



# International Metalworkers' Federation

## Problems of unionisation in Mexico

Current situation and approaches from a trade union perspective





## **Problems of unionisation in Mexico**

Current situation and approaches from  
a trade union perspective

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# 1. Mexico: Labour law hampers freedom of association

Workers within a company decide to establish a trade union in the form of a company union as is provided for by the union structure and the applicable labour law. They try to promote the idea among the other workers, hand out leaflets and discuss the issue with their colleagues.

As a result, several of the instigators are dismissed. The workers are told that they already have a trade union which means that these activities undermine the recognised worker representation and that they are therefore sanctioned and dismissed in accordance with the signed collective agreement.

None of the workers can remember giving a trade union a mandate of representation or having been asked by a union to let it have a mandate for negotiations. Neither were any of the workers aware of the fact that they are already “compulsory members” of an existing trade union which has concluded a collective agreement with the company they are working for.

Another practice is that an independent trade union is actually formed and an application for registration filed with the competent authority in accordance with the labour law but that this application is refused. It is often denied on the grounds that a union has already been registered for this company although in many cases nobody knows anything about this union apart from its general secretary and the company management.

This is no fiction. It is daily reality in a country that has ratified ILO Convention No. 98 on the freedom of association. It is reality in Mexico.

Company names such as Han Young in Tijuana, Duro Bag in Rio Bravo, Alcoa Fujikura in Piedras Negras and more recently Black & Decker in Reynosa are only some examples of a long list of companies that could be quoted here.<sup>1)</sup>

Past experience in Mexico has shown that Mexican labour law and the politico-social structures have not promoted the freedom of association that is part of ILO Convention No. 87, which has been ratified by Mexico. On the contrary, they have the opposite effect which is obviously politically desired.

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<sup>1)</sup> See also the annual report of the International Confederation of Free Trade Unions (ICFTU) on the violation of trade union rights. This report is available on the ICFTU website ([www.icftu.org](http://www.icftu.org)).

Only one incidence has come to light in recent years where an independent union was recognised even though another union had already been registered. But in this particular case, even the company supported the recognition of the independent union.

All in all, three major problem areas have been identified which seriously hinder workers in organising in trade unions.

- “contratos de protección” (protection contracts), which facilitate “secret agreements” on the recognition of trade unions without the workforce’s mandate and compulsory membership of the individual workers;
- “empleados (or trabajadores) de confianza”: the possibility of actually excluding entire groups of white collar workers from the right to organise;
- “contract labour”: the possibility of “borrowing” entire workforces from temporary employment agencies which, for their part, check applicants for union membership before hiring them, and also black-list members. Temporary employment always makes organising workers more difficult in any case. Its specific characteristics in Mexico do not even comply with national labour law.

These three problem areas in Mexican labour law are surely not the only problematic aspects. But they are the ones which are most striking when having a closer look at Mexican workers' rights to organise in trade unions.

It has also become obvious that it does not make sense in the long run to carry out more and more organising campaigns, the potentially positive results of which are immediately ruined by the system of “contratos de protección” and the practice of the “Juntas de Conciliación y Arbitraje” (conciliation and arbitration boards) which are charged with implementing the labour law.

That is why, in the medium term, the root of the problem, the labour law itself, has to be tackled. The need to reform Mexican labour law has already been discussed by a number of labour law experts but has not had any political consequences so far. Therefore, international pressure must also be put on the Mexican government for such changes to be instigated and ILO Convention No. 87 on the freedom of association to be implemented into labour law.

This paper is intended to provide a basis for discussion at both national and international level. It describes what the situation is like in Mexico and above all how firmly established the three above-mentioned problem areas are in the labour law and the social structures. The paper is supplemented by a number of proposals for union activities at national and international level.

The paper on the situation with regard to labour law written by Siglinde Hessler was funded by the German Hans Boeckler Foundation.<sup>2)</sup> It is based mainly on three individual studies which were carried out with the support of the Friedrich Ebert Foundation in Mexico in 2005.<sup>3)</sup>

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2) Hessler, Siglinde: Probleme der Arbeitnehmervertretung in Mexiko: Schutzverträge, Vertrauensangestellte und Leiharbeit. Gutachten im Auftrag der Hans-Böckler-Stiftung. Hamburg 2006

3) Fressmann, Rebecca: Leiharbeit in Mexiko: Rechtliche Bestimmungen und sozial-politische Realität, April 2005  
(<http://www.fesmex.org/Documentos%20y%20Programas/Studie%20Leiharbeit%20in%20Mexico.pdf>)

Hessler, Siglinde: Die Trabajadores de Confianza in Mexiko: Rechtliche Hintergründe und praktische Umsetzung, April 2005  
(<http://www.fesmex.org/Documentos%20y%20Programas/Studie%20Trabajadores%20de%20Confianza.pdf>)

Wittmütz, Kerstin: Die Contratos de Protección im Gewerkschaftssystem Mexikos: Rechtliche Hintergründe und sozialpolitische Bedeutung, April 2005  
(<http://www.fesmex.org/Documentos%20y%20Programas/Studie%20Contratos%20de%20Proteccion.pdf>)

Details without indication of source are taken from these studies.

## **2. Politics, unions, labour law: An introduction to developments in Mexico**

### **Politics: Slow democratisation after the change in government**

Until recently, the political situation in Mexico was marked by the hegemony of the Institutional Revolutionary Party (PRI). The party which emerged from the Mexican Revolution (1910-1920) had controlled the fate of the country for more than 70 years (1929-2000). It consolidated its power with a corporatist system which was based mainly on integrating major parts of the population into the PRI and the political system through associations and unions. This meant that quite a high degree of political stability was achieved – admittedly by largely suppressing both democracy and human rights. Political stability was long supported by a fairly stable economic situation due to the fact that state-controlled industrialisation brought a certain kind of prosperity to the country and thus to at least part of the population.

Since the 1980s, the instability of the political system has increased due to a number of factors, including a severe economic crisis. Due to an enormous external debt, which finally led to the insolvency of Mexico in 1982, the PRI government started implementing neo-liberal economic reforms as early as the 1980s, and turning away from its developmental state model. The economic opening (towards other countries) was accompanied by a controlled political opening within the country. After the opposition Party of the Democratic Revolution (PRD) had actually won the election in 1988 but was denied victory by fraudulent means, the conservative National Action Party (PAN), led by its presidential candidate Vincente Fox, finally achieved a historic victory at the election in 2000. After 71 years of virtually autocratic rule, it was the first time that a candidate from a party other than the ruling PRI party won the presidential election.

However, the Fox government was only able to implement its elections pledges to a very limited extent and thus only partly brought about the hoped-for but also dreaded drastic social changes. Mexico may be considered a democratic country if a very narrow interpretation of democracy is applied. There are general and free elections and the political system can definitely be described as pluralistic. But the Fox government has so far proved incapable of acting in relation to a variety of issues as it has no majority in parliament and has to rely on the alternating support of the other two major parties, the PRD and the PRI. That is why important tax, labour or energy reforms have not been tackled or, if they have, only half-heartedly. Neither was it possible to curb the PRI's influence in many areas. The

governing party of many years is still the strongest power in numerous federal states and has a major influence even beyond political structures. Old power structures have in many cases remained in place. That is why there is a concern that the PRI might again emerge as the strongest party from the next presidential elections, while the PRD is given a good chance as well.

As far as economic or social matters are concerned, little or no success has been achieved. On the contrary, a backward trend has even been apparent in some areas. The former Coca Cola manager continues to pursue the neo-liberal economic policy of his predecessor which among other things is characterised by the privatisation of former state-owned enterprises and the liberalisation of trade. The opening up of the Mexican economy is being accompanied by a focus on export and high levels of foreign direct investment in Mexico. Export trade plays a substantial role in Mexico's economic (in)stability with the result that Mexico has now even overtaken Brazil as the most important location for foreign investors in Latin America. The reliance of the Mexican economy on factors such as direct investment from transnational corporations (which are to be attracted mainly within the so-called Maquila industry by granting tax incentives and low-cost productions facilities) and the lack of a stable domestic economy is leading to a strong external dependency and less long-term economic stability. With its accession to the North American Free Trade Agreement (NAFTA), Mexico has strongly committed itself to the United States and relies heavily on the economic development of the United States. However, the Fox government is striving to diversify its trade partners and products.

Partial macroeconomic success such as high export rates and a rather high gross domestic product of 3.0% (Source: Instituto Nacional de Estadística, Geografía e Informática, INEGI, 2005) cannot conceal the fact that the current neo-liberal economic policy has further increased social tension in Mexico. In the largest economy of Latin America, which has major primary energy resources such as coal, petroleum and natural gas, more than 40% of the population live below the poverty line (German Foreign Office, 2006). While the official unemployment rate may only be 3.6% (INEGI, 2005), 30% of the workforce is considered underemployed and more than half of the working population work in the informal sector (both: German Foreign Office, 2006).

Even in terms of progress in human rights and the containment of violence, no major improvements can be seen so far. State organs and other institutions are still violating human rights and using violence. Discrimination against indigenous people, the repressive action taken against indigenous insurgents in the Federal State of Chiapas and the unsolved

murders of hundreds of women in the northern border town of Ciudad Juárez are just some examples of the climate of violence and intimidation which prevails in many sectors and regions.

### **Unions: Representatives of workers' interests lacking authenticity**

Mexican unions have long been a major pillar of the ruling PRI. They supplied the party with new members, since joining a union inevitably meant becoming a member of the PRI. At the same time, union officials secured some political and economic power for themselves by cooperating closely with the PRI. *Cláusulas de exclusión*, which were often agreed under the terms of collective agreements, meant that the entire workforce of a plant had to join the dominant trade union within the company, further supporting this system of incorporation. Because of their involvement in the apparatus of power, traditional unions in Mexico are often also referred to as corporatist unions.

The majority of Mexican unions are company unions which means that collective agreements normally only apply to one company. The individual unions are again organised in federations. The corporatist union movement has three major federations: The *Confederación de Trabajadores de México* (CTM), the *Confederación Regional Obrera Mexicana* (CROM) and the *Confederación Revolucionaria de Obreros y Campesinos* (CROC). These federations as well as the corporatist individual unions are again united under the joint umbrella organisation, the *Congreso de Trabajo* (CT).

Even after the change of government in 2000, corporatist unions still have far-reaching powers. The *cláusulas de exclusión* help them consolidate their powers regarding promotion and job prospects and, not least due to their influence in the state-run labour organisations, secure their virtual monopoly of representation and an authoritarian control of their members. In 2001, the supreme court declared the *cláusulas de exclusión* illegal but this judgement has not yet been incorporated into national law. Their involvement in the *Juntas de Conciliación y Arbitraje*, the conciliation and arbitration boards, whose powers include the right to register unions and collective agreements, consolidates the corporatist unions' power considerably. The *Juntas* are composed of equal numbers of employers, workers and government representatives whereby usually only corporatist unions are represented on the *Juntas* while independent worker representations are left out. That is why jurisdiction in labour matters cannot be called independent and unbiased. Independent and thus unwelcome unions are usually denied registration by these bodies.

However, the political and economic opening of Mexico has also caused the corporatist unions' foundations to shake. Traditional unions now increasingly have to assert and legitimise themselves outside the political system of which they were (once) part. There have been incidences where changes in general conditions have led to a democratic opening within corporatist unions with the result that not all affiliated unions of the CTM, CROC and CROM can be described as undemocratic. At the same time, some independent unions have managed to establish themselves and in some cases assert quite considerable influence. With regard to independent union federations, the *Unión Nacional de Trabajadores* (UNT), which plays a major part as an umbrella organisation at least in the private sector, deserves a special mention as does the *Frente Auténtico de Trabajo* (FAT) which is, however, of rather limited national importance.

### **Labour law: Revision postponed**

The basic elements of Mexico's existing labour law, the *Ley Federal del Trabajo* (LFT), go back to 1931. Despite its initially progressive orientation, which was definitely focused on safeguarding workers' interests, the current law is no longer in tune with the changes that have taken place in the working world. As can be seen below, Mexico's embrace of a neo-liberal economic model and the flexibility inherent in such a model has caused new problems of which the current law fails to take sufficient account. The necessity of reforming the LFT has been discussed for more than 10 years now without any substantial results. The interests of those involved in the debate – government, political parties, employers' associations, unions and to a lesser extent also civic actors – are so diverse that it has so far not been possible to reach an agreement.

The current government has adopted a wait-and-see policy with regard to Mexican labour law. The expectations raised with president Vicente Fox's taking office in 2000 have not been realised. This is also true for the reform of the labour law. Fox did not put this issue at the top of his agenda nor did he dare dissociate himself from the old power structure, which means that in an in-depth revision of the LFT is not to be expected from his government in the near future.

While employers' associations expect reforms to bring about a far-reaching flexibility in industrial relations, Mexican unions have failed to agree on the demands to be put forward. Bearing in mind their varying degree of involvement in existing power structures and their partly conflicting political orientation, this is hardly surprising. The old corporatist federations

of trade unions are mainly concerned about losing their political leverage while new independent federations of trade unions such as the *Unión Nacional de Trabajadores* (UNT) and the *Frente Auténtico del Trabajo* (FAT) are demanding a democratisation of union structures and thus a strengthening of workers' rights.

Of the many reform proposals that have been discussed since the end of the 1980s, the proposal put forward by the Secretary of Labour and Social Welfare, Carlos Abascal, together with the joint initiative of the Social Democratic Party (PRD) (*Partido Revolucionario Democrático*) and the progressive federation of trade unions (UNT) is of particular interest. The focus of the PRD's and UNT's legislative initiative is on strengthening both Mexico's competitiveness and workers' rights by promoting the rule of law and rejecting corporatist structures. But the reform project, which has become known as *propuesta Abascal* after the minister responsible for it, primarily provides for more flexibility in industrial relations, a weakening of collective rights and a reduction in employers' obligations.

Despite this hesitant attitude at the political level, the need to reform the labour law is becoming increasingly obvious in practice, in particular with regard to the issues examined in this paper such as protection contracts (*contratos de protección*), workers of trust (*trabajadores de confianza*) and contract labour. The following chapters focus on the difficulties encountered in these fields with regard to labour law and the changes which are considered desirable in this respect.

### **3. *Contratos de Protección*: Protection contracts to prevent unionisation**

#### **Basic principles of *contratos de protección***

The *contrato de protección* is a peculiarity of the Mexican world of labour. This term, which translates literally as “protection contract”, refers to specific collective agreements which are concluded between employers and union leaders without the involvement and knowledge of the workers and which systematically restrict the workers' rights. It is the aim of *contratos de protección* to prevent independent union representation in a particular company.

In practice, a trade union that is favourably disposed towards the employer is awarded the rights of representation for the particular company and concludes a collective agreement with the employer. Once the collective agreement and the union are registered, it is almost impossible to form another union in this particular company and to sign a new collective agreement. So-called exclusion clauses according to which membership in the already existing union is binding for all workers as well as bureaucratic arbitrariness massively impede the forming of new democratic unions in the particular company.

For the workers, this represents a blatant disregard for their rights. They are not allowed to organise in a union of their choice and are excluded from collective negotiations. At the same time, the lack of genuine union representation often leads to severe violations of labour rights and human rights. Child labour, mental and physical ill-treatment and unlawful dismissal of workers who don't toe the line are just some examples.

Signing a *contrato de protección*, is, however, of considerable benefit to the employer. Since he does not have to take into consideration any union, he is largely free to fix working hours, stipulate the kind and amount of remuneration and take on and dismiss workers. Working conditions in these companies are correspondingly poor. Workers are often paid by the hour, for example, and employment contracts are of limited duration. The employer can also take unilateral decisions on occupational health and safety at work, inevitably to the detriment of the workforce. At the same time, the possibilities of strike action are limited as only the registered union, which is close to the employer, is allowed to call a strike. All in all, systematically depriving workers of their rights makes production cheaper, which must, after all, be the employers' primary objective.

Unions which conclude *contratos de protección* are either the traditional corporatist and usually very undemocratic unions or the so-called white unions, *sindicatos blancos*, which are formed and run by the employers themselves. For these unions, *contratos de protección* are usually a profitable business. For their one-sided representation of interests, union officials receive a not inconsiderable amount of money from the respective employer.

The workers concerned are generally not informed about the formation of the union, the conclusion of the collective agreement or the *contrato de protección*. Therefore, they often do not know that there is a union in their company and that a collective agreement was signed. An essential element in this practice is, of course, that it is supported by the competent authorities which register the unions and accept the collective agreement.

## **Legal background**

### **The registration of unions**

The conclusion of a *contrato de protección* is only made possible by the fact that the undemocratic unions involved are recognised and registered by the authorities. At national level, registration is the responsibility of the Ministry of Labour and Social Security (STPS), at local level it is the responsibility of the conciliation and arbitration boards, the *Juntas Locales de Conciliación y Arbitraje*. As has already been mentioned, the *Juntas* are deserving criticism. They comprise equal numbers of employers, workers and government representatives. However, as a rule, only the corporatist unions are represented on the *Juntas*, while the progressive and democratic worker representative bodies are left out. This means that the real interests of the workers are not taken into account by the *Juntas*. Moreover, the members of government who sit on the *Juntas* mostly look after their own interests and are not committed to independent decision-making.

In practice, the *Juntas* often register the relevant unions even before the company has set up business and employed workers, i.e. before the workers even have a chance to register their own representative body. This officially registered union is given the right of representation, the *titularidad*. The *titularidad* entitles the union not only to engage in collective bargaining and to sign collective agreements but also to call a strike and to organise it. The *Juntas* are in charge of awarding the *titularidad* which again means a general lack of objectivity in the process. It is almost impossible to contest a *titularidad* that has already been recognised since it can only be withdrawn from a union if another union can prove that it represents the majority of the workforce (LFT 388). But this never happens in practice. There is a lot of evidence to show that workers who want to form their own union are put under intense pressure by employers and the authorities. In some cases, even physical threats, attempts at

intimidation and the use of violence were reported. Moreover, *contratos de protección* usually contain exclusion clauses which, on the one hand, ensure that only workers who are a member of the trade union that is represented in the company are taken on (“cláusulas de exclusión de ingreso”). On the other hand, they entitle trade unions to demand the termination of the contract of employment if the trade union excludes a worker or a worker leaves the union (“cláusulas de exclusión de separación”). Therefore, workers who try to form a second union run a severe risk of being dismissed from the company due to these exclusion clauses. As early as 2001, this statutory regulation was declared illegal by the supreme court but national legislation has not yet been adapted to this judgement (LFT 395). Consequently, it has been made almost impossible to deprive a registered undemocratic union of a *titularidad* and to form a new trade union which is entitled to conclude a collective agreement.

### **The registration of *contratos de protección***

Even the registration of the collective agreements and *contratos de protección* is carried out by the above-mentioned *Juntas de Conciliación y Arbitraje*. Often, the *Juntas* do not sufficiently examine the agreements to be approved of and knowingly recognise *contratos de protección*. Usually, they charge a high price for this practice. It is estimated that between several hundred thousands and one million US dollars are paid for a *contrato de protección*. The employer pays the union and the relevant government agency, i.e. the *Juntas* again.

Another problem relating to the registration of *contratos de protección* is that the annual review of all signed collective agreements by the Ministry of Labour and Social Security (STPS), which is prescribed by law, is carried out far less frequently. Over a period of six years for example (1984 – 1990), only 10 – 20% of a total of 600 000 collective agreements were examined by the STPS. An appropriate examination could easily reveal which of the collective agreements are *contratos de protección*.

The system of registering and reviewing collective agreements is thus largely responsible for the high number of *contratos de protección*. A transparent system of registration could help to contain this development.

### **The scope of *contratos de protección***

In Mexico, *contratos de protección* are a very widespread phenomenon. Experts believe that some 80 – 90% of all collective agreements are *contratos de protección*. The companies which have concluded a *contrato de protección* are mainly corporations that have set up

business in only one federal state. *Contratos de protección* are far less prevalent among nationally operating corporations. The reason for this imbalance is the particularly widespread corruption of authorities at local level.

Experts also estimate that the number of *contratos de protección* has increased considerably in recent years. The reason for this development given by some researchers is the 1980 reform of the labour law which provided for more flexibility in favour of employers. Another reason for the increase in *contratos de protección* could be the change in the government's policy, which has been striving to lure foreign investors under a neo-liberal agenda since the mid-1980s. Mexico's accession to the *North American Free Trade Agreement (NAFTA)* in 1994 has accelerated this political development. Even the government of the conservative president Vicente Fox, which has been in power since 2000, has so far taken an employer-friendly line which facilitates or at least does not prevent the conclusion of *contratos de protección*.

### **Lack of disclosure of *contratos de protección***

A major problem in fighting *contratos de protección* is that these contracts are not publicly accessible as is the case with other collective agreements. Unions, employers and authorities are not obliged to make the content of a collective agreement public. For obvious reasons, those in charge are usually not interested in publicising a *contrato de protección* so that it is hardly possible to look into its specific content.

However, changes have been observed regarding this matter. For some time, the *Junta Local de Conciliación y Arbitraje* of Mexico City has been publishing the collective agreements within its area of responsibility on the Internet. At least in the capital, which is governed by the leftist PRD (*Partido Revolucionario Democrático*) and is traditionally somewhat more liberal, certain efforts are being made to render the system of collective agreements more transparent.

### **Legal action against *contratos de protección***

It is almost impossible to take legal action against *contratos de protección*. This is mainly due to the fact that the conclusion of a *contrato de protección* does not infringe or only partly infringes applicable Mexican law, since officially the contract is a normal collective agreement. The practices which are often adopted by the *Juntas* and the ministries when registering unions and collective agreements are however illegal. It's a fact that registering

unions and collective agreements without the knowledge of the workers concerned is an illegal practice.

The currently pending lawsuit against the French tyre manufacturer Michelin shows how legal actions may be taken indirectly against *contratos de protección*. In this particular case, the independent trade union federation *Frente Auténtico de Trabajo* (FAT) brought an action against a collective agreement which has to be considered a *contrato de protección* and which was signed with the corporatist CTM. Typically, proceedings were not initiated against the *contrato de protección* as such but against the fact that the collective agreement undermines the general framework collective agreement of the tyre and rubber industry.

### ***Contratos de protección* and the reform of Mexican labour law**

The various reform proposals that are currently being discussed address the issue of *contratos de protección* in a variety of ways. Progressive proposals which aim at restricting the signing of *contratos de protección* mainly focus on making the registration of unions and collective agreements by the Ministry of Labour and Social Security (STPS) and the *Juntas* more difficult in order to stop their illegal practices.

The proposal put forward in 1995 by the *Partido de Acción Nacional* (PAN), the current governing party, includes some clauses which could definitely be useful in fighting *contratos de protección*. One was, for example, to stop the practice of the STPS and the *Juntas* registering unions and collective agreements. This would make it easier for independent unions to establish themselves and to sign collective agreements.

The joint proposal put forward by the independent trade union federation *Unión Nacional de Trabajadores* (UNT) and the leftist *Partido Revolucionario Democrático* (PRD) points in the same direction. The draft provides for the establishment of a national, publicly available register for unions and collective agreements which would produce a certain transparency. Apart from that, the proposal made by the UNT and the PRD aims at making registration more independent of the STPS and the *Juntas* and at engaging workers more in the decision-making process.

A completely different approach is being pursued by the controversial reform project favoured by the Fox government, the *propuesta Abascal*. This extremely employer-friendly draft aims at significantly facilitating the conclusion of *contratos de protección* which would extend the employers' room for manoeuvre and further reduce the scope of independent

unions. Basically, it favours the status quo – leaving the registration of unions and collective agreements in the hands of the STPS and the *Juntas*.

### **Final remark**

In Mexico, the *contratos de protección* are a widespread problem, significantly curbing the rights of the workers concerned. At the same time, Mexican social and political structures are an important factor in the proliferation of *contratos de protección*. Corruption and criminal networks in politics, the administration, the judiciary, the economy and in trade unions are a breeding ground for *contratos de protección* and have so far very efficiently prevented the fight against these contracts. Vicente Fox's neo-liberal agenda and the search for foreign investors only further promote the spreading of *contratos de protección*.

Political attempts to break up the system of *contratos de protección* therefore have to face the challenge of fighting the corrupt and criminal structures in politics, trade and industry and society. The most important question in this respect is who is going to fight it out. Mexican unions are either not willing or marginalised to such an extent that they cannot exert any influence at all. The workers for their part are often not even aware of their rights and therefore hardly have a chance to fight for them.

That is why a reform of the Mexican labour law which largely restricted the practice of *contratos de protección* would be desirable. This is a development, however, that cannot reasonably be expected. Instead, it is believed that the future labour law reform will emphasise the neo-liberal policy of the Fox government. It is for this reason that *contratos de protección* will inevitably remain the key problem of Mexican worker representative bodies for the years to come.

## 4. ***Trabajadores de confianza*: Workers without union rights**

### **Who are *trabajadores de confianza*?**

*Trabajadores de confianza*, or literally translated workers of trust, are a peculiarity of Mexican labour law. By legal definition, this term specifies workers who have particularly close relations with the employer and thus an insight into the company's internal affairs. This concept is comparable in some ways with the concept of *Leitende Angestellte* (chief executives) under German law. Due to their closeness to management, *trabajadores de confianza* occupy a special position. On the one hand, they usually earn more than the average worker and enjoy a better standing but on the other, they are excluded from important workers' rights.

The severe restriction on the right to organise in trade unions is particularly critical. *Trabajadores de confianza* are denied the right to organise together with other workers. In practice this means that they cannot organise, as each attempt to form an independent trade union is normally stopped by state authorities and employers.

This exception under Mexican labour law is particularly problematic because this regulation often affects a majority of the workforce. Frequently, it is not only workers who actually have close links to the employer that are considered *trabajadores de confianza* but also many white-collar workers such as secretaries or drivers whose tasks can definitely not be considered confidential. This often means that a large number of white-collar workers within a company are excluded from the right to organise.

## ***Trabajadores de confianza* in Mexican labour law**

### **Legal definition of *trabajadores de confianza***

The term *trabajadores de confianza* is defined by the *Ley Federal del Trabajo (LFT)*, the Mexican labour law. Only the *trabajadores de confianza* in the civil service are exempt from this definition and they are covered by separate legislation.

The definition of *trabajadores de confianza* is laid down in article 9 of the LFT. This article describes two main features of the tasks to be carried out by *trabajadores de confianza*. On the one hand, specific functions are laid down which are considered “*de confianza*”. This covers management staff or employees who exercise executive, supervising or controlling functions in the financial area. According to the LFT, these activities do, however, have to be of general nature. On the other hand, all functions which are “related to personal tasks of the employer within the company or a branch office” (LFT, article 9) are classified as “*de confianza*”.

This definition by the LFT does not go far enough and leaves a lot of room for interpretation and misuse. It is not quite clear whether all workers who are directly associated with the employer can be considered “*de confianza*”. Neither has it been made very clear which activities in the management and other executive and controlling functions are to be carried out as tasks of *trabajadores de confianza*. The provision that only activities of a “general nature” are concerned is anything but clear.

### **Limited workers’ rights for *trabajadores de confianza***

The precise legal provisions that apply to *trabajadores de confianza* are stipulated mainly in the articles 182-186 of the *Ley Federal del Trabajo*. They show very clearly that the rights of *trabajadores de confianza* are severely restricted.

A particularly severe legal restriction is the exclusion from the right of association which is laid down in article 183. The article states that *trabajadores de confianza* are not allowed to organise in trade unions together with other workers, that their votes are not counted at strike ballots and that they cannot represent other workers on bodies with joint representation of workers and employers (disciplinary commissions, committees on further training etc.) which are provided for by law.

This means that *trabajadores de confianza* are excluded from a fundamental right granted to all workers by the *International Labour Organisation* (ILO) and by the Mexican constitution. Mexico has signed ILO Convention No. 87, for example, which grants the right of freedom of association to both workers and employers regardless of their position within the company. The Mexican constitution, too, guarantees workers and employers the right of freedom of association.

It has to be said, however, that *trabajadores de confianza* are actually granted the right to set up their own organisations (LFT, article 183). In practice, this clause can be regarded as invalid as attempts to do so have so far hardly had a chance to be put into practice, as can be seen below.

It is worth mentioning and interesting to note the reasons given for excluding *trabajadores de confianza* from the right to organise in trade unions. In the commentaries to the law it states that this regulation is in place to protect the interests of the rest of the workforce. The interests of *trabajadores de confianza* are closer to those of the employers than those of the remaining workers. This means that joint unionisation would cause a conflict of interest. That is why the unions advocated the exclusion of *trabajadores de confianza* from the freedom to associate when the laws were drafted. They perceived a threat to their organisation by the infiltration of white-collar workers who would not have been committed to the interests of blue-collar workers but to those of the employer.

Defending their interests by means of a strike has been made impossible for *trabajadores de confianza* because they are not only excluded from strike ballots but are also not allowed to organise a strike themselves. The independent organisation of a strike is impossible for *trabajadores de confianza* because the right to strike requires a majority within the entire workforce, which they very seldom have.

The LFT even subjects *trabajadores de confianza* to further legal restrictions. They only have limited protection against dismissal as loss of confidence on the part of the employer is already considered a justified reason for dismissal (LFT, article 185). This means that the employer is given free rein, even though, if doubts exist, the said loss of confidence must be justified before the *Juntas de Conciliación y Arbitraje*, the conciliation and arbitration boards. Other than that, *trabajadores de confianza* are excluded from the right of reinstatement after an unjustified dismissal with the result that they can only sue the company for compensation (LFT, article 49, III). They only have limited access to profit-sharing schemes compared to other workers (LFT, article 127, II) and may be excluded from collective agreements.

However, their individual working conditions such as pay and working hours must not be worse than those of the other workers (LFT, article 182 and 184) which would hardly ever be the case in practice.

*Trabajadores de confianza* are thus subject to clear legal restrictions. In particular, the severely limited right to organise in unions has considerable consequences. This means that *trabajadores de confianza* are not able to enforce their rights collectively and to express their interests. To compound matters, it is basically impossible for them to organise a strike and they are excluded from strike ballots. At the same time, *trabajadores de confianza* suffer from unprotected working conditions as they can be dismissed quite easily.

### **In practice: The number of *trabajadores de confianza* increases**

The number of *trabajadores de confianza* in a company and the jobs involved are usually specified in the collective agreements, from negotiation of which *trabajadores de confianza* are mostly excluded from. That is why the negotiating skills of the individual union, its influence and in particular its commitment and interests determine the number of *trabajadores de confianza* in a company. *Trabajadores de confianza* thus rely entirely on a union which does not promote their interests.

The number of *trabajadores de confianza* varies considerably from company to company. It has to be said, however, that no generally valid statement can be made on the number of *trabajadores de confianza* in Mexico as the available data is insufficient. Government statistics do not explicitly show *trabajadores de confianza* and there have not been any scientific surveys so far. Nonetheless, there is evidence to show that some companies employ an excessive number of *trabajadores de confianza* and others only a few. The figures that are available vary between 2% (in the energy company *Luz y Fuerza del Centro*, 1995) and more than 50% (in the state-run oil company, the *Instituto Mexicano del Petróleo*, 2001).

There is evidence to suggest that the number of *trabajadores de confianza* has also increased with the privatisation and flexibility which has been spreading in Mexico as a result of the country's neo-liberal economic policy. Studies carried out also confirm this phenomenon. The benefits for the companies are manifold. They can conclude individual contracts with the *trabajadores de confianza* instead of having to comply with inconvenient collective agreements, for example. At the same time, unionisation of the workers concerned is prevented and dismissal facilitated.

In several cases, there are hardly any workers on standard employment contracts. The unions in some universities, for example, report that the working conditions of normal workers have deteriorated to such an extent that being employed as a *trabajadore de confianza* is often more attractive despite the legal discrimination. Normal workers only get lesser tasks with the result that their labour becomes more and more dispensable, while *trabajadores de confianza* get promotion and further training as compensation for their unprotected employment conditions. According to the Commission, salaries also vary considerably. As a rule, a *trabajadore de confianza* earns far more than a normal worker, who ultimately only has the possibility of getting better pay and work with a higher standing by being employed as a *trabajadore de confianza* which in turn means unprotected employment conditions and exclusion from the union.

### **Jurisdiction with regard to *trabajadores de confianza***

In Mexico, there is hardly any discussion on the constitutionality of labour law provisions regarding *trabajadores de confianza* or its application in practice. Instead, cases are argued at court as to whether a function which is classified as "*de confianza*" in the collective agreement really involves such confidential work.

Typically, collective agreements include both the individual areas of work and the precise jobs. This is considered beneficial by the unions as well as by the employers when negotiating the agreement because it allows them to circumvent the highly ambiguous definition of *trabajadores de confianza* in the *Ley Federal del Trabajo*. The courts and the *Juntas de Conciliación y Arbitraje*, the conciliation and arbitration boards, usually keep to this regulation. By doing so, they are not abiding by the wording of the LFT, which stipulates that it is not the description of a job but the actual activity that decides whether the relevant activity is classified as "*de confianza*" (LFT, article 9). The key issue in court rulings instead is which jobs are classified as "*de confianza*" in the collective agreement.

### ***Trabajadores de confianza* and the reform of the labour law: No prospects for substantial changes**

In the four most important proposals on the reform of the Mexican labour law which have been discussed for several years, *trabajadores de confianza* only play a minor part. The *propuesta Abascal*, i.e. the reform project proposed by the Secretary of Labour, Carlos Abascal, which for the time being has the best chances of success, typically does not provide for any changes with regard to the legal position of *trabajadores de confianza*.

The *proyecto Fraile*, a proposal put forward by Francisco Fraile, a senator in the current ruling party, the *Partido de Acción Nacional* (PAN), at least demands that the concept of *trabajadores de confianza* is used only to a limited extent. The addition of "In accordance with the fact that it is an exception, (...)" (*Proyecto Fraile*, article 9, a translation of the author's own translation from Spanish into German) to the definition of *trabajadores de confianza* in article 9 of the *Ley Federal del Trabajo* is intended to prevent a misuse of the regulation.

The joint reform project of the leftist *Partido Revolucionario Democrático* (PRD) and the independent trade union federation *Unión Nacional de Trabajadores* (UNT) provides for a similar proposal which, however, goes considerably further. It not only wants to declare *trabajadores de confianza* an exception (article 11, using the same wording as in the *proyecto Fraile*) but also wants to strengthen the rights of *trabajadores de confianza*. What is interesting is the extension of the working conditions stipulated in the collective agreement to cover *trabajadores de confianza* as well. The possibility of exempting *trabajadores de confianza* from collective agreements which is provided for by the *Ley Federal del Trabajo* is completely omitted in the PRD's and UNT's reform proposal (*Propuesta Laboral PRD-UNT*, article 214). The proposal does not go any further though. The exclusion of *trabajadores de confianza* from the unions of other workers is even kept in this proposal.

The most far-reaching changes with regard to *trabajadores de confianza* were put forward by the reform proposals of the current ruling party PAN dating back to 1995. These potential changes are, however, no longer under discussion. This proposal wanted to determine exactly which activities are to be carried out by *trabajadores de confianza*. The aim was not to restrict the regulation but to extend it and to add new categories to the existing ones. Thus, the PAN proposal would have resulted in a worsening of the situation of *trabajadores de confianza*.

As can be seen from the legislative initiative, the concept of *trabajadores de confianza* is not generally questioned. At issue are only more or less minor changes. The freedom of association which is the focal point of this paper is not addressed by any of the proposals which shows how low this issue is on Mexico's agenda.

### **Indifferent attitude of Mexican trade unions towards *trabajadores de confianza***

To examine the attitude of trade unions towards *trabajadores de confianza*, three union representatives were interviewed as part of the survey on which this paper is based. These

interviews may not be representative but they provide an insight into the positions taken by workers' organisations.

The author of the study ensured that both corporatist and independent unions were interviewed. For this reason, one interview was conducted with a representative of the corporatist trade union federation *Confederación de Trabajadores de México* (CTM), one with the independent trade union federation *Frente Auténtico del Trabajo* (FAT) and one with the progressive and independent union of Mexico's biggest telephone company (*Teléfonos de México, TELMEX*), the *Sindicato de Telefonistas de la República Mexicana* (STRM).

The most important result of the survey was that none of the unions concerned had so far addressed the issue of *trabajadores de confianza* in more detail. All three interviewees do consider the issue important as such but emphasise that it is of minor importance for their organisations. The explanation given is that *trabajadores de confianza* cannot join trade unions and therefore are irrelevant to their organisations. None of the organisations interviewed are calling for *trabajadores de confianza* to unite with the other workers. The FAT representative is the only one to see a problem with the concept of *trabajadores de confianza* and to deem it entirely wrong. In his view, no difference must be made between workers.

According to the worker representatives interviewed, a general problem is that the majority of *trabajadores de confianza* do not want to organise in trade unions. They are neither striving for a trade union organisation of their own nor do they want to join forces with an existing union. All interviewees point out that there is a gap between *trabajadores de confianza* and the other workers with regard to orientation which makes joint organising more difficult. In particular, the CTM representative emphasises that these two groups frequently come into conflict as "*de confianza*" functions are often associated with control and supervision, creating a natural barrier that the employer often tries to reinforce.

Yet the representatives of the FAT and the STRM claim that their trade unions would support the *trabajadores de confianza* should they try to set up their own organisation. The CTM representative assumes that the CTM would adopt a neutral attitude towards an independent organisation of *trabajadores de confianza*.

Despite their rather limited interest in the issue of *trabajadores de confianza*, all three interviewees stated that their unions would be interested in reducing the number of *trabajadores de confianza* in the individual companies. After all, by reducing the number of *trabajadores de confianza*, trade unions could win more members to be covered by the

collective agreement and increase their own influence. The problem, in their view, is, however, that workers consider employment as a *trabajadore de confianza* desirable. The reason stated is that *trabajadores de confianza* enjoy a higher reputation and in many cases are better paid as well. Thus, a reduction in the jobs classified as “*de confianza*” is not always in the workers' interest.

The issue of *trabajadores de confianza* is thus only of minor importance for Mexican trade unions, and this is true for both corporatist and independent unions. Neither is there much criticism of the widespread practice of excluding *trabajadores de confianza* from the freedom to organise in trade unions. The FAT is the only organisation to question the entire concept of *trabajadores de confianza* but this has not led them to taking concrete action so far. Other than that, all interviewees generally consider a reduction in the number of “*de confianza*” jobs as desirable but not as a major concern. Thus, the issue of *trabajadores de confianza* and their restricted possibilities of organising themselves in trade unions has no priority for Mexican trade unions.

### **Attempts at unionisation by *trabajadores de confianza***

Despite the legal obstacles described, there have already been several attempts at unionisation by *trabajadores de confianza* in Mexican history which are worth mentioning. As early as the 1970s, *trabajadores de confianza* at the state-run enterprises *Diesel Nacional* (DINA) and *Constructora Nacional de Carros de Ferrocarril* tried to form their own trade union. The *trabajadores de confianza* at the *Sistema de Transporte Colectivo* (Metro) even managed to get registered as a trade union, and those at the state-run oil company PEMEX are currently fighting in court for their recognition as a trade union. All these movements, however, face severe difficulties as can be seen in the current struggle of the *trabajadores de confianza* at PEMEX.

Two organisations of *trabajadores de confianza* are trying to achieve recognition as trade unions, the *Unión Nacional de Trabajadores de Confianza de la Industria Petrolera* (UNTCIP) and the similarly named *Organización Nacional de Trabajadores de Confianza de la Industria Petrolera* (ONTCIP). Both organisations applied for registration as trade union in spring 2004 but neither organisation has so far managed to achieve recognition. At the same time, the members of both organisations have to be prepared to encounter major difficulties. In June 2004, the entire leadership of the ONTCIP and some of the UNTCIP leaders, for example, were sent into early retirement. Other than that, *trabajadores de confianza* who resist intimidation are repeatedly faced with attempts at bribery.

This example should have made clear that it is not only impossible for *trabajadores de confianza* to organise together with other workers but that it is also virtually impossible for them to legally join forces in a trade union of their own.

### **Final remark**

As has been made clear, the question of *trabajadores de confianza* may be an important issue in Mexico's current labour relations but the issue is low on the country's agenda. Although many companies which are based in Mexico have a significant number of *trabajadores de confianza*, which means that a major part of the workforce faces an unprotected legal situation and a severe restriction of its freedom of association, the problem of *trabajadores de confianza* does not have priority in the debates on labour law reform or in union work. What is interesting is that the entire concept of *trabajadores de confianza* and their exclusion from the freedom of association is not questioned and, if so, only to a very limited extent. This can be attributed mainly to the fact that the concept of *trabajadores de confianza* as well as the restriction of their right to freedom of association is firmly established in Mexican labour law and working life.

Even trade unions do not have a particular interest in reducing the number of *trabajadores de confianza*. One of the reasons for this attitude is that most Mexican trade unions do not defend the interests of the workers, but rather their own interests or those of people and institutions who have political and economic influence.

Despite the generally marginal significance of *trabajadores de confianza* in the Mexican debate, one important development is that at least a reduction in their numbers is demanded. This becomes apparent in two proposals for the labour law reform, the *proyecto Fraile* and the PRD and UNT initiative which both consider the concept of *trabajadores de confianza* as an exception.

Yet this issue still has to move up on the country's political and labour law agenda to prevent an increasing number of workers from losing their union rights.

## 5. Contract workers: Second class workers?

### The phenomenon of contract labour

Temporary employment agencies originated in the 1960s when the personnel service agency *Manpower* started training secretaries in the United States and subsequently assigning them to companies. The idea behind this concept is both simple and effective: Companies can save themselves the trouble and expenses of recruiting suitable personnel and at the same time can deploy contract workers flexibly when and where needed without having to pay high social security contributions, as officially they are not their employer. From a legal point of view, the employment agency acts as employer and charges a commission for each worker it assigns. For the individual user enterprise this means higher costs (in some cases up to 80%) for the individual worker in the short term but the savings in human resources and the possibility of rapidly reducing personnel numbers when orders go down usually compensate for the extra expense.

The phenomenon of contract labour is also prevalent in Mexico. Many sectors increasingly replace workers on regular employment contracts with so-called contract workers. In the northern Mexican federal state of Jalisco, for example, where mostly electronics companies have set up business, contract labour is particularly widespread. The electronics firms IBM, DELL and Hewlett-Packard, for example, which have operations there, hardly employ any workers of their own. They have contracted out almost their entire production to subcontractors who again mostly employ contract workers. Of the roughly 7 000 workers on the IBM site in Jalisco, only some 500 are directly employed by IBM or its subcontractor, SCI. The remaining 6 500 or so workers are employed by employment agencies. This development is fostered by the Mexican government and the federal state government in Jalisco, both of which promote the establishment of subcontractors and employment agencies as a means to reduce production costs and consequently to lure foreign investors.

The result of this development is that the prospect of these workers getting protected, long-term employment contracts is diminishing. Employment agencies normally employ workers for a period of three to six months and usually do not pay any employee benefits. Thus it has become almost impossible for these workers to get a standard employment contract including employee benefits and full protection from dismissal.

## **Definition of contract labour**

According to the *International Labour Organisation* (ILO) contract labour (or temporary agency work) is characterised by the fact that a person who actually works for a particular company, the user enterprise, has no direct employment contract with this company. Instead, this person is employed with another organisation, the employment agency, which “lends” the contract worker to the user enterprise. This means that the employment which de facto exists between the worker and the user enterprise is not officially recognised.

That is why a double contractual relationship is a feature of contract labour. On the one hand, there is a contract between the user enterprise and the employment agency and on the other, a contract between the worker and the employment agency. What is important with regard to the worker's legal situation is the fact that the contract between the user enterprise and the employment agency is a contract based on civil or commercial law and only the contract between the worker and the employment agency is based on labour law.

## **Contract labour in Mexican labour law**

The provisions of the Mexican labour law regarding the legal situation of contract workers are highly unsatisfactory. This can be attributed mainly to the fact that contract labour only started to be a frequent form of employment in Mexico at the end of the 1980s and that Mexican legislation has not yet been adapted to the new situation.

Nevertheless, there are numerous provisions on the tasks, rights and legal restrictions of employment agencies and other forms of placement services both at international level and in Mexican law. At international level, ILO Convention No. 96 of 1949 ("Convention on Fee-Charging Employment Agencies") and No. 181 of 1997 ("Convention on Private Employment Agencies") define the role of employment agencies. Among other things, these conventions stipulate that employment agencies have to fulfil certain obligations with regard to the workers and have to give certain guarantees and the assignment has to be free of charge.

The Mexican constitution also contains several provisions that apply to employment agencies, such as the condition that the service has to be free of charge. However, no mention is made of responsibilities or protection guarantees to be assumed by the employment agency for its workers. In this respect, Mexican law lags behind the ILO Conventions, which provide for a certain level of protection for contract workers by the individual employment agencies.

## **Who is the employer - the employment agency or the user enterprise?**

The question as to who is the legal employer is of particular importance as it determines whether the companies to which the workers are assigned have any responsibilities with regard to labour law. If an individual employment agency files an insolvency petition, for example, and is no longer able to pay the wages that are due, it is crucial to know whether the user enterprise can be reminded of its duty.

In Mexico, practice has shown that employment agencies are considered to be employers. As mentioned already, employment contracts are only concluded between the worker and the employment agency and not between the worker and the individual company he is assigned to. For this reason, courts usually consider employment agencies to be the sole employer with the result that the user enterprises have hardly any obligations as employers. In several cases, the supreme court has, however, ruled that the user enterprise has to pay for the work performed should the employment agency file for insolvency.

The Mexican labour law itself, however, does not provide for this kind of practice. The *Ley Federal del Trabajo* (LFT) does not clearly define who acts as employer in the case of contract labour. Due to this lack of clarity in the law, opinions differ on the question as to who is the employer. There are labour law experts, however, who argue in favour of considering the user enterprise to be an employer.

To clarify the situation which has been very unclear so far, the various proposals for labour law reform also address the issue of contract labour. The PRD's and UNT's reform proposal, for example, aims at considerably strengthening the rights of contract workers. Among other things, it provides for contract workers to be legally put under the control of the user enterprise to avoid exemption provisions. This means that the same rights are to be established for contract workers as are in place for the other workers. In addition, it is planned to generally oblige user enterprises to assume wage costs if an employment agency files for insolvency.

The reform initiative proposed by Carlos Abascal, the Secretary of Labour, on the other hand, pursues entirely different objectives. The draft provides for contract workers to be legally assigned to employment agencies only. Should this reform proposal be adopted, contract workers would no longer have a chance to sue user enterprises for their wage.

## **The duration of employment**

The time limit on employment relationships is a characteristic feature of contract labour. This allows the employer to fend off any obligations with regard to employee benefits. However, this practice does not necessarily comply with Mexican labour law which provides for employment relationships to be limited in terms of time only in exceptional cases, i.e. either if it is essential for the manufacturing of the product or if a worker has to be replaced for a limited period of time. Therefore, the widespread practice in Mexico of assigning contract workers only for a short period of time does not comply with the provisions of the labour law.

## **In practice – the limited rights of contract workers**

Practice shows very clearly the extent to which contract workers are disadvantaged compared to regularly employed workers. They hardly ever receive employee benefits, for example, even though the employer is in principle obliged to pay them. It has to be said, however, that in Mexico even regularly employed workers often do not receive employee benefits. In Jalisco, for example, a total of 53.8% of all workers with contracts subject to social insurance contributions did not receive any employee benefits in 1998. Contract workers are not entitled to holidays, profit-sharing schemes and other rights to which workers in Mexico are (partly) entitled and cannot demand payment of these benefits. At the same time, short-term contracts often prevent them from claiming rights such as maternity protection or holiday and pension entitlements.

Other than that, contract workers have to be prepared to accept a lower wage. Admittedly, employment agencies are prohibited by law from deducting the commission they charge for the placement from the contract workers' wages. However, the lack of employee benefits reduce the wages of contract workers, and companies also punish absenteeism due to illness or late arrival, for example, by deducting money from the workers' wages.

Another major problem is that many Mexican workers are not aware of their rights and thus do not claim them. Moreover, there is the fear of unemployment which is often so predominant that workers are prepared to accept any limitation of their rights. Many workers' families hardly have enough to live on so losing their jobs may have drastic consequences for those concerned. Many employment agencies take advantage of these workers' difficult circumstances and increase pressure on them. Mexican contract workers may even have to sign blank documents which might then be used as their own notice, if need be. Due to this

high pressure and considerable uncertainty with regard to jobs, contract workers are also particularly prone to accidents and illnesses.

### **Little union organisation among contract workers**

The difficult situation of contract workers is aggravated by the fact that they are mostly not organised in trade unions and that the trade unions of which they are a member do not represent their interests sufficiently. Many companies to which contract workers are assigned only have insufficient union representation. Often, the relevant trade unions are even *sindicatos blancos* i.e. trade unions which are financed and set up by the companies themselves. Moreover, many of these companies have *contratos de protección* which further curb workers' rights.

Another major problem is that the increased use of contract workers and the proliferation of subcontracting undermines the spirit of solidarity among workers and weakens trade unions. Moreover, involvement in trade unions may well mean dismissal for a contract worker or not being taken on in the first place. Those who were or still are actively involved in trade unions are not hired by Mexican employment agencies.

### **Final remark**

The phenomenon of contract labour is now widespread in Mexico. At the same time, employment relationships for many workers are becoming increasingly precarious. Long-term employment contracts are rare. Only a small proportion of workers receive employee benefits at all and pressure on the individual workers is growing. Mexican trade unions have hardly any influence on this development. Workers who are employed as contract workers are usually not organised in trade unions since any kind of union involvement will prevent them from being employed as contract workers and these individualised employment relationships do not allow any kind of organising.

In this context too, the question arises of where and how trade union work can start. It has to be taken into consideration that an abolition of contract labour is highly unlikely in the short term. In a globalised and neo-liberal world of labour, precarious employment has long become the norm. At least in the short term, it will not be possible to curb this development unless a fundamental change of policy occurs which goes beyond Mexico.

## **6. Result: The three problem areas of labour law against the background of social structures in Mexico**

When describing the three problem areas of labour law it should have become clear that the problems outlined are not only attributable to Mexican labour law but that the general political, economic and social situation in Mexico also considerably impedes democratic worker representation. The structure of Mexico's society is in many respects not democratic but is marked by cronyism, corruption and enormous social inequality. Within the trade union movement too, democratic structures are emerging only slowly.

To summarise the problem areas examined in this paper, the following issues are of key importance: a) The predominance of undemocratic, corporatist unions and the large number of *sindicatos blancos* which are close to employers; b) the overdue reform of the Mexican labour law which among other things could remedy the evil of a labour law jurisdiction that is lacking independence and c) a neo-liberal policy which provides for increasing flexibility in employment and subordinates workers' interests to short-term economic success.

The predominance of corporatist trade unions and *sindicatos blancos*, which despite some radical changes is still a characteristic feature of the Mexican trade union system, in many cases prevents the substantial safeguarding of workers' interests. It is mainly these unions that conclude *contratos de protección* since they rarely feel committed to the workforce and their interests. Nor are corporatist unions and *sindicatos blancos* striving to reduce the number of *trabajadores de confianza*. Generally, they have little interest in democratising the world of labour as the existing system still guarantees them substantial political and economic power. As far as contract labour is concerned, these unions do not defend the interests of these workers either.

Another obstacle in protecting workers' rights in Mexico is the above-mentioned composition of the conciliation and arbitration boards, the *Juntas de Conciliación y Arbitraje*, which are in charge of registering trade unions and collective agreements. In the *Juntas*, which comprise equal numbers of employers, government representatives and union officials, workers' interests are solely represented by corporatist trade unions. Independent, democratic unions have no say in these bodies. This means among other things that undemocratic unions and *contratos de protección* can easily be registered.

It is not only this situation that could be improved by a progressive reform of the labour law. The establishment of a publicly accessible, national register for trade unions and collective agreements which would make the union's registration more independent of the traditional labour law jurisdiction would be a major first step. Another advantage would be a precise legal definition of *trabajadores de confianza* who at the same time should be granted a special status under labour law. With regard to the issue of contract labour, precise legal provisions, which guarantee contract workers protection of their rights are also necessary. Above all, provisions need to be made for contract workers to receive employee benefits and for individual user enterprise to be held responsible for paying them, if necessary. It is to be feared, however, that progressive views will only be successful to a certain extent in the discussion on labour law reform. Due to the very divergent positions taken by the actors involved in the reform process, it seems hardly possible to reach an agreement for the time being.

As far as the above-mentioned problem areas within Mexican labour law are concerned, however, it has to be said that each remedy for the evils described has to go beyond mere labour law issues. Only a fundamental democratisation of politics, trade and industry and society, which takes the importance of workers' rights seriously, will allow changes in the problem areas described. The growing flexibility and deregulation of industrial relations as a result of a neo-liberal economic policy, however, involves the danger that unprotected employment relationships will spread and that violation of workers' rights will increase. Experience has shown that this has been the case in the three problem areas. In the case of contract workers or *contratos de protección*, the attempts of the Mexican government, for example, to lure foreign investors by creating a particularly favourable manufacturing environment often means a severe violation of workers' rights.

The combination of the aspects described i.e. a lack of democracy in trade union structures, a non-existent democratic framework in labour law legislation, overdue labour law reform and neo-liberal reforms mean that workers' interests have so far not been effectively represented in Mexico. Looking for effective and innovative ways to take action is one of the challenges workers' representatives will have to take up in Mexico. Whether action taken at international level can be successful or which avenues should be embarked upon in this respect, will not be discussed in this paper but left to trade unions and their internal discussions.

Finally, it should be noted that, due to the high proportion of informal employment the problems outlined above only refer to a rather small proportion of the working population in

Mexico. About half of all workers remain excluded from the official system of industrial relations and thus from the labour law and trade union representation.

## **7. Final remark**

The above analysis has identified three problem areas of Mexican labour law. They are surely not the only problematic aspects but they are the most obvious ones which make it considerably more difficult if not impossible for workers to organise in free and democratic trade unions.

The paper has further shown that these problems are aggravated by the structures of Mexican society and the companies' every-day practice.

From a union point of view, in particular the system of “contratos de protección” is a striking violation of the right to freedom of association which is firmly established in ILO Convention No. 87 which has been ratified by Mexico.

Against this backdrop, it is now up to the unions to develop strategies and, subsequently, activities to tackle these problem areas of labour law. For this, it seems to be absolutely necessary to change the current Mexican labour law. Initiatives launched at national and international level have to be aimed at convincing Mexican politicians to initiate such a change in the labour law without delay.

## List of abbreviations

CROC	<i>Confederación Revolucionaria de Obreros y Campesinos</i> Revolutionary Confederation of Workers and Peasants: one of the three big corporatist trade union federations
CROM	<i>Confederación Regional Obrera Mexicana</i> Regional Confederation of Mexican Workers: one of the three big corporatist trade union federations
CTM	<i>Confederación de Trabajadores de México</i> Confederation of Mexican Workers: Mexico's biggest corporatist trade union federation
FAT	<i>Frente Auténtico del Trabajo</i> Authentic Labour Front: independent trade union federation
ILO	<i>International Labour Organisation</i> Agency of the United Nations
LFT	<i>Ley Federal del Trabajo</i> Mexican Federal Labour Law
ONTCIP	<i>Organización Nacional de Trabajadores de Confianza de la Industria Petrolera</i> National Organisation of the Oil Industry Workers of Trust: one of the two organisations of workers of trust within the oil company PEMEX
PAN	<i>Partido Acción Nacional</i> National Action Party: since 2000 ruling party in Mexico
PEMEX	<i>Petróleos Mexicanos</i> Mexican national oil company
PRD	<i>Partido de la Revolución Democrática</i> Democratic Revolutionary Party: social democratic party which is particularly strong in Mexico City where a PRD member was elected mayor
PRI	<i>Partido Revolucionario Institucional</i> Institutional Revolutionary Party: dominated Mexican policy for 71 years
STPS	<i>Secretaría de Trabajo y Prevención Social</i> Ministry of Labour and Social Security
STRM	<i>Sindicato de Telefonistas de la República Mexicana</i> Mexican Telephone Workers' Union: progressive trade union of the Mexican telephone company TELMEX
UNT	<i>Unión Nacional de Trabajadores</i> National Workers' Union: independent trade union federation
UNTCIP	<i>Unión Nacional de Trabajadores de Confianza de la Industria Petrolera</i> National Union of the Oil Industry Workers of Trust: apart from the ONTCIP, one of the two organisations of workers of trust within the oil company PEMEX

