

**Public Submission to the Office of Trade & Labor Affairs (OTLA) under Chapters 16  
(Labor) and 20 (Dispute Settlement) of the Dominican Republic-Central America Free  
Trade Agreement (DR-CAFTA)**

**Concerning the Failure of the Government of Honduras to Effectively Enforce Its Labor  
Laws and Comply with Its Commitments under the ILO Declaration on Fundamental  
Principles and Rights at Work**

**Submitted by:**

**The American Federation of Labor and  
Congress of Industrial Organizations (AFL-CIO)**

**and**

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Confederación de Trabajadores de Honduras (CTH)  
Confederación Unitaria de Trabajadores de Honduras (CUTH)  
Coordinadora de Sindicatos Bananeros y Agroindustriales de Honduras (COSIBAH)  
Federacion Independente de Trajadores de Honduras (FITH)  
Federación Nacional de Trabajadores Autónomos de la Economía de Honduras (FENTAEH)  
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Sindicato de Trabajadores de Delta Apparel, S, A (SITRADASA)  
Sindicato de Trabajadores de Finca América Ameribi (SITRAMERIBI)  
Sindicato de Trabajadores de Guarumas Agroindustrial (SITRAGUA)  
Sindicato de Trabajadores de la Compania Pinehurst (SITRAPINEHURST)  
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Sindicato de Trabajadores de La Empresa Honduras Electrical Distribution Systems S de R.L.  
Kyungshin-Lear (SITRAKYUNGSHINLEAR)  
Sindicato de Trabajadores de la Empresa Jerzees Nuevo Día (SITRAJERZEESND)  
Sindicatos de Trabajadores de la Empresa New Holland Lingerie de Honduras  
(SITRANEWHOLLAND)  
Sindicato de Trabajadores de la Empresa Petralex (SITRAPETRALEX)  
Sindicato de Trabajadores de la Empresa Southern Apparel Contractors, S.A (SITRASOACON)  
Sindicato de Trabajadores de la Fundacion Hondurena de Investigacion Agricola (SITRAFHIA)  
Sindicato de Trabajadores de la Industria de la Bebida y Similares (STIBYS)  
Sindicato de Trabajadores de la Tela Railroad Company (SITRATERCO)  
Sindicato de Trabajadores de Star (SITRASTAR)  
Sindicato Gremial de Trabajadores de Muelle (SGTM)  
Sindicato Gremial de Trabajadores Portuarios de Honduras (SINGTRAPH)  
Sindicato Reformado de Marineros de Honduras (SIREMAH)  
Centro de Derechos de Mujeres (CDM)

**March 26, 2012**

**NOTE REGARDING NAMES SUBMITTED IN CONFIDENCE:**

The petitioners request that, given the security situation in Honduras (which has the highest homicide rate in the world according to the UN's Global Study on Homicide, 2011) particularly as it affects labor and political activists, certain names be kept confident in order to protect the safety of those individuals. This protection is requested for persons mentioned on pages 6, 8, 21, 22, 28, 29, 35, 56, 57, and 58. Each such page contains the text "SUBMITTED IN CONFIDENCE" in a footnote. Section VIII (F) of the brief provides evidence of the ongoing threats and violence against unionists in Honduras. See also Elvin Sandoval, *U.S. Peace Corps Pulls out of Honduras*, CNN.com, January 17, 2012, available at [http://articles.cnn.com/2012-01-17/americas/world.americas.honduras-peace-corps.1.president-porfirio-lobo-honduras-volunteers?\\_s=PM:AMERICAS](http://articles.cnn.com/2012-01-17/americas/world.americas.honduras-peace-corps.1.president-porfirio-lobo-honduras-volunteers?_s=PM:AMERICAS).

## I. INTRODUCTION

On March 3, 2005, the government of Honduras ratified the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), which entered into force between the United States (U.S.) and Honduras on April 1, 2006. The labor unions and non-governmental organizations listed on the cover jointly file this petition with the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA).

This petition demonstrates that Honduras is failing to effectively enforce its labor laws and adhere to its commitments under the ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up. Serious violations of the right of freedom of association, collective bargaining and acceptable conditions of work under national and international law continue apace, and access to fair and efficient administrative or judicial tribunals remains elusive. Child labor, including in its worst forms, particularly in the agricultural sector, is also a serious concern.

In June 2009, a coup d'état forced the democratically elected president, Jose Manuel Zelaya, from office and into exile. Under the caretaker regime of Roberto Micheletti, several trade union leaders and rank-and-file trade union activists, who participated in the popular resistance to the coup d'état, were killed, beaten, threatened, and jailed. Union offices were raided by the police and armed forces and union property was seized and destroyed. In many locations, workers were forced from their workplaces and required to participate in pro-coup rallies under penalty of dismissal. To date, many of those responsible for these and other crimes have not been brought to justice.

Under President Porfirio Lobo, who took office on January 27, 2010, the rule of law in Honduras remains largely absent. Ongoing threats and attacks against journalists and members of the political opposition, including the National Popular Resistance Front (FNRP), have created an intense climate of intimidation. Impunity for human rights abuses remains the norm; Honduras has made very little progress toward addressing the human rights abuses committed during and since the 2009 coup. As for workers, they have seen little meaningful enforcement of their labor rights, as national labor laws are ineffective and violated with impunity. The current government amended the labor law in late 2010 to allow employers to hire up to 40% of their workforce on temporary, part-time contracts for work that is by its nature full-time permanent work—purportedly as a means to boost employment post-crisis.

Most recently, tens of thousands of teachers have struck over wages, unjustified firings, and to oppose a school reform plan that teachers worry will undermine public education and turn over the system to unaccountable private schools. These workers have been harshly treated by the police, who have used tear gas, water cannons, and batons. This use of excessive force has led to numerous serious injuries and a death, providing clear evidence that special interests often outweigh constitutional rights like the right to public protest and protection of life.

Violations of workers' rights can be found in numerous sectors of the Honduran economy, both public and private. This petition focuses on the failure to enforce the labor laws in three export-related sectors: manufacturing, agriculture, and port operations. This petition also raises several

issues in addition to the basic obligation to effectively enforce labor laws which should be the subject of consultation between the parties, including the numerous murders, attacks and threats since 2009 aimed at trade unionists for their labor or political activities.

This submission is filed with the OTLA in accordance with the procedures set forth at 71 Fed. Reg. 76691, Section F. Upon completing its investigation, the petitioners request that the U.S. government invoke Cooperative Labor Consultations under Article 16.6 of DR-CAFTA and urge the government of Honduras (GoH) to take all measures necessary to address the legal and institutional obstacles to the effective enforcement of its labor law, as well as to remedy as fully as possible the individual claims herein. If consultations fail to bring about a satisfactory resolution, the petitioners urge the U.S. government to invoke dispute settlement and to proceed through those procedures until such time that the GoH complies fully with its obligations under Chapter 16.

## **II. STATEMENT OF DR-CAFTA PROVISIONS VIOLATED BY THE GOVERNMENT OF HONDURAS**

The GoH has violated the following provisions of Chapter 16 of the DR-CAFTA:<sup>1</sup>

### Article 16.1: Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (ILO Declaration).<sup>2</sup> Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.8 are recognized and protected by its law.

### Article 16.2: Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws,<sup>3</sup> through recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each

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<sup>1</sup> Unless otherwise noted, the cases described herein have not been raised before the International Labor Organization (ILO).

<sup>2</sup> Article 2 of the ILO Declaration provides that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.”

<sup>3</sup> Article 16.8 defines labor laws as “a Party’s statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”

Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 16.8 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

### Article 16.3: Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's domestic law.

### **III. STATEMENT OF JURISDICTION**

The Office of Trade and Labor Affairs (OTLA) has jurisdiction to review this submission as it concerns “any matter arising under this Chapter.”<sup>4</sup> This petition concerns the GoH's failure to effectively enforce its labor laws with regard to freedom of association, the right to organize and bargain collectively, child labor, and acceptable conditions of work. Further, the claims herein set forth facts sufficient to establish a sustained or recurring course of action or inaction on the part of the GoH. The failure to effectively enforce labor laws has occurred in economic sectors engaged in trade between the U.S. and Honduras. The GoH's failure to effectively enforce its labor laws in each of these cases occurred after the trade agreement entered into force.

The petition also outlines the numerous ways in which the GoH falls short on its commitment to “respect, promote and realize” the core labor rights enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up. Finally, the petition alleges that the GoH amended its labor law in a manner that weakens or reduces its adherence to the internationally recognized labor rights. The stated purpose of this reform was to make Honduras more “competitive,” meaning lowering labor costs in order to maintain an advantage in trade or to maintain or attract investment.

Upon completion of its initial investigation and issuance of its public report, OTLA should immediately request Cooperative Labor Consultations under Article 16.6(1) by delivering a written request to the contact point designated under Article 16.4.3. As the petition asserts a violation of Article 16.2.1(a), if the consulting Parties fail to fully resolve the issues raised in the petition within a reasonable period of time, the U.S. government should request a meeting of the Free Trade Commission under Article 20.5 and, if still unresolved after 30 days, proceed to arbitration.

**GENERAL NOTE ON DOMESTIC HONDURAN LAWS PERTAINING TO LABOR INSPECTION:** The Labor Code establishes an affirmative duty to inspect and the authority to impose fines. Article 617(d) of the Labor Code states that inspectors “have a duty to intervene in all labor difficulties or conflicts of which they are aware, whether between employers and workers, with the aim to prevent their development or to reach conciliation out of court.” Under

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<sup>4</sup> See Article 16.6(1).

Article 618, a labor inspector “has the obligation to undertake an investigation ... whenever they receive a complaint, orally or in writing, from any of the parties, regarding violations of the Labor Code or labor regulations, within the company concerned.” Under the same article, inspectors have a right to access worksites at any hour, day; they may interview workers, company staff and request all types of documents. Article 617(b) permits an inspector to call for the assistance of the police in the face of unjustified resistance so that he or she can carry out his or her duties. Article 624 also provides that once a procedure is initiated, the labor inspector cannot drop the matter without the knowledge or authorization of his or her superiors. Article 625(d) (as amended by Decree No. 978) of the Labor Code grants the General Inspectorate of Labor the authority to impose fines on employers, ranging from 100 to 5,000 LPS (US\$5 to \$265.00)<sup>5</sup> for infractions.

#### **IV. MAQUILA SECTOR**

##### **A. OVERVIEW**

The Honduran garment<sup>6</sup> and manufacturing industry is characterized by widespread exploitation of workers through conditions that include excessive work hours, unpaid overtime, payment of wages below the legal minimum and unhealthy, hazardous working conditions. The right to organize is routinely violated. Most of what is produced in these factories is exported to markets in the U.S., Canada, and Europe.

Although the normal workday established by law is 8 hours, according to a 2009 report by *Centro de Derechos de Mujeres* (CDM), based on interviews of garment workers conducted in December 2007, all of the workers interviewed reported working longer hours.<sup>7</sup> In fact, 99% reported that they regularly worked shifts of 9 to 12 hours, and 1% reported working more than 12 hours per day. Thus, 100% of workers interviewed reported working beyond the 8 hour normal workday established by law. Extensive overtime is not an occasional occurrence but is in fact structural within the garment industry. Those who do not wish to work beyond the normal work day are often subject to verbal threats and threats of dismissal. The same report also found that 42% of workers interviewed did not receive at least the minimum wage. Non-payment of the overtime rate for overtime hours worked is also a widespread problem, with workers earning far below what they should receive for their labor by law.

Today, the minimum wage for garment workers is far lower than the minimum for most other workers. In January 2012, the monthly minimum wage for a garment worker in a factory that employs 151 or more was set at 4645.34 lempiras (LPS) (~\$244.87) whereas the minimum wage for a worker in a similar size manufacturing firm is 6944.01 LPS (~\$366). Additionally, the monthly minimum wage for garment workers located in five designated depressed areas in Honduras who do the same work as other garment workers in the country is only 3463.89 LPS

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<sup>5</sup> As the Honduran Ministry of Labor has decided to interpret the law, fines are applied per “type” of violation, rather than per each violation, thus limiting the size of the fines and their deterrent effect. See more on this issue in section VIII of this brief for more information on this subject.

<sup>6</sup> Women make up 60% of workers in the garment sector.

<sup>7</sup> Centro de Derechos de Mujeres (CDM), *Derechos humanos laborales de las opbrears en las maquilas textiles de Honduras*, Oct 2009. [http://www.derechosdelamujer.org/tl\\_files/documentos/maquila/doc\\_maquila\\_3.pdf](http://www.derechosdelamujer.org/tl_files/documentos/maquila/doc_maquila_3.pdf).

(~\$182.60). Only workers on very small farms may be paid a lower minimum wage. Since garment production is primarily for export, these low wages affect trade between the parties—even more so when the GoH fails to rectify instances when employers pay less than the legally required minimum wage, overtime, and other legally required wage payments.

In another 2009 report, CDM reported increasing levels of mistreatment of women workers by garment industry employers, taking the form of verbal abuse, shoving, punching, denial of meal or restroom breaks and threats of dismissal.<sup>8</sup> CDM also reported that sexual assault continues to be a problem, as well as discrimination against and dismissal of pregnant women.

Another prominent NGO, *Colectiva de Mujeres Hondureñas* (CODEMUH), has reported high levels of health problems experienced by workers in the garment industry, ranging from fatigue, conjunctivitis, ulcers, chronic nasal congestion and chronic muscular pain to dermatitis, migraines, depression and sleeplessness, among several other serious health conditions. These illnesses are the result of intense mental and physical stress, poor working conditions, and repetitive motion for prolonged periods of time. CODEMUH reports that inspections with regard to health and safety are hindered by the fact that there are few inspectors with expertise in the issue, as well as the fact that many employers simply refuse to allow inspectors into the factory and, contrary to the law, the Honduran Ministry of Labor (or “the Ministry”) takes no further action. Further, the penalties for violations of health and safety violations, including for serious work accidents, are too low to compel employers to improve worksite conditions.<sup>9</sup>

As the following example cases demonstrate, the labor law is frequently violated in the garment sector with impunity.

## **B. CASES**

### **1. PETRALEX**

#### **a. FACTS**

The Petrallex factory produces apparel for export to the U.S. On May 7, 2007, the union SITRAPETRALEX received notification from the Ministry’s, Secretariat of Work and Social Security (STSS) that it had gained legal status (*personería jurídica*). Around that time, the workers decided to switch affiliation from *Federación Independiente de Trabajadores de Honduras* (FITH) to the *Central General de Trabajadores* (CGT). As a result of this change, on May 12, the union’s membership elected a new group of workers to serve on the leadership committee of the union.

On June 1, 2007, Evangelina Argueta, CGT coordinator for the northwest region of Honduras, requested that an inspector from the San Pedro Sula office accompany her to the Petrallex facility in order to certify that each new member of the union’s leadership committee had worked for the

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<sup>8</sup> Centro de Derechos de Mujeres (CDM), *Impacto del libre comercio en los derechos laborales de las obreras de la maquila textil en Honduras*, July 2009.

<sup>9</sup> See, e.g., CODEMUH, *Situación de los derechos humanos en material de salud ocupacional de las obreras y obreros de la industria maquiladora en Honduras*, March 2010.

company for at least six months (*constancia de antigüedad*),<sup>10</sup> a requirement to hold the leadership committee post. The union leaders needed an inspector to certify their six-month tenure because Petrallex had refused earlier requests for work records containing this information.

On June 4, Inspector Raul Barahona visited the Petrallex facility but was denied access. The security guard informed Mr. Barahona that the Human Resources Manager, Ivette Posas, was unavailable. Mr. Barahona approached the zone's human resources office and was told the same thing. Unable to enter the facility, he decided to wait outside the plant and approach the workers as they left for their lunch breaks. Mr. Barahona used the information on their identification badges, which included the date of hire, to confirm that the workers had been employed for at least six months.

Between June 6 and 8, before the union was able to submit to the Ministry of Labor's headquarters in Tegucigalpa the inspector's certification, verifying that the workers legally held the leadership posts, Petrallex dismissed all six members of the leadership committee. The company's official reason for the terminations, cited in dismissal letters, was "staff restructuring" under Article 95(19) of the Labor Code.<sup>11</sup> However, there was no large scale dismissal of workers on these dates. [REDACTED],<sup>12</sup> [REDACTED], filed suit in the labor court regarding the dismissals. Nearly five years after the dismissals, the suit is still pending in the [REDACTED] labor court.

On June 30, workers reconstituted the union's leadership committee and elected a new group of six committee members. Argueta again needed an inspector to accompany her to the Petrallex facility in order to certify that the newly elected members of the union's leadership committee had worked for the company for at least six months. On July 24, Argueta approached Lucia Rosales, Director of the Ministry's San Pedro office, with a special request: she wanted to solicit an inspector without having to write out the name of the facility or the names of the workers in the Ministry's request log. Argueta explained to Rosales that this precautionary measure was necessary in order to keep the company from learning the identity of the workers in advance and firing them.<sup>13</sup> Rosales granted Argueta's request and instructed Vanesa Erazo, chief of the Inspectorate Division, to leave a blank slot in the Ministry's log for Argueta.

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<sup>10</sup> Article 510(c) requires that each member of the union's leadership committee hold a plant position covered by the union and that each have held that same position for a period of at least 6 months the previous year. Article 481(9) states that an inspector's "certification" serves as proof that union leaders have met such requirements.

<sup>11</sup> Article 95(19) of the Code requires that when employers undergo restructuring, they must do so "in accordance with a collective contract." They must also "respect seniority rights, and all things being equal, employers should give preference to unionized employees and permit them to continue working."

<sup>12</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual's identity be kept confidential.

<sup>13</sup> Argueta had learned from the Ministry's secretary, Martha Oseguera, that shortly before Barahona's June 4 visit to Petrallex, an unknown individual had requested a copy of Argueta's June 1 petition for an inspector, which contained the name of the company to be visited along with the list of workers in the union's leadership committee. Oseguera explained to Argueta that the dissemination of such information was warranted because Ministry documents are a matter of public record. Argueta explained to Rosales that she believed this individual was sent by Petrallex to retrieve the names of the union leaders in order to fire them *before* the workers could obtain the *fuero sindical*. Article 516 of the Labor Code extends a protection against dismissal for elected union leaders known as *fuero sindical*. An employer may only lawfully dismiss a worker who has been elected to a union's leadership



Pursuant to her arrangement with Rosales, Argueta returned to the Ministry the following day, July 25, to retain an inspector for the Petralex visit. Argueta informed Erazo that she would officially submit the names of the workers on July 30, together with the inspector's certification that the workers legally held their leadership posts, thereby achieving *fuero sindical*, a legal protection against dismissal provided to elected union leaders under Article 516 of the Labor Code. Before deploying the inspector, Erazo reviewed Argueta's document, which listed the names of the workers. To Argueta's surprise, Erazo proceeded to write down these names in the Ministry's request log, contrary to Rosales' instructions. Argueta protested, but Erazo assured Argueta that the names would remain confidential as only she had access to the log.

When Labor Inspector Barahona arrived at the factory, he received a message from Ivette Posas stating that neither she nor anyone else from the company could receive his visit. Because the inspector was unable to enter the factory and review company records, he sought to verify the required information by waiting for the workers outside the factory gates and confirming their tenure based on information from their identification badges. The inspector certified that each worker met the requirement and that therefore all of the workers were entitled to hold their leadership committee positions.

Later that day, Argueta returned to the plant to have the union leaders sign Barahona's official report certifying their tenure. Upon her arrival, Argueta learned that the factory had dismissed three of the new committee members shortly after Barahona's visit. Over the course of the next five days, all six of the committee members were terminated. As in the first group of firings, the same official justification of "staff restructuring" was given. However, there was no large scale dismissal of workers during this period.

The day after the firings, July 26, Argueta approached Rosales seeking to file a complaint against Erazo accusing her of having leaked the workers' identities to Petralex. Rosales summoned Erazo to her office along with the request log. It was apparent to Rosales, Argueta, and other Ministry officials present that the names of the Petralex workers had been covered over with white-out. On August 6, Argueta filed a complaint against Erazo with the Ministry's main office in Tegucigalpa. According to Argueta, the investigator assigned to the case, Matusala Orellana, was a close friend of Erazo. On September 6, a hearing was held where Argueta presented evidence and testified against Erazo. According to Argueta, the Ministry in Tegucigalpa did not impose any disciplinary action against Erazo, and Rosales insisted that as a regional director for the Ministry, she did not have the authority to terminate Erazo. She did, however, demote her to inspector.

On August 25, 2007, the union once again reestablished a new leadership committee comprised of six members. This time, instead of having an inspector visit the plant to confirm that the workers had worked a minimum of six months and thus were able to hold leadership positions, the workers asked human resources to provide a record of their work tenure so that they could

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committee after obtaining prior authorization from the government (in this case the Labor Court or the Civil Court), based on a finding that the firings are warranted by just cause. Union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership (as opposed to only after the successful notification of the union's founding to the government and management).

complete credit applications that required proof of employment. The documents were submitted to the Ministry of Labor in Tegucigalpa, and on October 17, the Ministry issued a document stating that these six individuals were protected by *fuero sindical*.

[REDACTED]<sup>14</sup> requested that an inspector formally notify Petrallex of the new leadership and the union's legal status (*personería jurídica*). On November 8 and 12, Inspector Raul Barahona visited the facility and was notified by the industrial park security guard that once again Ivette Posas was busy and unable to meet him.

On December 18, Argueta wrote a letter to Lucia Rosales requesting that she intervene in the Petrallex matter, citing Inspector Barahona's numerous unsuccessful attempts to access the facility. Rosales visited the Petrallex building and delivered a letter summoning management to appear before the Ministry on December 20 to discuss labor issues. Petrallex failed to appear.

On December 21, the day before workers were scheduled to begin their end-of-year holiday, the six members of the leadership committee and three additional union members were called into the personnel offices one by one and informed that, due to staff restructuring, they were being dismissed. Workers report that no non-union members were fired on this day.<sup>15</sup>

Petrallex began mass firings of union supporters in January 2008 and by late February, a total of 180 union supporters had been dismissed.

On January 19, 2008, the union held yet another election to establish a leadership committee. Six new members were elected and the union began the process of preparing the documents necessary for the Ministry to verify the legitimacy of the newly-elected leadership committee. On February 11 and 12, before the union was able to file the paperwork with the Ministry of Labor, the company fired three of the newly-elected leadership committee members and a union member. On February 12, Inspector Barahona visited the facility and was again denied access. In his report, the inspector recommended that the company be sanctioned under article 617(b) for obstructing the work of the Inspectorate. The General Directorate, however, did not pursue this recommendation.

On February 13, the union undertook emergency procedures and held a meeting outside the Petrallex plant to elect three replacement members before filing the documentation with the Ministry of Labor. The workers successfully submitted six names. On February 14, Inspector Jose Angel Portillo approached the industrial park that housed the Petrallex plant in order to notify management of the newly-elected leadership committee and their protection under *fuero sindical*. Portillo was told by the security guard that the managers were in a meeting and could not receive him. Portillo called for Rosales, who then joined him at the park gates and called the police for assistance. Despite the police officer's presence, the security guard refused to grant access. An attorney for the park eventually allowed them into the park, but not the Petrallex facility. Petrallex workers told the ministry officials how to enter the building, and Rosales and

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<sup>14</sup> SUBMITTED IN CONFIDENCE. See note 12.

<sup>15</sup> Although no formal complaint was submitted to the Ministry regarding the December 21 dismissals, the Ministry was made aware of the firings when the union requested an inspection on February 11, 2008.

Portillo successfully delivered to the company a copy of the leadership committee roster as well as the documentation that certified the legal status of the union. According to the Ministry report, the documents were handed to a human resources assistant who refused to sign them. At roughly 3:00 p.m. on this same day, the company called the six newly-elected union leaders, about whom they had received notification just hours prior, and gave them each letters of dismissal.

On February 21, the CGT General Secretary, Daniel Duron, sent a letter to Ministry headquarters in Tegucigalpa detailing the numerous labor law violations by Petrallex and requesting immediate intervention. In response, the Ministry assigned Inspector Raul Barahona and Marlon Edgardo Sanchez, an official from Tegucigalpa, to investigate the firings at Petrallex. Following his investigation, Barahona issued a report on May 23 concluding that Petrallex had violated the law. Specifically, Barahona found Petrallex to have violated Article 517 of the Code which bars employers from dismissing founding union members absent a finding from a competent court that the terminations were warranted by just cause. According to the report, Petrallex illegally fired a total of 134 union supporters, including their leadership, which had protection under *fuero sindical*. In his report, Barahona also documented that throughout the course of his investigation, he was denied access to the Petrallex plant on several occasions in April. The report warned Petrallex that if it failed to reinstate the fired workers within 3 days, it would receive a sanction. Barahona and several other inspectors delivered this notice to the human resources manager at Petrallex, who refused to sign it. Despite the Ministry's order, Petrallex failed to reinstate the workers.

On June 3, Petrallex appealed the Ministry's order. On June 25, the Ministry rejected the filing for not having been made within the time period stipulated under the law for challenging such an order (appeals must be submitted within three days of receiving notice). In that same document, the Ministry ordered that an inspection of the plant be made in order to confirm compliance with Barahona's May 23 recommendations. No one from the Ministry's San Pedro office ever followed up on the June 25 compliance order from Tegucigalpa. On May 12, 2009, representatives of a U.S.-based NGO met with Lucia Rosales, Inspector Bessy Lara, and Inspector Jose Angel Portillo at the San Pedro Sula office where the officials claimed to have no knowledge of the contents of the May 23 report. They maintained that Barahona's report was never read because it was sent directly to headquarters in Tegucigalpa. The local officials did not know whether the Ministry in Tegucigalpa took corrective action against Petrallex.

The case remains unresolved. Additionally, in spite of the complaint filed by Argueta against Inspector Vanesa Erazo as well as numerous complaints filed by other workers in the sector for Erazo being partial towards businesses, Erazo continues to work in the inspections department.

## **b. DOMESTIC LABOR LAWS VIOLATED**

Failure to Allow Inspectors to Inspect: Article 95(8) of the Labor Code<sup>16</sup> provides that all employers are obligated to "allow and facilitate the inspection and monitoring by labor, health and administrative authorities..." The company barred inspectors from performing their duties on numerous occasions in 2007 and 2008 thereby blocking the attempted inspections.

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<sup>16</sup> Unless otherwise specified, all references to Articles of Honduran law are to the Labor Code.

Anti-Union Discrimination: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code.<sup>17</sup> Under Article 96(3) of the Labor Code, “Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities.” Article 469 establishes that anyone who impairs the right of freedom of association will be punished with a fine.<sup>18</sup> The company’s targeted dismissal of the union’s leadership committee through several successive waves of dismissals and the mass firing of union rank and file is evidence that these dismissals were motivated by anti-union animus, which is prohibited by Articles 10 and 96(3) of the Labor Code.

Fuero Sindical: Article 516 of the Labor Code extends a protection against dismissal for elected union leaders known as *fuero sindical*.<sup>19</sup> An employer may only lawfully dismiss a worker who has been elected to a union’s leadership committee after obtaining prior authorization from the government (in this case the Labor Court or the Civil Court), based on a finding that the firings are warranted by just cause. Union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership (as opposed to only after the successful notification of the union’s founding to the government and management). In this case, all of the union’s leaders had been elected and were therefore protected by *fuero sindical* at the time of their dismissal, which management carried out without prior approval of a court.

Proteccion del Estado: Article 517 of the Labor Code provides special protection from dismissal for the founding members of the union once the employer is notified.<sup>20</sup> The company had sought for months (illegally) to evade this notification, which would trigger the protection for the founding members. The notification was eventually effectuated in 2008. In May 2008, a labor inspector issued a report specifically finding that this provision of the Labor Code had been violated when founding members of the union had been terminated.

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<sup>17</sup> Article 10 provides in relevant part: “It is prohibited to carry out reprisals against workers with the purpose of impeding them, partially or completely, from exercising the rights accorded to them by the Constitution, the present [Labor] Code, its regulations or other labor laws...”

<sup>18</sup> Article 469 on the “Protection of the Right to Associate” reads in relevant part: “Any person who, through violence or threats, attempts in whatever form to impair the right to freedom of association, will be punished with a fine of two hundred to ten thousand lempiras (200.00 LPS to 10.000.00 LPS), which will be imposed by the General Inspectorate of Labor...”

<sup>19</sup> Article 516 states: “Workers who are members of the Leadership Committee of a union organization, from the time of their election until six (6) months after they have completed their terms, cannot be fired from their jobs without prior proof before the respective Official Labor Judge or before the Civil Judge in his absence, that just cause exists to terminate the contract. The judge, making a summary judgment, will resolve the proceeding. This law is only applicable to the Central Leadership Committee, when the unions are organized in sections and subsections.”

<sup>20</sup> Article 517 states: “Formal notification of thirty (30) workers made in writing to their employer and communicated to the General Labor Administration or the Ministry of Labor of the jurisdiction, with regards to their intention to organize a union, places the signers of said notification under a special governmental protection. Therefore, from the date of notification until the receipt of proof of legal status, none of these workers can be fired, transferred or demoted in their working condition without just cause, qualified in advance by the respective authority.”

**c. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

The GoH has failed to enforce its domestic labor laws because here, despite being informed of each wave of anti-union dismissals—in four of the cases just hours or days after a labor inspector visited the plant for business specifically related to the workers’ status as union leaders—the Ministry of Labor took no investigation or enforcement action. Indeed, it was not until the CGT made high level approaches to the Ministry requesting redress and sought the intervention of the U.S. Embassy that any action was taken. The Ministry finally assigned an inspector to conduct an investigation regarding anti-union firings, and the inspector’s report, dated May 23, 2008, found that Petrallex had violated the Labor Code by terminating 134 union members and supporters. However, as described, Petrallex refused to sign a document acknowledging receipt of the report and then ignored an order to reinstate the workers within three days under threat of sanction. Following an unsuccessful company appeal, the Ministry ordered a new investigation to confirm the company was compliant with the reinstatement order. However, there is no indication that any inspection ever occurred or that a fine was levied. None of the workers were ever reinstated or provided any other remedy. The lawsuit claiming union repression remains pending in the courts of San Pedro Sula.

**2. DICKIES DE HONDURAS**

**a. FACTS**

The factory, owned by the U.S.-based Williamson-Dickie Corporation, produces garments for export to the U.S. market under the Dickies label. Workers have sought for more than a decade to establish a plant-level union affiliate of FITH. According to FITH, in 1998, a group of workers seeking to organize a union completed papers necessary to obtain legal status but were forced to abandon the effort when the company dismissed the majority of the union’s founding members. In 2003, a second attempt to establish a union was undertaken, but this effort was likewise thwarted when the company dismissed the workers involved.

In 2006, the union attempted for a third time to establish a union within the factory. On November 28, 2006, in response to a request from the union, inspectors visited the factory in order to notify the company of the identity of the union’s leaders. However, the inspectors were not allowed access to the plant and the union’s leaders themselves were forced to deliver the notification directly to management. Two hours later, the company fired the entire leadership committee of the union and the workers who witnessed the notification, as well as a substantial number of other workers, claiming the need for a general “reduction in personnel.” At the time of firing, managers interrogated some of the workers as to why they had become involved in the union.

The union demanded that the illegally fired workers be reinstated and paid back wages. The government offered to mediate the labor conflict. However, the company repeatedly failed to send decision-makers to the mediation sessions and the government made no apparent effort to bring the company’s decision-makers to the mediation. With no alternatives, and no apparent effort on the part of the Ministry of Labor to enforce the law, the workers accepted the severance payment under duress and forewent the reinstatement and back pay to which they were entitled

under law. The Ministry knew that the workers had been illegally fired, as a labor inspector had just attempted to notify the factory of the formation of the union and the leaders of that union were fired immediately thereafter, and that the workers were therefore entitled to far more than the severance provided in the settlement that the government presided over. The government, through its failed mediation efforts, facilitated the employer's efforts to deny its workers the right to freedom of association and organization and to force the workers to forego their rights under the labor law. The government then ratified the employer's misconduct.

**b. DOMESTIC LABOR LAWS VIOLATED**

Failure to Allow Inspectors to Inspect: Article 95(8) provides that all employers are obligated to "allow and facilitate the inspection and monitoring by labor, health and administrative authorities..." The company failed to allow inspectors to provide notice of the union formation in November 2006.

Anti-Union Dismissals: Article 10 of the Honduran Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and the Labor Code. Article 96(3) provides that "Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities." Article 469 establishes that anyone who impairs the right of freedom of association will be punished with a fine. The fact that the union's leadership committee was fired only hours after the Ministry of Labor attempted to notify the company of the workers' status is evidence that the dismissals were motivated by anti-union animus.

Fuero Sindical: Article 516 of the Labor Code provides a special protection against dismissal for elected union leaders, known as *fuero sindical*. An employer may only lawfully dismiss a worker who has been elected to a union's leadership committee after obtaining prior authorization from the government based on a finding that the firings are warranted by just cause. Union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership. In this case, all of the union's leaders had been elected and were therefore protected by *fuero sindical* at the time of their dismissal, which management carried out without prior government approval through a court ruling.

**c. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

The labor inspector's report cited above describes the company's refusal to grant the labor inspectors access to the factory and its dismissal of the leadership of the union. At that point, the labor inspector knew that a violation of the code had been committed and failed to conduct an investigation. Further, the Ministry of Labor presided over a flawed mediation process, which forced workers to accept a settlement on terms far less than what was owed to them under law. Whether the Ministry ever fined the company for these violations is not known.

### 3. CEIBA TEXTILES

#### a. FACTS

Ceiba Textiles is a garment textile mill located in Naco Quimistan in Green Valley Industrial Park in Santa Barbara, Honduras. It is owned and operated by U.S.-based Delta Apparel, which manufactures t-shirts and other apparel for the U.S. market. During January through March 2010, workers at Ceiba Textiles participated in a series of meetings to establish a union. The *Sindicato de Trabajadores de la Empresa Ceiba Textiles* (SITRAMCETEX) was formed and is affiliated with the national union federation FITH, a branch of the confederation CUTH. The union was formed with 46 founding members.

On the morning of April 10, 2010, Labor Inspector Raul Barahona visited Ceiba Textiles to serve the company with notice of the union's formation. The labor inspector's report indicates that the company's representative, Mishell Espana, refused to sign the notification, but nevertheless received the notification document. On the same day, the Ministry of Labor office in San Pedro Sula issued a certificate establishing that the union's 46 founding members were protected henceforth by *proteccion del estado* per Article 517 of the Honduran Labor Code.

Between April 14-17, Ceiba Textiles management systematically called the union's founding members into private meetings in which management induced the workers to resign from the company. In the meetings, management threatened to fire the workers and withhold their severance benefits, but if workers resigned the company stated the workers would receive their severance benefits. Ultimately, approximately 40 workers resigned under duress in exchange for their severance benefits, decimating the union. While the official reason provided the workers for the dismissals was a restructuring of personnel, no workers other than those in the union were dismissed (or "resigned") on the days in question.

On August 2, a FITH representative, Julio Reyes, informed Labor Inspector Barahona of the dismissals. However, no follow-up investigation or intervention by the Ministry was carried out.

#### b. DOMESTIC LABOR LAWS VIOLATED

Anti-Union Dismissals: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code. Article 96(3) of the Honduran Labor Code provides that "Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities." Article 469 establishes that anyone who impairs the right of freedom of association will be punished with a fine. The fact that the union's leadership committee was fired only hours after the Ministry of Labor attempted to notify the company of the workers' status is evidence that the dismissal were motivated by anti-union animus.

Fuero Sindical: Article 516 of the Labor Code provides a special protection against dismissal for elected union leaders, known as *fuero sindical*. Union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership. In this case, all of the union's leaders had been elected and were therefore protected by *fuero sindical* at the time of

their dismissal, which management carried out without prior government approval through a court ruling.

*Proteccion del Estado*: Article 517 of the Labor Code provides special protection from dismissal for the founding members of the union once the employer is notified. In April 2010, a labor inspector issued a report specifically finding that the founding members were protected. The dismissal/forced resignation of most of the founding members violated Article 517.

### **c. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

There was no follow-up investigation or intervention by the Ministry pursuant to the complaint filed by the union. The workers' complaints therefore remain unredressed.

## **4. A.TION**

### **a. FACTS**

The A.tion factory located in Choloma produces apparel that is exported to the U.S. On June 12, 2009, a group of A.tion workers completed paperwork necessary to establish a labor union at their factory. The union would be known as SITRATION and affiliated with the CGT. The union was founded by 68 workers, who signed a document informing the regional office of the Honduran Ministry of Labor of the union's formation.

On July 11 and again on July 21, workers submitted requests to the Ministry of Labor seeking the assistance of a labor inspector at the A.tion facility. The first request sought an investigation in relation to an alleged unlawful increase in the weekly production quota without a corresponding increase in workers' salary. The second request sought the presence of an inspector to accompany worker representatives in formally serving the company notice of the union's formation. On July 21, Labor Inspector Raul Barahona sought to visit the A.tion facility pursuant to the worker requests. However, the inspector was refused access to the worksite. A security guard, who was informed of the purpose of the visit, told the inspector that the plant's human resources manager, Nahun Joel Medina, was not present and thus could not meet with him. The inspector confirmed through other means that Mr. Medina was indeed in the factory at this time. The inspector left the premises, denied access to carry out his work.

On Wednesday, July 22, the same inspector sought to visit the A.tion facility for a second time. He was again refused access. The security guard claimed that Mr. Medina, the human resources manager, was not present and could not attend to him. The inspector again confirmed through other means that this claim was false: Mr. Medina was present in the plant at the time. On Tuesday, July 28, the inspector sought to visit the plant for a third time. He was refused access again. The security guard again claimed that the human resource manager was not present and again the inspector determined that this was not true. On Wednesday, July 29, the inspector sought to visit the plant for a fourth time. Again, the company refused him access to the worksite to complete his official work. Again, he concluded that human resources manager was indeed at the plant, but simply refused to cooperate.



On August 25, in view of the company's repeated refusal to allow the government inspector access to the site to carry out official business, the inspector recommended that the company be sanctioned with a fine for its failure to comply with Article 625 of the Labor Code requiring such cooperation. The report was sent to the Ministry of Labor in Tegucigalpa. However, the union believes that the Ministry of Labor in Tegucigalpa failed to act on the report. The CGT does not believe that A.tion was ever sanctioned for failure to permit inspections.

Throughout late July and early August, A.tion management dismissed all of the founding members of the union. Most workers felt they had no choice but to take whatever was offered to them as severance and seek work elsewhere. Thus, the union did not file a request for an inspection with regard to the illegal dismissals as it appeared pointless to do so with the union destroyed and the workers dispersed. However, the Ministry of Labor was well aware that the company was attempting to bust the nascent union by prohibiting the labor inspection that would have led to the notification of the union's formation and legal protection from dismissal for the union's founders. The government's inaction in compelling an inspection using the tools available to it deprived the workers of an important and necessary legal protection against dismissal. Further, the Ministry of Labor, knowing full well that workers were going to be fired due to the company's refusal to accept notification, failed to undertake any action on its own initiative to review and sanction the company for its illegal activity.

#### **b. DOMESTIC LABOR LAWS VIOLATED**

Failure to Allow Inspectors to Inspect: Article 95(8) provides that all employers are obligated to "allow and facilitate the inspection and monitoring by labor, health and administrative authorities..." In July 2009, the company repeatedly failed to allow inspectors to provide notice of the union's formation.

Anti-Union Dismissals: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code. Article 96(3) provides that "Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities." Article 469 establishes that anyone who impairs the right of freedom of association will be punished with a fine. The dismissal of all of the founding members of the union is evidence that dismissals were motivated by anti-union animus.

Fuero Sindical: Article 516 of the Labor Code provides a special protection against dismissal for elected union leaders, known as *fuero sindical*. An employer may only lawfully dismiss a worker who has been elected to a union's leadership committee after obtaining prior authorization from the government based on a finding that the firings are warranted by just cause. Union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership. In this case, all of the union's leaders had been elected and were therefore protected by *fuero sindical* at the time of their dismissal, which management carried out without prior government approval through a court decision.

**c. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

To date, it does not appear that A.tion was ever sanctioned for prohibiting the inspection. That inaction left workers unprotected and, because they assumed that a request for an investigation with regard to the dismissals would be fruitless, workers believed they had no other option than to take the compensation offered and leave.

The longer the government's recurring course of inaction in failing to enforce its own laws persists, the less likely it is that workers will make the effort to file complaints and otherwise pursue cases. It is particularly important that the U.S. accept this complaint at this time given the likelihood that evidence of workers seeking government assistance in asserting their rights is likely to diminish in the future even though employer violations are likely to increase as the GoH's recurring course of inaction emboldens them.

**5. PINEHURST**

**a. FACTS**

Pinehurst Manufacturing is a Honduras-based company that produces apparel for the U.S. market. In August 2010, employees at Pinehurst Manufacturing began meeting with representatives of the *Central General de Trabajadores* (CGT) in order to plan and implement the organization of an independent labor union at the factory. The founding assembly of the *Sindicato de Trabajadores de la Compania Pinehurst* (Sitrapinehurst) was held on August 14 with 45 founding members.

During the month of August 2010, a worker that was actively organizing the union stated that Pinehurst's general manager, Don Allen, approached him and asked him why he was in the union, told him that the union was "bad for business" and offered to promote him or to pay him money in exchange for his resignation from the union and, if he agreed, to encourage other workers to follow suit. In the month of August, this worker and four other workers that were actively involved in the union organizing campaign were fired, despite the fact that they had been considered productive and loyal employees by their supervisors. The union considers the firings to have been retaliatory in nature, to punish workers for their union leadership, weaken the union, and discourage other workers from joining the union.

On August 6, 2010, the *Centro de Derechos de Mujeres* (CDM) requested that the Ministry of Labor carry out an inspection at Pinehurst on behalf of sixteen workers from the company. On three occasions, August 16, 18, and 25, CDM and a labor inspector attempted to conduct inspections but were denied access by the company to conduct the inspection on each occasion. In the report filed after the August 25 attempted inspection, the labor inspector recommended that the factory be fined for not allowing the inspector to enter. The factory was not fined by the Ministry of Labor and no other action was taken to resolve workers complaints.

On September 8, 2010, CDM again requested that the Honduran Ministry of Labor carry out an inspection at Pinehurst, specifically mentioning the aforementioned dismissals and other labor rights violations including inaccurate payment of workers' salaries, verbal mistreatment, safety

violations, and others. According to CDM, the Ministry of Labor did make at least two attempts to carry out the inspection but the inspector assigned to this task did not document these efforts. CDM stated that Pinehurst management blocked each of the Ministry's attempts to carry out the inspection by blocking its entry into the factory premises, thereby making inspection impossible.

On September 13, the union presented the Ministry of Labor with the documents that are necessary in order to request *proteccion del estado*. The CGT spoke directly with the Regional Director of the Ministry of Labor's San Pedro Sula office who assured her that he had communicated with the Inspectorate that the notification should be carried out on the next visit to the factory. Despite the fact that the Inspectorate did visit the plant on multiple occasions during the months of September and October 2010, it never attempted to notify Pinehurst of the union's "special protection" status.

On October 27, the CGT-affiliated union, Sitrapinehurst, submitted documentation requesting its legal registration with the Ministry of Labor. This status was eventually granted on November 26, 2010. In the period between when Sitrapinehurst requested its legal status and when that status was granted, the following occurred:

- On November 1, Sitrapinehurst sent a letter to Pinehurst management informing it of the union's existence and the names of the union's leadership committee and requesting an urgent meeting. The letter also expressed concern about a newly formed union at Pinehurst, which was sponsored by Pinehurst management. The company did not respond to the letter or to the union's request for a meeting.
- On November 15, the CDM again wrote to the Ministry of Labor citing its failure to grant *proteccion del estado* to the CGT-affiliated union and expressing concern that a new management-sponsored union had been formed inside the plant, stating that this union, different than the independent Sitrapinehurst union, had been granted full access by management to workers and threatened workers that chose not to affiliate.

Independent investigations of the rise of the second, management-sponsored union, show that, on September 25, Pinehurst management invited a number of workers that were not involved in the Sitrapinehurst organizing efforts to attend a meeting at the offices of another union federation, and offered to pay their bus fare in order to attend. At the meeting, it was decided that these workers would join and reactivate a dormant, industry-wide union known as the *Sindicato de Trabajadores de la Industria de la Costura y Similares* (initially known as Sitracostura, later as Sitraincosi).

On October 26, the Sitracostura union contacted the Ministry of Labor requesting a change in the union's leadership committee. Just two days later on October 28, in marked contrast to the difficulties encountered by the Sitrapinehurst union, the Ministry of Labor complied with a request from the Sitracostura union to notify the Pinehurst management that the Sitracostura union was representing workers at Pinehurst. Not only did the Ministry's Inspectorate act swiftly upon this request, but the factory placed no barrier upon the inspector's entrance into the industrial park in order to receive notification.

Worker testimony supports the claim that there was collusion between Pinehurst management, the union, and Ministry of Labor officials. Testimony provided by workers to an NGO that conducts factory monitoring stated that middle managers openly referred to the Sitracostura union as “the company’s union,” that the union leadership frequently held meetings in the management offices, that Sitracostura leaders were freely allowed to affiliate workers during working hours, that some workers were offered money in exchange for their affiliation to this union, and that union meetings were held for all workers during working hours.

On October 29, the Ministry of Labor responded to the union’s request for a change in its leadership committee by informing the union that one of the leaders did not meet the six month minimum employment required in order to be a member of the leadership committee and that another worker’s time at the factory could not be determined because her date of hire was left blank on her employment verification letter. In this same document, the Ministry suggested that the union change the leadership committee in order to meet the legal requirements. The union eventually resolved this issue on November 10 by presenting new letters to the Ministry of Labor for the aforementioned workers, stating that the date in question (less than six months of employment) was an error. On November 16, 2010, the Ministry of Labor certified the new leadership committee, with no apparent investigation of the anomalous employment verification letters.

In late November and early December 2010, both unions submitted a request for bargaining. Given Sitrapinehurst’s concern that management had been heavily involved in bringing the Sitracostura union to the Pinehurst factory in an effort to eliminate the independent union’s efforts and its concern that the Ministry of Labor would not fairly and independently mediate the conflicting requests, Sitrapinehurst and the CGT contacted the factory buyers and asked them to become involved in resolving the dispute.

The company’s clients eventually recommended to the factory that the workers involved in union activities that were fired be reinstated and that the management extricate itself from any relationship with the Sitracostura union. In early January 2011, the five workers who had been fired for their organizing efforts were reinstated and factory buyers informed the union that the Sitracostura union was withdrawing its petition to bargain. The Ministry of Labor played no role in mediating these points of conflict.

After finally conducting an inspection on December 7, 2010, the Ministry of Labor issued an investigation report citing the company for the nonpayment of overtime hours for two months, plus a 25% per hour fine which added up to 453,433.25 LPS. The president of the company was informed of the citation on January 24, 2011. On February 9, 2011, a follow-up inspection conducted by the Ministry of Labor found that the company had still not paid workers their owed overtime and that the company was still not in compliance with the law on proper payment of overtime. For this reason, on March 23, the Ministry of Labor issued a decision to impose a fine against the company. On January 23, 2012, the Ministry of Labor levied a fine of 10,000 LPS against the company. To date, workers continue to receive incorrect payments of overtime and have not received the 453,433.25 LPS that the Ministry of Labor ordered the company to pay to them.

## **b. DOMESTIC LABOR LAWS VIOLATED**

Discrimination Against Union Members: Article 96(3) of the Honduran Labor Code provides that “Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities.” The facts—including the timing of the firings, the composition of the firings and anti-union threats by managers—are evidence that firing of five workers in August 2010 was motivated by anti-union hostility and were therefore illegal.

Fuero Sindical: Article 516 of the Labor Code extends a protection against dismissal for elected union leaders known as *fuero sindical*.<sup>21</sup> An employer may only lawfully dismiss a worker who has been elected to a union’s leadership committee after obtaining prior authorization from the government (in this case the Labor Court or the Civil Court), based on a finding that the firings are warranted by just cause. Union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership (as opposed to only after the successful notification of the union’s founding to the government and management). In this case, the five fired workers had been elected and were therefore protected by *fuero sindical* at the time of their dismissal.

Establishment of Employer-Dominated Union: Article 469, which states, “It is prohibited for any person to infringe the right of association.” Further, Article 96(9) states, “It is prohibited for employers to perform or authorize any act that directly or indirectly infringe or restrict the rights granted by law to workers or offends their dignity.” Here, the company established a parallel union apparently for the purpose of prejudicing the legal rights of workers who had decided to establish and join a legitimate union to promote the interests of its members—not the employer. Further, since Article 53 provides that there can be no more than one collective bargaining agreement in an enterprise, the purpose of establishing the employer-dominated union appears to be in violation of both Articles 469 and 96(9): to “negotiate” a contract and thus bar the legitimate union from negotiating a real collective bargaining agreement.

Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Under Article 330, overtime should be compensated with a 25% premium. The employer does not pay workers the legal mandated overtime pay.

## **c. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

Article 618 of the Labor Code establishes that labor inspectors of the Ministry of Labor have the authority to access worksites for the purpose of investigating labor violations and performing other Ministry functions. Article 617 of the Labor Code authorizes the Ministry to fine an employer for refusing to cooperate with agents of the Ministry carrying out its lawful functions (although the maximum fine is only about \$265.00). On at least five occasions between August and September 2010, the company refused to allow labor inspectors access to the factory. There

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<sup>21</sup> Article 516 states: “Workers who are members of the Leadership Committee of a union organization, from the time of their election until six (6) months after they have completed their terms, cannot be fired from their jobs without prior proof before the respective Official Labor Judge or before the Civil Judge in his absence, that just cause exists to terminate the contract. The judge, making a summary judgment, will resolve the proceeding. This law is only applicable to the Central Leadership Committee, when the unions are organized in sections and subsections.”

is no indication that the Ministry fined the company or took any other action for its failure to comply.

After founding the union on August 14, 2010, founders and leaders of the union became protected under the *proteccion del estado* and *fuero sindical*. Five union leaders were illegally fired by the company. The Ministry of Labor failed to conduct an investigation, order reinstatement of the union leaders, or fine the company for violation of the law. The union leaders were only reinstated due to pressure by the company's apparel buyers.

In September 2010, Pinehurst engaged in the establishment of an employer dominated union. In contrast to its response to the independent union Sitrapinehurst, the Ministry of Labor acted quickly and in compliance with the employer's and employer dominated union's requests. The Ministry of Labor took no action against the employer for establishing an employer-dominated union and violating workers' right to establish and join a legitimate union to promote the interests of its members. The employer dropped its efforts to establish an employer-dominated union only after receiving pressure from the employer's buyers, and not due to an action taken by the Ministry of Labor.

Since December 2010, the employer has not complied with an order to pay workers owed overtime pay, nor with an order to begin paying overtime properly. Although the Ministry of Labor issued a fine against the employer, and the employer has paid the fine, no further action has been taken by the Ministry of Labor to ensure compliance by the company to properly pay workers overtime and pay them their owed back-pay.

## **6. KYUNGSHIN-LEAR HONDURAS ELECTRICAL DISTRIBUTION SYSTEMS**

### **a. FACTS**

The Kyungshin-Lear Honduras Electrical Distribution Systems factory is an auto parts manufacturing factory that produces automobile electrical harnesses for export to the U.S. market and employs approximately 3,000 workers. The factory is owned and operated by Kyungshin-Lear, a joint venture between the South Korean company Kyungshin and the U.S.-based Lear Corporation.

In May 2011, employees at Kyungshin-Lear began meeting with representatives of the CGT in order to form an independent labor union and address ongoing labor rights violations at the factory. Violations detailed by workers include management denying permission to workers to use the bathroom, denying workers permission to drink water, and improper payment of vacation pay. In September 2011, workers formed the union Sindicato de Trabajadores de la Empresa Honduras Electrical Distribution Systems S. de R.L. Kyungshin-Lear (SITRAKYUNGSHINLEAR) and presented the required documentation to the Ministry of Labor.<sup>22</sup> At this same time, the CGT requested that the Ministry of Labor notify the company of the formation of the union.

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<sup>22</sup> Article 477, Honduran Labor Code, explains the legal requirements to form a new union, which includes, among others, the followings: the names, nationality, trade, or profession of the founding members, and the kind of organization being created.

On September 28, 2011, an inspector from the Ministry of Labor, accompanied by a worker representative of SITRAKYUNGSHINLEAR and a representative of the CGT, attempted to present notification of the formation of the union to the company. The labor inspector was denied access to the factory by a security guard, who stated that the management of the factory was in Mexico and no one could attend to the inspector. The labor inspector asked the guard when the executives would return, but was not given an answer. Later that day the worker representative from SITRAKYUNGSHINLEAR who had accompanied the labor inspector during the attempted notification in the morning, was called into the factory's human resources office, questioned by management (whom security had claimed were in Mexico) and threatened with firing for forming a union.

On September 29, the labor inspector, a worker representative, and a representative from CGT again attempted to present notification of the union to the company and were again denied entrance to the factory and told by security that management was in Mexico. Two additional attempts were made by the labor inspector on October 4 and 5, and on each occasion the labor inspector was again denied entrance to the factory and unable to present the notification of the formation of the union to the company. At this point, after the labor inspector made his reports, the Ministry of Labor made no further attempts to notify the company of the formation of the union.

On December 19, 2011, members of the executive board of SITRAKYUNGSHINLEAR traveled to Tegucigalpa to request directly from the Ministry of Labor that it grant the union legal status,<sup>23</sup> in virtue of the union having exhausted all available means via the regional Ministry of Labor in San Pedro Sula to present the company with notification of the formation of the union.

[REDACTED]

[REDACTED].<sup>24</sup> The three workers were presented letters by the company stating that the reason for termination was a reduction of personnel levels. According to the workers, the Director of Human Resources told them that they were being fired for making bad decisions and that he had received a list from the Ministry of Labor in Tegucigalpa of the workers who had organized the union. The Director of Human Resources further stated that the company did not want conflictive people in the factory and pressured the workers to accept their severance checks, which they did not accept. No other workers were fired by the company at that time.

[REDACTED], the company fired [REDACTED].<sup>25</sup> [REDACTED]. The company's termination letter again stated that the reason for the firing was a reduction in personnel levels. No other workers were fired by the company at that time.

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<sup>23</sup> Article 483 of the Honduran Labor Code requires the Ministry of Labor to grant legal status/recognition to a new union within 15 days, except when doing so would be contrary to the Honduran Constitution.

<sup>24</sup> SUBMITTED IN CONFIDENCE: In order to protect these individuals from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that all of their identities be kept confidential.

<sup>25</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual's identity be kept confidential.

The Director of Human Resources then began calling the fired members of the union's executive board to come for their severance checks and sign their settlements, threatening them that if they did not retrieve the checks they would lose all their rights. Due to the continuous pressure and threats, [REDACTED] [REDACTED]<sup>26</sup> decided to accept the checks out of fear of losing them and being blacklisted.

On February 7, 2012, the Ministry of Labor legally registered the union and provided the union with its *personería jurídica*, but it still did not officially notify the company. On February 7, 8, and 9, 2012, the Director of Human Resources called [REDACTED],<sup>27</sup> [REDACTED]. During these meetings the company demanded that the worker resign, that he give the names of other workers in the factory sympathetic to the union, that he give the name of the lawyer helping the union, and that he tell them with what organization the union was affiliating. The worker was told during these meetings that if he provided this information he would still receive all owed payments and benefits, and that his check would be handed over immediately. The worker refused to provide the company with the information. On February 10, 2012, the worker was called to human resources where he was handed a termination letter detailing that he was terminated due to a reduction in personnel levels. No other workers were terminated by the company at that time.

On February 27, 2012, the Ministry of Labor finally notified the company of the legal registration of the union. On March 10, the union conducted an election to replace the union leaders that had been previously fired by the company and had accepted their severance payments. On March 12, the company fired three of the newly elected union leaders. No other workers were terminated by the company at that time.

#### **b. DOMESTIC LABOR LAWS VIOLATED**

Failure to Allow Inspectors to Inspect: Article 95(8) provides that all employers are obligated to “allow and facilitate the inspection and monitoring by labor, health, and administrative authorities...” The company refused to allow entry of labor inspectors on four separate occasions.

Anti-Union Discrimination and Firings: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code. Pursuant to Article 96(3) of the Honduran Labor Code, “employers are prohibited from firing workers or taking any other adverse action against them due to their membership in a union or their participation in union activities.” Article 96(9) also prohibits employers from taking or authorizing any action that directly or indirectly puts at risk or restricts the rights provided by law to workers. To the best of our knowledge, the eight members of the union's

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<sup>26</sup> SUBMITTED IN CONFIDENCE: See notes 24 and 25.

<sup>27</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual's identity be kept confidential.



leadership that were fired were the only workers fired by the company during this time, which indicates that they were targeted, discriminated against, and fired for their union activity.

### **c. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

The labor inspector was denied access by the company to present notification of the union's formation on four separate occasions. After the fourth attempt, the Ministry of Labor made no further attempt to notify the company and abandoned the process. No citation or fine was made against the company, which continued to act with impunity. By refusing to accept notification of the union's formation, the company essentially blocked the union from being legally registered. Without legal registration of the union, the company refused to acknowledge the union's leaders and founders right to *proteccion del estado* and *fuero sindical* that would have protected them from discrimination and firings by the company. The company used this opportunity to target and fire union leaders. Furthermore, the company indicted to workers that it had received a list of the union's leaders from the Ministry of Labor. This indicates that the Ministry of Labor communicated with the company and providing it with information about the union, while at the same time the Ministry of Labor continued to fail to officially notify the company about the union or legally register the union. The union was not officially registered until more than four months after it requested the Ministry of Labor to do so, and only after union leaders had been fired.

## **7. RESOLVED MAQUILA SECTOR CASES**

In the last two years, major cases regarding widespread violation of freedom of association in the *maquila* sector were resolved by private settlement between workers, major U.S. brands, and U.S.-based worker rights NGOs. Representative cases, involving violations of Honduran labor law at Jerzees Choloma and Jerzees de Honduras are described in Appendix I. No further action is sought on any of these cases. Rather, these cases are presented solely as additional evidence of the Honduran government's failure to effectively enforce its labor laws. In none of these cases did the government play a meaningful role in the eventual resolution of these disputes. It is highly likely that these cases would have remained unresolved if left entirely to the labor justice system of Honduras.

## **V. COLLECTIVE PACTS**

### **A. OVERVIEW**

The establishment of management-dominated worker associations is a common means by which to frustrate workers' collective efforts to form an independent union and to bargain collectively. Once formed, the management "negotiates" a collective pact with the association, which often contains little more than a restatement of the law. The pacts are usually imposed unilaterally by the employer, with no input from workers or worker representatives. The petitioners obtained a list prepared by the Ministry of Labor itself in 2010 of collective pacts in 25 companies covering over 32,000 workers. The Ministry of Labor is clearly aware of the presence of these illegal agreements and the names of the employers that are using them, but has affirmatively failed to do anything about it. See Exhibit I. This petition closely examines the institution of collective pacts at Hanesbrands factories.

## **B. CASE: HANESBRANDS**

### **1. FACTS**

Hanesbrands operates eleven factories in Honduras, producing garments for export to the U.S. In 2008, workers at Confecciones de Valle, a Hanesbrands plant, attempted to organize a union. Over the course of that year, numerous union leaders were dismissed and the factory was eventually closed.<sup>28</sup> Apparently in reaction to the union organizing effort at Confecciones de Valle, Hanesbrands has initiated and implemented “collective pacts” and “worker committees,” a system of management-dominated employee representation, in several of its manufacturing facilities in Honduras.

In October 2008, Hanesbrands introduced a collective pact and worker committee structure at its Jasper plant, which is located in Choloma. As with the introduction of collective pacts at Hanesbrands’ other factories in the region, described in more detail below, Hanesbrands management initiated the pact, conditioned workers’ continued receipt of current benefits on signing the pact, engaged in no meaningful negotiation with workers concerning the pact’s contents, and handpicked worker candidates to serve on a committee responsible for representing workers in dealings with management.

At a meeting at the beginning of January 2009, Hanesbrands’ regional director of human resources for Central America reportedly informed managers of each of Hanesbrands’ other factories in Honduras that the company would be implementing collective pacts—modeled after the one at Jasper—at each of their facilities. The regional human resources director reportedly informed the plant managers that the company’s intention in implementing the collective pacts was to reduce the threat of a union being formed at their facilities and, in the case that a union is formed, to prevent the union from negotiating improved benefits during the period in which the pact was in effect (a period of five years). Managers received instructions and a PowerPoint presentation for presenting the collective pacts to the workers in their respective factories. We understand that Hanesbrands’ country-level vice president for manufacturing participated in the meeting.

On or around March 24, the managers at five of Hanesbrands’ facilities in Honduras made presentations to their workforces announcing the creation of the pacts. These presentations included a lengthy slideshow, filled with statistics and newspaper clippings, making the case that, given the layoffs being carried out throughout the region’s apparel sector, Hanesbrands workers were lucky to be employed and should do their part to ensure the company’s success. Managers informed workers that because of the economic crisis, the company had decided to implement a collective pact at each of its facilities. Workers were told that their current wages and working conditions would be guaranteed only if they signed a document agreeing to be party to the pact. In order to participate, workers were told, they could not be members of a union. They were told that they needed to sign the pact that same day.

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<sup>28</sup> The case was eventually resolved, not by the intervention of the government, but through private settlement.

The managers also informed workers that the company was creating a leadership committee for the collective pact, which would be responsible for representing workers in dealings with management. During their presentation to the workers, managers showed workers the management-selected candidates' names and photographs and told workers they could vote from amongst these candidates to fill six slots. Worker-selected candidates were not allowed.

Immediately after the presentations, workers were instructed to sign two different documents: an individual authorization form to join the collective pact and a list with their names and identification numbers. The names and identification numbers of the signing workers were later appended to the collective pact (a document listing the company's policies and benefits). Workers were not given time to read the contents of the pact before signing. Managers met with reluctant workers to get them to agree to sign. All, or virtually all, of the plants' workers ultimately signed documents agreeing to join the pacts. After signing these forms, workers voted for the leadership committee.

To the extent that the worker leadership committees created by Hanesbrands functioned at all, they apparently did so at the direction of company management. In some facilities, managers trained the workers to make announcements to the workforce in which they discussed the benefits provided by the company through the collective pacts and prevailed upon workers to work more efficiently. In other factories, the worker committees ceased to function after a few meetings. The committees were not involved in formulating the contents of the pacts—rather the submitted them to the Ministry of Labor without any negotiation with the committees' members or other workers. It is not known if the committees were ever provided copies of the pacts themselves.

By the end of March 2009, management of the majority of Hanesbrands' factories in Honduras had presented the pacts to the workers and arranged for their employees to sign the pact authorization documents.

## **2. DOMESTIC LABOR LAWS VIOLATED**

### Solidarist Associations and “Negotiation” of Collective Pacts:

The employers established management-dominated worker committees (solidarist associations) to “negotiate” collective pacts. The intent of this effort was to reduce the threat of a union being formed and, in the case that a union was formed, to prevent the union from negotiating improved benefits during the period in which the pact was in effect (a period of five years). Indeed, a 2008 union drive in Confecciones de Valle, a Hanesbrands factory, appears to have precipitated the company's move towards collective pacts.<sup>29</sup>

The establishment of solidarist associations, especially when following on the heels of efforts to frustrate legitimate trade union activity, frustrates workers' collective efforts to form an

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<sup>29</sup> In 2008, workers at Confecciones de Valle attempted to organize a union. Over the course of that year, numerous union leaders were dismissed and the factory was eventually closed. The case was eventually resolved, not by the intervention of the government, but through private settlement.

independent union and to bargain collectively.<sup>30</sup> Indeed, the leading labor law treatise in Honduras observes that:

It can be said with certainty that when a collective pact is originated or signed, the source of its inspiration or origin is from the employer. Further yet, almost always a collective pact comes about as a means of annihilating the rights of a union. . . . [U]nder the pretense of executing a legitimate action by the employer, the actual goal that the pacts pursue is unfair and illicit: to seek to undermine the right of freedom of association and the free exercise of the right to collective bargaining, guaranteed by international conventions and by national legislation.<sup>31</sup>

In this instance, workers were threatened that they could maintain current wages and conditions of work only on the condition that they sign onto a collective pact and renounce any effort to form a union. This violates Article 469, which states, “It is prohibited for any person to infringe the right of association” and Article 96(9), which states, “It is prohibited for employers to perform or authorize any act that directly or indirectly infringes or restricts the rights granted by law to workers or offends their dignity.”

Honduran labor law does not prohibit negotiation of collective agreements between an employer and non-union employees. However, Article 72 provides that “agreements between employers and non-union workers are governed by the provisions for collective agreements...” The provisions regarding collective bargaining contemplate parties freely entering into an agreement negotiated by their chosen representatives. Thus, the collective pacts unilaterally imposed by management were never “negotiated,” and therefore violate the Labor Code.<sup>32</sup>

The ILO has previously condemned the creation of solidarist associations and the imposition of collective pacts in Honduras. For example, the ILO Committee on Freedom of Association (CFA) has stated that, “[S]olidarist associations . . . cannot play the role of independent organizations in the collective bargaining process, a process which should be carried out between an employer (or an employers' organization) and one or more workers' organizations totally independent of each other. This situation therefore gives rise to problems in the application of Article 2 of Convention No. 98 which sets out the principle of full independence of workers' organizations in carrying out their activities.”<sup>33</sup> Indeed, the CFA has urged since 1992 that

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<sup>30</sup> This has happened at several *maquilas* in Honduras, including at Confecciones del Valle, Delta Apparel, Jerzees Choloma, and Jerzees de Honduras.

<sup>31</sup> Arnaldo Villanueva Chinchilla, *Derecho Laboral Hondureño* (Honduran Labor Law) 98 (1985); Similarly, the U.S. State Department's 2009 human rights report on Honduras describes such arrangements as akin to “company unions” – a form of workplace organization that has long been banned in the United States because it interferes with workers' freedom to form their own independent labor organizations. U.S. State Department, *2008 Human Rights Report – Honduras* (2009), available online at [www.state.gov/g/drl/rls/hrrpt/2008/wha/119164.htm](http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119164.htm).

<sup>32</sup> See Article 53, which states: “Collective bargaining is any written agreement with regard to conditions of work entered into between an employer, a group of employers or one or more employers' organizations on the one hand, and, second, one or more organizations of workers, representatives of the employees of one or more companies or transiently associated groups of workers. See also Article 57, which states: “The representatives of workers or employers that are not organized into unions, will prove their representational capacity [personality] through assembly or meeting minutes, signed by the attendees.”

<sup>33</sup> See, e.g., ILO Committee on Freedom of Association (“ILO CFA”), *Complaint against the Government of Honduras*. Report No. 281 ¶ 380, Case No. 1568 (Vol. LXXV. 1992, Series B, No. 2).

Honduras revise its labor laws in this area because the misuse of such arrangements interferes with workers' free exercise of their associational rights. "[T]he C[FA] expresses the hope that the [Honduran] [g]overnment will urgently take the legislative and other measures necessary to prohibit solidarist associations from exercising trade union activities, particularly collective bargaining."<sup>34</sup>

Although an explicit prohibition is lacking, the use of solidarist associations in practice violates current Honduran labor laws. In any case, Honduras has ratified ILO Convention 98, which is incorporated directly into its domestic legal regime.<sup>35</sup> Thus, collective pacts that violate Convention 98's prohibition on "the establishment of workers' organizations under the domination of employers," also violate Honduran law.<sup>36</sup>

### **3. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

In each of these cases, the government registered collective pacts despite the fact that they were clearly contrary to law as they were not the result of negotiation between employers and the chosen representatives of employees. Further, given that the collective pacts at the Hanesbrands factories followed close on the heels of the high-profile conflict at Confecciones de Valle, where the union had been destroyed through illegal dismissals, the Ministry of Labor had good reason to know or at least suspect that these "agreements" in Hanesbrands facilities were not freely entered into by the workers. The Ministry also knew or should have known that such pacts were suspect given the fact that the ILO had repeatedly denounced such pacts in Honduras. The government has also done nothing to sanction employers for the creation of solidarist associations. In each of the factories above, the collective pacts remain in effect.

## **VI. AGRICULTURAL SECTOR**

Serious violations of acceptable conditions of work, including those related to minimum wages, hours of work, safety, and health, and nonpayment of legal obligations, are common occurrences in the agricultural sector in Honduras. Indeed, many workers work excessive hours and are not compensated at the annually established minimum wage rate or for overtime hours. Child labor can also be found on some plantations producing goods for the U.S. market. And, as elsewhere in Honduras, workers who seek to form a trade union are routinely dismissed.

The bulk of the cases described herein are from the Choluteca Department in southern Honduras, which produces bananas and melons for export.

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<sup>34</sup> See ILO CFA, *id.* at ¶ 381.

<sup>35</sup> See Constitution of Honduras (1982), Chapter 3, Articles 16, 18 (stating that international treaties ratified by Honduras become part of domestic law, and that in case of a conflict between Honduras' treaty or convention commitments and domestic law the former prevails).

<sup>36</sup> ILO Convention 98 (Right to Organize and Collective Bargaining), states explicitly that "[w]orkers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration" and, specifically, that "acts which are designed to promote the establishment of workers' organizations under the domination of employers . . . shall be deemed to constitute acts of interference."

## 1. FUNDACIÓN HONDUREÑA DE INVESTIGACIÓN AGRÍCOLA (FHIA)

### A. FACTS<sup>37</sup>

Formerly the site of an agricultural laboratory operated by Chiquita/United Brands Company, the FHIA was launched by the Honduran government and the United States Agency for International Development (USAID) in 1984. It is a public-private institution, now operating with the support of the government and contributing private sector businesses. It develops seed varieties for numerous crops in Central America. The seeds created at the FHIA are purchased and used by virtually all of the major agriculture exporters in Honduras. The FHIA also develops agricultural technologies used by produce exporters, and provides such exporters with training. The FHIA is an integral part of not only the Honduran agroexport industry but that of all Central America.

On March 5, 2008, FHIA was notified by workers of the establishment of a union (SITRAFHIA, *Sindicato de Trabajadores de la FHIA*), affiliated with COSIBAH (*Coordinadora de Sindicatos Bananeros y Agroindustriales de Honduras*). The union initially had 34 founding members. FHIA immediately fired eight union activists, four within a day of the notification and another four in the days that immediately followed. Shortly before notification, the company had demoted [REDACTED],<sup>38</sup> [REDACTED].

[REDACTED]. After the notification, he was transferred to a location separated from the rest of the workers. Another [REDACTED],<sup>39</sup> was prohibited from working voluntary overtime, which had the effect of preventing him from interacting with workers at other farms that are part of FHIA.

On or about June 1, the company began to fire additional union supporters, first requiring them to sign a statement resigning from the union and then firing them from the FHIA. The company's stated justification for the dismissals was economic, namely that a large project with Chiquita on which workers were employed was winding down. However, the project is still ongoing today. Moreover, FHIA immediately hired new workers and, in some cases, rehired the dismissed workers—though as new, temporary workers. Thus, it appears that the stated reason for the firings was pre-textual.

The union complained to the Ministry of Labor in San Pedro Sula about the dismissals and other anti-union retaliation several times beginning in March 2008. COSIBAH was told by then-regional director Lucia Rosales that there was no one available to conduct an inspection. Eventually, the union did manage to get inspectors out to FHIA;<sup>40</sup> however, the company refused to talk to the inspectors each time, claiming that the director, Adolfo Martinez, was unavailable.

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<sup>37</sup> The facts of this case are detailed further in a report prepared by Hector Hernandez Fuentes for the ILO in May 2009. A copy of the complete report is available upon request from the petitioners.

<sup>38</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual's identity be kept confidential.

<sup>39</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual's identity be kept confidential.

<sup>40</sup> The union faced unprecedented hurdles in this process, including being asked for new documentation that had never previously been requested or providing notarized triplicates of documents.

From March to August 2008, the company continued to fire union supporters in small groups. On August 12, the union was finally granted legal status; however, by this time FHIA had eliminated virtually all of the union's founding 34 members.

On September 25, the union again requested an inspection by the Ministry of Labor. The inspection took place on September 30, at which time the representative of the company simply repeated the company's argument that it needed to reduce personnel due to the end of the project. There is no indication that the Ministry evaluated this statement or that it interviewed the workers. No significant action was taken to remediate the situation.

On January 26, 2009, after FHIA had eliminated virtually all of the union's founding members, the company acted to dissolve the union. An official decision dissolving the union was published in the official gazette on April 27, 2009.

On June 4, COSIBAH requested an inspection to verify that FHIA had hired new personnel for the positions of the union members who were fired in 2008. In the same request, COSIBAH also asked that the inspector verify that eight of the union members were forced to quit the union in order to maintain their jobs. The Ministry of Labor inspector conducted an inspection and took worker statements. There was no company representative present and the statement was signed in the presence of [REDACTED],<sup>41</sup> [REDACTED], and the representative of the Ministry of Labor. In the statement, the workers related all the labor violations that had been occurring for some time as well as the firings that had taken place for having joined the union. The inspector issued the report on July 9, stating that the company representative, Adolfo Martinez, was not present at the signing of the report on the day of the inspection.

That same day, July 9, in response to COSIBAH's of June 4 request for an inspection to investigate whether the company was complying with Convention 87 of the ILO regarding Freedom of Association and the protection of the right to organize, a Ministry of Labor inspector and the president of the union again went to the company and were met by Manuel Girón, lawyer and legal representative of the company, who stated that the union had only caused internal problems for the FHIA, among other things.

On July 20, the Ministry of Labor made another visit to the company to serve a summons on the company to respond to the noncompliance with Convention 87, but the company refused to receive the visit. The inspector made a report of this refusal and on July 28, served FHIA with the first report (Acta número uno), which was based on the June inspection done by Inspector Bessy Lara. The report concluded that the FHIA had violated national and international rights when firing the workers by disregarding the right to organize to which they were entitled. The inspection report further obligated the company to compensate for the illegally fired workers for the damages they had suffered, giving the company a timeline of three working days to correct the violation.

On July 30, the company challenged the information in the first report. In its challenge, the company argued that many workers were misled at the moment of joining the union and that the

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<sup>41</sup> SUBMITTED IN CONFIDENCE: See note 38.

firings were legal based on Honduran law because they were temporary workers. The company also argued that the union was dissolved on January 26, 2009 by a group of its members.

On September 28, the Ministry offices issued a ruling after analyzing the challenge presented by the company. The Secretary concluded that a fine would be levied for failure to correct the violations contained in the report served on the employer on July 28, 2009. The company's July 30 challenge was determined to be without merit.

On November 16, a fine of 10,000 LPS (~\$527.00) was levied against FHIA. The requirement that the violations of national and international rights be corrected remained in place. On December 2, the FHIA presented and appealed the decision, claiming that FHIA did protect workers' rights and had not violated national or international rights. The company did not follow correct procedure, and on February 25, 2010, the Labor Secretary declared the appeal without merit and ratified the fine of 10,000 LPS.

On January 10, 2011, FHIA paid the 10,000 LPS fine at the Honduran General Prosecutor's office. However, FHIA never corrected its violations of national and international laws.

The FHIA case has been closed by the Ministry of Labor in Tegucigalpa even though labor violations continue at the company. Although reliable evidence existed that FHIA violated the right of the fired workers to join a union, the Ministry of Labor found the payment of the 10,000 LPS fine an acceptable action to close the case without redress for the workers or compliance with the law. The minutes of the founding assembly of the SITRAFHIA union and the election of a provisional leadership on March 2, 2008, established the founding members and leaders of the union. The letters issued by FHIA firing the workers show that the majority of the workers fired belonged to the SITRAFHIA union and that FHIA targeted union members for firing. FHIA's actions left the union without membership and without the required minimum number of 30 members who, according to Honduran labor law, are needed to register the union. The violations of workers' rights have not been redressed.

## **B. DOMESTIC LABOR LAWS VIOLATED**

Failure to Allow Inspectors to Inspect: Article 95(8) provides that all employers are obligated to "allow and facilitate the inspection and monitoring by labor, health and administrative authorities..." In mid-2008, when the union was finally able to get the Ministry of Labor to send inspectors out to FHIA, the company repeatedly refused to talk to the inspectors.

Anti-Union Discrimination: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code. Pursuant to Article 96(3) of the Labor Code, "employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities." Article 96(9) also prohibits employers from taking or authorizing any act that directly or indirectly puts at risk or restricts the rights provided by law to workers. Here, workers were fired due to their membership in the SITRAFHIA union, which put the rights provided by law to the workers at risk.



*Protección del Estado*: Pursuant to Article 517 of the Labor Code, provides special protection from dismissal for the founding members of the union once the employer is notified. This provision protects workers from dismissal, without prior authorization by the government, for any reason. The only circumstance in which an employer may lawfully dismiss a founding union member while this protection is in effect is if the General Labor Administration or the Ministry of Labor grants the employer authorization to do so, based on an affirmative finding that there was “just cause” to dismiss the worker. The employer did not go through this process and thus illegally fired the founding members of the SITRAFHIA union.

### **C. FAILURE TO ENFORCE DOMESTIC LABOR LAW**

In several instances in which requests were made, the Ministry of Labor simply refused to undertake an investigation, or if it did, it failed to take steps necessary to compel access to the worksite when it was denied by the employer. Further, the September 2008 inspection does not appear to have been a competent inspection, merely restating the claims of management with no apparent effort to determine the veracity of those claims. A fine of 10,000 LPS was eventually imposed against the employer and the case was closed without further recourse or compensation for the fired workers, as should have been pursued under Honduran law.

## **2. SUR AGRICOLA/CULTIVOS DE VEGETABLES DEL SUR**

### **A. FACTS**

Sur Agricola de Honduras (SurAgro) and Cultivos de Vegetables del Sur (Covesur) are two of five farms located within a single plantation. In total, there are roughly 3,000-5,000 workers employed on this plantation, which grows melons, including honeydew and cantaloupe for the U.S. and European markets.

In May 2006, COSIBAH first complained orally to the Ministry of Labor in Choluteca regarding the non-payment of minimum wages, among other violations.<sup>42</sup> The Ministry of Labor claimed that it did not have an inspector or a car available and thus was unable to inspect the farm. COSIBAH visited the office monthly from May 2006 forward, always receiving the same response. In late 2007, the Ministry finally undertook an inspection and provided the report to the employer on November 2, 2007. The Ministry did not make the inspection report available to the workers despite COSIBAH’s repeated requests.

In August 2008, the workers struck, protesting the non-payment of the minimum wage. As one result of the strike, the 2007 inspection report was finally released on October 14, 2008. The report stated that labor violations in the following areas were found during the November 2, 2007, inspection:

- Failure to provide the inspector requested documents
- Employment of eight child laborers
- Failure to provide workers written work contracts

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<sup>42</sup> The staff of the Inspectorate they complained to were Marcelino Espinal, Marie Lusia \_\_\_\_\_, Luz Idalia Gomez, and Jesus Martinez.

- Lack of payroll records in accordance with the model adopted by IHSS (the national social security system)
- Lack of internal work rules approved by the Ministry of Labor
- Failure to enroll workers with IHSS
- Failure to pay the minimum wage

According to the inspection report, the workers were owed 5,166,818 LPS (roughly \$258,000) in unpaid compensation. In the report, the Ministry also fined the company a total of 90,000 LPS (roughly \$4,500). The company was given three days to pay the workers and correct the violations. The company was warned that if it did not make the corrections in the established time period a further fine would be levied of 50 to 50,000 LPS.

On December 14, 2007 the Ministry of Labor did a follow-up inspection to verify whether the company had complied with the order and found that it had not.

On July 8, 2008, the Ministry of Labor issued a finding based on the first notification issued to the company on November 2, 2007, and cited additional violations committed by the company, bringing the total violations cited to seventeen. The additional violations included:

- Not providing the required day off for rest
- Not providing legal holidays
- Failure to pay workers overtime
- Failure to pay the annual thirteenth month bonus
- Failure to pay the annual fourteenth month bonus
- Failure to pay the education bonus

The company paid the fine of 90,000 LPS (roughly \$4,500) on October 22, 2008, but never paid the workers the compensation owed to them nor corrected the violations cited. Because the company continued to fail to pay the minimum wage, COSIBAH demanded that the Ministry of Labor conduct another investigation in March 2009. However, the coup occurred in June 2009, which frustrated these efforts. The Ministry of Labor did conduct an investigation in November 2009 and again declined to make the report available to the workers. As a result, COSIBAH called upon the public prosecutor's office, which forced the Ministry to issue a summary of the findings on March 25, 2010.

The report cited the company for fewer violations, though workers stated that conditions at the plantation had not improved. The violations noted in the report were:

- Lack of individual work contracts
- Lack of internal work rules approved by the Ministry of Labor
- Lack of payroll records in accordance with the model adopted by IHSS
- Failure to pay workers the minimum wage

The Ministry notified the company of the inspection's results on March 1, 2010 and provided the company three days to correct the violations. An inspector returned on March 9 and found that the violations had not been corrected. Accordingly, the regional inspector forwarded the

findings to the Inspector General of the Ministry to apply for fines.<sup>43</sup> It is unclear whether those fines were ever sought or paid.

According to COSIBAH, the company continues to pay workers below the minimum wage. Additionally, workers typically work 2-3 hours beyond the normal workday without overtime pay and are not paid the *septimo dia* benefit.<sup>44</sup> Furthermore, if workers miss a day of work, the employer often penalizes them by charging them 80 LPS for the missed day *plus* the *septimo dia* (at the rate of 136 LPS, the minimum wage—even though they would not have received the *septimo dia* if they had not missed a day of work) *plus* another day's salary. This adds up to 250-300 LPS, 3-4 days' wages.

## B. DOMESTIC LABOR LAWS VIOLATED

Failure to Pay Minimum Wage: Article 381 of the Labor Code provides that the minimum wage is that which every worker has the right to receive to cover his normal needs and those of his family in material, moral, and cultural ways. Article 95(1) obliges employers to pay remuneration to workers as provided by agreement or stipulated in law. The minimum wage for 2010 is 139.22 LPS.<sup>45</sup> Here, the employer has failed to pay the officially established minimum wage for agricultural workers because it pays its workers at various daily wage rates—from 57 to 135 LPS.<sup>46</sup>

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to be compensated for one day of rest for each 6 days of work in a single week. The pay is equivalent to wages for an ordinary workday. Here, the *septimo dia* benefits were not paid to workers eligible for that benefit.

Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325 provides that the maximum workday for agricultural workers cannot exceed 12 hours. Even though agricultural workers may be required to work 12 hours, they remain entitled to overtime pay after 8 hours. Under Article 330, overtime should be compensated with a 25% premium.

Illegal Deductions: Under Article 96(5), employers are prohibited from deducting or retaining any amount from workers' salaries without previous written authorization, a judicial order, or pursuant to applicable law or regulation. There is no law that permits the deduction of additional days' salary for a missed day of work. In addition, while missing a day's work may make a

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<sup>43</sup> Ranging from 50 LPS to 5000 LPS (approximately \$2.50 to \$250 USD) per type of violation, rather than by violation, as the Ministry has decided to interpret the law.

<sup>44</sup> COSIBAH has pay stubs that show receipt of only 800 LPS for two weeks' work, roughly 66.66 LPS per day for 6 days of work per week. The pay stubs do not include any information to explain the calculation based on the number of hours workers worked, whether and how much overtime was performed, or any information concerning required benefits.

<sup>45</sup> Decreto No. STSS-342-STSS-10 published October 29, 2010 (the 2010 minimum wage increment was published nearly one year late).

<sup>46</sup> Decreto No. STSS-374-STSS-08 published on December 27, 2008. In 2008, the minimum wage was 104 LPS per day. In 2009, the daily minimum wage was 135 LPS.

worker ineligible for the *septimo dia* benefit, an amount equivalent to that benefit should not also be deducted from the paycheck.

Child Labor: Article 31 of the Labor Code provides that only workers 16 years of age or older are able to enter into a labor contract. Under Articles 32 and 33, children between 14 and 16 may work only with written authorization from a parent and authorization from the Ministry of Labor. There is no evidence that they had received the required authorization to work.

Failure to Provide Written Contracts: Article 30 of the Labor Code provides that all employment contracts along with any modification or extension must be made in writing.

Failure to Pay the Education Bonus: Article 21-A of the Labor Code and Decree No. 43-97 (Reforms to Minimum Wage Law and Education Bonus Law) provide that workers with children enrolled in kindergarten, primary, or secondary school have the right to an education bonus.

Failure to Keep Payroll Records: Article 380 of the Labor Code provides that all employers who employ three or more permanent employees must keep payroll records.

Failure to Enroll Workers in the National Health Plan: The Regulation of the Application of Social Security Law, Legislative Decree No. 140, under Article 3 and Article 7, provides that workers are to be enrolled in the national social security system (IHSS) and employers are obligated to enroll their workers.

### **C. FAILURE TO ENFORCE DOMESTIC LABOR LAW**

Following more than a year of requests, the Ministry of Labor finally conducted inspections and issued reports. In 2008, a fine was paid but the GoH failed to compel compliance with the law. In 2009, the Ministry conducted a follow up inspection at the urging of the workers but again failed to compel compliance with the law. The violations continue to this day.

## **3. LAS TRES HERMANAS**

### **A. FACTS**

Las Tres Hermanas is a banana plantation in El Progreso. It supplies bananas to Chiquita, the previous owner of the plantation, that are exported to the U.S. In total, the plantation employs approximately 225-250 workers.

Under Chiquita's ownership, the workers were represented by the Sitrasurco union and had a collective bargaining agreement. However, in 2005, Hurricane Gamma inflicted massive damage, forcing the plantation to shut down. It reopened roughly 6 months later under new ownership, Tres Hermanas. When it reopened, the workers had no union, no agreement, and were often not paid the minimum wage. In 2007, COSIBAH began to contact workers to inform them of their rights and to start organizing. COSIBAH stepped up this activity in 2008. In June/July 2009, the company fired two workers who had communicated with COSIBAH.

However, because of the coup, COSIBAH did not immediately approach the Ministry of Labor seeking reinstatement.

For the remainder of 2009, COSIBAH continued to organize meetings with a view to forming a new union. On January 17, 2010, workers informed COSIBAH that the company had created a *trato justo* (fair treatment) committee and explained that the company supervisors were telling workers to tell outside auditors that everything was fine or they would lose their jobs.<sup>47</sup>

On January 24, COSIBAH held a meeting with nineteen workers, eighteen of whom signed documents to initiate the process of formally creating the union. The following day, the company fired seventeen workers, fifteen of whom had participated in worker rights training with COSIBAH. The company informed the workers that the reason for the dismissals was a lack of financing; however, the workers were escorted from the plantation by armed security guards, which indicates that the reason for the termination were pre-textual.

On January 29, four days after the firing, the company asked workers to assist in finding family members or friends to hire to perform the same jobs previously performed by the seventeen workers, noting that the company had a need to fill the vacancies. The following day, the plantation's human resources manager, Santo Francisco Fuentes, pressured [REDACTED],<sup>48</sup> to provide him with the names of all workers who had participated in workshops with COSIBAH. This information was requested as a condition of returning to work. The manager told him "We know you are meeting together.... We have videos." [REDACTED] refused to provide such information.

On February 2, COSIBAH met with the General Manager of one Tres Hermanas' buyers, Jorge Moya, to discuss the situation concerning the fired workers at Tres Hermanas. On February 22, COSIBAH and three of the fired workers met with Tres Hermanas management—Jose Obregon (general manager) and Cesar Castro (legal advisor)—and obtained a verbal agreement to reinstate the seventeen workers.<sup>49</sup> The dismissed workers were to return in groups according to the following schedule: five workers on March 8, five more workers on March 15, and the remaining seven on March 22. The workers were to be provided with checks for 2,000 LPS. The company would also pay the workers a production bonus it owed them from 2009 and would respect the workers' seniority. Workers were to have a choice of whether to sign a permanent or temporary contract.

On March 8, the first group of workers returned to the plantation to start work. When they arrived, the company asked them to sign a document that did not contain the conditions

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<sup>47</sup> At the time, the plantation was certified by Rainforest Alliance.

<sup>48</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual's identity be kept confidential.

<sup>49</sup> Other aspects of the February 22 verbal agreement included that the company would provide training for workers on their labor rights, including the right to organize, and that the company would provide workers with an option of signing a permanent or a temporary work contract. COSIBAH was to participate in the training process; instead, the company began working with SAI, though it is unclear if any training has actually occurred. On March 6, the company reneged on its commitment regarding the work contracts by requiring workers to sign documents stating that they did not want permanent work contracts.

previously agreed upon: there was no recognition of seniority and no mention of the 2,000 LPS. On March 10, COSIBAH requested a copy of the document the workers had signed and, upon review, requested from Jose Obregon a new written agreement with the conditions established by the verbal agreement. Mr. Obregon said he would speak with Santo Francisco Fuentes, human resources manager, to draft a document according to the verbal agreement.

On March 11, the workers met with Santos Francisco Fuentes. However, in this meeting, he said that, under orders from legal advisor Cesar Castro, he could not sign the document with the conditions earlier agreed and that the company would only commit to hiring five of the workers. He stated in this meeting that the reason for this position was that the company could not have too many “rebellious” workers at the plantation who would incite other workers to unionize.

Up to then, COSIBAH had not asked the Ministry of Labor to get involved. It was only after the company broke its agreement that COSIBAH asked the Ministry to intervene. At a conciliation meeting on April 20, 2010, the company offered 1,000 LPS for each season the workers worked, as well as a 1,000 LPS production bonus. It did not however offer reinstatement. The company also stated that it would not recognize seniority, and that any workers rehired would be hired as new employees. No agreement was reached. At a subsequent meeting, the company offered again to reinstate some of the workers; however, when one of them showed up the week of May 10, he was told that there was no work available.

Sometime in April or May, the Ministry of Labor told COSIBAH that it had failed to identify any violations of the labor law at Tres Hermanas. However, violations were ongoing. According to COSIBAH, workers perform several hours a day of unpaid overtime, which is not reflected in the payroll records. COSIBAH estimates that workers should be paid about 221.00 LPS per day with the overtime hours.

On June 11, 2010, the workers filed a lawsuit against the company with regard to the unlawful dismissals. Since then, six of the workers have gone back to work. However, this was under the condition that they would not organize a union, a condition that management made clear to the individual workers and to COSIBAH. The workers were hired as new hires and had to sign documents waiving their right to sue the company. They were paid 4,000 LPS consistent with the offer previously described. Four workers remained out of work and parties to the lawsuit against the company. Two of these workers subsequently chose not to continue with the lawsuit due to lack of confidence in the authorities, and the other two workers continued. The lawsuit was finally brought to the Labor Court, and the two workers won a favorable ruling. Another three remained without work but were not party to the lawsuit.

## **B. DOMESTIC LAWS VIOLATED**

Anti-Union Discrimination: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code. Pursuant to Article 96(3) of the Labor Code, “employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities.” Article 96(9) also prohibits employers from taking or authorizing any act that directly or indirectly puts at risk or restricts the rights provided by law to

workers. Article 469 establishes that anyone who impairs the right of freedom of association will be punished with a fine. In 2009-10, the employer fired workers it knew were engaged in efforts to form a union and thus violated domestic labor law.

Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325 provides that the maximum workday for agricultural workers cannot exceed 12 hours. However, while agricultural workers may be required to work 12 hours, they are entitled to overtime pay after 8 hours. Under Article 330, overtime should be compensated with a 25% premium. Although workers were paid for 12 hours of work, their overtime hours were not paid at the overtime rate.

### **C. FAILURE TO ENFORCE DOMESTIC LAW**

Regarding the anti-union dismissals, the Ministry of Labor failed to play any constructive role once the firings were brought to its attention. Indeed, the Ministry found no violation—a determination without merit as evidenced by the later finding of the Labor Court. Some workers returned to work, though only after waiving rights they held under law. Others filed a lawsuit with a labor court. Others have neither returned to work nor joined the suit. With regard to the violations of wage and hour laws, no effort was made by the Ministry of Labor to inspect or remedy those violations. These failures with respect to Tres Hermanas are simply part of a long pattern of recurring failures by the GoH to enforce the law and protect the rights of Honduran workers.

## **4. OKRA SUR**

### **A. FACTS**

Okra Sur, located in Choluteca, employs roughly 800-900 workers in the production of okra and melons, which are then exported to the U.S.

COSIBAH first requested an investigation by the Ministry of Labor in 2007 for minimum wage violations by Okra Sur. Throughout the first half of that year, COSIBAH complained verbally several times about conditions at the plantation and requested investigations. The Ministry declined to investigate.

In January 2008, Okra Sur workers undertook a work stoppage to protest the company's failure to pay the minimum wage. In response, the company came into compliance, but these improvements were short-lived. The company did not pay the correct wages when the minimum wage was subsequently increased. As a result, COSIBAH sought the assistance of the Ministry of Labor several times in early 2009; each request to conduct an inspection was refused. COSIBAH then complained to Likza Cardina de Vicente, then Director of the regional Ministry of Labor, from September through December 2009, and then to Andres Reyes, then interim director, in January and February 2010.

An inspection was finally carried out on February 26, 2010. As far as COSIBAH was aware, this was the first inspection conducted at the plantation. The results were presented to Okra Sur on March 11, 2010. The inspection found the following violations:

- Failure to have written work contracts
- Failure to enroll workers in IHSS
- Failure to pay minimum wage to all workers
- Failure to pay the education bonus

The Ministry of Labor gave the company eight days to correct the violations. On March 24, 2010 a follow-up inspection was made in which the Ministry of Labor confirmed that the company had not made changes to correct the labor violations for which it had been cited.

On April 7, 2010, workers conducted another work stoppage. The workers reported that managers made death threats against them and subsequently fired nine of them. On April 12, the Ministry of Labor facilitated a conciliation meeting, but the conciliation was unsuccessful in reaching an agreement on the conflict, which centered largely on violations related to the minimum wage and payment of benefits and severance, *septimo dia*, and overtime. A second conciliation meeting, also unsuccessful, took place several days later. The nine terminated workers filed a lawsuit against the company on or around April 15, 2010. In October 2011, the court issued a ruling in favor of the workers and the nine workers received their severance payments from the company.

None of the other labor violations have been remedied at Okra Sur and the company continues to fail to pay the minimum wage to workers.

## **B. DOMESTIC LAWS VIOLATED**

Dismissals: Article 96(9) prohibits employers from taking or authorizing any act that directly or indirectly puts at risk or restricts the rights provided by law to workers. In 2010, the employer fired workers who participated in a work stoppage over wages and working conditions and thus violated Article 96(9).

Failure to Pay Minimum Wage: Article 381 provides that the minimum wage is that which every worker has the right to receive to cover his normal needs and those of his family in material, moral, and cultural ways. Article 95(1) obliges employers to pay remuneration to workers as provided by agreement or stipulated in law. The minimum wage for 2010 is 139.22 LPS.<sup>50</sup> Here, the employer has failed to pay the officially established minimum wage for agricultural workers.

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, the *septimo dia* benefits were not paid to workers eligible for that benefit.

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<sup>50</sup> Decreto No. STSS-342-STSS-10 published October 29, 2010 (the 2010 minimum wage increment was published nearly one year late).



Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325, however, provides that, for agricultural workers, the maximum workday cannot exceed 12 hours. While agricultural workers may be required to work 12 hours, they are entitled to overtime pay after eight. Under Article 330, overtime should be compensated with a 25% premium.

Failure to Provide Written Contracts: Article 30 of the Labor Code provides that all employment contracts along with any modification or extension must be made in writing.

Failure to Pay the Education Bonus: Article 21-A of the Labor Code and Decree No. 43-97 (Reforms to Minimum Wage Law and Education Bonus Law) provides that workers with children enrolled in kindergarten, primary, or secondary school have the right to an education bonus.

Failure to Enroll Workers in the National Health Plan: The Regulation of the Application of Social Security Law, Legislative Decree No. 140, under Article 3 and Article 7, provides that workers are to be enrolled in the national social security system (IHSS) and employers are obligated to enroll their workers.

### **C. FAILURE TO ENFORCE DOMESTIC LAW**

After considerable efforts, an inspection was finally carried out on February 26, 2010. The Ministry of Labor found numerous violations but did not appear to follow up to ensure that the violations were corrected or to sanction the employer for ignoring its order to correct the violations. The same violations persist.

## **5. AGROEXPORTADORA DOME**

### **A. FACTS**

The Agroexportadora Dome plantation grows okra for the U.S. market and employs approximately 150 workers.

COSIBAH first complained to Cordelia Lago of the Ministry of Labor in Choluteca in April of 2008. The complaints focused on the plantation's failure to pay the minimum wage, among other things. The Ministry declined to carry out an investigation claiming that it did not have inspectors or vehicles available to do so. COSIBAH again requested an inspection in August and November of 2008 and on two further occasions in 2009 before the coup, each time getting the same response. COSIBAH did not complain to the Ministry again until February 2010, when they met with Andres Reyes, the interim regional director. He claimed that he was unable to order an inspection because he was the interim director.

In March 2010, the new director, Mr. Rodriguez Pineda, took office. COSIBAH met with him, complaining specifically about child labor and minimum wage violations. Mr. Rodriguez ordered and oversaw the investigation. According to a summary report prepared for COSIBAH, the Ministry found the following violations:

- Failure to pay the minimum wage
- Employment of 60 child laborers
- Failure to maintain payroll records
- Failure to adopt internal work rules.

The Ministry gave the company three days to correct the nonpayment of the minimum wage and 30 days to correct the other violations. As a result of the inspection, the company eliminated most child labor. However, the company continued to violate the labor law in several other respects. According to COSIBAH, the following labor violations persisted:

- Failure to pay the minimum wage, paying instead 104 LPS per day.
- Forced, uncompensated overtime of 2-3 hours per day
- Failure to pay the *septimo dia* benefit
- Failure to fully eliminate employment of child laborers

COSIBAH complained to the Ministry of Labor in May and June 2010 about these continuing violations. No follow up investigation by the Ministry of Labor has been conducted.

## **B. DOMESTIC LAWS VIOLATED**

Failure to Pay Minimum Wage: Article 381 provides that the minimum wage is that which every worker has the right to receive to cover his normal needs and those of his family in material, moral, and cultural ways. Article 95(1) obliges employers to pay remuneration to workers as provided by agreement or stipulated in law. The minimum wage for 2010 is 139.22 LPS.<sup>51</sup> Here, the employer has failed to pay the officially established minimum wage for agricultural workers, even after being ordered to remedy the situation.

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, the *septimo dia* benefits were not paid to workers eligible for that benefit.

Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325, however, provides that, for agricultural workers, the maximum workday cannot exceed 12 hours. While agricultural workers may be required to work 12 hours, they are entitled to overtime pay after eight. Under Article 330, overtime should be compensated with a 25% premium. Here, the employer not only failed to pay the overtime premium but to pay wages for the overtime hours.

Child Labor: Article 31 of the Labor Code provides that only workers 16 years of age or older are able to enter into a labor contract. Under Articles 32 and 33, children between 14 and 16

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<sup>51</sup> Decreto No. STSS-342-STSS-10 published October 29, 2010 (the 2010 minimum wage increment was published nearly one year late).

may work only with written authorization from a parent. The children in this case were 14-16 years old. There is no evidence that they had received the required authorization to work.

### **C. FAILURE TO ENFORCE DOMESTIC LAW**

After much delay, which allowed the employer to receive the benefits of violating the law in respect to its profits, the Ministry of Labor inspected the plantation in March 2010. It issued a report finding numerous violations and gave the company three days to correct the nonpayment of the minimum wage and 30 days to correct the other violations. However, the same violations continued after the inspection, with the exception of a reduction in the amount of child labor employed. COSIBAH has complained to the Ministry regarding the persistence of violations but there has been no follow up by the government. The many failures to enforce the law in this instance reinforce the conclusion that the GoH has engaged in a sustained and recurring course of action or inaction, which has resulted in failure to effectively enforce its labor laws.

## **6. AGRO INDUSTRIAS PACIFICO (AGRIPAC)**

### **A. FACTS**

The plantation, located in Choluteca, grows melons primarily for the U.S. market. It currently employs approximately 250 workers.

COSIBAH requested that the regional Ministry of Labor perform an inspection in September, November, and December of 2009 regarding nonpayment of the minimum wage, failure to compensate workers for overtime, and failure to enroll workers in the IHSS. Each time, COSIBAH was informed that the Inspectorate could not do an inspection because either there was no inspector or no vehicle available. COSIBAH returned to the Ministry of Labor again in January and February 2010 and met with Andres Reyes, the interim director, who also declined to do an inspection. Immediately after Mr. Rodriguez Pineda assumed office in March, an inspection was carried out.

According to COSIBAH, inspectors were granted access to the plantation during their first visit on March 5, 2010, but were then denied access on a subsequent visit, which was to take place on March 12. The March 5 inspection found the following labor violations:

- Lack of payroll records as required by the Labor Code
- Lack of internal company regulations
- Nonpayment of the minimum wage
- Failure to enroll workers in IHSS
- Lack of written work contracts
- Failure to allow the inspector access to part of the worksite
- Failure to pay overtime

On March 25, the Ministry notified company management of its findings and told them that it had eight days to correct the violations. COSIBAH is unaware of any subsequent inspection to verify whether the violations were corrected. According to COSIBAH, none of the violations

have in fact been corrected. COSIBAH complained to the Ministry of Labor in April and May 2010 noting that the violations continue. To date, the Ministry has failed to re-inspect the plantation or take action to correct the violations found in the initial inspection.

COSIBAH reports that the following violations continue to occur at the plantation:

- Workers work 2-3 hours of unpaid overtime per day
- Failure to pay the *septimo dia* benefit
- Failure to provide workers with necessary safety equipment, such as gloves and masks when they apply chemicals to melons
- Failure to provide workers with access to restrooms
- Failure to provide workers with pay slips; workers are paid in cash with no record of payment
- Failure to enroll workers in IHSS
  
- Failure to provide workers with a location to eat
- Failure to provide workers with holiday pay

## **B. DOMESTIC LAWS VIOLATED**

Failure to Pay Minimum Wage: Article 381 of the Labor Code provides that the minimum wage is that which every worker has the right to receive to cover his normal needs and those of his family in material, moral, and cultural ways. Article 95(1) obliges employers to pay remuneration to workers as provided by agreement or stipulated in law. The company failed to pay the established minimum wage for agricultural workers.

Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325 provides that the maximum workday for agricultural workers cannot exceed 12 hours. However, while agricultural workers may be required to work 12 hours, they are entitled to overtime pay after 8 hours. Under Article 330, overtime should be compensated with a 25% premium.

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, the *septimo dia* benefits were not paid to workers eligible for that benefit.

Failure to Enroll Workers in the National Health Plan: The Regulation of the Application of Social Security Law, Legislative Decree No. 140, under Article 3 and Article 7 provides that workers are to be enrolled in the national social security system (IHSS) and employers are obligated to enroll their workers.

Failure to Provide Written Contracts: Article 30 of the Labor Code provides that all employment contracts along with any modification or extension must be made in writing.

Failure to Keep Payroll Records: Article 380 of the Labor Code provides that all employers who employ three or more permanent employees must keep payroll records.

Failure to Allow Inspectors to Inspect: Article 95(8) provides that all employers are obligated to “allow and facilitate the inspection and monitoring by labor, health and administrative authorities...” On March 5, 2010, the company only permitted partial access to the labor inspector and on March 12, 2010, the company refused access to the inspector to conduct an inspection.

### **C. FAILURE TO ENFORCE DOMESTIC LAW**

Between September 2009 and March 2010, COSIBAH repeatedly requested the Ministry of Labor to conduct an inspection of nonpayment of minimum wage, failure to compensate workers for overtime, and failure to enroll workers in the IHSS. Each time, the Ministry refused the request. Inspection was finally conducted in March 2010 and multiple violations were found. Agripac management was notified that it had 8 days to correct the violations, but none were corrected, and the Ministry has failed to conduct a reinspection to determine whether there has been compliance despite requests from COSIBAH to do so. To the best of our knowledge, no fines or other corrective action have been imposed, and the GoH has once again failed to effectively enforce its own law by allowing known violations to persist.

## **7. LA PRADERA**

### **A. FACTS**

La Pradera is a small producer located in Cholulteca, which employs roughly 20 to 30 workers. It produces melons, including watermelon, for the U.S. market. The plantation at various times has not paid the minimum wage; it also failed to pay workers overtime or the *septimo dia*. COSIBAH first requested an inspection of the plantation in 2007 and has verbally requested an inspection every two to three months since then. To date, no inspection has taken place.

### **B. DOMESTIC LAWS VIOLATED**

Failure to Pay Minimum Wage: Article 381 provides that the minimum wage is that which every worker has the right to receive to cover his normal needs and those of his family in material, moral, and cultural ways. Article 95(1) obliges employers to pay remuneration to workers as provided by agreement or stipulated in law. The minimum wage for 2010 is 139.22 LPS.<sup>52</sup> Here, the employer has failed to pay the officially established minimum wage for agricultural workers.

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, the *septimo dia* benefits were not paid to workers eligible for that benefit.

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<sup>52</sup> Decreto No. STSS-342-STSS-10 published October 29, 2010 (the 2010 minimum wage increment was published nearly one year late).

Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325, however, provides that, for agricultural workers, the maximum workday cannot exceed 12 hours. While agricultural workers may be required to work 12 hours, they are entitled to overtime pay after eight. Under Article 330, overtime should be compensated with a 25% premium.

### **C. FAILURE TO ENFORCE DOMESTIC LAW**

Despite repeated requests for inspections beginning in 2007, the plantation has never been inspected. To the best of our knowledge the reported violations of Honduran labor law persist.

## **8. PLANTAS ORNAMENTALES**

### **A. FACTS**

The plantation grows ornamental plants for the U.S. market. It is located in San Marcos and employs roughly 150-200 workers. The plantation is owned by the consortium Agrolibano. The plantation has historically failed to pay the monthly minimum wage; in 2009, workers earned only 104 LPS despite a legal minimum wage of 135 LPS. It also failed to pay proper overtime wages or the *septimo dia*. COSIBAH began requesting inspections in 2008 and was repeatedly told that no inspector was available. After two years of persistent effort, an inspection was finally ordered in April 2010.

On April 30, 2010, an inspector from the Ministry of Labor attempted an inspection and was accompanied by representatives of COSIBAH. The inspector was denied access to conduct an investigation by the Plantas Ornamentales security guard, who stated that he was not authorized to give the inspector access or provide the Ministry of Labor with any information.

On August 12, a report by Inspector Selvin Ramon Martínez was submitted in which he describes how the company refused to allow him to enter to perform an inspection. Mr. Miguel Molina, the legal representative of Plantas Ornamentales, was presented with a copy of the inspector's report. The company was given three days in which to respond. Plantas Ornamentales did not present a response. It took the Ministry of Labor until July 8, 2011, eleven months after the report was issued, to determine that the period of three days had expired. Finally, on July 28, 2011, the Ministry of Labor determined that the company would be charged a fine for having obstructed the work of the Ministry of Labor inspector. However, to date, the Ministry of Labor has not set an amount for this fine nor has it done anything to stop the continued labor violations against workers.

### **B. DOMESTIC LAWS VIOLATED**

Failure to Pay Minimum Wage: Article 381 provides that the minimum wage is that which every worker has the right to receive to cover his normal needs and those of his family in material, moral, and cultural ways. Article 95(1) obliges employers to pay remuneration to workers as provided by agreement or stipulated in law. Here, the employer has failed to pay the officially established minimum wage for agricultural workers.

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. In this case, the *septimo dia* benefits were not paid to workers eligible for that benefit.

Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325, however, provides that, for agricultural workers, the maximum workday cannot exceed 12 hours. While agricultural workers may be required to work 12 hours, they are entitled to overtime pay after eight. Under Article 330, overtime should be compensated with a 25% premium. Here, there is evidence that Plantas Ornamentales failed to pay overtime as stipulated by law.

Failure to Allow Inspectors to Inspect: Article 95(8) provides that all employers are obligated to “allow and facilitate the inspection and monitoring by labor, health and administrative authorities...” The company refused access to the labor inspector on April 30, 2010, to conduct an inspection.

### **C. FAILURE TO ENFORCE DOMESTIC LAW**

Over a two year period beginning in 2008, COSIBAH repeatedly made requests for inspections, but no inspection was attempted until April 2010. After the inspector was denied access to conduct an investigation on April 30, 2010, the Ministry of Labor took no action to impose a fine against the company or other actions to ensure an inspection was conducted and that compliance with the law was ensured, a clear failure to act to enforce its own labor laws. The company still does not pay its workers in accordance with the law, thus continuing to send products to the U.S. market that benefit from the GoH’s sustained failure to act.

## **9. AZUCARERA LA GRECIA**

### **A. FACTS**

Azucarera la Grecia is a sugar cane plantation located in Chulateca. From 1993 to 1999, there was a union on the plantation. However, when the plantation changed hands in 1999, the new owner, Grupo Pantaleon, refused to assume the collective bargaining agreement or recognize the union. In 2010, about 1,000 workers were employed on the plantation during harvest, with its sugar exported to the U.S. among other destinations.

The plantation has five distinct legal entities operating on the same plantation. These different “companies” all have common management, grow sugarcane, and share the same workforce. The workers are routinely rotated among the five entities. Workers commonly work on two-month contracts, after which they are passed along to another of the five companies.

During the first few months of 2009, workers complained to their supervisor about the plantation’s failure to pay overtime and the 13<sup>th</sup> and 14<sup>th</sup> month benefits<sup>53</sup>, as well as verbally

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<sup>53</sup> Under Decree 112 Chapter 2, *Ley del Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo*, employers must provide one month of additional salary to workers in the month of December. This is referred to as the 13<sup>th</sup>

abusive treatment by management. The supervisor claimed that they were being paid in accordance with the law. Workers thereafter complained to the Ministry of Labor in February or March 2009 but no inspection was undertaken. Between March 31 and April 5, 17 workers were fired en masse, apparently for complaining to the Ministry about wages and working conditions.

On April 17, 2009, the Ministry of Labor initiated an administrative process. The company's legal representative was summoned on three different occasions by the Ministry of Labor. On each of the three occasions (April 22, April 27, and April 29) the company and its legal representatives failed to appear. The Ministry of Labor has a policy to summon an employer up to three times if they do not show up even if they do not present an excuse as to why. Once the three dates pass, the administrative procedure is considered closed, expediting the case to a judicial phase with the labor court.

On July 30, the case proceeded to court. On September 21, the legal representative for seventeen workers presented a document to the court asking to summon the company legal representative once again. A court representative went on three different occasions in person to the company to present the summons, but on each attempt was unsuccessful in presenting the summons to a company representative. The company's refusal to receive the summons prevented the case from moving forward for more than a year.

On January 28, 2011, the company finally responded to the lawsuit filed by the seventeen workers, stating that it was absolved from paying any severance for unjustified firings because the seventeen workers were temporary employees and therefore did not have a right to social benefits or any kind of legally mandated severance pay.

On March 10, the labor court of Choluteca held the first conciliation hearing. No agreement was reached and proceedings to present evidence in the case commenced. A first hearing was finally held on March 8, 2012. The workers have still not received any severance pay for their unjust firings and labor violations persist at the company.

On September 29, workers from Azucarera la Grecia made a statement in the office of COSIBAH in which they reported that they work from 6:00 a.m. to 6.00 p.m. from Monday to Sunday without overtime pay and with no holidays or days off.

## **B. DOMESTIC LAWS VIOLATED**

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, where workers work from Monday to Sunday with no holidays or days off, the *septimo dia* benefits are not being paid to eligible workers.

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month benefit. Under Decree 135-94, Acuerdo 02-95 Chapter 1, *Reglamento del Decimo Cuarto Mes de Salario en Concepto de Compensacion Social*, employers must provide one month of additional salary to workers in the month of June. This is referred to as the 14<sup>th</sup> month benefit.



Failure to Pay Overtime: Article 322 provides that, in general, the ordinary hours of work are 8 hours per day and 44 hours per week. Article 325, however, provides that, for agricultural workers, the maximum workday cannot exceed 12 hours. While agricultural workers may be required to work 12 hours, they are entitled to overtime pay after eight. Under Article 330, overtime should be compensated with a 25% premium.

Failure to Pay the 13<sup>th</sup> and 14<sup>th</sup> Month Benefit: The company does not pay these benefits as required by Decree 112, Chapter 2, and Acuerdo 02-95, Chapter 1.

### **C. FAILURE TO ENFORCE DOMESTIC LAW**

Although workers complained to the Ministry of Labor in February or March 2009 about the company's failure to pay proper overtime and other wages, no inspection was taken. In addition, the seventeen workers who were fired, apparently for complaining to the Ministry about their wages and working conditions, have still not been reinstated.

## **10. CHILD LABOR IN MELON AND COFFEE SECTOR**

In its 2010 "List of Goods Produced by Child Labor or Forced Labor," the U.S. Department of Labor (DOL) reported that it had "reason to believe" that melons and coffee are produced by child labor in Honduras in violation of international standards. The petitioners urge the DOL to incorporate the information used to make that determination into this petition and to make a further determination as to whether the information, if substantiated, would support a claim that the GoH has violated its obligations under Chapter 16 of DR-CAFTA.

## **VII. PORTS AND MARITIME SECTOR**

### **A. OVERVIEW**

Port workers employed to perform various functions related to the transit of goods for export face serious violations of the Labor Code related to freedom of association, minimum wage and hours of work and occupational safety and health. When the employer violates the law, the Ministry of Labor in Puerto Cortez often fails to effectively enforce it. Often, when workers request an inspection, they are told that they must pay for the inspector's taxi fare and sometimes his meals. This is prohibitively expensive for many workers, denying them any effective redress.

## B. CASES

### 1. SUBCONTRACTED STEVEDORES WITH PRIVATE SHIPPING COMPANIES

#### a. FACTS

Among the most serious violations of worker rights in the ports occur with respect to stevedores working for shipping companies<sup>54</sup> who are contracted through hiring agencies (*contratistas*). These shipping companies employ some workers directly, such as heavy machine operators, mechanics and truck drivers; however, the majority, whose jobs entail manually attaching and detaching cables to containers and other tasks integral to the facility's operation, are hired through hiring agencies. Roughly 1,500 workers are employed at Puerto Cortez in this manner.

Despite the indirect employment relationship, the supervision of subcontracted stevedores is performed by supervisors employed by the shipping company, who remain onsite throughout the course of the working day directing the workers' activities. The shipping company's supervisor is the final decision maker with respect to the termination of individual workers, including subcontracted workers. The shipping companies treat the subcontracted stevedores as temporary workers, even though many have worked continuously for the same company (through the subcontractor) uninterrupted for a period of several years. These facts indicate that the shipping companies are the true employers despite the presence of hiring agencies.

The subcontracted stevedores are not paid an hourly wage but are instead paid by the number of containers they load or unload per day.<sup>55</sup> The *Sindicato Gremial de Trabajadores de Muelle* (SGTM) reported in 2010 that stevedores working for hiring agencies are typically paid 1 lempira (5 cents) per container. They are typically able to move approximately 28 containers per hour. Workers are also paid the same rate regardless of whether the work is performed during overtime hours, on weekends or holidays. Often, payment by container falls well below the monthly minimum wage for non-agricultural workers. Further, workers reported regularly working shifts of 24 and even 36 straight hours. Sub-contracted workers are also provided no contract and are paid in cash with no corresponding pay stub accounting the hours worked and wages and benefits owed. When workers want to make a complaint there is no proof of the employer, wage rates, or deductions. Thus, in spite of complaints made to the Ministry of Labor, it claims not to be able to do anything because there is no proof. Benefits, such as the education bonus, *septimo dia*, and 13<sup>th</sup> and 14<sup>th</sup> month bonuses, are rarely, if ever, paid to qualifying workers.

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<sup>54</sup> According to *Sindicato Gremial de Trabajadores de Muelle* (SGTM), Honduran shipping companies using hiring agencies include: Ag. Nav Europea S.A., Tela Railroad Company, Henry Arellano Fuentes, Villafrancar & Co. S de R.L., Terminales de Cortes, Impulsora Comercial, Crowley Liner Services, Estandar Fruit de Honduras, Guillermo Mejia Cobos S.A., Remarco, Naviera Universal, Transcoma Comercial Pecas, Martima y Transportes de H., Ag. Ad. y Nav Aurora, Seaboard Honduras, Naviera Oceanos S. de R.L., Naviera, Isaguierre S. de R.L de C.V, Maerks de Honduras, Operadores Navieros S.A.

<sup>55</sup> Article 364 provides that workers can be paid by piece rate. However, Article 363 is clear that the salary cannot be less than the minimum rate established by law.

Furthermore, workers in this sector allege they are not provided with essential protective equipment for operating heavy machinery and moving heavy objects, including metal-toed boots, gloves, vests, goggles, coats, and hard hats. Workers have to cover these at their own expense, which can be up to 350 LPS. They also are not provided raincoats or other rainwear. As workers are often required to perform twenty-four hour shifts (or longer), they will sometimes get drenched with rain during the day and then work in their wet clothes at night when the temperature drops. Finally, workers responsible for operating heavy machinery are not provided any formal training to operate the machinery, which puts them and their co-workers at serious risk of harm. The lack of safety equipment and training is common to both workers working for contractors and workers directly employed by shipping companies. Not surprisingly, workplace accidents and injuries are common. The employers also fail to make payments to IHSS, and confiscate the employees' contributions that are collected by the employer. Because employers do not pay into the IHSS, workers cannot make use of public health services. The *Seguro Social* asks for proof of current payments by the employer of the monthly fees in order to provide services. Workers end up going to other hospitals and assuming the costs of their medical care.

#### **b. DOMESTIC LABOR LAWS VIOLATED**

Treating Permanent Workers as Temporary Workers: Article 47 of the Labor Code states: "Contracts relative to work that by its nature is permanent or continuous are considered to be indefinite, even when a period of duration has been expressed if, at the time that said contracts expire, the circumstances which gave rise to the need for the employment or the purpose for the services or the execution of the same or analogous work still exists. As a consequence, contracts for a set period of time for a determined job are an exception and can only be drawn up in those cases which are determined by the accidental or temporary nature of the service that is to be done or of the job that is to be executed." Thus, if an employee works for an employer on a continuous basis performing the same or similar tasks, the worker is properly considered a permanent employee with an unbroken tenure, regardless of whether successive contracts are employed during the course of the worker's employment. Although the shipping companies treat the subcontracted stevedores as temporary workers, there appears to be no question that they are in fact permanent workers. Indeed, many have worked continuously for the same employer for years.

Failure to Pay Minimum Wage: The monthly minimum wage for a port worker in 2010 was 183.3 LPS per day (5,500 LPS per month).<sup>56</sup> The subcontracted stevedores will not always be paid at least this amount on a weekly (pro-rata) or monthly basis. Under Honduran law, in certain circumstances, workers are entitled to the full monthly minimum wage, even though they may not work a full regular schedule throughout the month. Article 328 provides: "Permanent workers that by law or by agreement with employers work less than forty-four (44) hours per week are entitled to receive full salary for the ordinary daytime workweek." A related concern is that workers at times have to wait for up to six hours for a ship to dock in order to perform paid work. During this time, they are required to be present at the dock and remain under the direction of their employer, but they are not paid. This work should be counted as work time and compensated accordingly.

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<sup>56</sup> Decreto No. STSS-342-STSS-10 published October 29, 2010 (the 2010 minimum wage increment was published nearly one year late).

Excessive Hours of Work: Article 322 states that the normal hours of work per day are eight. Article 332 also establishes a maximum workday of 12 hours per day (except under extraordinary conditions not found here). Workers at the port frequently exceed the 12 hour maximum.

Failure to Pay Overtime Rates: Subcontracted workers are compensated at the same piece rate, regardless of the number of hours they work. Shifts usually far exceed the normal work schedule of eight hours (and the maximum work shift of 12). Article 330 entitles workers to a 25% premium during overtime performed during the day and a 50% premium for overtime performed at night. These workers are also not paid the 200% wage rate required under Article 340 of the Labor Code for work performed on Sundays and national holidays.

Septimo Dia and Other Benefits: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, these benefits were not paid to those workers eligible for that benefit. Decree 135-94 of October 12, 1994, and Acuerdo 02-95 of February 6, 1995, also establishes a right to the payment of the 14th month salary, to be paid in June of each year. That has also not been paid. In some cases, workers will get small gifts instead. However, the law is clear that the benefit must be paid in currency.

Occupational Safety and Health: The subcontracted stevedores are subjected to numerous health and safety violations on the job. They include:

- *Not Enrolled in National Health Plan:* Sub-contracted workers are not enrolled in IHSS as required by Legislative Decree No. 140, Regulation of the Application of Social Security Law, Decree No. 193-1971 and Article 9 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness.
- *Lack of Protective Equipment:* Article 369 of the Labor Code creates a general obligation for employers to provide safety equipment. The *Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness* also provides the following:
  - Article 270: In no case does the use of personal protective measures excuse the obligation to employ collective preventative measures if possible.
  - Article 272: The company owner is under the obligation to:
    - a) Provide all of the workers with the necessary accessories for proper conservation with regard to personal protection or its components according to the respective characteristics and needs;
    - b) Instruct their workers on the proper use and conservation of personal protection, provide them with precise training, and teach them about their limitations; and
    - c) Determine the places and work stations where some means of personal protection are necessary.

Here, in addition to requiring workers to provide their own personal protection equipment, the company has also failed to provide formal training to operate the machinery.

- Article 274: The means of personal protection should be approved. In the case that it has been produced in the country, the company will accredit this approval with the Secretariat of Labor and Social Security; if the personal protection garments are imported, this Secretariat will demand at a minimum that for the equipment to be used at the work site, it must be approved or certified in its country of origin.

### **c. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

The SGTM has reported the violations described above on at least three occasions to the Ministry of Labor in Puerto Cortez. Jose Edgardo Contreras, former president of SGTM, reported the violations listed above and requested an investigation from the regional Ministry of Labor *Procurador* Alejandro Hilsaca Coto verbally in July or August 2008, December 2008, February or March 2009, and November 2009. The complaints focused on non-payment of the minimum wage, nonpayment of the 13<sup>th</sup> and 14<sup>th</sup> month bonuses and the lack of safety equipment. In none of these instances did the Ministry respond by conducting an investigation or otherwise intervening to ensure the violations were corrected. The response on each occasion was that the Ministry did not have inspectors available, did not have vehicles or funds to pay for gasoline to carry out the investigation, or both.

## **2. EMPRESA NACIONAL PORTUARIA (SECURITY WORKERS)**

### **a. FACTS**

On March 4, 2010, 58 security workers for Empresa Nacional Portuaria (ENP) notified the Ministry of Labor of the establishment of their union, *Sindicato Gremial de Trabajadores Portuarios de Honduras* (SINGTRAPH). On May 20, the union notified the company of its formation. The notification was carried out by Jose Julio Reyes, Secretary of Finances of FITH, in the presence of Labor Inspector Frederico Ordonez. Wilmer Valle, ENP's Assistant Human Resources Manager signed a document acknowledging the notification. On the same day, the Ministry of Labor issued a document certifying that the union's founding members were thereafter protected by *proteccion del estado*.

On May 25 and 26, ENP's Human Resources Manager, Oscar Armando Lopez Posadas, called twelve founding members of the union into his office, one at a time, to inform them that they had been fired because they joined the union. On May 27, at least ten workers requested the urgent intervention of the Ministry of Labor to secure their reinstatement. In response, the Ministry's *procurador*, Alex Fernando Hilsaca Coto, requested that the General Manager of ENP, Maynor Humberto Pinto Valle, attend a conciliation meeting to be held on June 10.

After the firing of the twelve workers and threatening other workers with firings if they did not resign from the union, on May 27, ENP management arranged for 45 union members to sign a letter to management, which was prepared by management, explaining that they were voluntarily resigning from the union. The letter stated that the workers would pledge their “support for the General Manager,” in view of their “duty to be on the side of the administration that you are directing” and to support the “wellbeing of the great National Port Company.”

The following day, May 28, Mr. Lopez Posadas sent a letter to port management stating that he had received letters from workers stating that they voluntarily resigned from the union. He explained in this letter that, once it was confirmed that the workers had resigned, the company had committed not to take any repressive action against the workers for their actions (i.e. seeking to unionize), and would re-employ workers who were involved in such action. The text very strongly implies that the company considered the unionization effort a crime for which it could reasonably have punished the workers had they not abandoned it.

On May 31, Labor Inspector Jose Roberto Urbina visited the port at the request of ENP’s human resources. To assess if workers had resigned from the union voluntarily, the inspector did not meet with the workers alone, but together with management. Without meeting with the workers separately from management, it would be impossible to make this assessment. The report that was issued accepted the view that the workers resigned voluntarily from the union, and noted the management’s receipt and acknowledgement of their resignation from the union and the company’s commitment to not retaliate against any worker for their actions. Given the fact that union members were fired for forming the union, the failure of the inspector to interview the workers outside of the presence of management reflects indifference, incompetence, or, at worst, knowing submission of a report which he knew to be false. This rendered null and void the notification of May 20, which established the SINGTRAPH union.

In addition to these issues, the security workers faced numerous ongoing wage and hour violations enumerated in Section b below, including misclassification as temporary workers and failure to receive vacation benefits, night work premiums, properly calculated overtime pay, *septimo dia*, and 13<sup>th</sup> and 14<sup>th</sup> month benefits.

## **b. DOMESTIC LABOR LAWS VIOLATED**

Anti-Union Discrimination: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code. Article 96(3) of the Labor Code provides that “Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities.” Article 469 establishes that anyone who impairs the right to freedom of association will be punished with a fine. The company’s targeted dismissals of 12 union founders, as well as the subsequent campaign to coerce union members to resign from the union on the threat of dismissal, are evidence of anti-union discrimination.

Protección del Estado: Article 517 of the Labor Code provides special protection from dismissal for the founding members of the union once the employer is notified. This provision protects workers from dismissal without prior authorization by the government, for *any* reason. The only

circumstance in which an employer may lawfully dismiss a founding union member while this protection is in effect is if the General Labor Administration or the Ministry of Labor grants the employer authorization to do so, based on an affirmative finding that there was “just cause” to dismiss the worker.

Misclassification of Contract as Temporary: Article 47 of the Labor Code states: “Contracts relative to work that by its nature is permanent or continuous are considered to be indefinite, even when a period of duration has been expressed if, at the time that said contracts expire, the circumstances which gave rise to the need for the employment or the purpose for the services or the execution of the same or analogous work still exists. As a consequence, contracts for a set period of time for a determined job are an exception and can only be drawn up in those cases which are determined by the accidental or temporary nature of the service that is to be done or of the job that is to be executed.” Thus, if an employee works for an employer on a continuous basis performing the same or similar tasks, the worker is properly considered a permanent employee with an unbroken tenure, regardless of whether successive contracts are employed during the course of the worker’s employment. There are between 130-150 workers who have worked continuously but are on successive fixed-term, two-month contracts. These workers should instead be on indefinite contracts as soon as the 60-day probation period expires. As a result of being classified as workers on fixed term contracts, they are denied numerous benefits, including vacation, which is calculated on the basis of years of continuous service.

Failure to Pay Night Work Premium: The security workers rotate through the following shifts: (1) 6:00 am to 2:00 pm, (2) 2:00 pm to 10:00 pm, and (3) 10:00 pm to 6:00 am. The company does not pay the security workers the night shift premium of 25%, as required by Article 329 of the Labor Code.

Failure to Pay Overtime Pay: The company fails to calculate overtime hour pay as required by Articles 330, which established overtime rates based on day, night and mixed shift schedules, and 361, which states that the concept of salary, used to calculate benefits and bonuses, should include not only the base wage rate but also other payments, including overtime. The failure to use this concept of salary means an underpayment on other benefits based on the “salary.”

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, the *septimo dia* benefits were not paid to those workers eligible for that benefit.

Failure to Properly Pay the 13<sup>th</sup> and 14<sup>th</sup> Month Benefit: The company pays these benefits on the basis of their workers’ base pay, rather than their average earnings, as required by Decree 112, Chapter 2, and Acuerdo 02-95, Chapter 1.

### c. FAILURE TO ENFORCE DOMESTIC LABOR LAW

Workers complained to the Ministry of Labor on May 27, 2010 regarding the dismissal of members in retaliation for forming a union. Rather than undertaking an inspection, the Ministry of Labor called for a conciliation meeting. However, the meeting never occurred because the

majority of the union's members (including the dismissed workers) succumbed to management coercion to resign from the union in order to either be reinstated or to remain employed. Instead of conducting a proper investigation to determine whether the resignation letters were freely prepared, the labor inspector conducted an investigation that ratified the employer's illegal conduct.

In addition, prior to the formation of the union, the ENP workers had reported the wage and hour violations to the Ministry of Labor in March 2007. However, the Ministry took no action. The workers visited the Ministry four times, finally submitting a written complaint. During the following days, several workers were called into human resources and they were told that there was little work and so they would not be working that week. They were told that the way they would work was changing and that the port would call them when they were needed. They would be paid only the day that they were called in to work. The workers expressed their discontent with this situation because they had been working without interruption for over a year in the port and earning a weekly salary. Inspector Perdomo came in person to the port and documented the complaint of the workers and declared the actions of the company an "indirect firing." Once the firings had been documented, the workers initiated a lawsuit on July 27, 2007 on behalf of nine workers in the labor court of Puerto Cortes. Later, the court issued its ruling in favor of the workers. When the port was made aware of the ruling, they immediately filed an appeal. In the San Pedro Sula appellate court, the court ruled against the workers. The workers' legal representative then made a petition of cassation (to bring the case before the Supreme Court) in 2008. The case is currently before the Supreme Court in Tegucigalpa. The workers have been waiting for over four years for their case to be resolved and continue to wait.

### **3. EMPRESA NACIONAL PORTUARIA (FORK LIFT OPERATORS, CONTAINER CHECKERS AND PLANNERS)**

#### **a. FACTS**

ENP also employs fork-lift operators, container checkers, and planners (who check the weight balance on ships). These workers work on the following schedule: the first week they work a full day shift; the second week they work a full night shift; the third week, they are off or work shorter hours; and the fourth week they work a full day shift schedule. Each day they are working approximately 12 hour shifts. ENP argues that these workers, because they are not employed for the whole month, are not permanent workers but instead only temporary. However, ENP workers have worked for years under this arrangement.

When additional work is needed for the night shift, the Chief of Operations, Juan Carlos Aguilera, and the port superintendent, Eddy Calderón, force workers to work the night shift by threatening that if they do not work this shift, they will not work the next day. That is how these workers are forced to work 36 hours straight: 12 hours during the day, 12 hours at night, and then 12 hours the following day.

The law requires that, in certain circumstances, workers are entitled to at least the minimum wage per month (6,474.60), (about \$342) even if they do not work a regular schedule each week



during the month.<sup>57</sup> The effort by the ENP to treat workers not as continuously employed but rather on fixed term contracts or hired for work for a specific service or task is meant to avoid paying the full month minimum wage. ENP workers so hired also are paid substantially less than permanent workers for exactly the same work tasks. SGTM argues that this violates Article 367 of the Labor Code and Article 128.3 of the Constitution, which both require equal pay for equal work<sup>58</sup>.

The differences are laid out in the following table developed by SGTM:

<b>Job Classification</b>	<b>Salary in LPS</b>	<b>Salary in USD</b>
Forklift Operators (permanent)	<b>93.00 per hour</b>	<b>\$4.92 per hour</b>
Forklift Operators (temporary)	<b>27.70 per hour</b>	<b>\$1.46 per hour</b>
Container Checkers (permanent)	<b>84.00 per hour</b>	<b>\$4.44 per hour</b>
Container Checkers (temporary)	<b>27.70 per hour</b>	<b>\$1.46 per hour</b>
Planners (permanent)	<b>89.00 per hour</b>	<b>\$4.71 per hour</b>
Planners (temporary)	<b>27.70 per hour</b>	<b>\$1.46 per hour</b>

In 2010, representatives from SGTM met with the Minister of Labor in Tegucigalpa and requested an inspection regarding the violations of labor laws by ENP. The Minister of Labor ordered an inspection that was carried out by two inspectors who met with the company and interviewed forty-nine workers. Although SGTM has requested a copy of the inspection report, the union has never received a copy of the report. After a SGTM representative called one of the inspectors, the inspector told him that the Ministry of Labor found no violations of labor law during the inspection. None of the labor violations have been remedied and the violations continue to this day.

**b. DOMESTIC LABOR LAWS VIOLATED<sup>59</sup>**

Failure to Pay Minimum Wage: The minimum wage for most of 2010 for a port worker was 183.3 LPS per day (5,500 LPS per month). The subcontracted stevedores at times will not be paid at least this amount on a weekly or monthly basis. Under Article 328, workers are entitled to the minimum wage per month in certain circumstances even though they may not work a full regular schedule throughout the month.

<sup>57</sup> Article 363 of the Labor Code and Article 2 of the Minimum Wage Law.

<sup>58</sup> Article 367 of the Labor Code and Article 128.3 of the Constitution state that “Equal work should have equal salary without any kind of discrimination when the job, schedule, efficiency, and seniority are the same.”

<sup>59</sup> The petitioners can supply, upon request, charts detailing, by shift, the underpayment of these workers’ wages and benefits.

Equal Pay for Equal Work: Article 367 requires that equal wages should be paid for equal work without discrimination of any kind (assuming the job, shift, conditions, etc., are equal). Here, workers are paid a much lower wage for the same work based on a form of contract used to (illegally) reduce labor costs.

Overtime Pay: The company fails to calculate overtime hour pay as required by Articles 330 (which established overtime rates based on day, night and mixed shift schedules) and 361 (which states that the concept of salary, used to calculate benefits and bonuses, should include not only the base wage rate but also other payments, including overtime). The failure to use this concept of salary means an underpayment on other benefits based on the “salary.”

Failure to Pay *Septimo Dia*: The *Ley de Septimo Dia y Decimo Tercer Mes en Concepto de Aguinaldo* states that workers are entitled to a compensated day of rest for each 6 days of work in a week. The pay should be equivalent to wages for an ordinary workday. Here, the *septimo dia* benefits were not paid to those workers eligible for that benefit.

Failure to Properly Pay the 13<sup>th</sup> and 14<sup>th</sup> Month Benefit: The company pays these benefits on the basis of their base pay, rather than their average earnings, as required by Decree 112, Chapter 2, and Acuerdo 02-95, Chapter 1.

### c. FAILURE TO ENFORCE DOMESTIC LABOR LAW

In 2010, workers presented their complaints to the Ministry of Labor. Although an inspection was conducted, workers were never presented with a copy of the inspection report. No action was taken by the Ministry of Labor to compel compliance with the law. The violations continue to this day, which constitutes evidence of the GoH’s sustained failure to enforce its own labor laws in a manner that affects trade or investment.

## C. INDIVIDUAL ILLUSTRATIVE CASES

### 1. [REDACTED]<sup>60</sup>

[REDACTED]<sup>61</sup> drives trucks of cargo containers full of exports that are loaded onto ships. He worked for Seaboard [REDACTED]. He worked under this third party arrangement for approximately one year. He was paid 15 LPS per container. [REDACTED] received 45 LPS for each container that [REDACTED]<sup>62</sup> transported to the ship and from the ship to the holding lots. He worked four twenty-four hour shifts per week, a total of 96 hours. His weekly payment varied from 1,750 LPS to 4,390 LPS. He was not given lunch breaks, dinner breaks, or any other breaks during the twenty-four-hour workday. He received no additional compensation for the nocturnal portion of his shift, or overtime. When working on the

<sup>60</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual’s identity be kept confidential.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

ship itself, he was paid an extra 5 LPS per container moved. If one of his tires needed repair, and this repair was caused by an unperceivable cause, like a nail on the floor, the company paid for the repair. However, if the truck required repair for something like running over a pile of rocks (a more obvious hazard) then he had to bear the total repair costs. In such cases, he did not have the option of taking the truck to a mechanic to seek the cheapest repair. Instead, the employer would deduct approximately 7,000 LPS from his paycheck to cover the repair costs. Every two months, he and other sub-contracted employees were forced to sign a contract saying they agreed to waive all their rights, legal benefits, minimum wage, bonuses, seventh day payment, and indemnification as a condition of continuing to work for the company.

He was discharged without cause on December 24, 2008. The employer told him and other workers that they were no longer needed because Seaboard was no longer a contractor. The workers initiated a lawsuit on February 9, 2009, seeking payment of benefits, salary adjustment, nonnegotiable rights, and severance pay. The Minister of Labor had a meeting with he and suggested he pursue indemnification for six months instead of nine months (which was the total amount due). The minimum wage for port workers is 183 LPS per day. The Ministry of Labor calculates that 53,000 LPS is due to he as severance. The contractor said he would pay 15,000 LPS, at 400 LPS per week as severance. Up to now, the contractor has failed to pay the amount he promised. The Ministry of Labor has done nothing to compel the subcontractor to pay.

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. On February 5, 2009, there was an oil spill on the pavement on the lot assigned to Seaboard by the ENP. There was no warning for vehicles about the spill and his truck slid into a container trailer chassis. He suffered trauma to his head and multiple fractures in his lower jaw, loss of two teeth, and damage to the nerves in his gums. He was taken to the clinic . He was refused service there because the employer claimed that he was not an employee, but a temporary worker. Thereafter, he was transferred to the *Instituto Hondureno del Seguro Social* (IHSS) public hospital (state medical care provider) where he was forced to pay part of the medical costs, totaling 23,500 LPS. The *seguro* certified him as incapacitated for six months. The company refused to sign the incapacitation given by the *seguro*. Instead, the company agreed to give him *incapacidad* (incapacity payments) for only thirty days. This incapacity payment is 34% of the average amount he earned during a work week. The company refuses to be held responsible for the medical payments associated with his accident. His medical bills, including post-operative treatment, added up to 27,059 LPS.

In the end neither the *seguro social* (government insurance) nor the company made any payment to the IHSS, arguing that the ENP did not send the forms specifying the manner, location, and influencing factors in the accident. The company denied this even though they knew the Health

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<sup>63</sup> SUBMITTED IN CONFIDENCE: In order to protect this individual from blacklisting, threats, violence, or any other possible retaliation, the AFL-CIO and fellow petitioners request that this individual's identity be kept confidential.

<sup>64</sup> *Id.*

and Safety commission presided over by Lourdes Castillo had ruled that the accident had been caused by an oil spill and there were no signs posted to warn of this, as is typical in this port. It also found other causal factors, including machinery in poor repair, low visibility, holes on the lot, and many privately owned vehicles at the accident site. He was only reimbursed for his denture replacement for his two lost teeth. Before presenting a lawsuit, he went through the required administrative procedure before the Ministry of Labor. Three conciliation hearings took place but no agreement was reached.

On July 31, 2009, ██████████<sup>65</sup> initiated a lawsuit asking for reinstatement to his position ██████████ ██████████, a salary adjustment, compensation for injury due to a work-related accident, payment of medical expenses, medicines, proper application of the collective bargaining agreement to his situation, adjustment of end-of-the-year bonuses, vacation pay, and 14<sup>th</sup> month salary. The court ruled in his favor and the company appealed that ruling to the ██████████ court. The ruling on the appeal also was in his favor. The port has contested the ruling in a motion for cassation to the Supreme Court in Tegucigalpa. We understand that he awaits a final decision.

## **VIII. ADDITIONAL ISSUES FOR CONSULTATIONS**

Under Article 16.6, a Party may request consultations with another Party regarding any matter arising under the labor chapter. Petitioners urge the U.S. government to consult with the GoH on the following issues, as they relate to its failure to “reaffirm” its “commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)” and its commitment to “strive to ensure” that these “labor principles and the internationally recognized labor rights set forth in Article 16.8” are recognized and enforced.

### **A. THE GOVERNMENT OF HONDURAS HAS FAILED TO ENACT LAWS CONSISTENT WITH ILO RECOMMENDATIONS**

The ILO’s Committee of Experts on the Application of Conventions and Recommendations has made several recommendations related to the amendment of Honduran labor law.<sup>66</sup> The U.S. government should strongly urge the GoH to pass laws and regulations necessary to bring them into compliance with the ILO Declaration on Fundamental Principles and Rights at Work and to ensure that internationally recognized labor rights are recognized and enforced. Issues to be addressed include:

- the exclusion from the scope of the Labor Code of workers in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (Article 2(1));
- the prohibition of more than one trade union in a single enterprise, institution or establishment (Article 472 of the Labor Code);

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<sup>65</sup> SUBMITTED IN CONFIDENCE: See note 62.

<sup>66</sup> See, e.g., Committee of Experts on the Applications of Conventions and Recommendations: Individual Observations Concerning Freedom of Association and Protection of the Right to Organize (No. 87), 2010.

- the requirement of more than 30 workers to establish a trade union (Article 475 of the Labor Code);
- the requirement that the officers of a trade union, federation or confederation must be of Honduran nationality (Articles 510(a) and 541(a) of the Labor Code), be engaged in the corresponding activity (Articles 510(c) and 541(c) of the Labor Code) and be able to read and write (Articles 510(d) and 541(d) of the Labor Code);
- the ban on strikes being called by federations and confederations (Article 537 of the Labor Code);
- the requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (Articles 495 and 563 of the Labor Code);
- the power of the Ministry of Labor and Social Security to end disputes in oil production, refining, transport and distribution services (Article 555(2) of the Labor Code);
- the need for Government authorization or six-months notice for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State (Article 558 of the Labor Code); and
- the submission to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services that are not essential in the strict sense of the term, that is, those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (Articles 554(2) and (7), 820 and 826 of the Labor Code).

## **B. INSPECTIONS EASILY AVOIDED, FINES RARELY IMPOSED**

In numerous cases described herein, the problem was not that the inspectors failed to respond to inspection requests but rather that they were hindered from conducting inspections by plant security guards. However, the Ministry of Labor rarely uses existing authority to call upon the police to escort inspectors into the plants. Further, the Ministry of Labor rarely imposes fines upon employers when they refuse to allow inspectors onto the worksite.

## **C. FINES TOO LOW, CALCULATION OF FINES IMPROPER, AND FINES NOT PAID WHEN IMPOSED**

The law must also be amended to allow inspectors to impose economically significant fines for labor law violations. The current maximum is wholly insufficient to dissuade employers from violating the law. The government must also apply fines per violation rather than per issue. For example, it is not an effective deterrent to fine a company employing 10 workers the same fine as a company employing 1,000 workers if they both violated the minimum wage law as to all of their workers. The fine should instead be for each instance that the employer violated the law. The current approach virtually guarantees non-compliance since the fine will always be far less than of the cost of compliance. If needed, an executive decree could be issued to clarify existing

law. Even when a fine is imposed, the employer frequently fails to pay the fine and little is done to compel payment of the fine or correction of the underlying violation.

#### **D. SERVICE OF NOTICE OF UNION FORMATION TOO CUMBERSOME, FACILITATING DISMISSAL OF UNION FOUNDERS**

An employer is not considered notified of the existence of a union until the Ministry of Labor physically serves a notice on the company. This is important, as the founding members of the union enjoy protection from dismissal from the moment that the notice is carried out. However, the law has been interpreted to require that the notice be hand delivered to the legal representatives of the employer at the place of employment. An employer can (and often does) simply refuse to meet with the labor inspector, thereby delaying indefinitely the legal recognition of the union. The law should be re-interpreted to allow for official notice by mail, e-mail, or fax to the address and fax number listed in the company's filings with the agency responsible for registering corporations.

#### **E. INEFFECTIVE PROCEDURES FOR REINSTATEMENT OF WORKERS TERMINATED FOR UNION ACTIVITY**

The Ministry of Labor does not act quickly achieve reinstatement of workers fired for union activity or to obtain full severance for those workers who do not wish to return to work. The Ministry of Labor should adopt expedited procedures for cases involving the unjust dismissal of union leaders covered by *fuero sindical*, or founding members covered by *proteccion del estado*, or union members otherwise fired for trade union activity. Additionally, employers should be sanctioned by dissuasive fines for all such illegal activity.

#### **F. THREATS AND MURDERS**

In 2009, numerous trade unionists (as well as members of other civil society organizations) were threatened, beaten, tortured, and even murdered for their activities in opposition to the June 2009 coup d'état or in retaliation for that opposition. According to the ITUC, 12 unionists were murdered in 2009. Moreover, both before and after the coup, union leaders were also threatened and murdered for undertaking more routine trade union activity. Such cases were rarely fully investigated and those responsible were not prosecuted. Not only does a threat or murder prevent the victim from exercising the labor rights protected under the trade agreement, it also has a broad chilling effect on the exercise of those rights by other workers. The U.S. government must urge the GoH to investigate and prosecute those responsible for threats or acts of violence against trade unionists related to their traditional trade union activity, as well as those involved in pro-democracy activities related to the 2009 coup.

Below is only a partial list of trade unionists who were murdered, assaulted, or threatened from 2009-2011.

March 26, 2011: Jaime Donaire, member of the National Registry Workers Union (SITRARENAPE), was murdered.

March 2011: The government initiated a wave of violence in response to protests led by the *Association of Secondary Teachers of Honduras* (COPEMH) against corruption, wage issues, and an education reform initiative viewed as laying the foundation for the privatization of public education in the country. The police used excessive force against the protestors, including beating people with batons and firing tear gas canisters into crowds. On March 18, Ilse Ivania Velasquez Rodriguez, a teacher, was killed when struck in the head by a tear gas canister fired at close range and hit by a vehicle. On the same day, Adalid Romero, a union leader, was also beaten on the head by police wielding batons.

March 1, 2011: Eduardo Argueta Santos, Vice President of Local 2 of the Union of Beverage and Related Workers (STIBYS), was beaten and shot in the face by two unidentified men on his way from his home to work at a brewery. STIBYS had recently denounced a targeted, systemic campaign of violence against trade unionists in Honduras.

January 30, 2010: Blas Lopez Muerto, a middle school teacher, a Pech indigenous leader and an active member of the resistance to the coup was found killed by gunfire in El Carbonal, Olancho.

February 2, 2010: The body of Vanessa Zepeda, 29 years old, an active union member of the Honduran Social Security Institute Workers' Union, SITRAIHSS, was thrown from the moving vehicle near the Colonia Loarque south of Tegucigalpa.

February 11, 2010: Hooded men in broad daylight entered the house of Porfirio Ponce Valle, a national officer of the beverage workers union STIBYS. On February 12, 2011, Porfirio Ponce Valle was followed by a white Volvo from the Pepsi premises to the STIBYS office in Colonia Las Brisas in Tegucigalpa.

September 17, 2010: Juana Bustillo, President of the Union of Workers of SITRAIHSS was murdered in San Pedro Sula. Ms. Bustillo had been involved in the mobilization of September 15, 2010, where demonstrators were subject to brutal state repression. Ms. Bustillo left a union meeting and was driving home, accompanied by two companions, when a gunman shot at them several times and then fled the scene. She was taken to the emergency room at the IHSS, where she died about an hour later.

July 29, 2010: Nelson Eliberto Lopez Reyes, VP of the Saba, Colon branch of the beverage workers union STIBYS was murdered by three armed men wearing balaclava masks in Tegucigalpa.

On June 12, 2010, José Luis Baquedano, Deputy General Secretary of the CUTH trade union confederation was attacked as he travelled in a van with his daughter and three grandchildren. Armed assailants in a grey minibus with smoked-glass windows opened fire on the van. Fortunately no one was harmed.

On June 10, 2010, Oscar Molina, the brother-in-law of Porfirio Ponce, VP of the beverage workers union STIBYS, was killed when two men came out of their vehicle, in broad daylight, and shot him 42 times in full public view when he stopped at a traffic light.

June 2010: Carolina Pineda, finance secretary of the teachers union COPEMH, suffered an attempt on her life by hooded men who attacked the vehicle she was driving, shooting at her with high-caliber weapons. She was fortunately able to escape from her attackers, taking refuge in a private house where she was offered protection.

May 25, 2010: Douglas Ramon Gomez, national officer and local officer of the San Pedro Sula branch of the beverage workers union STIBYS, was gravely wounded when two armed men shot him in the back during an attack at the STIBYS office in San Pedro Sula.

On February 24, 2010, Claudia Maritza Brizuela, age 36, was killed at home. She was the daughter of union and social leader Pedro Brizuela, who participates actively in the resistance. Two unknown persons came to the door; when Claudia Brizuela opened the door, she was shot and killed in the presence of her two children, ages 2 and 8.

February 15, Julio Benitez, member of the Union of Workers of the National Autonomous Water Service (SITRASANAAYS), was shot by men on a motorcycle in front of his home and died shortly thereafter. His wife had stated that he had received numerous threatening calls warning him to quit his opposition activism.

February 3, 2010: The body of Vanesa Yanez (Zepeda), Union of Social Security Workers (SNTSS), was dumped from a car in Tegucigalpa. Witnesses stated that the body showed signs of torture.

September 2009: Lorna Redell Jackson and Juana Maldonado Gutiérrez, leaders of the Union of Workers of the Alcoa Fujukura Company (SITRAFL) were shot and injured by two unidentified individuals on a motorcycle in El Progreso.

September 23, 2009, Jairo Sanchez, the president of SITRAINPOP and coordinator for the resistance in the Colonia San Francisco was struck in the face by a bullet fired by a police officer. At 11:30 a.m. a motorized patrol of two police officers shot without any reason into a group of demonstrators north of Comayagua. After several operations, Jairo Sanchez died on October 9, 2009.

July 30, 2009, Carlos Reyes, General Secretary of the beverage workers union STIBYS, was arrested and beaten during a march and was subsequently hospitalized with a broken arm. Juan Barahona, President, *Federación Unitaria de Trabajadores de Honduras* (FUTH) was arrested around the same time.

On July 30, 2009, Roger Abraham Vallejo Sorino, 38 years old, a secondary school teacher and member of the teachers union COPEMH, was struck in the face by a bullet during a protest. He was transferred, seriously injured, to the Hospital Escuela where he died on August 1. A witness observed that a police officer who was squatting in the bed of a pickup fired into the demonstration and struck Vallejo Sorino, mortally wounding him. Another teacher and member of COPEMH, Martín Florencio Rivera, died after being stabbed 27 times on leaving Vallejo's funeral service.



July 11, 2009, Roger Iván Bados, member of the Bloque Popular and former leader of the SITRATExHONSA union, was killed by an unknown assailant who arrived at his home in the Colonia 6 de Mayo in the Rivera Hernandez sector of San Pedro Sula under the guise of looking for his nephew. When Roger went to reenter his home, the assailant fired three times, shooting him in the back and the side. In this same incident, Bados' sister and the wife of his nephew were injured.

In July 2009, a bomb exploded at the headquarters of the beverage workers union STIBYS.

On June 29, 2009, 14 leaders of the Union of Workers of the National Electric Company (STENEE) were detained and beaten by soldiers in San Pedro Sula.

### **G. National Plan for Employment by Hours**

On November 5, 2010, the government issued Decree 230-2010, the “National Plan for Employment by Hours.” The decree has been framed as an anti-crisis bill of temporary duration, meant to create good jobs and avoid unemployment and sub-employment caused by the 2008 global economic crisis.<sup>67</sup> However, the decree permits employers to register to hire workers on part-time, temporary (and therefore precarious) employment contracts for work that is full-time, permanent work. As full time, permanent workers already face overwhelming obstacles to the exercise of freedom of association, unions are deeply concerned that the shift to temporary contracts will mean that the ability to exercise the right to associate and bargain collectively will be even more difficult. Further, Honduran unions argue that the government failed to engage in sufficient consultations with unions or workers about this major labor market reform.<sup>68</sup>

Under the plan, which is to last three years (and which may be extended), employers can hire workers by the hour, part time (day, night or mixed shift), or full time shift (day, night or mixed) under short term contracts or contracts for specific works or services. Contracts can be for as short as two hours per day in rural areas or three hours in urban areas.<sup>69</sup> An employer in the private sector can hire up to 40% of its workforce under this form of contract (not counting seasonal temporary workers who may already be under contract). Firms with one to 15 workers can hire an equal number of temporary workers under the plan.<sup>70</sup> Call centers appear to be excluded from even these limitations.<sup>71</sup> Under the plan, workers are to be paid no less than the pro-rata share of the monthly minimum wage, according to the hours worked. In place of the 13<sup>th</sup> and 14<sup>th</sup> month bonus and vacation (to which they would be entitled as permanent workers), the worker instead will receive 20% of the base pay as compensation (unless they are paid piece rate, in which case they can be denied the 20% if they do not meet the same production targets as the permanent workers). The decree is clear that it alone regulates the rights that workers enjoy, though it provides that temporary workers employed under the plan are protected by the

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<sup>67</sup> Of note, Article 2.4 of the decree explicitly states that one of its purposes is to stimulate an investment climate in the public and private sector.

<sup>68</sup> On March 31, 2011, three Honduran labor federations, CUTH, CGT and CTH, filed a joint representation under Article 24 of the Constitution of the ILO concerning Decree 230-2010.

<sup>69</sup> See Article 3 of the Decree.

<sup>70</sup> See Article 4 of the Decree.

<sup>71</sup> See Article 3.2 of the Decree.

fundamental rights applicable to permanent workers as well as the coverage of the eight core conventions.

According to information submitted by the government to the ILO Committee on Application of Standards, few employment contracts under this program have been registered, meaning either the program has been ineffective in generating employment, or that many workers' contracts are not registered (or both). Indeed, the government indicated that 72 firms claim to have used the program, though only 35 are registered.<sup>72</sup>

The major concerns expressed by the union confederations to this law are:

1. Temporary workers, per Article 510 of the Labor Code, are for all intents and purposes unable to form or join a union. Temporary workers do not accrue seniority and do not pass the probationary period, and thus can be dismissed at any time for any reason. They are not protected by *protection del estado* or *fuero sindical*. The shift towards the use of more temporary contracts for work that is actually permanent forecloses the ability of workers hired under this program to exercise their fundamental rights. Honduran labor lawyers consulted believe that Article 7 of Decree 230-2010, which purports to give temporary workers the right to organize, is entirely hortatory and does not (and cannot) change the legal status of temporary workers as provided in law.
2. While workers under the program are to be given a 20% premium (in some cases only if meeting production targets) in lieu of certain benefits to which they would otherwise be entitled, they are not afforded all of the benefits otherwise afforded a permanent worker performing the same work, again creating a two-tiered system for workers performing the same work.

This decree weakens adherence to internationally recognized worker rights. At least one of the stated motivations of the decree was to attract investment in productive sectors, a motivation that violates the GoH's commitment under Chapter 16 of DR-CAFTA. OTLA should investigate whether this move, which reduces labor stability and allows for the hiring of large numbers of workers without the right to unionize, was meant to or did encourage trade with the U.S. or encourage the establishment, acquisition, expansion, or retention of an investment in Honduras, in violation of Article 16.2.2.

## **IX. CONCLUSION**

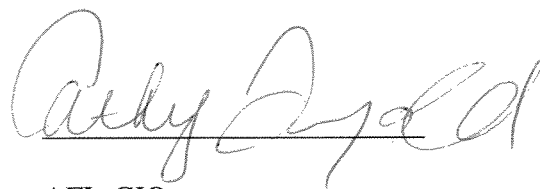
These cases provide substantial evidence that the government of Honduras, through a sustained and recurring course of action or inaction has failed to respect its commitments under Chapter 16 of DR-CAFTA. The U.S. government should accept this petition and conduct a thorough investigation of these cases, which we believe will sustain fully the claims made herein. Petitioners can supply numerous additional cases during the investigation stage. Upon completion of that investigation, the U.S. government should immediately invoke consultations

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<sup>72</sup> ILO, Information and reports on the application of Conventions and Recommendations, Report of the Committee on the Application of Standards, June 2011, p. 90, available online at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_157818.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_157818.pdf).

and require that the GoH take all necessary measures to address the legal and institutional obstacles to the effective enforcement of its labor laws, as well as to remedy as fully as possible the individual cases herein. If the consultations fail to bring about a satisfactory resolution, the U.S. government should invoke the dispute settlement mechanism and proceed until such time that the GoH complies with the trade agreement.

This petition is filed with the OTLA on behalf of all petitioners by the AFL-CIO on  
March 26, 2012.

A handwritten signature in cursive script, appearing to read "Cathy Engel", written over a horizontal line.

AFL-CIO

## APPENDIX I

### 1. JERZEES CHOLOMA

#### A. FACTS

On March 13, 2007, SITRAJERZEES held its founding assembly, with 83 workers signing on as the union's founding members. Employer retaliation was swift. In the days immediately following, Jerzees Choloma fired nine of the founding members of the union citing a "reduction of personnel." No other workers were fired, and there was no evidence of reduction in orders necessitating a retrenchment. Three days later, on March 16, the union prepared new founding documents out of concern that the dismissal of some of the founding members listed on the March 13 documents would render those documents invalid. This time, 72 workers signed on as founders of the union. The union submitted the list and other required documentation to the Ministry of Labor on March 21.

In March, the union requested that the Ministry of Labor assign an inspector to accompany union representatives to the Jerzees Choloma factory to present the company representative with notice of the union's founding. Evangelina Argueta, regional coordinator for the CGT, made the request directly with the Ministry's regional director Lucia Rosales, who assigned Labor Inspector Raul Barahona to perform this function. At the same time, Ms. Argueta informed Ms. Rosales about the dismissals.

The following day, Inspector Barahona went to the factory with a worker named Blanca Lisseth Alvarez and Ms. Argueta to attempt to notify the company of the union's formation.<sup>73</sup> They were unable to present the notification as security guards, acting on behest of Jerzees Choloma, denied them access to the Zip Choloma Industrial Park where the factory was located. Over the next two days, management fired five more founding members, including the worker who had attempted to present notice to the company. Fearing further dismissals, the union decided to delay further attempts to notify management.

On May 2, Ms. Argueta visited the Labor Ministry to request a second notification of the union's formation. Inspector Walter Zelaya was assigned to the case and was informed by Ms. Rosales of the most recent dismissals of union members. Two founding members of the union, Ms. Argueta, and Mr. Zelaya went together to the industrial park, where they were again denied access to the facility. The group waited around outside the zone until nearly 7:00 p.m. trying to get in to serve notice. Between the period of May 2 and June 5, the company conducted a number of firings of union members.

On June 5, a union member, Evangelina Argueta, and Labor Inspector Walter Zelaya sought, for a third time, to notify the company of the union's formation. Upon arriving at the industrial park, Eva Fuñez, the park-level human resources manager, informed them that no one at Jerzees Choloma would receive them. In requesting this third notification attempt, Argueta spoke to Rosales again about the dismissals that happened between May 2 and June 5. During the visit to

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<sup>73</sup> Argueta spoke to Raul Barahona when they went to the factory together and told him specifically about the first wave of dismissals.

the industrial park to attempt to serve notice, Argueta again mentioned the dismissals to Walter Zelaya.

The following day, June 6, the factory fired another founding member of the union. On June 7, a union member and a representative of the Ministry of Labor made a fourth attempt to formally notify the company of the union's formation. On this occasion, a representative of Jerzees Choloma finally agreed to meet them in an office outside of the factory. This individual, Loessy Barrera, identified herself as a legal representative of the company. Ms. Barrera signed the notification document, acknowledging that the factory had been informed of the union's formation. The factory thus obtained a copy of the full list of founding union members. As in the prior cases, before they attempted the notification Argueta spoke with Rosales about the fact that another worker was fired on June 6. During the visit to the zone, Argueta spoke to Zelaya about the firing on June 6.<sup>74</sup>

To Argueta's knowledge, the Inspectorate never sanctioned Jerzees Choloma for failing to grant the inspector's access to the plant three times, in March, May, and June.

Beginning that same day, the factory proceeded to fire most, if not all, of the remaining founding members of the union, approximately 60 firings over a seven-day period. According to credible worker testimony, there was no large-scale dismissal of non-union workers at this time. In the case of most of the dismissed workers, management informed the workers that they were being terminated as part of a general "reduction of personnel." However, almost all of those dismissed as part of this reduction were union members, in a factory where the union at that time represented less than 10% of the workforce. The union's leadership committee never brought any judicial or administrative claims against Jerzees Choloma for unjust termination because they had been paid 100% of their benefits and believed a court case would be futile.

By June 14, all, or almost all, of the 72 founding members of the union established on March 16 were gone. The vast majority had been fired; a small number had resigned. On June 14, Argueta made a written complaint to Rosales at the Ministry about the firings of the workers at Jerzees Choloma. After the June 7-14 firings, Rosales told Argueta that she was going to meet with the company to discuss what was happening. At this meeting, the company told Rosales that they were cutting back the personnel and it had nothing to do with the union. There was no further investigation.

Following the dismissal of nearly all the founding union members between March and mid-June, the union sought to reconstitute itself by assembling a new group of members. After several months of organizing, the union was re-constituted at the beginning of September. The new union, like its predecessor, was affiliated with the CGT.

On the evening of Wednesday, September 12, 2007, a meeting was held between the union and an investigator from a worker rights NGO. The meeting was arranged as part of the NGO's

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<sup>74</sup> On the morning of June 7, prior to the notification attempt, Zelaya had received a letter of dismissal effective the following date; since it was not effective until the following date, he proceeded with the notification attempt. Argueta hypothesizes that (a) the firing of Zelaya had to do with his being too diligent for the company's taste in helping the union serve notice on the previous two occasions and (b) the fact that the company allowed them to serve notice on June 7 is related to the company having believed at the time that the inspector Zelaya had already been fired.

standard investigative methodology in a complaint-triggered investigation, which entails meeting formally with the complainant, in this case, the union. In attendance were roughly 50 current Jerzees Choloma workers who were members of the union and a lawyer representing the union from the CGT union confederation. The meeting took place in the back patio of the CGT office, which is partially visible from the street on which it is located. Members of factory management were observed in a vehicle driving slowly by the meeting location while the meeting was in progress.

On Thursday, September 13, the union confederation's representative prepared documents to file with the government, including a list of the new union's 56 founding members. According to union members and the union's representative, the union had scheduled a meeting for the following day, Friday, September 14, at which the founding members would sign the formal union formation documents, which were to be filed the following Monday, September 17, with the government. On the morning of Friday, September 14, Jerzees Choloma fired approximately 22 of the founding members of the new union. The vast majority of the fired workers had attended the meeting with the NGO investigator on Wednesday evening, 36 hours before the firings. Few, if any, non-union members were fired. On September 19, Russell Corp. announced that it intended to close its Jerzees Choloma facility in the next several months. In the days that followed, Argueta again spoke with Rosales of the Ministry about the firings, the announcement of the company that the factory would close, and the fact that the company refused to cooperate with the NGO's investigation. At no point did the Ministry of Labor conduct any investigation of any of the dismissals described above.

On October 24, Russell agreed to a remediation program with the NGO which included reinstatement of all unlawfully dismissed union members at Jerzees Choloma and Jerzees de Honduras (see next section) and payment of lost wages. In November and December, workers were reinstated or given the opportunity to be paid severance, including the payment of lost wages from the time of dismissal. Eventually, 142 out of 145 eligible workers were successfully contacted and provided back pay; 62 accepted reinstatement.

Russell had initially agreed to give workers the option of returning to work at either Jerzees Choloma or Jerzees de Honduras, but ultimately only reinstated workers to their past respective places of work. At the end of March 2008, Jerzees Choloma closed. In the weeks before the closure, Russell agreed to give all Jerzees Choloma workers the option to transfer to Jerzees de Honduras. All of reinstated workers were ultimately fired again leading up to or upon the closure of Jerzees de Honduras in January 2009. The closure was found by multiple investigations – including by a former ILO labor expert – to be motivated in significant part by anti-union animus.

In November 2009, Russell Athletic/Fruit of the Loom committed to rehire and compensate Jerzees de Honduras' 1,200 dismissed workers, open a new unionized factory in Honduras, and take concrete steps to respect and recognize its workers' rights to freedom of association at the company's seven existing Honduran plants. These agreements include measures to protect freedom of association that are unprecedented in Central America. These include: (a) union access to, and joint union-management freedom of association trainings in all of the company's unorganized plants in Honduras, (b) employer neutrality regarding future

organizing efforts, and (c) mechanisms for third-party dispute resolution. Importantly, the company also has agreed to phase-out existing *solidarista* employee representation systems at its non-union plants to ensure that these do not obstruct workers' exercise of freedom of association.

## B. DOMESTIC LABOR LAWS VIOLATED

Anti-union Discrimination: Article 10 of the Labor Code prohibits reprisals against workers calculated to impede their exercise of rights guaranteed by the Constitution and Labor Code.<sup>75</sup> Article 96(3) of the Labor Code provides that, “Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities.” Article 469 establishes that anyone who impairs the right of freedom of association through violence or threats will be punished with a fine.<sup>76</sup> The timing of the dismissals, the status of the dismissed workers as union activists and statements by managers indicate that the firings were motivated by anti-union animus.<sup>77</sup> Indeed, management later admitted it had fired the workers because of their union activities.

Protección del estado: Article 517 of the Labor Code provides a special protection against dismissal for founding members of a union from the moment they successfully notify the factory. This provision protects workers from dismissal, without prior authorization by the government, for any reason. The only circumstance in which an employer may lawfully dismiss a founding union member while this protection is in effect is if the General Labor Administration or the Ministry of Labor grants the employer authorization to do so, based on an affirmative finding that there was “just cause” to dismiss the worker (e.g. a disciplinary infraction warranting dismissal). In this case, the founding members of the union at Jerzees Choloma were protected by *protección del estado* at the time of the mass dismissals of June 7-13.<sup>78</sup>

Fuero sindical: Article 516 of the Labor Code provides for a special protection against dismissal for elected union leaders, known as *fuero sindical*. An employer may only lawfully dismiss a worker who has been elected to a union’s leadership committee after obtaining prior authorization from the government, based on a finding that the firings are warranted by just cause. However, unlike the case with *protección del estado*, union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership (as opposed to only after the notification of the union’s founding to the government and

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<sup>75</sup> Article 10 provides in relevant part: “It is prohibited to carry out reprisals against workers with the purpose of impeding them, partially or completely, from exercising the rights accorded to them by the Constitution, the present [Labor] Code, its regulations or other labor laws . . .”

<sup>76</sup> Article 469 on the “Protection of the Right to Associate” reads in relevant part: “Any person who, through violence or threats, attempts in whatever form to impair the right to freedom of association, will be punished with a fine of two hundred to ten thousand lempiras (200.00 LPS to 10.000.00 LPS), which will be imposed by the General Inspectorate of Labor . . .”

<sup>77</sup> See Worker Rights Consortium, *Assessment re Jerzees de Choloma (Honduras): Report of Findings and Recommendations*, October 3, 2007, [http://www.workersrights.org/freports/Jerzees\\_Choloma\\_Report\\_10-03-07.pdf](http://www.workersrights.org/freports/Jerzees_Choloma_Report_10-03-07.pdf).

<sup>78</sup> As noted in the WRC’s October 3, 2007 Report, “This protection was confirmed in a document provided to the union by the Honduran Ministry of Labor shortly after management was formally notified of the union’s founding on June 7. A copy of this document was obtained by the WRC. In carrying out the dismissals of approximately 60 founding union members at this time, factory management failed to seek or obtain prior approval from the Honduran authorities. For this reason, the firings, regardless of their underlying purpose, violated workers’ rights under Article 517 of Labor Code.”



management).<sup>79</sup> In this case, the membership of the committee was identified in a founding document dated March 16, 2007. The protection was thus in effect when the factory began to fire members of the union's leadership committee, the first of whom was fired on March 23; the remaining leadership committee members were fired in June.

In the case of each of these firings, the factory neither sought nor received government authorization; instead, the factory dismissed the workers without even claiming just cause.

### **C. FAILURE TO ENFORCE DOMESTIC LABOR LAWS**

#### Dismissal of Union Organizers:

The Ministry of Labor was informed of the illegal firings at least ten times between March and September 2007. This included nine times verbally and once in writing requesting an urgent investigation—in each case immediately after the unlawful firings took place. Yet, the Ministry never at any point conducted any investigation of the facts or applied any sanction to the company. Workers were ultimately reinstated, but only through the intervention of U.S. universities which placed heavy pressure on Russell to remediate following the Worker Rights Consortium's investigation. The Ministry played no role in securing the workers' reinstatement. The workers were then dismissed unlawfully again after being transferred to Jerzees de Honduras. No remediation of those dismissals has occurred.

The Labor Code states that inspectors have a duty to intervene in conflicts between employers and workers when made aware of such disputes.<sup>80</sup> The Labor Code also imposes an obligation on inspectors to conduct company investigations upon receiving verbal or written complaints of labor law violations.<sup>81</sup> Anyone can alert inspectors of such violations.<sup>82</sup> According to the Labor Code, inspectors must report any irregularities that arise in the course of their investigation to their administrators; the General Inspectorate must then decide whether to sanction the employer.<sup>83</sup>

#### Non-Cooperation with Ministry Inspectors:

Starting in March 2007, Jerzees Choloma refused for a total of eleven weeks to grant access to Ministry inspectors seeking to notify the company of the union's formation. The company did not receive the inspectors until the fourth attempt to notify, on June 7, 2007. At this time, along with the formal notification, management received from the delegation a list of every founding

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<sup>79</sup> Article 516 states: "Workers who are members of the Leadership Committee of a union organization, from the time of their election until six (6) months after they have completed their terms, cannot be fired from their jobs without prior proof before the respective Official Labor Judge or before the Civil Judge in his absence, that just cause exists to terminate the contract. The judge, making a summary judgment, will resolve the proceeding. This law is only applicable to the Central Leadership Committee, when the unions are organized in sections and subsections." (WRC Translation)

<sup>80</sup> Article 617(d).

<sup>81</sup> Article 618; see also Hond. Const., Article 138 (declaring that "in order to effectuate labor laws, the State shall monitor and inspect companies, and impose sanctions established by the law").

<sup>82</sup> Article 628.

<sup>83</sup> Articles 618-21; see also Article 625.

member of the union. The reason the government provides this list is to make sure that management knows the names of the workers who it is now prohibited from firing. Management, beginning that same day, then systematically fired virtually every worker on the list who was still in its employ.

Article 618 authorizes labor inspectors to conduct company inspections at any time and whenever necessary; they may interview workers, company staff and request all types of documents.<sup>84</sup> Article 617 of the Labor Code authorizes the Ministry to find an employer for refusing to cooperate with agents of the Ministry carrying out its lawful functions (although the maximum fine is only about \$265.00.<sup>85</sup> Despite this flagrant non-cooperation with Ministry inspectors, the Ministry failed to apply any sanction or recommend a judicial action against the company.

## **2. JERZEES DE HONDURAS**

### **A. FACTS**

In late June 2007, workers held a founding assembly to establish a local union associated with the national union federation CGT. On July 4, the union prepared its legal notice listing 106 founding members and submitted the notice to the Ministry of Labor on July 10. Later that day, union representatives and a labor inspector attempted to formally notify the company of the union's formation. Loessy Barrera, one of the company's legal advisors, was assigned by the factory to meet the group. Due to recent prior experiences with Ms. Barrera, the inspector thought that Ms. Barrera was not in fact the legal representative for the company for the purposes of the notification and thus refused to move forward with the signing.

That same day, the factory fired 10 of the union's founding members. Immediately thereafter, the workers who had accompanied the inspectors to the plant travelled to the Ministry of Labor to request an inspection. The workers told inspectors at that time that they felt that they had been fired because of their participation in the union. The Ministry of Labor never conducted an inspection on the legality of the dismissals. The Ministry of Labor did call the company to two conciliation meetings but the company's representatives never appeared. The Ministry made no further efforts with regard to these dismissals.

On July 10, several of the founding union members who had been fired the previous day accompanied a labor inspector in a second attempt to notify the factory. The factory again sent Loessy Barrera to meet them in the industrial park's office. According to worker testimony, she signed two copies of the act acknowledging official notification, including one for the Ministry. Ms. Barrera took the third document, which listed the names of all the union's founding members, and ripped it in two, stating that she was doing so because she was not the official legal representative and thus could not formally accept the notification. She then took the two

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<sup>84</sup> Article 618; see also Article 614 (I)(a), 617(a).

<sup>85</sup> The Code grants the General Inspectorate of Labor the authority to impose fines on employers, ranging from 100.00 to 5,000.00 LPS (US\$5 to \$265.00), for infractions of Code provisions that do not stipulate specific penalties. The Labor Code of Honduras, Article 625(d), as amended by Decree No. 978; see also Article 597(i) (establishing that the General Directorate of Labor may also impose sanctions set forth by the Code).

pieces of the list with her as she went back to the factory. Later that day, the Labor Ministry gave to the union a document establishing that *proteccion del estado* was in effect for the founding members of the union whose names had just been presented to the factory. The document listed the names of 82 founding members.

Over the next two weeks, the factory fired at least 25 the founding union members in several waves. According to worker testimony, only a small number of non-union workers were fired on the dates on which the firings of the union members took place. Very few of the workers that were fired in the second and third waves went to the Ministry of Labor to complain, having seen no follow-up to the efforts of the first group.

On October 24, 2007, Russell agreed to a remediation program with the Workers' Rights Consortium (WRC) that included reinstatement of all unlawfully dismissed union members at Jerzees de Honduras and Jerzees Choloma and payment of lost wages. In November and December, workers at Jerzees de Honduras and Jerzees Choloma were reinstated or given the opportunity to be paid severance, including the payment of lost wages from the time of dismissal. In the end, 142 out of the 145 dismissed workers were successfully contacted and provided back pay, with 62 accepting reinstatement. It is important to note that the government played no role whatsoever in getting the company to comply with the law.

In December 2007, the union submitted documents to the Ministry of Labor seeking full legal status (*personería jurídica*). Although the law requires the request to be processed in 30 days, the union's legal status was not recognized until May 26, 2008, more than six months after the union submitted materials to the Ministry of Labor.

On January 16, 2008, the union requested that the Ministry perform an investigation regarding the company's failure calculate workers' "seventh day" bonus in accordance with the law. On January 28, the Ministry acknowledged receipt of the document and stated that it has appointed Inspector Raul Barahona to confirm that the company was paying workers correctly and if it is not to make necessary adjustments. On February 5, the Ministry convened a conciliation meeting with the union and company regarding the matter. On March 25, the local Ministry issued a report finding that the company was violating the law in the manner in which it calculated the payment of the seventh day bonus. The inspector issued a warning that the company had three days in which to make adjustments or face a fine.<sup>86, 87</sup>

In early June, the union held an event to celebrate that it was given its *personería jurídica*, at which the regional head of the Ministry of Labor Lucia Rosales was invited and present at the CGT office. The union representatives told her that they feared the company would close in

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<sup>86</sup> On July 16, the Ministry of Labor informed the union that, because the union did not have legal status at the time it complained to the Ministry of Labor regarding the "seventh day" bonus issue, the actions taken by the Ministry of Labor office in San Pedro Sula were declared null and void. However, the Ministry of Labor is obligated under the Labor Code to investigate Labor Code violations that are brought to its attention. Further, the union's complaint pertained to all workers and was not a request made for the benefits of the union or union members alone. The local Ministry of Labor's report made no distinction whatever between union and non-union members.

<sup>87</sup> Ms. Argueta told inspector Raul Barahona that management was threatening workers that the plant would close if they persisted in organizing. This was in the context of a visit to the plant to conduct an investigation regarding the company's failure to properly pay workers a benefit known as *séptimo día*.

retaliation for the union organizing and that managers had made specific threats to workers in this regard. CGT's Ms. Argueta also told Rosales of these concerns herself. She also told Rosales that that Russell's lawyer William Collins had tried to bribe her on behalf of Russell to give up on the organizing and that the company could not live with a union.

On July 31, August 5, and August 6, Ms. Argueta informed Labor Inspector Jose Angel Portillo that the company was threatening workers that the plant would close if the continued to organize and press for a collective bargaining agreement. On August 25, 26, and 28, Ms. Argueta spoke with an inspector regarding the anti-union threats of closure in the context of an attempted investigation regarding management's circulation within the plant of an anti-union petition.<sup>88</sup> The CGT's Argueta spoke with Inspector Rosales about the management threats of closure at least five times between the date the union and the company had their first bargaining sessions on July 11 and the announcement of closure on October.

From July 11, when the parties commenced contract talks, to October 3, 2008, when the workers' union declared an impasse, the parties had held a series of approximately nine negotiating sessions. On October 8, 2008, five days after the impasse was declared, Russell announced it would close Jerzees de Honduras and terminate its 1,800 workers. On October 13, the union wrote to the Ministry of Labor requesting government mediation in the collective bargaining process. On December 15, 2008, the company informed the union's president in writing that it was ending the negotiation process in view of the plant's planned closure.

On January 29, 2009, fourteen weeks after the union sought mediation, the union was informed by the Ministry that a team of mediators had been appointed for their case: Lucia Rosales, regional director of the Ministry, and Jose Lorenzo Rivera Ramirez. On the same date, the Ministry also tried to notify the company about the mediation but the inspector was not allowed into the factory. On the following day, January 30, Russell completed its closure of the plant.

On February 16, both the union and the company were called to a mediation session at the Ministry. The company took the position that the plant was closed and there was therefore nothing to negotiate. The union argued that the plant was closed illegally. It stated that the mediation process should continue. No further mediation sessions occurred after this point.

As noted in the previous case, this matter was eventually settled in 2009 through a private agreement between Russell/Fruit of the Loom and the workers.

## **B. DOMESTIC LABOR LAWS VIOLATED**

Discrimination Against Union Members: Article 96(3) of the Honduran Labor Code provides that "Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities." The facts, including the timing of the firings, the composition of the firings and anti-union threats by managers, constitute evidence that the firings of the 25 union members in July 2007 were

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<sup>88</sup> On August 25 and 26, the inspector and Argueta were refused access to the factory. On the 28, the inspector was granted access but Argueta was denied access.

motivated by anti-union hostility and were therefore illegal. Russell Corporation later admitted that it fired the workers due to their union activities.

Protección del Estado: Article 517 of the Labor Code provides a special protection against dismissal for founding members of a union from the moment they successfully notify the factory. This provision protects workers from dismissal, without prior authorization by the government, for any reason. The only circumstance in which an employer may lawfully dismiss a founding union member while this protection is in effect is if the General Labor Administration or the Ministry of Labor grants the employer authorization to do so, based on an affirmative finding that there was “just cause” to dismiss the worker (e.g. a disciplinary infraction warranting dismissal). From at least July 10, the union’s founding members were protected by *protección del estado*.

Plant Closure Motivated, in Significant Part, by Anti-union Animus: The closure of the entire plant and consequent dismissal of its workforce when motivated in significant part by workers’ decision to organize violates the aforementioned provisions of the law prohibiting employer interference in and retaliation for workers’ exercise of freedom of association—albeit on a much larger and more damaging scale. The WRC, in its November 7, 2009 report found that “there is substantial credible evidence that animus against workers’ exercise of their associational rights was a significant factor in Russell’s decision to close Jerzees de Honduras.”<sup>89</sup> The evidence cited for this conclusion includes “the timing of the closure announcement in the context of negotiations with the plant’s union, threats by management prior to the closure that the facility would close because of workers’ exercise of associational rights, admissions by management after the closure announcement that the decision was related to workers’ associational activities, and other conduct by management demonstrating continued hostility to workers’ exercise of their associational rights.”

ILO Expert, Dr. Adrian Goldin, in an investigation undertaken for the Fair Labor Association, concurred that closure was motivated by anti-union animus.<sup>90</sup> Corroborating all of the WRC’s evidentiary findings, Dr. Goldin concluded that closure was determined “at least to a significant extent, by the existence and activity of the union.” Both inquiries found that there was sufficient evidence to conclude that anti-union animus played a significant role in the closure decision, even if there were accompanying economic justifications.

Failure to Calculate Weekly Benefit in Accordance with the Law: Decree 112 of October 28, 1982 establishes that workers shall be paid a weekly *séptimo día* benefit, which is to be comprised of the daily average of their earnings over the previous six days of work. For workers earning compensation based on production, the benefit is to be calculated based on their average overall earnings. Jerzees de Honduras calculated the *séptimo día* benefit on the basis of the minimum wage, rather than workers average pay, thereby underpaying them for the benefit each week.

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<sup>89</sup> Workers Rights Consortium, *Jerzees de Honduras (Russell Corporation): Findings and Recommendations* (Nov. 7, 2008), at 3, <http://www.workersrights.org/freports/Jerzees%20de%20Honduras%2011-07-08.pdf>.

<sup>90</sup> See, e.g., Adrian Goldin, *Mission Report: The Closure Process at Jerzees de Honduras, Previous Investigations, and the Right of Freedom of Association* (Jan. 26, 2009), [http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009/jerzees\\_de\\_honduras\\_second\\_jdh\\_investigation\\_jan\\_2009.pdf](http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009/jerzees_de_honduras_second_jdh_investigation_jan_2009.pdf).

### C. FAILURE TO ENFORCE DOMESTIC LABOR LAWS

Dismissal of Union Organizers – July 2007: Ministry of Labor officials were made specifically aware of the firing of the union’s founding members on July 10, 2007. The Ministry failed to conduct any investigation. Its only action was to call the company to two conciliation meetings, which the company failed to attend. At this point, as far the Ministry was concerned, the matter was over. No sanction was ever applied. One of the workers filed a legal claim; by the time the worker was re-instated five months later, following the WRC investigation, the court had failed to process the claim.

Retaliatory Plant Closure: Ministry of Labor officials were made aware of the company’s repeated threats to close the Jerzees de Honduras factory in retaliation for workers’ decision to organize a union on numerous occasions, contemporaneous to those threats occurring. This included specific information provided to Ministry inspectors in May, June, July, August, and September of 2008 leading up to the closure announcement on October 8. Yet, the Ministry of Labor conducted no investigation whatsoever regarding the legality of the plant closure. Indeed, even after the publication of the reports finding Russell had violated workers’ freedom of association by closing the plant, and even while failing to conduct an investigation on this matter itself, the government went out of its way to praise Russell Corporation for its labor practices.<sup>91</sup>

Failure to Certify Union’s Legal Status in Timely Manner: The Labor Code states that in order to obtain official recognition, union organizers must submit registration documents to the General Directorate of Labor, including a list of at least 30 founding members, a list of the elected union officers, the workers’ identification cards, and proof of the union’s founding meeting.<sup>92</sup> The Ministry has a total of 30 days from the date of receiving the registration application to recognize the union.<sup>93</sup> First, the Code requires the General Directorate of Labor to review and verify the documents within 15 days of receipt.<sup>94</sup> The General Directorate must then send the filings, along with the inspector’s (or mayor’s) confirmations, to the Ministry of Labor for final approval.<sup>95</sup> The Code directs the Ministry of Labor to recognize and register the union within 15 days, unless union by-laws violate the Constitution or any other laws.<sup>96</sup>

In the case of Jerzees de Honduras, the union deposited the required documentation to the General Labor Inspectorate in December 2007. The Ministry did not award the union legal status until May 26, 2008—more than six months *after* the submission. Worse, the Ministry justified its failure to take action on basic labor rights violations at the factory during this period on the basis of the union’s lack of legal status.

Failure to Calculate Weekly Benefit in Accordance with the Law: The regional Ministry of Labor conducted an investigation in response to workers’ complaints regarding the company’s

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<sup>91</sup> Letter from Honduran President Manuel Zelaya Rosales to Fruit of the Loom president John Holland, March 11, 2009, [http://www.russellsocialresponsibility.com/pages/russell\\_opinions.html](http://www.russellsocialresponsibility.com/pages/russell_opinions.html).

<sup>92</sup> Articles 475, 480-81.

<sup>93</sup> Articles 482-83.

<sup>94</sup> Articles 482, 607.

<sup>95</sup> *Id.*

<sup>96</sup> Article 483; see also Articles 591(14), 594, 606(a).

underpayment. On March 25, San Pedro Sula Labor Inspectorate issued a report finding that the company was in violation of Honduran law due to the manner in which it calculated the *séptimo día*. The inspector issued an order to the company to make an adjustment to address the problem within three days or face a fine. The company refused to cooperate with the investigation, refusing provide the inspector with access to payroll records so that he could determine how many workers were affected by the company's practices and how much each was owed. The company ignored the finding. There is no indication any fine was ever imposed or paid.

On July 16, the Ministry of Labor at a national level rendered the finding moot, finding that all actions taken by the regional Ministry were rendered null and void because the union, which brought the issue to the Ministry's attention, did not have full legal status at the time they informed the Ministry of the problem. The question of whether the union had legal status or not is immaterial with regard to the seventh day wage claims. Moreover, the only reason that the union did not have legal status was due to the Ministry's delays.

Non-Cooperation with Ministry Inspectors: Article 618 of the Labor Code establishes that Labor Inspectors of the Ministry of Labor have the authority to access worksites for the purpose of investigating labor violations and performing other Ministry functions. Article 617 of the Labor Code authorizes the Ministry to fine an employer for refusing to cooperate with agents of the Ministry carrying out its lawful functions (although the maximum fine is only about \$265.00). On at least three occasions between July and August 2008, the company refused to allow labor inspectors access to the factory. The company also refused to comply with requests by Ministry of Labor inspectors for documentation in the context of attempted inspections related to the company's failure to pay a legally mandated benefit in accordance with the law (*séptimo día*) and its unlawful deduction of workers' wages (in relation to vacation days), rendering those investigations largely impossible. There is no indication that the Ministry fined the company or in any other way for its failure to comply.

## EXHIBIT I

### Collective Pacts Registered with the General Labor Directorate Period 2008-2010<sup>97</sup>

No.	Name of Company	Date of Registry	Length of Agreement	Location	Workers Covered
1	Ceiba Textiles, S. de R.L.	9/1/2008	5 yrs	Naco, Santa Barbara	479
2	Expreco Comercial, S. de R.L.	11/7/2008	2 yrs	Tegucigalpa, Francisco Morazon	249
3	RLA Manufacturing, S. de R.L. de C.V.	11/7/2008	5 yrs	Choloma, Cortes	2535
4	Manufacturas Villanueva, S. de R.L. de C.V.	11/7/2008	5 yrs	Villanueva, Cortes	1296
5	Productos San Jose, S. de R.L. de C.V.	11/7/2008	5 yrs	San Pedro Sula, Cortes	1904
6	Jerzees Buena Vista, S. de R.L.	11/7/2008	5 yrs	Villanueva, Cortes	948
7	Confecciones Dos Caminos, S. de R.L. de C.V.	11/7/2008	5 yrs	Villanueva, Cortes	2047
8	Manufacturing, S. de R.L. de C.V.	11/7/2008	5 yrs	El Progreso, Yoro	164
9	Desoto Knits, S. de R.L.	1/27/2009	5 yrs	Choloma, Cortes	1210
10	Confecciones del Valle, S. de R.L. (Planta Costura)	6/8/2009	5 yrs	Villanueva, Cortes	10379
11	Confecciones del Valle, S. de R.L. (Planta Modelo)	6/10/2009	5 yrs	Villanueva, Cortes	824
12	Confecciones del Valle, S. de R.L. (Planta Corte)	6/9/2009	5 yrs	Choloma, Cortes	638
13	Hanes Choloma, S.A de C.V.	6/10/2009	5 yrs	Choloma, Cortes	1648
14	Hanes Choloma, S.A de C.V. (Planta Costura)	6/10/2009	5 yrs	Villanueva, Cortes	91
15	Jasper Honduras, S.A.	6/10/2009	5 yrs	Choloma, Cortes	5614
16	Jogbra de Honduras, S.A.	7/13/2009	5 yrs	Villanueva, Cortes	738
17	Confecciones del Valle, S. de R.L. (Proceso de Laminaciones, Bodega Central, Industrialización y Market Simples)	2/26/2010	5 yrs	Villanueva, Cortes	319
18	Plycem Construsistemas Honduras, S.A. de C.V.	4/5/2010	2 yrs	Villanueva, Cortes	171
19	Manufacturadota Textil de Honduras, S. de R.L. de C.V.	7/30/2010	1 yr	Olanchito, Yoro	31
20	Alimentos Concentrados Nacionales, S. de R.L. (Alcon)	8/16/2010	5 yrs	Villanueva, Cortes	290

<sup>97</sup> Original document on file with petitioners.



21	Productos Nortenos, S. de R.L. (Pronorsa)	8/16/2010	5 yrs	Villanueva, Cortes	410
22	Delicia, S de RL	8/16/2010	5 yrs	San Pedro Sula, Cortes	124
23	Reproductora Avivcola, S. de R.L. (Rasa)	8/16/2010	5 yrs	Villanueva, Cortes	187
24	Proyectos Agropecuarios, S. de R.L. (Prasa)	8/16/2010	5 yrs	Santa Cruz de Yojoa, Cortes	175
25	Alimentos Concentrados Nacionales Exportaciones, S. de R.L. (ALCONEX)	8/16/2010	5 yrs	Villanueva, Cortes	13
					32,484

## **Exhibit II**

**This list of Honduran laws cited in the brief is included to assist OTLA's consideration of the submission pursuant to Guideline F(2).**

### **FUNDAMENTACION JURIDICA DE LA QUEJA, CON RESPECTO A LA FALTA DEL GOBIERNO DE HONDURAS DE EFICAZMENTE HACER CUMPLIR SUS LEYES EN MATERIA DE TRABAJO:**

#### **VIOLACIONES A LOS DERECHOS LABORALES ESTABLECIDOS EN EL CODIGO DEL TRABAJO:**

##### **Artículo 10**

Se prohíbe tomar cualesquiera clase de represalias contra los trabajadores con el propósito de impedirles parcial o totalmente el ejercicio de los derechos que les otorguen la constitución, el presente código, sus reglamentos o las demás leyes de trabajo o de previsión social, o con motivo de haberlos ejercido o de haber intentado ejercerlos.

##### **Artículo 11**

Se prohíbe a los patronos emplear menos de un noventa (90%) de trabajadores hondureños y pagar a estos menos del ochenta y cinco por ciento (85%) del total de los salarios que en sus respectivas empresas se devenguen. Ambas proporciones pueden modificarse: a) cuando así lo exijan evidentes razones de protección y fomento a la economía nacional o de carencia de técnicos hondureños en determinada actividad, o de defensa de los trabajadores nacionales que demuestren su capacidad. En todas estas circunstancias el poder ejecutivo, mediante acuerdo razonado emitido por conducto del ministerio de trabajo y previsión social puede disminuir ambas proporciones hasta en un diez por ciento (10%) cada una y durante un lapso de cinco años (5) para cada empresa, o aumentarlas hasta eliminar la participación de los trabajadores extranjeros. En caso de que dicho ministerio autorice la disminución de los expresados porcentajes debe exigir a las empresas: .....

##### **Artículo 31**

Tienen capacidad para celebrar el contrato individual de trabajo las personas que hayan cumplido dieciséis (16) años de edad.

##### **Artículo 32**

Los menores de catorce (14) años y los que habiendo cumplido esa edad, sigan sometidos a la enseñanza en virtud de la legislación nacional, no podrán ser ocupados en ninguna clase de trabajo. Las autoridades encargadas de vigilar el trabajo de estos menores podrán autorizar su ocupación cuando lo consideren indispensable para la subsistencia de los mismos o de sus padres o hermanos, y siempre que ello no impida cumplir con el mínimo de instrucción obligatoria. Para menores de dieciséis (16) años, la jornada de trabajo, que deberá ser diurna, no podrá exceder de seis (6) horas y de treinta y seis (36) semanales, en cualquier clase de trabajo.

### **Artículo 33**

Los menores de dieciséis (16) años necesitan autorización escrita de sus representantes legales, y en defecto de éstos, de un inspector de trabajo. A falta de inspector de trabajo, la autorización la dará el jefe del concejo de distrito o alcalde municipal del termino en que deba cumplirse el contrato, sin perjuicio de lo que establezca la ley de menores.

La autorización debe concederse cuando, a juicio del funcionario, no haya perjuicio aparente, físico ni moral para el menor, en el ejercicio de la actividad de que se trata.

Concedida la autorización, el menor puede recibir directamente el salario, y, llegado el caso, ejercitar las acciones legales pertinentes.

### **Artículo 36**

Todo contrato de trabajo, así como sus modificaciones o prorrogas debe constar por escrito, salvo lo dispuesto en el artículo 39 de este Código, y se redactara en tantos ejemplares como sean los interesados, debiendo conservar uno cada parte. El patrono queda obligado a archivar su ejemplar para exhibirlo a requerimiento de cualquier autoridad del trabajo.

La omisión de estas formalidades no invalidará el contrato, pero dará, lugar a la aplicación de lo dispuesto en los artículos 30 y 41°-

### **Artículo 47**

Los contratos relativos a labores que por su naturaleza sean permanentes o continuas en la empresa, se consideraran como celebrados por tiempo indefinido aunque en ellos se exprese término de duración, si al vencimiento de dichos contratos subsiste la causa que le dio origen o la materia del trabajo para la prestación de servicios o la ejecución de obras iguales o análogas. El tiempo de servicio se contara desde la fecha de inicio de la relación de trabajo, aunque no coincida con la del otorgamiento del contrato por escrito. En consecuencia, los contratos a plazo fijo para obra determinada tienen carácter de excepción y solo pueden celebrarse en los casos en que así lo exija la naturaleza accidental o temporal del servicio que se va a prestar o de la obra que se va a ejecutar.

### **Artículo 72**

Los pactos entre patronos y trabajadores no sindicalizados se rigen por las disposiciones establecidas para las convenciones colectivas, pero solamente son aplicables a quienes lo hayan celebrado o adhieran posteriormente a ellos.

**Entran en contradicción con el convenio Convenio 98 (Derecho de sindicación y negociación colectiva), declara específicamente que “Las organizaciones de trabajadores y de empleadores deberán gozar de adecuada protección contra todo acto de injerencia de unas respecto de las otras, ya se realice directamente o por medio de sus agentes o miembros, en su constitución, funcionamiento o administración” y, que se consideran “actos de injerencia... las medidas que tiendan a fomentar la constitución de organizaciones de trabajadores dominadas por un empleador...”**

### **Artículo 88**

Esta obligado a tener un reglamento de trabajo todo patrono que ocupe más de cinco (5) trabajadores de carácter permanente en empresas comerciales o más de diez (10) en empresas industriales, o más de veinte (20) en empresas agrícolas, ganaderas o forestales.

En empresas mixtas, la obligación de tener un reglamento de trabajo existe cuando el patrón ocupe más de diez (10) trabajadores.

### **Artículo 95: INCISO 1**

Además de las contenidas en otros artículos de este código, en sus Reglamentos y en las leyes de previsión social, son obligaciones de los patronos:

1) pagar la remuneración pactada en las condiciones, periodos y lugares convenidos en el contrato, o en los establecidos por las leyes y reglamentos de trabajo, o por los reglamentos internos o convenios colectivos, o en su defecto por la costumbre;

### **Artículo 95: Inciso 8**

Además de las contenidas en otros artículos de este código, en sus reglamentos y en las leyes de previsión social, son obligaciones de los patronos:

**INCISO 8)** Permitir y facilitar la inspección y vigilancia que las autoridades de trabajo, sanitarias y administrativas, deban practicar en su empresa, establecimiento o negocio, y darles los informes que a ese efecto sean indispensables, cuando lo soliciten en cumplimiento de las disposiciones legales correspondientes;

### **Artículo 95: INCISO 19**

Además de las contenidas en otros artículos de este código, en sus Reglamentos y en las leyes de previsión social, son obligaciones de los patronos:

**INCISO 19)** Llevar a cabo los reajustes de acuerdo con las estipulaciones del Contrato colectivo. A falta de estas, respetaran los derechos de antigüedad y, en igualdad de condiciones, preferirán a los elementos sindicalizados para que sigan trabajando;

### **Artículo 96**

Se prohíbe a los patronos:

**INCISO 3)** Despedir o perjudicar en alguna otra forma a sus trabajadores a causa de su afiliación sindical o de su participación en actividades sindicales lícitas;

5) Deducir, retener o compensar suma alguna del monto de los salarios y prestaciones en dinero que corresponda a los trabajadores, sin autorización previa escrita de estos para cada caso, sin mandamiento judicial, o sin que la ley, el contrato o el reglamento lo autoricen;

9) Ejecutar o autorizar cualquier acto que directa o indirectamente vulnere o restrinja los derechos que otorgan las leyes a los trabajadores, o que ofendan la dignidad de estos;

### **Artículo 322**

La jornada ordinaria de trabajo diurno no podrá exceder de ocho (8) horas diarias y cuarenta y cuatro (44) a la semana, equivalentes a cuarenta y ocho (48) de salario. La jornada ordinaria de trabajo nocturno no podrá exceder de seis (6) horas diarias y treinta y seis (36) a la semana. Estas disposiciones no se aplicaran en los casos de excepción, muy calificados, que determine este código. El trabajador que faltare en alguno de los días de la semana y no complete la jornada de cuarenta y cuatro (44) horas de trabajo, solo tendrá derecho a recibir un salario proporcional al tiempo trabajado, con base en el salario de cuarenta y ocho (48) horas Semanales. Este principio regirá igualmente para la jornada ordinaria de trabajo efectivo nocturno, y la mixta.

### **Artículo 324**

En las labores que sean especialmente insalubres o peligrosas, el gobierno puede ordenar la reducción de la jornada de trabajo, previo estudio de la secretaria de trabajo y previsión social.

### **Artículo 325**

Quedan excluidos de la regulación sobre jornada máxima legal de trabajo los siguientes trabajadores: a) los que desempeñen cargos de dirección, de confianza o de manejo; b) los del servicio domestico, ya se trate de labores en los centros urbanos o en el campo; c) los que ejecuten actividades discontinuas o intermitentes como peluqueros, empleados de hoteles y demás que sean calificados en tal carácter por la dirección general del trabajo, y los de simple vigilancia como mayordomos y capataces, cuando residan en el lugar o sitio del trabajo; d) los chóferes particulares y los que presten sus servicios en empresas de transporte de cualquier clase, sea cual fuere la forma de su remuneración; e) los que realizan labores que por su propia naturaleza no están sometidas a jornadas de trabajo, tales como las labores agrícolas, ganaderas y afines; y, f) los trabajadores remunerados a base de comisión y los empleados similares que no cumplan su cometido en el local del establecimiento o lugar de trabajo. Sin embargo, tales personas no estarán obligadas a permanecer más de doce (12) horas diarias en su trabajo, y tendrán derecho dentro de la jornada a un descanso mínimo de hora y media (1-1/2) que puede ser fraccionado en periodos no menores de treinta (30) minutos. El poder ejecutivo, mediante acuerdos emitidos por conducto del ministerio de trabajo previsión

### **Artículo 328**

Los trabajadores permanentes que por disposición legal o por acuerdo con los patronos laboren menos de cuarenta y cuatro (44) horas en la semana, tienen derecho de percibir integro el salario correspondiente a la semana ordinaria diurna.

### **Artículo 330**

El trabajo efectivo que se ejecute fuera de los límites que determinan los Artículos anteriores para la jornada ordinaria, o que exceda de la jornada inferior, convenida por las partes, constituye jornada extraordinaria, y debe ser reenumerado, así:

- 1.- Con un veinticinco por ciento (25%) de recargo sobre el salario de la jornada diurna cuando se efectúe en el periodo diurno;
- 2.- Con un cincuenta por ciento (50%) de recargo sobre el salario de la jornada diurna cuando se efectúe en el periodo nocturno; y,
- 3.- Con un setenta y cinco por ciento (75%) de recargo sobre el salario de la jornada nocturna cuando la jornada extraordinaria sea prolongación de aquella.

**Artículo 340**

Si en virtud de convenio se trabajare durante los días de descanso o los días feriados o de fiesta nacional, se pagaran con el duplo de salario correspondiente a la jornada ordinaria en proporción al tiempo trabajado, sin perjuicio del derecho del trabajador a cualquier otro día de descanso en la semana conforme al artículo 338.

**Artículo 345**

El trabajador tendrá derecho a vacaciones anuales remuneradas, cuya extensión y oportunidad se regula en el presente Capítulo.

En caso de despido injustificado el patrono pagará en efectivo, a más de las indemnizaciones que la ley señale, la parte de vacaciones correspondiente al período trabajado.

**Artículo 361**

Constituye salario no solo la remuneración fija u ordinaria, sino todo lo que recibe el trabajador en dinero o en especie y que implique retribución de servicios, sea cualquiera la forma o denominación que se adopte, como las primas, sobresueldos, bonificaciones habituales, valor del trabajo suplementario o de las horas extras, valor del trabajo en días de descanso obligatorio, porcentaje sobre ventas, comisiones o participación de utilidades.

**Artículo 363**

El salario se estipulara libremente, pero no podrá ser inferior al que se fije como mínimo de acuerdo con las prescripciones de este código.

**Artículo 364**

El cálculo de la remuneración para el efecto de su pago, puede pactarse:

- a) Por unidad de tiempo, (mes, quincena, semana, día y hora);
- b) Por unidad de obra, (pieza, tarea, precio alzado o a destajo); y,
- c) Por participación en las utilidades, ventas o cobros que haga el patrono.

**Artículo 367**

Para fijar el importe del salario en cada clase de trabajo, se deben tomar en cuenta la intensidad y calidad del mismo, clima y condiciones de vida, y el tiempo de servicio del trabajador. A trabajo igual debe corresponder salario igual, sin discriminación alguna, siempre que el puesto, la jornada y las condiciones de eficiencia y tiempo de servicio, dentro de la misma empresa, sean también iguales, comprendiendo en este, tanto los pagos hechos por cuota diaria, como las gratificaciones, percepciones, habitación y cualquier otra cantidad que sea entregada a un trabajador a cambio de su labor ordinaria. No pueden establecerse diferencias en el salario por razones de edad, sexo, nacionalidad, raza, religión, opinión política o actividades sindicales.

**Artículo 381**

Salario mínimo es el que todo trabajador tiene derecho a percibir para subvenir a sus necesidades normales y a las de su familia, en el orden material, moral y cultural.

### **Artículo 469**

Queda prohibido a toda persona atentar contra el derecho de asociación sindical. Toda persona que por medio de violencias o amenazas atente en cualquier forma contra el derecho de libre asociación sindical, será castigada con una multa de doscientos a dos mil lempiras, (l 200.00 a l 2.000.00); que le será impuesta por el respectivo funcionario administrativo del trabajo, previa comprobación completa de los hechos. En caso de sobrevenir condenación penal con sanción pecuniaria, se devolverá la multa que se prevé en este inciso.

## **CAPITULO III ORGANIZACION**

### **Artículo 475**

Todo sindicato de trabajadores necesita para constituirse o subsistir un número no inferior a treinta (30) afiliados, y todo sindicato patronal no menos de cinco (5) patronos independientes entre si. Las organizaciones sindicales deben estar constituidas en un artículo 0476 -pueden formar parte de las organizaciones sindicales las personas mayores de dieciséis (16) años. También podrán formar parte los mayores de catorce (14) años con autorización expresa de su representante legal. Se prohíbe ser miembro a la vez de varios sindicatos de la misma clase o actividad.

## **PERSONERIA JURIDICA**

### **Artículo 480**

Las organizaciones sindicales se consideraran legalmente constituidas y con personalidad jurídica desde el momento en que se registren en la secretaria de trabajo y previsión social.

Para la inscripción y reconocimiento de la personería jurídica de los sindicatos, la directiva provisional, por si o mediante apoderado especial, deberá elevar al ministerio de trabajo y previsión social, por conducto de la dirección general del trabajo, la solicitud correspondiente, acompañándola de los siguientes documentos, todos en papel común: 1o.-certificación del acta de fundación, con las firmas autógrafas de los asistentes, o de quienes firmen por ellos, y la anotación de sus respectivas tarjetas de identidad; 2o.-certificación del acta de la elección de la junta directiva provisional, con los mismos requisitos del ordinal anterior; 3o.-certificación del acta de la reunión en que fueron aprobados los estatutos; 4o.-carta poder de quien solicite el reconocimiento de la personería jurídica, cuando la solicitud no sea presentada por la junta directiva provisional. El poder debe ser autenticado, ante autoridad competente; 5o.-dos (2) certificaciones del acta de fundación, extendidas por el secretario provisional; 6o.-dos (2) ejemplares de los estatutos del sindicato, extendidos por el secretario provisional. 7o.-nomina de la junta directiva provisional, por triplicado, con indicación de la nacionalidad, profesión u oficio, el número de la tarjeta de identidad y el domicilio de cada director; 8o.-nomina completa del personal de afiliados, por triplicado, con especificación de la nacionalidad, sexo y profesión u oficio de cada uno de ellos; y, 9o.-certificación del correspondiente inspector de trabajo sobre la inexistencia de otro sindicato, si se tratare de un sindicato de empresa o de base que pueda considerarse paralelo; sobre la calidad de patronos o de trabajadores de los fundadores, en relación con la industria o actividad de que se trate o de su calidad de profesionales del ramo del sindicato; sobre la antigüedad, si fuere el caso, de los directores provisionales en el ejercicio de

la correspondiente actividad, y sobre las demás circunstancias que estime conducentes. En los lugares en donde no haya inspector de trabajo, la certificación debe ser expedida por el respectivo alcalde municipal, y refrendada por el inspector de trabajo más cercano. Los documentos de que tratan los números 1o., 2o. Y 3o. Pueden estar reunidos en un solo texto o acta.

#### **Artículo 481**

Para la inscripción y reconocimiento de la personería jurídica de los sindicatos, la directiva provisional, por sí o mediante apoderado especial, deberá elevar al ministerio de trabajo y previsión social, por conducto de la dirección general del trabajo, la solicitud correspondiente, acompañándola de los siguientes documentos, todos en papel común: 1o.-certificación del acta de fundación, con las firmas autógrafas de los asistentes, o de quienes firmen por ellos, y la anotación de sus respectivas tarjetas de identidad; 2o.-certificación del acta de la elección de la junta directiva provisional, con los mismos requisitos del ordinal anterior; 3o.-certificación del acta de la reunión en que fueron aprobados los estatutos; 4o.-carta poder de quien solicite el reconocimiento de la personería jurídica, cuando la solicitud no sea presentada por la junta directiva provisional. El poder debe ser autenticado, ante autoridad competente;

5o.-dos (2) certificaciones del acta de fundación, extendidas por el secretario provisional; 6o.-dos (2) ejemplares de los estatutos del sindicato, extendidos por el secretario provisional. 7o.-nomina de la junta directiva provisional, por triplicado, con indicación de la nacionalidad, profesión u oficio, el número de la tarjeta de identidad y el domicilio de cada director; 8o.-nomina completa del personal de afiliados, por triplicado, con especificación de la nacionalidad, sexo y profesión u oficio de cada uno de ellos; y, 9o.-certificación del correspondiente inspector de trabajo sobre la inexistencia de otro sindicato, si se tratare de un sindicato de empresa o de base que pueda considerarse paralelo; sobre la calidad de patronos o de trabajadores de los fundadores, en relación con la industria o actividad de que se trate o de su calidad de profesionales del ramo del sindicato; sobre la antigüedad, si fuere el caso, de los directores provisionales en el ejercicio de la correspondiente actividad, y sobre las demás circunstancias que estime conducentes. En los lugares en donde no haya inspector de trabajo, la certificación debe ser expedida por el respectivo alcalde municipal, y refrendada por el inspector de trabajo más cercano. Los documentos de que tratan los números 1o., 2o. Y 3o. Pueden estar reunidos en un solo texto o acta.

#### **Artículo 482**

Recibida la solicitud por la dirección general del trabajo, esta dispondrá De un término máximo de quince (15) días para revisar la documentación acompañada, examinar los estatutos, formular a los interesados las observaciones pertinentes y elevar al ministerio respectivo el informe del caso, para los efectos consiguientes.

#### **Artículo 483**

El ministerio del trabajo y previsión social reconocerá la personería jurídica, salvo el caso de que los estatutos del sindicato sean contrarios a la constitución de la republica, a las leyes o a las buenas costumbres o contravengan disposiciones especiales de este código. El ministerio, dentro de los quince (15) días siguientes al recibo del expediente, dictara la resolución sobre



reconocimiento o denegación de la personería jurídica, indicando en el segundo caso las razones de orden legal o las disposiciones de este código que determinen la negativa.

#### **Artículo 484**

Si los documentos mencionados no se ajustan a lo prescrito en el artículo 81, se dictara resolución que indique sus errores o deficiencias para que los interesados, dentro del término de dos (2) meses, los subsanen o pidan reconsideración de lo resuelto. En este caso, el término de quince (15) días hábiles señalado en el artículo anterior, comenzara a correr desde el día en que se presente la solicitud corregida. La reconsideración será resuelta dentro de los diez (10) días hábiles siguientes al de la interposición del recurso.

#### **Artículo 510**

Para ser miembro de la junta directiva de un sindicato, tanto de la provisional como de las reglamentarias, deben reunirse los siguientes requisitos, además de los que exijan los estatutos respectivos: a) ser hondureño; b) ser miembro del sindicato; c) estar ejerciendo normalmente, es decir, no en forma ocasional, o a prueba, o como aprendiz, en el momento de la elección, la actividad, profesión u oficio característico del sindicato, y haberlo ejercido normalmente por más de seis (6) meses en el año anterior; d) saber leer y escribir; e) tener cedula de ciudadanía o tarjeta de identidad, según el caso; y, f) no haber sido condenado a sufrir pena aflictiva a menos que haya sido rehabilitado, ni estar llamado a juicio por delitos comunes en el momento de la elección. La falta de cualquiera de estos requisitos invalida la elección; pero las interrupciones en el ejercicio normal de la actividad, profesión u oficio de que trata la letra c) no invalidarán la elección cuando hayan sido ocasionadas por la necesidad de atender a funciones sindicales.

#### **Artículo 516**

Los trabajadores miembros de la junta directiva de una organización sindical, desde su elección hasta seis (6) meses después de cesar en sus funciones, no por ser despedidos de su trabajo sin comprobar previamente ante el juez de letras respectivo o ante el juez de lo civil en su defecto, que exista justa causa para dar por terminado el contrato. El juez actuando en juicio sumario, resolverá lo procedente. Esta disposición solo es aplicable a la junta directiva central, cuando los sindicatos estén organizados secciones y sub secciones. La violación de lo dispuesto en el párrafo anterior. Sujetara al patrono a pagar a la organización sindical respectiva una indemnización equivalente a seis (6) meses de salario trabajador. Sin perjuicio de los derechos que a este correspondan.

#### **Artículo 517**

La notificación formal de treinta (30) trabajadores hecha a su patrono escrito, comunicada a la dirección general del trabajo o a la procuraduría de trabajo de jurisdicción, de su propósito de organizar un sindicato. Coloca a los firmantes de dicha n fijación, bajo la protección especial del estado. En consecuencia, desde la fecha de la notificación, hasta la de recibir la constancia de personería jurídica, ninguno de aquellos trabajadores podrá ser despedido, trasladado o desmejorado en sus condiciones de trabajo, sin causa justa, calificada previamente por la autoridad respectiva.

### **Artículo 591**

Corresponde a la secretaria de trabajo y previsión social: 1o-autorizar, cumplir y hacer cumplir las leyes y reglamentos relativos al ramo; 2o-elaborar su reglamento interior; 3o-la dirección, estudio y despacho de todos los asuntos relacionados con el trabajo y la previsión social; 4o-el mejoramiento de las condiciones de vida y de trabajo de los obreros; 5o-la vigilancia e inspección respecto al debido cumplimiento de las disposiciones legales relativas a las relaciones obrero-patronales; 6o-la revisión y aprobación de los reglamentos de trabajo que presenten a su consideración las empresas del estado y las particulares; 7o-armonizar las relaciones entre patronos y trabajadores; 8-la fijación de salarios mínimos, sobre la base de los dictámenes que le presente la comisión nacional de salario mínimo. 9o-aprobar o improbar los estatutos de las organizaciones sociales; 10o-el estudio y solución de los problemas relacionados con la desocupación. 11o-la preparación de estadísticas de carácter laboral; 12o-proponer a la corte suprema de justicia, para su nombramiento, candidatos para jueces del trabajo; 13o-coordinar su acción en materia de previsión social, con el instituto hondureño de seguridad social, sujetándose a lo que dispongan las leyes y reglamentos correspondientes; **14 o el reconocimiento y registro de las asociaciones obreras y patronales**; 15o-la procuraduría del trabajo; 16o-contratos de trabajo de los extranjeros y de los nacionales en el extranjero; 17o-el fomento y vigilancia de sociedades cooperativas formadas por los trabajadores ; 18o-la investigación científica de los problemas de la clase trabajadora; 19o-congresos y reuniones nacionales internacionales de trabajo; y, 20o-los estudios e iniciativas relacionadas con el código de trabajo y sus reglamentos.

### **Artículo 594**

La dirección general del trabajo tendrá funciones puramente administrativas, como registro de las organizaciones sociales, registro de los contratos y convenciones de trabajo que se celebren en el país, servicios de estadísticas y colocaciones y todas las demás que le atribuyan este código y sus reglamentos.

### **Artículo 597**

La dirección general del trabajo es el órgano o autoridad de aplicación de las leyes del trabajo en primera instancia en lo administrativo y tendrá los siguientes cometidos y funciones específicas: a) propender, por todos los medios adecuados, a que exista la mayor armonía entre patronos y trabajadores; b) c) d) e)...

### **Artículo 606**

La sección de registro de organizaciones sociales tendrá las siguientes funciones; a) llevar al día el registro de organizaciones sociales de patronos y de trabajadores; b) estudiar los estatutos de los sindicatos que se presenten a inscripción así como sus modificaciones; c) archivar y custodiar los estatutos de las organizaciones sindicales y sus modificaciones y anotar las disoluciones o cancelaciones; d) informar a la dirección general del trabajo de toda gestión de inscripción de sindicatos y sobre los proyectos de estatutos o modificación de los mismos; y, e) producir los informes que le sean requeridos en asunto de su competencia.

### **Artículo 607**

Las solicitudes de inscripción de las organizaciones sociales se presentaran a la dirección general del trabajo, la que seguirá los tramites establecidos en el capitulo iv del titulo vi de este código.

#### **Artículo 614**

Corresponde a la inspección general de trabajo: i-vigilar el cumplimiento del código del trabajo, sus reglamentos, contratos colectivos y demás disposiciones obligatorias, que comprenden: a) inspección de centros de trabajo; b) inspección especial del trabajo familiar, del trabajo a domicilio y de las industrias; c) estudiar las actas de inspección para proponer las medidas procedentes; d) re inspección para averiguar si se han subsanado las deficiencias encontradas con anterioridad; y e) formular informes con los resultados de las inspecciones, proponiendo las medidas que sean necesarias para la protección general de los trabajadores; ii-auxiliar a las demás oficinas de la secretaría, practicando, por medio de sus inspectores, las diligencias que se le encomienden; iii-intervenir conciliatoriamente, por medio de sus inspectores, en los conflictos obrero-patronales; iv-vigilar la integración de las comisiones de seguridad; v-cooperar en la revisión de contratos colectivos, investigando para tal efecto las condiciones de vida de los trabajadores y la situación económica de las empresas; vi-personal residente en el distrito central y en los departamentos, que comprende : a) adscripción y movimiento de inspectores, visitadoras y demás personal; b) inspecciones y control de actividades; y, c) sanciones y menciones laudatorias. Vii-celebrar cada seis (6) meses reuniones publicas a las que asistirá obligatoriamente todo su personal, las trabajadoras sociales, enfermeras, visitadoras y demás cuerpos similares, con el objeto de estudiar los problemas comunes relacionados con el cumplimiento de la legislación social. Cada sindicato podrá enviar a estas reuniones un delegado con derecho a voz y voto; y, además, tendrá facultad de exigir la convocatoria a tales reuniones en la oportunidad arriba señalada.

#### **Artículo 617**

Los inspectores de trabajo y las visitadoras sociales son autoridades que tienen las obligaciones y facultades que se expresan a continuación: a) pueden revisar libros de contabilidad, de salarios, planillas, constancias de pago y cualesquiera otros documentos que eficazmente los ayuden a desempeñar su cometido. B).siempre que encuentren resistencia injustificada deben dar cuenta de lo sucedido al tribunal de trabajo que corresponda y, en casos especiales, en los que su acción deba ser inmediata, pueden requerir, bajo su responsabilidad, el auxilio de las autoridades o agentes de policía, con el único fin de que no se les impida o no se les creen dificultades en el cumplimiento de sus deberes; c) pueden examinar las condiciones higiénicas de los lugares de trabajo y las de seguridad personales que estos ofrezcan a los trabajadores, y, muy particularmente, deben velar porque se acaten todas las disposiciones en vigor sobre prevención de accidentes de trabajo y enfermedades profesionales d) deben intervenir en todas las dificultades y conflictos de trabajo de que tengan noticia, sea que se presenten entre trabajadores y patronos, solo entre aquellos o solo entre estos, a fin de prevenir su desarrollo o lograr su conciliación extrajudicial, si ya se han suscitado; e) deben colaborar en todo momento con las autoridades judiciales de trabajo y también coordinar su acción con los maestros al servicio del ministerio de educación publica, para lograr el desarrollo cultural y la educación social de los trabajadores; f) gozan de franquicia telegráfica cuando tengan que comunicarse, en casos urgentes y en asuntos propios de su cargo, con sus superiores, con las autoridades de policía o con los tribunales de trabajo. G) las actas que levanten y lo informes que rindan en materia de sus atribuciones tienen plena validez en tanto no se demuestre en forma evidente su inexactitud falsedad o parcialidad; y, h) los inspectores cuidarán especialmente de que se respeten todos aquellos preceptos cuyo cumplimiento garantice las buenas relaciones entre patronos y obrero asimismo vigilaran que se cumpla la prohibición sobre trabajo nocturno para menores, poniendo

en conocimiento de quien corresponda, las faltas que anoten para que sean castigados. Por último, están obligados a acatar las instrucciones relacionadas con el desempeño de su cargo, que reciban de sus superiores jerárquica.

#### **Artículo 618**

Los inspectores de trabajo para los efectos del artículo anterior podrán visitar, previa identificación, las empresas a toda hora del día y de la noche, siempre y cuando se haga necesario; podrán igualmente interrogar al personal de los establecimientos, sin la presencia del patrono ni de testigos y solicitar toda clase de documentos y registro a que obliga este código. Harán constar los inspectores en acta que al efecto levanten si se encontraren irregularidades en la empresa visitada. Esas actas las enviaran a la autoridad de que dependan, y esta impondrá, con vista de ellas, las sanciones correspondientes y ordenara 1: ejecución de las medidas que procedan conforme a la ley. Los inspectores de trabajo tendrán la obligación de practicar las investigaciones a que se refiere este artículo, siempre que verbalmente o por escrito reciban queja de alguna de la partes, respecto de violaciones de este código o de los reglamentos de trabajo, en el seno de la empresa de que se trate.

#### **Artículo 617**

Los inspectores de trabajo y las visitadoras sociales son autoridades que tienen las obligaciones y facultades que se expresan a continuación:

**B)** siempre que encuentren resistencia injustificada deben dar cuenta de lo sucedido al tribunal de trabajo que corresponda y, en casos especiales, en los que su acción deba ser inmediata, pueden requerir, bajo su responsabilidad, el auxilio de las autoridades o agentes de policía, con el único fin de que no se les impida o no se les creen dificultades en el cumplimiento de sus deberes;

#### **Artículo 618**

Los inspectores de trabajo para los efectos del artículo anterior podrán visitar, previa identificación, las empresas a toda hora del día y de la noche, siempre y cuando se haga necesario; podrán igualmente interrogar al personal de los establecimientos, sin la presencia del patrono ni de testigos y solicitar toda clase de documentos y registro a que obliga este código. Harán constar los inspectores en acta que al efecto levanten si se encontraren irregularidades en la empresa visitada. Esas actas las enviaran a la autoridad de que dependan, y esta impondrá, con vista de ellas, las sanciones correspondientes y ordenara 1: ejecución de las medidas que procedan conforme a la ley. Los inspectores de trabajo tendrán la obligación de practicar las investigaciones a que se refiere este artículo, siempre que verbalmente o por escrito reciban queja de alguna de la partes, respecto de violaciones de este código o de los reglamentos de trabajo, en el seno de la empresa de que se trate

#### **Artículo 621**

Contra las decisiones imponiendo multas, los interesados podrán interponer el recurso de reposición ante la inspección general de trabajo, y el de apelación ante el ministerio de trabajo y previsión social. Los recursos de reposición y de apelación se interpondrán y sustanciaran dentro de la plazos y en la forma establecida en el código de procedimientos administrados, otorgando se en su caso el término de la distancia.

### **Artículo 625**

Se sanciona con multas de cincuenta hasta cinco mil lempitas (l. 50 hasta 5,000), de acuerdo con las circunstancias particulares del caso, su reiteración y capacidad económica de la empresa infractora, las siguientes infracciones;

a) La desobediencia a las disposiciones impartidas por los inspectores dentro del límite de sus atribuciones legales.

b) la obstrucción del cumplimiento de los deberes que legalmente que corresponden a los inspectores de trabajo.

c) la agresión física moral hacia la persona de los inspectores del trabajo.

d) la violación, por parte de los patronos, de cualquiera de las garantías mínimas que establece el código que no tengan sanción pecuniaria especial.

Estas sanciones se entienden sin perjuicio de cualquier acción, penal, civil o laboral que corresponda conforme la justicia ordinaria.

Las multas las impone el inspector general de trabajo, tanto a la persona directamente responsable de la infracción como al patrono en cuya empresa, industria, negocio o establecimiento, se hubiera cometido la falta, a no ser que este demostrara su desconocimiento o no participación en la misma, si el culpable fuera una compañía, sociedad o institución pública o privada, las penas se aplicaran contra quien figure como patrono, director gerente, o jefe de empresa, establecimiento, negocio o lugar donde el trabajo se preste, pero la respectiva personería jurídica, quedara obligada solidariamente con estos a cubrir toda clase de responsabilidades de orden pecuniario.

### **Artículo 628**

Toda persona puede dar cuenta a los inspectores o a las visitadoras sociales de cualquier infracción que cometan patronos o trabajadores en contra de las leyes de trabajo o de previsión social.

## **CONSTITUCION DE LA REPUBLICA HONDUREÑA:**

**ARTICULO 16.-** Todos los tratados internacionales deben ser aprobados por el Congreso Nacional antes de su ratificación por el Poder Ejecutivo.

Los tratados internacionales celebrados por Honduras con otros estados, una vez que entran en vigor, forman parte del derecho interno.

**ARTICULO 18.-** En caso de conflicto entre el tratado o convención y la Ley prevalecerá el primero.

### **Artículo 128 numeral 10**

10. Se reconoce el derecho de los trabajadores al pago del séptimo día; los trabajadores permanentes recibirán, además, el pago del decimotercer mes en concepto de aguinaldo. La Ley regulará las modalidades y forma de aplicación de estas disposiciones.

**ARTÍCULO 138.-** Con el fin de hacer efectivas las garantías y leyes laborales, el Estado vigilará e inspeccionará las empresas, imponiendo en su caso las sanciones que establezca la Ley.

### **El Decreto 112 del 28 de octubre de 1982 SEPTIMO DIA:**

**Artículo 2.** El trabajador gozará de un día de descanso, preferentemente el domingo, por cada 6 días de trabajo. El día de descanso o séptimo día será remunerado.

**Artículo 3.** El pago del Séptimo Día y Décimo Tercer Mes integra el concepto de salario para todos los efectos legales.

**Gaceta No. 32,358- Decreto No.230-2010 Ley del Empleo Temporal.**

**Bono educativo:** tabla emitida por la misma secretaria de trabajo se hace anualmente.