform non-designated tasks (e.g. cleaning, arranging shopping carts, stocking merchandise) and are pressured by retail businesses to “volunteer” for additional hours, without pay.<sup>51</sup> Interviews conducted by the submitters’ researchers confirmed the presence of INAPAM participants at Chedraui stores, and submitters specifically allege that, at times, the volunteers are required to perform non-designated tasks without payment at Chedraui stores, such as cleaning and moving shopping carts.<sup>52</sup>

---

<sup>46</sup> “Vinculación Laboral para Personas Adultas Mayores,” INAPAM, available at: [http://www.inapam.gob.mx/en/INAPAM/Empleo\\_para\\_adultos\\_mayores](http://www.inapam.gob.mx/en/INAPAM/Empleo_para_adultos_mayores); Garcia, Sandra, “Promueven INAPAM y DIF Trabajos sin Sueldo para Adultos Mayores,” *Quadratin Veracruz* (Jun. 1, 2015), available at: <https://veracruz.quadratin.com.mx/Promueven-Inapam-y-DIFs-trabajos-sin-sueldo-para-adultos-mayores/>; “Convenio de Protección a Menores Empacadores en el Distrito Federal,” (1999), available at: <http://www.iapa.df.gob.mx/work/sites/styfe/docs/CONVPROTECMENORES.PDF>.

<sup>47</sup> “Lo Barato Sale Caro: Violaciones a los Derechos Humanos Laborales en Wal-Mart Mexico,” PRODESC, pp. 89-90 (2008), available at: [http://www.prodesc.org.mx/?page\\_id=1708](http://www.prodesc.org.mx/?page_id=1708); Rivera, Astrid, “Despues de una Vida Trabajando... Buscan Empleo,” *El Universal* (Apr. 25, 2015), available at: <http://archivo.eluniversal.com.mx/nacion-mexico/2015/impreso/despues-de-una-vida-trabajando-buscan-empleo-225365.html>.

<sup>48</sup> “Lo Barato Sale Caro: Violaciones a los Derechos Humanos Laborales en Wal-Mart Mexico,” PRODESC, pp. 89-90 (2008), available at: [http://www.prodesc.org.mx/?page\\_id=1708](http://www.prodesc.org.mx/?page_id=1708); Martinez, Fernando, “Maltratan a Adultos Empacadores,” *El Universal* (Jul. 22, 2009), available at: <http://archivo.eluniversal.com.mx/ciudad/96551.html>.

<sup>49</sup> Rivera, Astrid, “Despues de una Vida Trabajando... Buscan Empleo,” *El Universal* (Apr. 25, 2015), available at: <http://archivo.eluniversal.com.mx/nacion-mexico/2015/impreso/despues-de-una-vida-trabajando-buscan-empleo-225365.html>.

<sup>50</sup> Viveros, Ozair, “Ex-Cerillito le Gana \$300 mil a Wal Mart,” *El Sol De Puebla* (Jan. 13, 2009), available at: <http://www.oem.com.mx/elsoldepuebla/notas/n1004645.htm>; “Convenio de Protección a Menores Empacadores en el Distrito Federal,” (1999), available at: <http://www.iapa.df.gob.mx/work/sites/styfe/docs/CONVPROTECMENORES.PDF>.

<sup>51</sup> “Lo Barato Sale Caro: Violaciones a los Derechos Humanos Laborales en Wal-Mart Mexico,” PRODESC, pp. 89-90 (2008), available at: [http://www.prodesc.org.mx/?page\\_id=1708](http://www.prodesc.org.mx/?page_id=1708); Martinez, Fernando, “Maltratan a Adultos Empacadores,” *El Universal* (Jul. 22, 2009), available at: <http://archivo.eluniversal.com.mx/ciudad/96551.html>.

<sup>52</sup> Supplemental information provided by the submitters: “JLCA Visits and Chedraui Worker Interviews” (Dec. 17, 2015); “Summary of Surveys of Chedraui Employees and Baggers in Mexico City” (Mar. 25, 2016). The researchers hired by the submitters interviewed a total of 16 volunteer baggers at Chedraui stores in Mexico City and, among other findings, reported that the vast majority of volunteers at Chedraui are senior citizens and that volunteers generally must pay for their own uniforms and report to Chedraui supervisors



### C. Pregnancy Discrimination

The submission alleges that Chedraui stores have subjected female employees and job applicants to pregnancy discrimination. Submitters allege that 24 of the 54 Chedraui women workers interviewed by researchers between November 2015 and March 2016 reported being asked by Chedraui about their pregnancy status during their job application process and that nine had either taken mandatory pregnancy tests or knew a woman worker at Chedraui who had been required to take a pregnancy test as a condition of employment.<sup>53</sup> Such alleged employer conduct would appear to be unlawful under the November 2012 reforms to the FLL that expanded protections against employment and workplace discrimination, including by expressly prohibiting workplace discrimination based on pregnancy and pregnancy testing as a condition of employment or promotion.<sup>54</sup> Under the reforms, employers also are prohibited from dismissing a worker due to her pregnancy or pressuring her, directly or indirectly, to resign.<sup>55</sup>

## **III. Findings**

### A. Protection Contracts

As discussed, certain factors in Mexico's legal labor framework appear to facilitate the use of protection contracts, including: not requiring a demonstration that covered workers are aware of and support an initial CBA, or the union that negotiated it, before the CBA can be registered and take effect; and insufficient safeguards to prevent abuse and delays in the *recuento* process that exists for unions to challenge CBAs to gain bargaining rights. As also discussed, employers' and unrepresentative unions' ability to manipulate the current system is facilitated by the above-described structural bias of the CABs, responsible for overseeing and administering the *recuento* process, requests related to the registration of unions and CBAs, and the transparency requirements governing the release and publication of CBA-related materials, among other matters.

In the present case, the OTLA analyzed the submitters' allegations that the GOM has failed to meet its obligations under the NAALC with respect to the alleged prevalence of protection contracts at Chedraui stores in Mexico. The OTLA's review did not reveal any evidence that workers, worker representatives, or others affiliated with Chedraui stores filed a request for a *recuento* to challenge alleged protection contracts at Chedraui or brought to the GOM's attention any alleged failure by Chedraui stores to post and disseminate CBAs to employees at their workplaces. In that context, considering the additional information presented in the submission and obtained during the review process related to Chedraui stores, and further noting that the

---

<sup>53</sup> See supplemental information provided by submitters: "Summary of Surveys of Chedraui Employees and Baggers in Mexico City" (Mar. 25, 2016); "JLCA Visits and Chedraui Worker Interviews" (Dec. 17, 2015); "Entrevistas a empleadas de tiendas Chedraui" (Nov. 25, 2015).

<sup>54</sup> DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, Art. Único (at Arts. 56, 133(XIV)) (Nov. 30, 2012), available at: [http://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT\\_ref26\\_30nov12.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT_ref26_30nov12.pdf).

<sup>55</sup> DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, Art. Único (at Art. 133(XV)) (Nov. 30, 2012), available at: [http://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT\\_ref26\\_30nov12.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT_ref26_30nov12.pdf).

negotiation and registration of a CBA without worker awareness of or support for the CBA, or the union that negotiated it, is not illegal under Mexican law, the OTLA finds that, at this time, there is insufficient evidence to support specific conclusions regarding the GOM's application of Mexican labor law in this area with respect to Chedraui stores.

Nonetheless, protection contracts, as well as the above-articulated factors that appear to facilitate them, are serious, long-standing concerns for the OTLA. In this context, the OTLA takes note that through the launch of a new inspection protocol in January and the presentation to Congress of legislative and constitutional labor reforms in April, the GOM recently has taken the positive steps which, if effectively implemented, would help address such underlying factors and, as a result, the use of protection contracts in Mexico. These steps are discussed in detail below.

### 1. Inspection protocol

The STPS has developed a new inspection protocol to improve compliance with the requirement in Article 132(XVIII) of the FLL that employers post and disseminate CBAs to employees at their workplaces.<sup>56</sup> The protocol establishes a detailed methodology and approach that inspectors must follow, during both regular and targeted inspections, to assess whether employers have complied and to seek immediate remediation in case of violations. Under the protocol, the STPS will prioritize enforcement of Article 132(XVIII) by proactively targeting for inspection employers with registered CBAs, randomly selecting them from a list provided by the CABs, and by requiring that inspectors confirm compliance in all worksite inspections conducted. This inspection protocol, if effectively implemented, will help address one of the above-described factors that appear to facilitate protection contracts: workers' lack of awareness of CBAs governing their workplaces and of the unions that purport to represent them. Only when workers are aware of the CBAs covering them, in particular protection contracts, can they take appropriate action to challenge them, as well as the unions that control them. The STPS has indicated to the OTLA that inspections are already occurring under this protocol, including a series of inspections at Chedraui stores, and that the STPS will keep the OTLA informed of results of those inspections.

### 2. Proposed labor law reforms: new requirements for registering a collective bargaining agreement

The labor law reforms that President Peña Nieto presented to Congress on April 28, 2016, would establish certain preconditions for registration of a CBA, which if effectively implemented, would help prevent new protection contracts: 1) that the workplace at issue currently is functioning and has workers carrying out permanent and essential functions; 2) that the workers who would be covered by the CBA have received a copy of the agreement, together with a copy of the bylaws and registration documents of the negotiating union; and 3) that at least 30 percent of the workers in the workplace who would be covered by the CBA support the negotiating

---

<sup>56</sup> "Protocolo del Operativo Sobre Libre Contratación Colectiva," STPS, (2016), available at: <http://www.gob.mx/stps/documentos/programa-de-inspeccion-2015-de-la-inspeccion-federal-del-trabajo-de-la-stps-protocolos-de-inspeccion>.

union.<sup>57</sup> These elements would be verified through an electronic or paper card check process, with accompanying short timelines. Under the constitutional labor justice reforms discussed below, contract registration is an administrative labor function that would become the responsibility of the proposed new, public, independent entity.

### 3. Proposed labor law reforms: new timelines and procedures for the *recuento* process

The April 28 proposed labor law reforms would establish clear and short timelines for each step of the union election process, including finalizing eligible voter lists; establishing the date, time, and location of the union vote; and holding the vote.<sup>58</sup> The legislation also would provide that only those legal objections related to the voter list and the date, time, location, and conditions of the election must be resolved prior to and can therefore delay the vote.<sup>59</sup> No other objections, including those challenging a union's legitimacy, may be the basis for election delays; instead, if they are not resolved prior to the vote, their resolution shall occur afterwards and under another short timeline.<sup>60</sup> Presently, all objections, regardless of their claims, must be resolved prior to a vote, which has led to significantly delayed union elections, at times for years. Under the constitutional labor justice reforms discussed below, the *recuento* process is a judicial labor function that would be administered by new state or federal labor courts, as appropriate, presided over by specialized labor judges.

### 4. Proposed constitutional reforms to establish a new system of labor justice

The proposed labor reforms include constitutional reforms that would fundamentally transform the labor justice system in Mexico, eliminating the structurally biased tripartite CABs. The reforms would help ensure that workers are better able to exercise their right to form or join organizations of their choosing, including to freely choose the union that has exclusive bargaining rights to negotiate and control the CBA governing their workplace. They would transfer responsibility for all judicial labor matters, such as ruling on unjust dismissal and discrimination cases and overseeing and administering the *recuento* process, to newly created labor courts in the state and federal judiciaries,<sup>61</sup> overseen by specialized labor judges. They also would create a new, independent decentralized federal entity that would carry out *all*

---

<sup>57</sup> Iniciativa por el que se reforman y adicionan diversas disposiciones de la Ley Federal del Trabajo, Art. Único (at Art. 390 Bis) (Apr. 28, 2016), available at: [http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5\\_INI\\_EF\\_Ley\\_Federal\\_Trabajo.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5_INI_EF_Ley_Federal_Trabajo.pdf).

<sup>58</sup> Iniciativa por el que se reforman y adicionan diversas disposiciones de la Ley Federal del Trabajo, Art. Único (at Art. 931, 931 Bis, 931 Ter) (Apr. 28, 2016), available at: [http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5\\_INI\\_EF\\_Ley\\_Federal\\_Trabajo.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5_INI_EF_Ley_Federal_Trabajo.pdf).

<sup>59</sup> Iniciativa por el que se reforman y adicionan diversas disposiciones de la Ley Federal del Trabajo, Art. Único (at Art. 931 Bis, 931 Ter) (Apr. 28, 2016), available at: [http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5\\_INI\\_EF\\_Ley\\_Federal\\_Trabajo.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5_INI_EF_Ley_Federal_Trabajo.pdf).

<sup>60</sup> Iniciativa por el que se reforman y adicionan diversas disposiciones de la Ley Federal del Trabajo, Art. Único (at Art. 931 Ter) (Apr. 28, 2016), available at: [http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5\\_INI\\_EF\\_Ley\\_Federal\\_Trabajo.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/5_INI_EF_Ley_Federal_Trabajo.pdf).

<sup>61</sup> Iniciativa por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de justicia laboral, Art. Único (at Art. 123(A)(XX)) (Apr. 28, 2016), available at: [http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/2\\_INI\\_EF\\_Justitica\\_laboral.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/2_INI_EF_Justitica_laboral.pdf).

registrations of CBAs and unions, as well as any related administrative labor functions, including responding to requests under the Federal Law on Transparency and Access to Information. The new administrative labor entity also would be responsible for effectively implementing the heightened transparency provisions of the 2012 labor law reform that require that information related to CBAs and union registration materials be made publicly available, including by publishing full union bylaws on line and preferably publishing full CBAs online, as well.<sup>62</sup> The entity would be required to be objective, impartial, and transparent, would have autonomy with respect to technical, operational, financial, and budgetary matters, as well as in decision making, and would be led by a director confirmed by the Senate to help ensure sufficient independence from the Executive Branch.

### B. Minimum Employment Standards

The submission alleges that volunteers at retail stores working pursuant to government-sponsored volunteer programs are at times required by employers to do work beyond the scope of these programs and are treated illegally as *de facto* employees but without compensation, in particular at Chedraui stores. Specifically, the submission alleges that volunteers are sometimes required by Chedraui to perform non-designated tasks and to “volunteer” for additional hours beyond the terms of their agreements, without pay.

The OTLA’s review did not reveal any evidence that the GOM was notified of any such alleged misuse of these government programs at Chedraui, specifically, or in the Mexican retail sector, more generally, including any evidence that workers, worker representatives, or others had attempted to bring these issues to the GOM’s attention. In such context, and considering the additional information presented in the submission and obtained during the review process, the OTLA finds that, at this time, there is insufficient evidence to support specific conclusions regarding the GOM’s application of Mexican labor law with regard to Chedraui stores’ use of these government programs. However, the OTLA will continue to monitor concerns in this area.

### C. Pregnancy Discrimination

The submission alleges that Chedraui stores have engaged in pregnancy discrimination, including by unlawfully inquiring about female employees’ pregnancy status and requiring them to submit to pregnancy testing as a condition of employment. The OTLA’s review did not reveal evidence that the GOM was notified or aware of such activity at Chedraui, including any evidence that workers, worker representatives, or others had attempted to bring these issues to the GOM’s attention. In such context, and considering the additional information presented in the submission and obtained during the review process, the OTLA finds that, at this time, there is insufficient evidence to support specific conclusions regarding the GOM’s application of Mexican labor law in this area with respect to Chedraui stores.

---

<sup>62</sup> Iniciativa por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de justicia laboral, Art. Único (at Art. 123(A)(XX)) (Apr. 28, 2016), available at: [http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/2\\_INI\\_EF\\_Justitica\\_laboral.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/1/2016-04-28-1/assets/documentos/2_INI_EF_Justitica_laboral.pdf).

Nonetheless, pregnancy discrimination in Mexico, as well as barriers and intimidation workers may face in alleging such conduct, has been a concern of DOL under the NAALC since 1997 and also has been raised regularly as a concern in academic studies.<sup>63</sup> After the GOM reformed its labor law in 2012 to explicitly prohibit pregnancy discrimination, the OTLA and the STPS worked closely to design and implement a \$1.389 million project to help ensure that labor inspectors have the tools they need to effectively inspect for gender discrimination, including pregnancy discrimination, and that workers are aware of their rights with respect to employment and workplace discrimination, including pregnancy discrimination, and how to claim them.<sup>64</sup> The project began in 2015 and is currently operating in Estado de México, Jalisco, and the Federal District. The OTLA will continue to monitor the issue of pregnancy discrimination in Mexico, including at Chedraui stores.

#### **IV. Recommendations and Next Steps**

The submitters have made allegations regarding issues that generally have been of serious concern to the OTLA. In particular the OTLA has had long-standing concerns about the widespread use of protection contracts in Mexico to undermine workers' right to freedom of association and collective bargaining, as well as each of the above-articulated factors that appear to facilitate their use, including a burdensome *recuento* process and the structural bias in the CABs. The OTLA offers the following recommendations to the GOM regarding these concerns:<sup>65</sup>

- Expediently pass and effectively implement the proposed constitutional reforms that would fundamentally transform and modernize the labor justice system in Mexico.
- Expediently pass and effectively implement the proposed legislation that would establish requirements for registration of CBAs and new timelines and rules governing the *recuento* process.
- Fully implement the new inspection protocol intended to more effectively enforce the requirement that employers post and disseminate to workers copies of CBAs governing their workplace; ensure that the targeting of such inspections takes into account public information related to at-risk sectors, including retail stores.

---

<sup>63</sup> See, e.g., "Public Report of Review of NAO Submission No. 9701," U.S. Department of Labor (Jan. 12, 1998), available at: [https://www.dol.gov/ilab/reports/pdf/Public%20Report%209701%20\(Gender\).pdf](https://www.dol.gov/ilab/reports/pdf/Public%20Report%209701%20(Gender).pdf) (original 1997 submission here: [https://www.dol.gov/ilab/submissions/pdf/US\\_97-01\\_Gender\\_submission.pdf](https://www.dol.gov/ilab/submissions/pdf/US_97-01_Gender_submission.pdf)); Williams, Natara, "Pre-Hire Pregnancy Screening in Mexico's Maquiladoras: Is it Discrimination?" Duke Journal of Gender Law & Policy (2005), available at: <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1093&context=djglp>; Smith, Michelle, "Potential Solutions to the Problem of Pregnancy Discrimination in Maquiladoras Operated by U.S. Employers in Mexico," Berkeley Journal of Gender, Law & Justice (1998), available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1143&context=bglj>; "Mexico's Maquiladoras: Abuses Against Women Workers," Human Rights Watch (Aug. 17, 1996), available at: <https://www.hrw.org/news/1996/08/17/mexicos-maquiladoras-abuses-against-women-workers>.

<sup>64</sup> See "U.S. Department of Labor Awards \$1.3M to Help Implement Mexican Employment Discrimination Laws," (Jan. 15, 2015), available at: <https://www.dol.gov/newsroom/releases/ilab/ilab20150020>.

<sup>65</sup> See also "U.S. Statement before the ILO Conference Committee on the Application of Standards," (2016), pp. 64-65, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_489124.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_489124.pdf).

Additionally, the OTLA will continue to monitor the issues raised in the submission, in particular allegations of pregnancy discrimination and of employers' misuse of government-sponsored volunteer programs in retail stores, including Chedraui stores.