

# Mexico: Public policy

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# MEXICO

## *Public Policy*

Laura Ruiz Pérez and Ricardo Massa Roldán



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This policy brief discusses employment laws in Mexico, with a particular focus on policies related to the employment of older workers, as it relates to the dimensions of the quality-of-employment framework. Rather than discussing all employment policies, this policy brief will highlight the most significant legislation in order to provide a general introduction to current policies as they relate to quality of employment in contemporary Mexico.

This brief includes four sections:

- An in-country policy context that introduces the reader to the policy background of Mexico.
- A discussion of the eight dimensions of quality employment, providing an overview of the major public policies affecting each dimension.
- A contextual focus on the Retirement Saving System Law highlighting the results of the implementation of a new pension system in the Mexican economic environment. This section also will examine the need to strengthen the system in order to provide income security to the aging society.
- A brief conclusion on the implications of policy for quality of employment in Mexico.



This brief uses the Quality of Employment Framework to discuss the effect of public policies in Mexico.

## IN-COUNTRY POLICY CONTEXT

### *Need for labor reform facing a new economic and social environment*

May 1<sup>st</sup>, 2010 marked the 40th anniversary of the passage of the Federal Labor Law in Mexico. Since its original publication in 1970, no substantial changes had been made to the Law, allowing it to reach an obsolescent state that reduced employment, as well as the competitiveness and productivity of the country.<sup>1</sup>

The Mexican labor market combines a small reduced “formal” sector, protected by strict legislation,<sup>2</sup> and a large “informal” sector with limited legal protection. In 2008, Mexico was third within the OECD’s country rankings in relation to employment protection legislation, falling only behind Luxembourg and Turkey.<sup>3</sup>

The social and economic reality of Mexico is very different from forty years ago.<sup>1</sup> A modernization of the labor sector’s legal framework is crucial in order to improve the status of the country in current global employment indicators and boost productivity and competitiveness.<sup>4</sup> According to the Global Competitiveness Report 2009-2010 (2010), Mexico is ranked 60 out of 133 in terms of the Global Competitiveness Index. In labor market efficiency, the country is ranked 115. Mexico does not reach the top 70 in any of the following sub-categories: cooperation in labor-employer relations (75), flexibility of wage determination (88), rigidity of employment (102), hiring and firing practices (106), firing costs (81), pay and productivity (99), reliance on professional management (87), and female participation in labor force (114).<sup>5</sup> According to the “Doing Business Report” (2010), Mexico is ranked 136 out of 183 in the employing workers indicator and reports a rigidity of employment index of 41 out of 100.<sup>6</sup> These results highlight the importance of a reform of the Federal Labor Law.

On March 18, 2010, the Parliamentary Group of the National Action Party presented their Labor Reform Bill to the Congress. The bill is divided into five main axes: 1) facilitation of employment and job creation, 2) the promotion of gender equity, inclusion, and non-discriminatory actions, 3) strengthening of enforcement of labor justice, 4) development of transparent and democratic labor unions, and 5) enhancing the regulatory powers of monitoring and sanctioning labor authorities.<sup>4</sup>

Two previous bills had been introduced to the Congress in 2002. The bill did not address all of the significant issues, but represented the first steps forward in the achievement of reform by reducing legal uncertainty and increasing labor-market flexibility characteristics.<sup>2</sup> With these proposals as the basis, the new Federal Labor Law will define, address and include: productivity and competitiveness; increased attention to the child labor situation; assurance of better working conditions and solutions to work-related conflicts; reduction of excessive concessions to unions and eased access to formal and well-paying jobs particularly for women, younger employees, and older employees.<sup>1</sup>

Meanwhile, the economically active population (EAP)<sup>7</sup> in Mexico is projected to increase from 56.2% (2009) to 59.8% in 2030 and 58.6% by 2050. Younger employees, representing 46.9% of the EAP, will reduce their participation to 34.7% in 2030 and 29.4% in 2050, while older employees will increase their participation from 19.5% to 31.5% and 40.7% for the same periods. Women will increase their participation from 35.5% (2009) of the EAP to 39.6% and 42.1% in the above-mentioned years.<sup>8</sup> These projections suggest that attention be given to the creation of programs that lead to an inclusive workplace for women and older employees.<sup>4</sup>

### *The National Development Plan 2007-2012*

The objective of the National Development Plan 2007-2012 (presented in 2007 in accordance with Article 26 of the Political Constitution of the United Mexican States and Article 12 of the Planning Law) is to facilitate cooperation between private and public sectors in order to reverse the current economic situation. There were 131,918 participants and 41 documents with proposals involved in the development of this plan. The plan considers sustainable human development the guiding principle for its five main pillars of action. For the purpose of this research, three are highlighted: the rule of law and security provision, competitive and job-generating economy, and equality of opportunities.<sup>9</sup>

## POLICY OVERVIEW

### DIMENSIONS OF QUALITY OF EMPLOYMENT



#### ➡ Indicators of Fair, Attractive, and Competitive Compensation & Benefits

*Employees' basic needs are secured, and fair and equitable distribution of compensation and benefits among employees is promoted.*

#### Overview

Public policy for this dimension of quality of employment has focused mainly on improving economic productivity, as the basis to improve the economic conditions of the employees, and the effective minimum wage establishment in order to secure the basic economic and social needs throughout the geographical areas of the country. Promoting fair and equitable distribution of wages and other compensations remains an objective that needs improvement.<sup>10</sup>

#### *Productivity as the basis to improve employees' environment*

The National Development Plan 2007-2012 supports the modernization of the labor regulatory framework in order to enhance productivity, economic competitiveness, job opportunities, and in protecting the rights of employers and employees.<sup>9</sup> According to the "Doing Business 2010: Mexico" report (2010), the country is ranked 51 out of 183 in the Ease of Doing Business. The report reviewed such areas as paying taxes, start-up business requirements, and employment of workers. In employment, Mexico is ranked 136 out of 183, with a difficulty of redundancy index of 70 out of 100 and a redundancy cost of 52 weeks of salary. In the rigidity of employment index, the country is 41 out of 100, being more rigid than both the Latin America and Caribbean average (26.6) and the OECD countries average (26.4).<sup>6</sup>

The Federal Executive Power, through the Ministry of Labor and Social Welfare (STPS), signed the National Agreement on Labor Productivity in May 2009. Its purpose was to enhance business competitiveness by reversing the employment situation and increasing labor productivity. The agreement states that competitiveness and labor productivity are priorities of the national agenda, and promote a stable and better-paying work environment.<sup>11</sup>

In reaction to the agreement, employers have established their commitment to maintaining and expanding the sources of employment, including specific efforts in promoting productivity that secures the basic economic needs of workers. From January to November 2009, 6,362 salary reviews between unions and companies were conducted involving 797 million workers who negotiated an average direct wage increase of 4.38%.<sup>12</sup>

The agreement also established that regulation regarding productivity by the STPS would promote higher competitiveness of the national economy and an increase in workers incomes.<sup>13</sup>

#### *Strengthening employee protection*

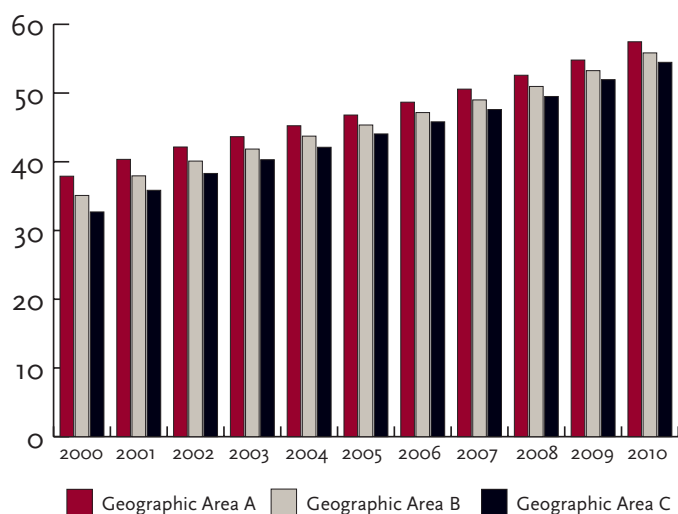
The National Committee of Minimum Wages (CONASAMI) is a public agency created by the reform of Fraction VI of Article 123 of the Political Constitution of the United Mexican States.<sup>10</sup> CONASAMI's main objective is to set the minimum wage, as established by Article 94 of the Political Constitution of the United Mexican States and the economic and social conditions of the country. CONASAMI aims to secure the basic economic needs of workers while promoting fairness and justice for workers and their families.<sup>10</sup>

In Mexico, the minimum wage is defined as the "lesser" amount to be paid in cash to the employee for services rendered in a work day.<sup>14</sup> In order to describe the economic flow and activities of the different states in the country and fit the minimum wage to it, the CONASAMI divided the country into three geographic areas and set a minimum wage for each.<sup>10,15</sup> In 2009, the minimum wage for Geographical Area A was 54.80 MXP an hour (About \$4.06 USD), while for B and C, the minimum wage was 53.26 MXP (\$3.94) and 51.95 MXP (\$3.85 USD), respectively.<sup>16</sup> Also in this year, the average number of employees registered with the Mexican Social Security Institute (IMSS) was 13,254,835 in 805,371 firms, from which 3.4% received one minimum wage, 32.6% received between one and two, and 64% received more than two minimum wages.<sup>17</sup>

As shown in Figure 1, the minimum wage gap between geographic areas in Mexico is closing. The minimum wages for the year 2010, as set by the CONASAMI,<sup>10</sup> will be 57.46 MXP (\$4.54 USD) for geographic area A, 55.84 MXP (\$4.41 USD) for area B, and 54.47 MXP (\$4.30 USD) for area C.<sup>16</sup> These changes represent an increase of 4.85% for the three geographic areas in relation to 2009, the highest year-to-year overall change in the last eight periods.

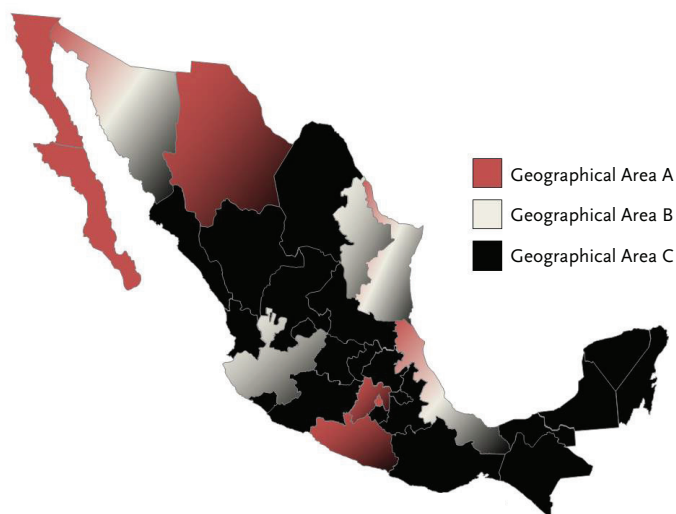
The Mexican government categorizes municipalities in accordance to the economic activity of that region. Municipalities with the greatest amount of economic activity and flow of capital and labor are designated as Geographic Area A. By contrast, Geographic Area C represents municipalities where economic activity is low.<sup>15</sup>

Figure 1a: Minimum Wage Gap between Geographic Areas



Source: Tax Administration Service (2010)<sup>18</sup>

Figure 1b: Map of Mexico, Geographical Areas



Note: The States of Sonora, Jalisco, Nuevo Leon, Tamaulipas, Veracruz, Michoacan and Mexico State, have more than one geographic area, as shown on this map illuminated with more than one color.

Source: Elaborated with Data From National Committee of Minimum Wages (CONASAMI) (2010)<sup>19</sup>



### ➤ Indicators of Opportunities for Development, Learning, & Advancement

*Job skill development and advancement are promoted for employees of as many industrial sectors, employment statuses, and life/career stages as possible.*

#### Overview

The National Development Plan 2007-2012 considers job skills training and the development of human resources as essential elements to enhancing national productivity and competitiveness.<sup>9</sup> In order to accomplish this objective, important programs are being managed by two institutions, the STPS and the National Council for Science and Technology (CONACYT).

#### Promoting training to enhance productivity

The right for workers to receive training appeared with the reform published in the DOF in January 1978 in relation to the reform of Article 123, Fraction XIII of the Political Constitution of the United Mexican States with the corresponding reforms and additions to the Federal Labor Law (published in the DOF in April of the same year).<sup>20</sup>

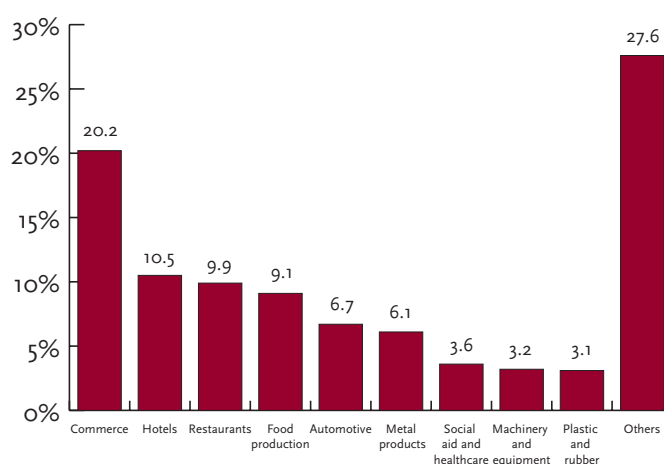
The STPS has two specific units. The Undersecretary of Employment Inclusion, through the General Directorate of Training, is in charge of the promotion, distribution and enforcement of legal obligations derived from the training process. The Undersecretary of Employment and Labor Productivity, through the General Directorate of Labor Productivity, is in charge of the Support Program for Productivity (PAP).<sup>21</sup>

According to the Guidelines for Operation of the PAP, the objective of the program is to facilitate access to training to increase knowledge, abilities, and skills required to increase

labor productivity.<sup>22</sup> With the generation of wealth and the maintenance and expansion of employment opportunities, the PAP works to improve life conditions of workers, both economic (better future income) and personal (training). This program utilizes a subsidy, paid for by the STPS, of up to 80% of the cost per hour of training courses taught by registered instructors according to the guidelines of operation of the program.<sup>21</sup>

As shown in Figure 2, 20.2% of assistance was given to firms in the commercial sector, followed by 10.5% in hotel-related

Figure 2: Assistance Given by the PAP in 2009 by Economic Activity



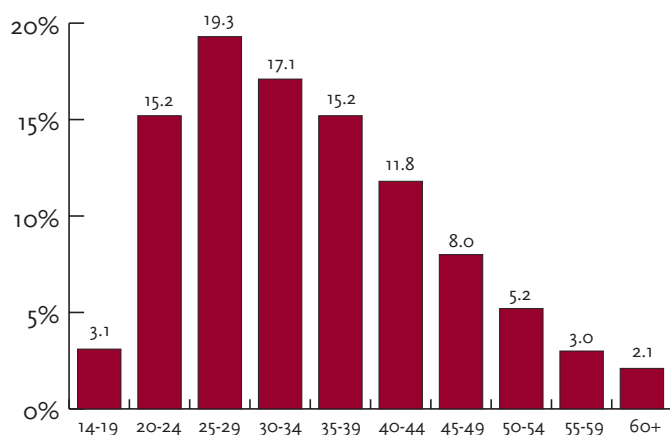
Source: Undersecretary of Employment and Labour Productivity (2010)<sup>23</sup>

activities. The restaurant and food production industries received 9.9% and 9.1% of assistance, respectively, while automotive and metal products manufacturing received 6.7% and 6.1%, respectively. Sectors receiving less than 3% are grouped together and total 27.6% of the overall assistance.

From the assistance registered in 2009, 8.9% was given to micro, 31.2% to small, 32.8% to medium and 27.1% to large firms.<sup>23,24</sup> If analyzed by income range, 42.8% of the assistance was given to workers receiving between 1 and 2 minimum wages, 26.4% to the 2-3 minimum wage range, while the 3-5 and above 5 ranges received 18.9% and 11.9%, respectively.

As shown in Figure 3, from the total assistance provided by the program, 54.7% was given to younger employees (35 years and under), 35% to mid-life employees (35-49 years) and 10.3% to older employees (50+).

Figure 3: Assistance Given by the PAP in 2009 by Age Group



Source: Undersecretary of Employment and Labour Productivity (2010)<sup>22</sup>

### *Coordination between Ministries: programs for training and development*

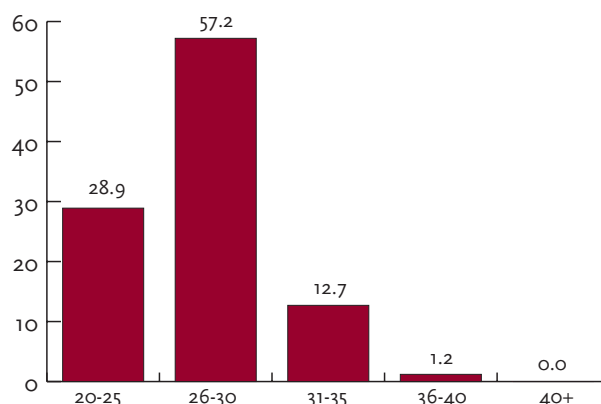
Along with the STPS, the Ministry of Public Education (SEP) promotes training programs through the General Directorate of Training Centers for Work (DGCFT). The main objective is to train and develop human resources in order to meet the needs of all Mexican economic sectors. In order to do so, the DGCFT has 198 Training Centers for the Industrial Work (CECATI) throughout the country, offering a catalog of 226 courses, in 61 specialties and in 17 economic areas.<sup>25</sup> Methods of training include regular, non-regular, mobile, online and the Official Recognition of Occupational Competence.<sup>26</sup> Job assistance and other services are provided to companies seeking to improve their current employees' situations. Under certain conditions, the firms receive discounts when acquiring courses for large groups.

In 1971, the federal government, through the Ministry of Finance and Public Credit (SHCP), established the Fund for the Development of Human Resources (FIDERH). The Fund is a public trust fund, managed by Bank of Mexico and coordinated by the National Council for Science and Technology (CONACYT), which provides credits, training, and upgrading of technical specialists in specific scientific, technological, and administrative areas considered relevant to the economic and social development of the country.<sup>27</sup> By granting loans and credits to schools and institutions engaged in the promotion of technical and higher education, the FIDERH seeks to produce economic activity.

In the first semester of 2009, the FIDERH received 579 applications from which 425 (73%) were approved. From the approved applications, 72% were given assistance to receive

education or training abroad while the remaining 28% were given assistance to study in Mexico. Masters degrees were granted 92.7% of the credits while doctoral degrees and specialties were given 4.2% and 3.1%, respectively.<sup>28</sup>

Figure 4: Assistance Given by the FIDERH in 2009 by Age Group



Source: Integrated Information System on Scientific and Technological Research (2010)<sup>28</sup>

As shown in Figure 4, from the total assistance provided by the program, 98.8% was given to younger employees (35 years and under), 1.2% to employees aged 36-40, and 0% to employees aged 40+.





## ➔ Indicators of Wellness, Health & Safety Protections

*Protection of employees' safety and health at their worksites is mandated, and their physical and mental well-being is promoted. In the case of job-related injury or illness, compensation or other forms of social protection are offered.*

### Overview

The responsibility of the employer to guarantee the health and safety of employees in the workplace, taking the necessary measures to prevent accidents, is stated in the Political Constitution of the United Mexican States. The Federal Labor Law stipulates that it is the obligation of employers to prevent workplace hazards and to meet the health and safety requirements defined by law.<sup>29</sup>

After facing an increase (see Figure 5) in reported accidents and diseases in the workplace, the government promoted this dimension of quality of employment by declaring health and safety a major objective. The NDP 2007-2012 determines that occupational risk prevention is a top priority of the labor policy, as no positive results have been reached to date.<sup>9</sup>

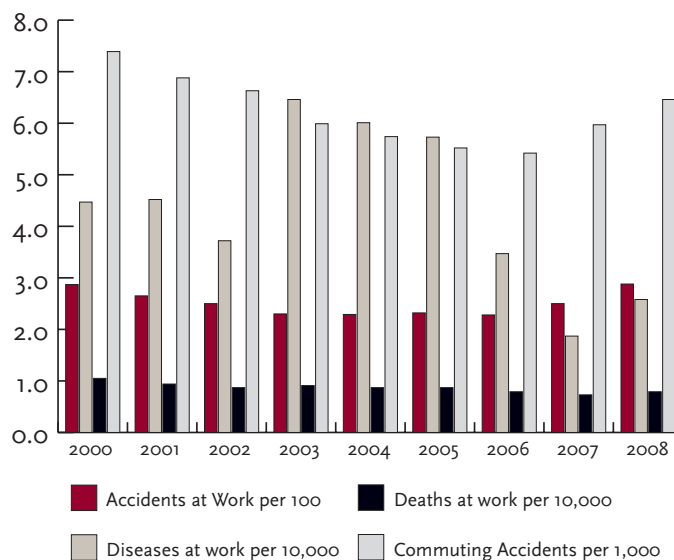
### Preventing work-related injuries and illnesses

In response to the NDP 2007-2012, the STPS designed and published the Sector Program of Labor and Social Welfare. This program considers as priority the establishment of proper working conditions in an optimal environment characterized by safety and hygienic elements.<sup>21</sup> The STPS, through the Department of Health and Safety at Work, established the National Advisory Committee on Occupational Safety and

Health at Work (COCONASHT), a tripartite body under the Federal Labor Law, which aims to study, develop, and implement preventive measures to abate hazards in the workplace.<sup>21</sup>

Even though the efforts of the COCONASHT were important in 2009,<sup>30</sup> the only decrease in comparison to 2008 was in accidents at the workplace, while diseases, deaths, and commuting accidents continued to increase in relation to the previous year (see Figure 5). One explanation of the increase in diseases and deaths at workplace might be the Swine Flu A (H1N1) virus that sprouted in the second quarter of 2009, however, there is not enough statistical proof to make that conclusion.

Figure 5: Historic Evolution of Work-related Injuries and Illnesses



Source: Mexican Social Security Institute (2010)<sup>31</sup>

*Among the total risks at work of accidents, diseases, and commuting accidents in 2009, 55.73% occurred among younger employees (35 years and under), 32.96% among mid-life employees (35-49) and 11.31% among older employees (50+).<sup>31</sup>*



### *Promoting a culture of prevention*

One of the main tasks of the COCONASHT is to strengthen the culture of prevention under national and international standards, and therefore reduce a focus on compensation.<sup>32</sup> The General Guidelines for the Self-Management Program in Health and Safety at Work (PASST) was issued in 2002 as incentive for employers to voluntarily implement management systems to guarantee operations under safe and hygienic conditions.<sup>33</sup>

The PASST proposed a deduction in the premium insurance risks to employers that formalized a commitment to establish a management system in health and safety accompanied by the design of an STPS accredited prevention program in their workplaces.<sup>29</sup> The progress of the program is measured based on four categories of analysis, and allocated to one of three levels receiving the compensation established for that level.<sup>34</sup>

In 2009, 388 workplaces voluntarily joined the PASST (128.2% higher than 2006 and 37.1% higher than 2008). In addition, 199 workplaces were recognized as “safe companies” and 35 workplaces were reevaluated as “safe companies,” reaching the highest level in the program. The number of revalidations increased by 75% since 2006 and by 16.7% since 2008.<sup>35</sup> By July 2009, the number of accidents at work, at sites recognized as safe companies, had decreased by 77.6% from 2008.<sup>30</sup>



### ➤ Indicators of Opportunities for Meaningful Work

*Opportunities for meaningful or fulfilling employment are promoted through facilitating appropriate job-skill matches, self-realization through occupation, or community participation away from routine work.*

#### *Overview*

The efforts of the government in this dimension of quality of employment have been centered in the job-skill match through a competence-based approach. In August 1995, The Occupational Competency Standardization and Certification Council (CONOCER), sanctioned by the Ministry of Public Education, was established.<sup>36</sup> The Council seeks to meet companies' job specifications with a competence-based standard of skills and knowledge from the workers. Considerations in community participation apart from routine work have not been taken.

#### *Reducing job mismatch through competence-based standards*

The role of CONOCER was adjusted in December 2009 in response to the NDP 2007-2012. The NDP considers it essential to promote dialogue between labor and business sectors in order to increase job creation and productivity.<sup>9</sup> The council transitioned from an institution focused on the development of technical standards to an institution aimed at generating competence-based standards to meet the needs of the private sector.<sup>37</sup>

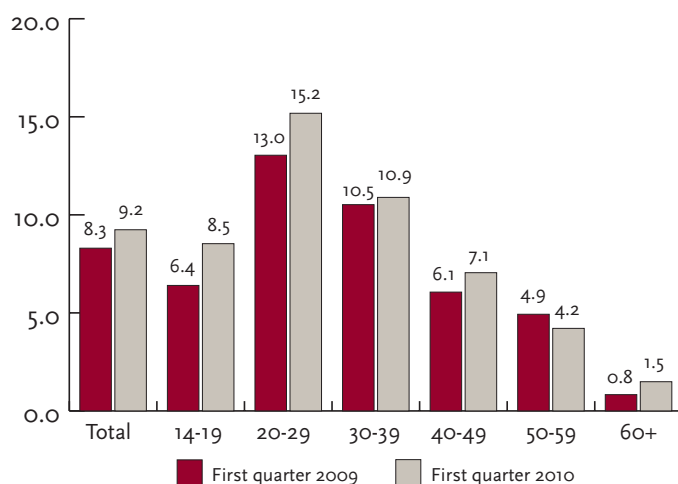
By promoting constant development of workers' skills and knowledge, based on continuous evaluations and certifications of their performance, CONOCER encourages employees and employers to develop a set of competence-based standards called Labor Competency Technical Standards (NTCL).<sup>38</sup> The

Competency Based Human Resources Training Program (PROFORHCOM) was established in April 2005 as part of this strategy. Its constitution was the result of a loan agreement (with a total cost of \$84 million USD) between the Inter-American Development Bank (IDB) and the Mexican government.<sup>35</sup>

Although the main objective of CONOCER is to generate social value around the skills and knowledge of the workers, the main challenge of CONOCER, taking into consideration the economic and social conditions of the country, is to modernize labor skills that are obtained.<sup>38</sup> This entity looks not only to respond to the specific requirements of companies, but also to make personal development and training available to all sectors of the population.<sup>36</sup>

During 2009, improvements were made to the quality of educational and work training programs, accompanied by an increased number of NTCLs issued and demanded by the productive and labor sectors.<sup>35</sup> However, 89,429 employees quit their jobs looking for an income improvement or better conditions for self-realization at work.<sup>39</sup> As shown in Figure 6, there was an overall increase, from the first quarter of 2009 to the first quarter of 2010, of 0.94 per one thousand employees looking for a job due to dissatisfaction with their current job. Analyzed by age groups, the biggest increases were present among 20-29 year olds (2.14) and the 14-19 (2.13) year old age group, while the only decreases were present in the 50-59 year old age group (-.72). A greater effort is still needed in this area.

Figure 6: Rate of People Looking for a Job due to Dissatisfaction with Current Job



Source: National Institute of Statistics and Geography (2009)<sup>39</sup>



## ➔ Indicators of Provisions for Employment Security & Predictability

*Stable provision of employment opportunities for job seekers is promoted, clear communication of terms of employment is facilitated, and protecting the job security of the employed is a policy objective.*

### Overview

Government efforts in this dimension of quality of employment focus on job maintenance and assistance to job seekers. In order to promote employment security in the context of the recent financial crisis, the government, with various economic sectors of Mexico, signed the National Agreement in favor of Household Economics and Employment for a Better Living in January 2009.<sup>40</sup> This agreement offers three programs that support employment and employees.<sup>35</sup> Efforts to link job seekers with employers was also considered in the agreement.

### Increasing job protection

As part of the National Agreement in favor of Household Economics and Employment for a Better Living, the Undersecretary of Employment and Labor Productivity, through the general coordination of the National Employment Service, established the National Employment Service (SNE), the Temporary Employment Program (PET), and the Job Preservation Program (PPE).

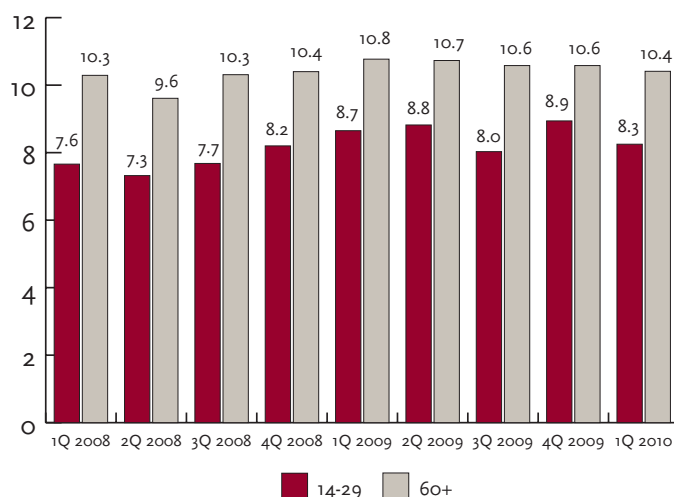
The PET provides temporary economic support to people who, due to the economic cycle or a natural disaster, have lost their jobs. The program seeks to provide benefits to a family or to the community; as well as assist employees and employers from companies that are 'highly' vulnerable to the international

financial environment such as the automotive and electronic equipment industries. In addition, the program provides incentives and compensation to keep companies solvent, avoiding bankruptcy.<sup>41</sup>

Most of the actions taken in this dimension of quality of employment have been made through the SNE. Its two pillars are Linking Services for Employment and the Employment Support Program (PAE). The SNE promotes employment by “linking” employees and employers and also provides economic support through guidance and supervision, placing workers in one of its 147 offices located throughout the country.<sup>42</sup> During 2009, the SNE assisted 3,939,401 people, placing 22.8% (896,402) in work. The placements exceeded the government’s target for the year by 3.8%.<sup>30</sup> For example, during the first seven months of 2009, a crucial period in the context of the financial crisis, Linking Services assisted 2,031,606 people, placing 15.9% (323,778) in a work post. Most placements were accomplished through job databases (26.4%), job fairs (15.9%) and opening spaces (*Abriendo espacios*) services (8.27%).<sup>30</sup>

As shown in Figure 7, during 2009 young employees (14-29 years) and older employees (60+ ) did not expect to find a job due the economic situation of the country. However, the trend was reversed during the first quarter of 2010, compared to the same period from the previous year.

Figure 7: Rate of Younger and Older Population Interested in Work but Without Expectation of Employment



Source: National Institute of Statistics and Geography (2009)<sup>39</sup>

The PAE consists of a set of active labor market policies that seek to contribute to the reduction of unemployment. It is divided into the following subprograms: Training Scholarships (*Bécate*), Formal Employment, International Labor Mobility (Agricultural, Industrial and Services Sectors), Promotion of Self-Employment and Working Returnees (*Repatriados Trabajando*).<sup>30</sup> During 2009, the PAE registered 398,406 cases and placed 55.8% people in jobs, exceeding the target for the year by 2.7%.<sup>35</sup> The budget allocated to support unemployed and underemployed persons totaled 782.6 million MXP (\$57.9 million USD), 26.3% higher than the same period in 2008.<sup>30</sup>

#### *Using Internet to connect job seekers with employers*

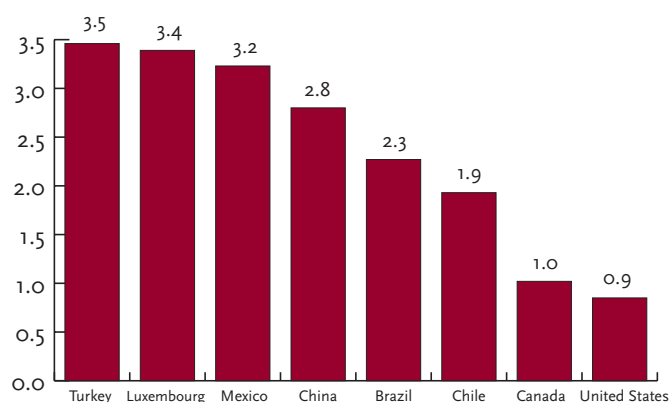
Two web sites were developed as tools to link employers with employees: the Job Portal, and the Mexican Labor Observatory (OLA). The Job Portal in effect since March 2008, [www.empleo.gob.mx](http://www.empleo.gob.mx), links job seekers with available posts in the private sector and in the three tiers of government. Information, direction, guidance, and consultancy related to the Mexican labor market is also provided.<sup>30</sup> During 2009, it registered 30,892,963 visits (93.9% were domestic). Of 1,352,617 applicants registered in the year, 1,003,224 published their curriculum vitae and 1,554,431 vacancies were published.<sup>35</sup> From January to July 2009, 15% of the 775,157 registered applicants were placed. Both registrations and placements increased by 17.5% and 38.1%, respectively, relative to the first seven months of 2008.<sup>30</sup>

The Mexican Labor Observatory (OLA) is a free job information and vocational guidance service, available at [www.observatoriolaboral.gob.mx](http://www.observatoriolaboral.gob.mx). The OLA connects students, educational institutions, guidance counselors, employers, employment agencies, and employees.<sup>43</sup> By presenting specific information, characteristics, trends, polls, and behavior of the most representative professions and occupations of the Mexican labor market, it functions as a useful and informative tool. According to an online poll on the website, 50.5% of visitors used the service to choose a career and 39.1% used it to look for a job.<sup>30</sup>

#### *Competitive environment for employment security provision*

The information presented in Figure 8, indicates the sternness of employment (overall) protection legislation by country, as of 2008. The value assigned for Mexico (3.23) indicates that the country has less restrictive legislation compared to Turkey (3.46) and Luxembourg (3.39). However, it is the highest value for a country in America, North and Latin America combined, of the ones reported by the OECD.<sup>3</sup>

Figure 8: Strictness of Employment Protection Legislation, Overall, as of 2008, by Country

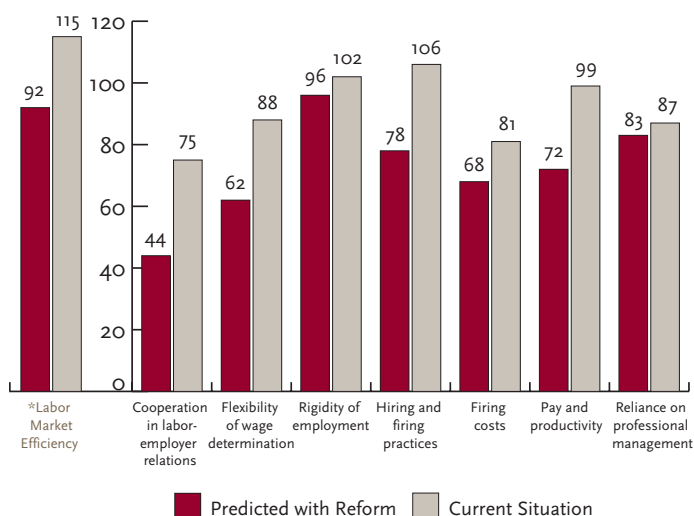


Source: Organisation for Economic Co-operation and Development (2010)<sup>3</sup>

According to the Global Competitiveness Report 2009-2010, Mexico is ranked 60 out of 133 countries in the Global Competitiveness Index (GCI). The results in the 7th pillar of the index, Labor Market Efficiency, ranked Mexico 115 out of 133, the worst among the 12 pillars of the GCI. When asked about the most problematic factors for doing business, respondents stated: insufficient government bureaucracy (15.5%), corruption (12.8%), crime and theft (12.4%), access to financing (12.3%), and restrictive labor regulations (10.5%).<sup>5</sup>

The Bank of Mexico, along with the International Labor Organization (ILO), the Organization for Economic Co-operation and Development (OECD), and the Mexican Institute for Competitiveness (IMCO), conducted a study that provided insight on the labor market. The study established that if the Labor Reform Bill passed, Mexico would gain 20 to 25 rating points in labor market efficiency, and 3 rating points in the Global Competitiveness Index.<sup>44</sup> The reform would lead to the improvements shown in Figure 9, providing more employment security to employees in a competitive environment.<sup>44</sup>

Figure 9: Predicted Improvements in the Global Competitiveness Index if the Reform of the Federal Labor Law is Accepted



\*Note: Cooperation in labor-employer relations, flexibility of wage determination, rigidity of employment, hiring and firing practices, firing costs, pay and productivity, reliance on professional management are some of the indicators of Labor Market Efficiency in the GCI.

Source: Ministry of Labor and Social Welfare (2010)<sup>44</sup>



### ➤ Indicators of Workplace Flexibility

*Availability and utilization of flexible work options are promoted for employees of various life stages through increasing their control over work hours, locations, and other work conditions.*

#### Overview

Even though a specific action or program regarding this dimension of quality of employment does not exist, a Labor Reform Bill was presented to the Congress in March 2010. This bill considers the promotion of work flexibility, particularly in new contractual designs and control over working hours, as a fundamental element to enhance Mexico's competitiveness and productivity in response to the objectives of NDP 2007-2012. The proposal has been turned over to the Commissions of Labor and Social Welfare of both representative chambers of government for analysis and review.<sup>44</sup>

#### *Environment of labor rigidity urges for a reform*

The bill introduced by the Parliamentary Group of the National Action Party establishes that new contractual modalities should be included (trial periods, work opportunities, and conditions) for recently graduated students and temporary jobs related to seasonal opportunities. A new plan regarding hourly work was also suggested, because full social security benefits would be granted despite contracts being based on pay for specific hours of service. The bill aims to enhance flexible work options and flexible work hours while, at the same time, creating more formal and well-paying jobs for an aging population.<sup>44</sup>



### ➤ Indicators of Culture of Respect, Inclusion & Equity

*Diversity in the workforce and inclusion of less-advantaged populations are promoted, and equity in work conditions is pursued.*

#### Overview

The main objective of the current social policy in Mexico is to guarantee opportunities to the citizens in order to achieve human and economic development.<sup>9</sup> The efforts and actions taken in this dimension of quality of employment are part of one of the national objectives of the NDP 2007-2012.

One of the main axes of the NDP 2007-2012 is related to the promotion of equity among Mexicans by providing equal opportunities, both economic and social, with particular emphasis on less-advantaged groups. This axis focuses on enhancing the integration of women into the labor force by reducing discrimination at work and developing equal employment conditions. The plan also focuses on the complete incorporation, in the economic and social environment, of indigenous communities. At the same time, the strategy seeks the inclusion of older adults in the labor force in order to develop productive activities relevant to their communities.<sup>9</sup>

#### *Closing the gender gap*

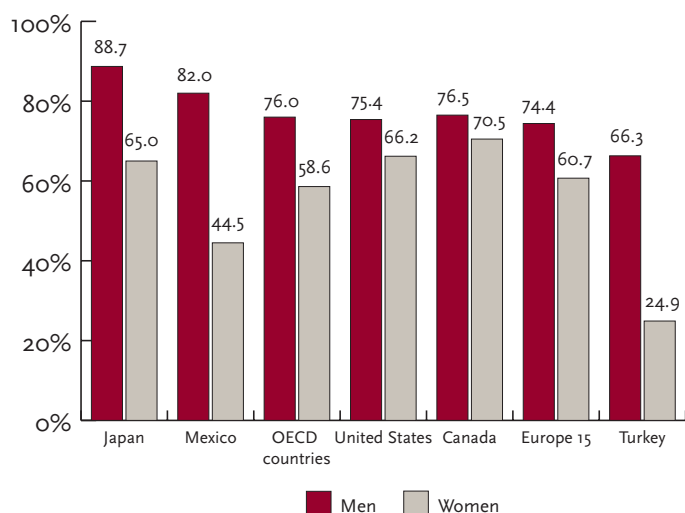
Article 33 of the General Law for Equality Between Women and Men states that strengthening equality in relation to work inclusion and conditions among women and men is a priority of the national policy.<sup>45</sup> The institution in charge of reducing gender discrepancies is the National Institute for Women (INMUJERES). As a response to the strategies established by the NDP 2007-2012, INMUJERES began the National Program for Equality between Women and Men 2008-2012 (PROIGUALDAD) which seeks to enhance women's economic participation.<sup>46</sup> The Institute views equality of component in the work environment as a condition for greater opportunities of development for women.<sup>47</sup>

In order to revert results such as those presented in Figure 10, the STPS together with INMUJERES and other institutions designed the Mexican Norm for Employment Equality between Women and Men that ratified in April 2009, the Gender Equality Model (2003).<sup>21</sup> The Model established equal status for access, maintenance, and promotion of women; 2) prevention of sexual harassment; 3) equal pay for the same tasks; and 4) the parameters for work-family life balance.

As shown in Figure 10 the employment rate in 2009 for the OECD countries was 76% for men, and 58.6% for women with a gender gap of 17.4%. From the reported countries, Mexico presents one of the highest employment rates for men (82%) but also the second largest gender gap (37.5%), lower only than Turkey (41.4%). Even though the male employment rate for Mexico is higher than that of the United States, its gender gap is nearly 4.1 times that of the United States (9.2%).

From June to December 2009, nine companies were certified under the Norm with direct benefits for 16,432 workers. Through the Gender Equality Model, 305 organizations established their commitment to gender equity, representing more than 400,000 employees.<sup>35</sup>

Figure 10: Employment rate by Country and Gender as of 2009



Source: Organisation for Economic Co-operation and Development (2010)<sup>48</sup>

As shown in Figure 10, results in this area are not as significant as desired.

### Assistance of less-advantaged groups

The two main groups considered in the labor inclusion policy are the indigenous population and older adults, those older than 59 years. The NDP 2007-2012 considers labor incorporation of indigenous peoples and communities a priority since job scarcity, low wages, and asymmetric relations between indigenous and non-indigenous people prevails.<sup>9</sup>

The National Commission for the Development of Indigenous Peoples (CDI), along with the STPS and other institutions, designed mechanisms aimed at improving the living and working conditions of the indigenous by increasing employment promotion through the link between employers and communities, especially in the agricultural sector. As a result of those efforts, the Program for the Development of Indigenous Peoples 2009-2012 was published in the DOF in December 2009. The program describes the set of objectives, indicators, targets, and strategies the government will follow in order to promote the development of the Mexican indigenous people, specifically through the improvement of labor participation.<sup>49</sup> Progress has not yet been reported.

In response to the NDP 2007-2012, which seeks the inclusion of older adults in the labor force, the National Institute of Older Persons (INAPAM) made 3,412 collaboration agreements with Federal Public Administration agencies. Most of the agreements promoted the inclusion of older adults in the labor market. In December 2009, 5,816 vacancies for older adults were granted through the agreements. Also the INAPAM carried out 4,142,008 community development activities, highlighting training for work, leisure time administration, and health education.<sup>35</sup>





### Indicators of Promotion of Constructive Relationships at Work

*Employer-employee frictions and conflicts are mitigated, and constructive workplace relations are facilitated.*

#### Overview

Strategy 4.4 of the NDP 2007-2012 states that through reconciliation of labor disputes, contracts and wage revisions, labor “peace” and balance between employees and employers can be achieved.<sup>9</sup> For that reason, the actions taken in this dimension of quality of employment by the government are focused on the promotion, reconciliation and legality of the labor relationship. The two main public bodies working on this matter are the Federal Prosecutor for the Defense of Labor and the Federal Board of Conciliation and Arbitration.

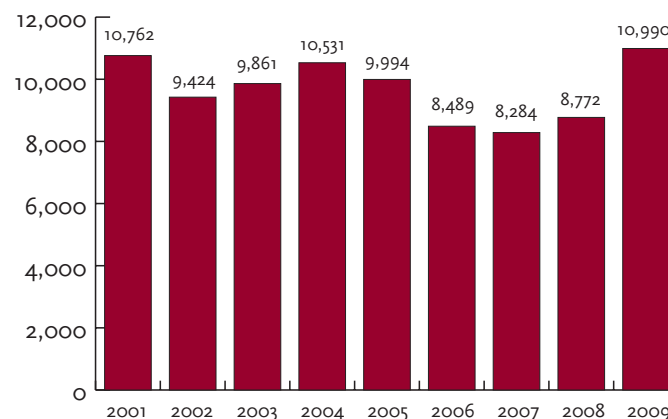
#### Assisting employer-employee disputes with an employee perspective

The Federal Prosecutor for the Defense of Labor (PROFEDET) is a decentralized public body of the STPS that provides guidance, advice, and legal representation to workers, unions or beneficiaries regarding labor activity, specifically rights and obligations that regulate employment.<sup>50</sup> PROFEDET seeks to reduce employer-employee disputes by assuring that the conditions established in employment contracts are honored.

During 2009, the PROFEDET provided 221,496 services of labor justice enforcement, (40.6% more than in 2008): 175,492 (79.2%) were guidance and advice services: 33,840 (15.3%) were legal representation services: 10,990 (5%) were conciliation cases, and 1,174 (0.5%) were court protections.<sup>51</sup>

As shown in Figure 11, 2009 had the highest number of counseling cases of the last nine years. From the 10,990 counseling cases presented in 2009, 93.4% of them (10,261) were concluded. Of them, 6,612 cases were solved favorably

Figure 11: 2001-2009 Counseling Cases Registered at PROFEDET



Source: Ministry of Labor and Social Welfare (2010)<sup>51</sup>

for the employee, resulting in a 64.4% of success rate for the PROFEDET. This result is 3.5% higher than in 2008 and exceeded by 2.4% the target for 2009.<sup>35</sup>

#### Solving disputes as a group

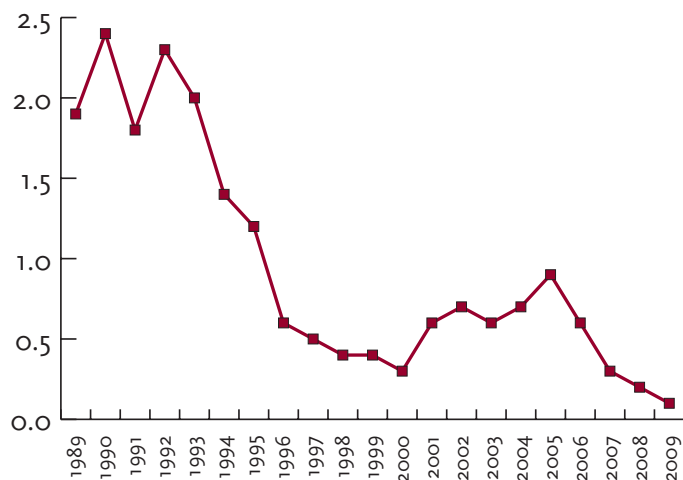
The Federal Board of Conciliation and Arbitration (JFCA) seeks to ensure employees and employers legal assistance in the resolution of labor disputes.<sup>52</sup> The aim is to accomplish the goals established in the NDP 2007-2012 which focus on strengthening dialogue, conciliation, and negotiation of the political and social sectors in the country.<sup>9</sup> The JFCA works along with the STPS, but is an autonomous body made up of a representative from the government, the employees, and the employer in order to enhance the tripartite participation in the solution of labor conflicts.<sup>52</sup>

During 2009, the JFCA focused its efforts on promoting conciliation and voluntary agreement between the parties. From the 527 administrative conciliation services that were provided, 524 reached an agreement, resulting in a 99.4% effectiveness rate. This rate is 1.5% higher than reported in 2008.<sup>35</sup>

Even though 13,207 strike summons were registered in 2009, only 19 resulted in strikes, the smallest amount in the last 27 years. The amount of employees involved in the strikes (24,472) however, was the highest of the last 3 years (13,242 and 10,601 for 2008 and 2007, respectively). Figure 12 indicates the strike-bursting coefficient in the last ten years in Mexico. It refers to the ratio of registered strikes to the strikes summons registered each year. In 2009 this coefficient was 0.1%, the lowest recorded by the STPS.<sup>51</sup>



Figure 12: 1989-2009 Strike-bursting Coefficient



Source: Ministry of Labor and Social Welfare (2010)<sup>51</sup>

During 2009, 94,608 cases were received and 87,437 of them were solved (5.9% more than 2008), a sign of the advances made in the promotion of labor peace between the agents. From those cases, 16,078 were solved through conciliation and agreement procedures, reaching a 19.7% average rate of completion. Only 335 claims of labor disputes between unions were registered in 2009 and successfully resolved, 148 less than in 2008).<sup>35</sup>

## CONTEXTUAL FOCUS:

### RETIREMENT SAVING SYSTEM LAW

The composition of the Mexican population will drastically change by 2050. In 2009, 64% of the population was under 35 years of age, and this number will decrease to 49% by 2030 and to 40% by 2050. People above 50 years old represented 16% of the population in 2009 and will increase to 30% by 2030 and 42% by 2050.<sup>53</sup> The growing number of older persons in Mexico highlights the need for an efficient and well-structured pension system in order to provide economic independence to almost half the population by 2050. This is one of the main concerns of public policy. Mexican institutions have been faced with the need for a significant number of modifications in order to meet the demand of social security provisions, focusing mainly on the transformation of legal norms and institutions to protect employees.<sup>54</sup>

The Mexican Social Security Institute (IMSS) administered the pension system from 1943 to 1996. It was a collective pension system in which employees made contributions to a cooperative fund and, when a contributor retired, their pension was paid from the fund.<sup>55</sup> The retirement rules were predominantly designed to provide the employee with a life-long pension. However, mandatory ceilings limited monthly pensions, which caused disruptions in the number of years quoted by the IMSS and the amount of salary registered for the worker. Other problems faced by the system were that employees could neither make additional contributions nor receive benefits from return funds. For decades, this system proved to be financially untenable for two reasons: first, the design of the disablement, old age, severance, and death insurance was encompassed by a legal system that did not allow its sustainability, and second, the vision of the growing number of retired workers in relation to active workers.<sup>56</sup>

The Social Security Law, and subsequently, the Retirement Saving System Law were created, in order to correct the situation and transform the pension system. This reform has been one of the most important public policies regarding the labor sector in recent decades.

#### *Implementation of a new pension system*

The first reform of the Social Security Law of 1995, (published in 1996 and enacted in 1997), introduced two fundamental changes and created the Retirement Saving System Law. The first of these changes was a new plan in which employees no longer contributed to a collective fund, but rather to individual funds. Each private financial institution managed account, received three periodical contributions: one from the State, one from the employer, and a mandatory individual contribution.

Moreover, employees were able to choose a pension provider, without involvement from the employer or the government, and also make voluntary additional contributions to their account.<sup>57</sup> The accumulation of contributions in the individual account throughout the years transformed into a proportional pension-income flow at retirement.<sup>58</sup>

Among the changes, employees contributed 1.125% of their earnings (discharge and old age insurance), while employers contributed 2% of the employees' earnings (retirement fund), and 3.15% (discharge and old age insurance) to reach a total of 6.275%. Finally, the government contributed an additional 0.225% of the employees' earnings. The National Institute for Workers' Housing Fund (INFONAVIT) also makes an extra contribution of 5% to an individual housing fund. The contribution appears as part of the employee's balance sheet but if it is not used by the time of the retirement, it returns to the account.<sup>58</sup>

The second change was the establishment of specialized financial institutions in order to invest the resources from individual accounts in the financial markets. With this, the pension-income stream also included a risk-return element that could further enlarge future income. Three institutions were created to accomplish these investments: the Retirement Fund National Commission (CONSAR), Retirement Fund Administrators (AFORES) and the Retirement Funds Specialized Investment Societies (SIEFORES).<sup>57</sup>

The CONSAR is a governmental authority, whose main function is to regulate the retirement savings system by supervising the AFORES and protecting employees' accounts. It ensures proper management of retirement savings and contributes to the development of financial market resources.<sup>57</sup> AFORES are private financial entities that manage the retirement funds of workers registered to the IMSS or the ISSSTE. Their main objective is to assure a pension to registered employees at their retirement.<sup>59</sup> The accounts kept in the AFORES are invested in the financial market by the SIEFORES. Those financial entities provide instruments in five tiers depending on the risk-return relation and the age of the employee. SIEFORE 1 is assigned for employees 56 years and older, and the instruments used are low risk, low return. On the other hand, SIEFORE 5 is assigned to employees 26 years and younger with a diversified portfolio and moderate returns (but still the highest of the 5 tiers).<sup>59</sup>

Mexico is one of eight OECD countries with a compulsory defined-contribution plan, and it represents 75.7% of the pension package for employees, the highest of the reported OECD countries for that type of provision.<sup>58</sup> Even though the AFORES manage the accounts, the contractual obligation is between the employees and the government as the contributions are legally considered part of social security.

If, by retirement, the worker has depleted the resources of his account, the government will provide a daily pension equivalent to a minimum wage (of geographic area A). Also, if the employee does not choose an AFORE, the contributions will go to a temporary account and then will be assigned to a specific AFORE. The employee may transfer the resources to the AFORE of his choice but only once a year.<sup>60</sup> Even though there are no unemployment credits, the Social Security Law allows unemployed workers (of least 46 days) to withdraw up to either the equivalent of 75 days of his base wage (of the last 250 weeks) or 10% of the retirement fund sub-account (depending upon which is smaller) from that sub-account's total. Early retirement (before 60 years of age) is possible if the worker is not employed and has at least 1,250 weekly contributions (25 years). If a worker is permanently unemployed and does not meet the contribution requirements, the worker may clear the account. Late retirement (after 65) is also possible.<sup>58</sup>

#### *Poor performance and the need to change*

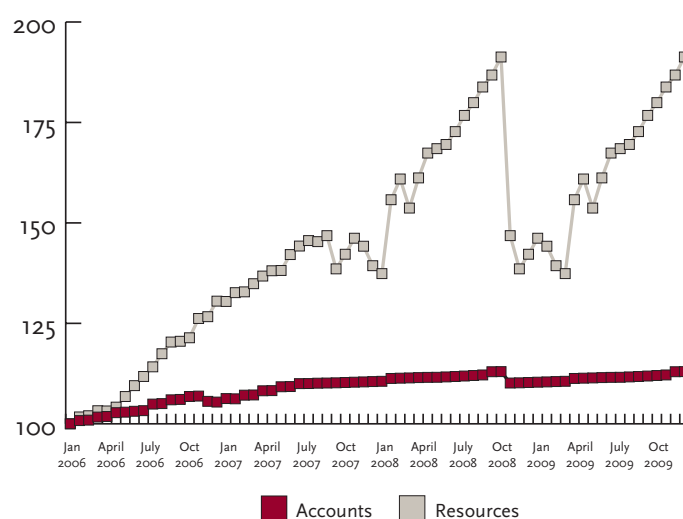
The Retirement Saving System Law had positive effects on the labor market. The individualization of accounts provided more sustainability to the pension system mainly because low risk investment allowed workers to obtain moderate returns and maintain the monetary value of their contributions. It has also eased labor mobility, as individual accounts are independent from the working sector.<sup>56</sup> In the last decade, the CONSAR has encouraged Mexican employees to switch to lower-cost (on commission) providers. Currently, 15 AFORES are operating in the country, offering a range of different funds depending on risk-return characteristics. Despite the positive results, the coverage rate for mandatory personal pensions is still low (34.5%) due to the economic activity in the informal sector. The Mexican government's actions on this matter are not supportive with the efforts of the CONSAR since any type of tax incentive for private pensions is being given to enhance the coverage. Mexico is the only OECD country that does not provide any fiscal incentive whatsoever.<sup>58</sup>

The income of older people (aged 65+) represents 82.4% of the equivalent household disposable income between OECD countries (mid-2000s). For Mexico, the relative income of older people is around 97%, placing the country on top within the OECD countries. Despite this fact, poverty among the elderly in Mexico is high. Mexico has the third highest poverty rate among older people (28%), only behind Korea (45%) and Ireland (31%). When comparing poverty rates of total population and older people, Mexico presents a significant difference: old-age poverty is around 9% higher than the total population poverty rate.<sup>58</sup>

Facing this scenario, the Mexican government sought to improve the pension system by implementing a series of reforms in 2004, 2005 and 2007. The strategy was to strengthen the pension system and ensure a better income for older workers, mainly by modifying procedures, and increasing safety and security provisions of the accounts, investments, returns, and profits.<sup>61</sup> In addition to those revisions, and taking into account the environment and effects of the recent financial crisis, new reforms were added (published in the DOF in January 2009) to the Retirement Saving System Law. These reforms addressed the need to ensure financial protection for workers in a crisis environment. The first proposal extended the withdrawal capability from pension funds in case of unemployment. Previously, only workers who had 5 years in the pension system could withdraw a specified amount, however, with the changes, employees can do so after three years. Also, the withdrawal amount was increased by 58% on average. The second proposal increased the housing credit support. The credits of INFONAVIT and ISSSTE Housing Fund (FOVISSSTE) were increased by 28%, while Federal Mortgage Society credits increased by 39%.<sup>40</sup>

Figure 13 shows the monthly index (taking Jan-06 as the base) of the total accounts and resources managed by the AFORES from January 2006 to December 2009. Both trends are positive, but the accounts managed by the AFORES increased around 13% while the resources managed had almost doubled the value presented in January 2006. The three decreasing periods in the resources index are presented in January 2008, October-November 2008, and February 2009.

Figure 13: 2006-2009 Monthly Index of the Total Accounts and Resources Managed by the AFORES



Source: National Commission for the Retirement Savings System (2010)<sup>62</sup>

In 2009, the AFORES managed 39,509,039 accounts, from which 67.9% were employees registered in the IMSS, 0.7% in the ISSSTE, 0.2% as independent, and 31.2% were assigned accounts by the CONSAR. The yearly total of resources registered in the AFORES was 1,734,410 million MXP (\$128,403 million USD)<sup>16</sup> from which 59.9% was managed by the AFORES, 30.9% was managed by the INFONAVIT and FOVISSTE, and 9.2% was a pension compensation made by the ISSSTE.<sup>62</sup>

From the registered accounts managed by the AFORES, 53.1% of the accounts belonged to younger employees (under 36 years), 36.6% to mid-life employees (36-55 years), and 10.3% to older employees (above 55 years). Of the investment instruments used by the SIEFORES, 66.13% is invested in government securities, 16.52% in domestic private debt, and 7.98% in domestic equities; other instruments are grouped in the remaining 9.37%.<sup>63</sup>

## IMPLICATIONS FOR QUALITY OF EMPLOYMENT:

The challenges in Mexican public policy regarding quality of employment are centered in the development of a better-qualified labor market characterized by effective employee protection and an increase in the long-term standard of living.<sup>64</sup> Although the government has made considerable progress in labor market regulations and public policies to enhance economic growth and improve employee productivity, it has also lost its competitive edge in the last decade.<sup>65</sup>

Poor economic growth in Mexico is linked to a rigid and non-competitive market and an institutional framework that encourages under productivity.<sup>66</sup> The rigidity of the labor market does not necessarily imply that it is segmented; law rigidity and low incentives inhibit job creation.<sup>64</sup> Implemented reforms had little impact on competitiveness and productivity.<sup>65</sup> Federal Labor Law reforms must contain modifications to the labor incentive structure in order to enhance capital, provide optimal allocation of resources, institute efficient work practices, and to boost productivity.<sup>66</sup>

Most of the policies taken by the government are of recent creation and largely dependent on the performance of future policies. The first step towards a competitive economy is to increase the flexibility of the labor market. Two main elements must be considered: the costs for hiring or firing employees as well as the promotion plans that value seniority over performance. Both practices increase labor costs and lead to ineffective and less competitive job posts, in which talented employees are frustrated by the scarcity of promotion opportunities that could increase their economic and professional status. Furthermore, employers and employees cannot allocate resources in the most productive areas without an effective modification of current incentives.<sup>66</sup>

The fundamental element that needs modification in order to set the basis for labor market flexibility deals with the reduction of labor mobility costs. By establishing an unemployment insurance system or a separation fund along with increasing the portability of pension funds, current severance costs will be replaced and reduced, leading to a more flexible, and performance-oriented labor market.<sup>66</sup> If labor mobility costs are not reduced, employees will seek better opportunities to obtain revenues in the informal labor sector, with higher incomes and benefits in a more flexible unprotected labor market.<sup>64</sup>

Although some positive policy outcomes have been discussed, a competitive and flexible formal labor market has not been reached in Mexico and integral solutions still need to be developed. Rather than prevent the growth of the informal sector by strengthening labor regulations, Mexican labor public policies must focus on creating incentives that promote efficiency in resource allocation and bigger labor contract alternatives as well as greater investment, productivity and competitiveness in order to fully reach the NDP 2007-2012 objectives.<sup>66</sup>

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Established in 2007 by the Center on Aging & Work, the Global Perspectives Institute is an international collaboration of scholars and employers committed to the expansion of the quality of employment available to the 21st century multi-generational workforce in countries around the world.

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