

International Tribunal for Trade Union Freedom of Association

On this first day of May 2011 in Mexico City, **JAMES D. COCKCROFT, LAURA MORA CABELLO DE ALBA, AMPARO MERINO SEGOVIA, LUIS GUILLERMO PÉREZ, LYDIA GUEVARA RAMÍREZ, KJELD JAKOBSEN, LUIZ SALVADOR, HUGO BARRETTO GHIONE, DEAN HUBBARD, HORACIO MEGUIRA, MARÍA ESTRELLA ZÚÑIGA POBLETE, HUGO LEAL NERI, ROSARIO IBARRA DE PIEDRA, MIGUEL ÁNGEL GRANADOS CHAPA, RAÚL VERA LÓPEZ, MIGUEL CONCHA MALO, ANA COLCHERO, ALFREDO SÁNCHEZ ALVARADO, OSCAR ALZAGA, ENRIQUE LARIOS Y OCTAVIO LÓYZAGA**, members of the **International Tribunal for Trade Union Freedom of Association**, are convened to make a determination regarding accusations and complaints made against the State of Mexico for violating the right to the freedom of association of workers in this country, and

RESOLVE THAT:

1. The International Tribunal for Trade Union Freedom of Association (*Tribunal Internacional de Libertad Sindical*, or “TILS”) is an independent entity comprised of labor experts, human rights defenders, and eminent personalities from diverse countries, including Mexico. This Tribunal is convened at the request of several national and international civil society organizations.
2. The Tribunal was constituted on September 30th, 2009, in Mexico City, with the commitment to safeguard the right to trade union freedom of association, in the understanding that the exercise of this right is part of the backbone of democracy, of the rights of citizens, of progress and of the global distribution of wealth.
3. The TILS issued its first resolution on May 1, 2010 (ANNEX VI), in which it concluded that “The Mexican government has committed gross negligence in its functions of promoting, safeguarding and protecting the right to freedom of association, and has gravely and systematically violated, by its own acts and by omission, the right of freedom of association through anti union practices, thereby undermining the founding autonomy of Collective Labor Law which represents fundamental human right of freedom of association.” The Tribunal demanded that the government respect and make third parties, private, national and transnational corporations respect and apply Article 123 of the Constitution, as well as the different international instruments Mexico has signed and ratified.
4. The TILS presented its findings to different national bodies, such as the Supreme Court of Justice of the Nation (“SCJN”), whose Chief Justice at the time, Guillermo Ortiz Mayagoitia, met on June 10th, 2010 with a Commission of the TILS acting as *Amicus Curiae*; the Senate, the House of Representatives, as well as the Secretariat of Labor and Social Welfare (“STPS”), the Federal Board of Conciliation and Arbitration (“JFCA”), the Local Board of Conciliation and

Arbitration of the Federal District (“JLCADF”) and the Human Rights Commission of the Federal District. The Resolution was delivered as well to several international organizations, such as the International Labour Organization (“ILO”) on June 7, 2010. The Resolution was also presented to several different international union organizations, such as at the Global Congress of the International Transport Workers’ Federation, in addition to having had broad public dissemination and having been analyzed in other specialized international fora.

On June 7, 2010, the Resolution was presented to authorities of the International Labour Organization in Geneva, Switzerland.

5. In order to review the current legal and social situation of the cases which gave rise to the May 1, 2010 Resolution, and to also analyse more recent cases, the TILS opened a new session to receive complaints and evidence pertaining to events subsequent to the prior Resolution. On January 27, 2011, the TILS convened workers to file accusations for violations of their fundamental labor rights, specifically their trade union freedom of association.

6. The TILS convened in full from April 28 to May 1, 2011 in Mexico City to receive and analyze these cases and the information on which the present Resolution is based.

7. The TILS convened a Public Hearing on April 29th, 2011 in the Old School of Medicine, at 33 República de Brasil St., Colonia Centro in Mexico City. Invitations were sent on April 20, 2011, to the Secretariat of Labor and Social Welfare, the Federal Board of Conciliation and Arbitration, and the Local Board of Conciliation and Arbitration of the Federal District, as well as to the House of Representatives and the Senate.

8. During the April 29, 2011 Public Hearing, the TILS formally received the General Complaint (ANNEX I) and heard testimony and documented complaints made by different unions and workers, whose right to trade union freedom of association has been increasingly violated throughout 2009 and 2010. This Tribunal also obtained documentation of systematic violations of the right to trade union freedom of association from other sources (ANNEX III). In particular, the Tribunal received cases from thirteen worker organizations (ANNEX IV), each of which is summarized below.

A) Updates on cases presented in the previous session of this Tribunal (May 1, 2010)

I. MEXICAN UNION OF ELECTRICAL WORKERS (*Sindicato Mexicano de Electricistas, SME*)

a) On July 5th, 2010, the Supreme Court of Justice of the Nation (SCJN) issued a decision in an *amparo* application¹ filed by the SME, declaring that the Executive Decree [which extinguished the electrical power company Luz y Fuerza del Centro]² was constitutional. This Decree had been rejected not only by the union, but also by broad sectors of civil society and by this Tribunal, as was made clear to the Chief Justice of the Supreme Court.

b) 93 SME members (80 in the Zócalo in Mexico City and 13 in Toluca) began a hunger strike on April 23, 2010, to demand their reinstatement and full restitution of their labor and union rights. Due to the declining health of the workers, the Federal Government promised to begin a dialogue with the union in order to find a solution to the conflict and the strike was stopped after 90 days.

c) The first result of the talks, and the only one to date, was the restitution of the electoral process for half of the union's leadership in November 2010, in which 27,000 workers voted freely and by secret ballot in an exemplary display of union transparency, and 90% of the voting members ratified the mandate of the current leadership. The Federal Government officially issued a legal acknowledgment or *toma de nota*³ of the result of the election on December 14, 2010.

d) To date, the lawsuit filed by SME workers for unlawful dismissal continues in its first procedural stage. The JFCA has issued decisions which have delayed the process and therefore has violated the constitutional guarantee [of speedy justice]⁴ enshrined in Article 17 of the Constitution.

e) By contrast, on August 30, 2010, the JFCA issued its decision regarding a lawsuit filed on October 3, 2009, by the Assets Administration and Transfer Service ("SAE"), requesting the termination of the individual and collective employment relationships between the SME and the electric power company Luz

¹ TRANSLATORS' NOTE: "Amparo" is an application for constitutional protection whose rules and procedures are governed by the Mexican Constitution and the Amparo Law. An *amparo* application can be filed against acts of authority which allegedly violate civil liberties, including resolutions of the conciliation and arbitration boards where those resolutions are alleged to have breached the due process guarantees contained in the Constitution (it being, in effect, an additional level of appeal). Jurisdiction over *amparo* applications lies with the federal court system.

² Translators' clarification.

³ TRANSLATORS' NOTE: In Spanish, the phrase "toma de nota" is used. *Toma de nota*, as presently practiced, is a bureaucratic requirement not established in the Constitution or federal labor law whereby, after the duly elected leadership of a union communicates the results of the union's internal elections to the General Directorate of Registry of Associations (*Dirección General de Registro de Asociaciones*, "DGRA") of the STPS, the DGRA reserves to itself the power and discretion whether to recognize such leadership as the representative of the workers. If such acknowledgment is denied, a duly elected leadership can be effectively prohibited from functioning, as it is deprived of the ability to legally represent the union, make demands, engage in negotiations or sign collective agreements, and carry out many other day-to-day legal acts on behalf of the union. In particular, without the *toma de nota*, the elected leadership is unable to prove its standing as representative of the union and its members before the conciliation and arbitration boards and in other legal proceedings. We generally translate *toma de nota* as "legal acknowledgment" of the results of an internal union election.

⁴ Translators' clarification.

y Fuerza del Centro. The Board granted the request and determined compensation for those who had not accepted voluntary redundancy settlements. Also, the decision stated that the substitution of employers⁵ did not operate vis-à-vis the Federal Electricity Commission (“CFE”) with respect to the former workers of Luz y Fuerza del Centro.

f) The Mexican government also embarked on a media campaign against the union, plus the political criminalization of acts of protest conducted by SME members. For example, in May 2010 workers staging a sit-in at the sub stations of Cuernavaca, Morelos, were forcibly removed by the federal police and arrest warrants were issued against two union leaders. In June 2010, José Juan Rosales Pérez, in charge of a sit-in camp on the corner of Insurgentes and Reforma in Mexico City, was assassinated. On June 28, 2010, AFI⁶ officers detained Marco Antonio García Barrera, under Secretary of the Interior of the Cuernavaca division. On October 28, 2010, Miguel Ángel Márquez Ríos, pro Secretary of the Central Committee of the SME was detained and remains in prison. Lastly, on April 11, 2010, workers were blamed for the violence that broke out during a protest and eleven workers were arrested and remain in prison.

g) To this day SME bank accounts remain frozen.

II. NATIONAL UNION OF MINE, METAL, STEEL AND ALLIED WORKERS OF THE MEXICAN REPUBLIC (*Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana, SNTMMSSRM*):

a) On two occasions the legal acknowledgment of the election of Napoleón Gómez Urrutia, the democratically elected General Secretary of the SNTMMSSRM, has been denied. To date, this legal acknowledgment has not been issued.

b) Eight arrest warrants have been issued against union leader Napoleón Gómez Urrutia, who has been forced to live in exile in Canada. Seven of these warrants were found to be without merit by the corresponding courts, and one is being reviewed at the moment.

⁵ TRANSLATORS’ NOTE: The Mexican labor law term “sustitución patronal” (loosely translated as “employer substitution”), contained in Article 41 of the Federal Labor Law, is largely equivalent to the successor rights regimes in common law jurisdictions. Article 41 covers a situation where the assets of one employer (the substituted or predecessor employer) are transferred to a new employer (the substitute or successor employer). The workers of the predecessor employer become the workers of the successor employer, and the successor is required to observe the terms of the individual employment contracts or the collective agreement in place at the time of the substitution. The successor is further required not to alter the terms and conditions of employment of the predecessor’s employees for a period of six months.

⁶ TRANSLATORS’ NOTE: “AFI” is the Spanish acronym for “*Agencia Federal de Investigaciones*” (Federal Agency of Investigations), an agency similar to the U.S. Federal Bureau of Investigations (FBI).

c) After the prolonged strike at the Cananea mine in Sonora, the army took over the mine on June 6, 2010, and violently removed the strikers. Many were injured and detained.

d) To this day, the army maintains control of the mine, in addition to sustaining the permanent harassment by paramilitaries of the city and its inhabitants.

e) At the same time, the government violently removed family members of the miners who died due to an explosion in the Pasta de Conchos mine, who had staged a sit-in to demand justice and denounce the poor working conditions that led to the deaths on February 19, 2006.

f) As part of the repression exercised by the government against this union, in May 2010 federal police beat Mario García Ortiz, a special SNTMMSSRM delegate, in Lázaro Cárdenas, Michoacán. In September 2010, the company Altos Hornos de México, in Monclova, dismissed the recently elected union leader of that union section and launched a campaign to persecute and harass all the members of the local committee.

g) In August 2010, the union was granted a provisional suspension of the proceeding to determine the legality of the strike, allowing the workers to continue their strike action. Regardless, the Federal Government refused to call off the army.

h) In June 2010, dozens of union members were dismissed from the plants of Altos Hornos in Monclova (Coahuila).

i) In November 2010, the STPS registered, with unusual speed, the Napoleón Gómez Sada Union. A few days later, the leader of this union sued for the right to administer several collective bargaining agreements, and votes to resolve the representation disputes⁷ were held on December 3, 2010, in a context of harassment and support to company unions. The SNTMMSSRM lost the local votes but challenged the results before the courts. A decision is still pending.

j) In December 2010, an impeachment suit⁸ was filed against the Secretary of Labor and Social Welfare, Javier Lozano, for his constant persecution of the

⁷ TRANSLATORS' NOTE: In Spanish, the term "recuento" is used here. A "recuento" is a vote held pursuant to Article 931 of the Federal Labor Law to be used as evidence in a labor proceeding. Pursuant to Jurisprudence 150/2008 of the Supreme Court of Justice of the Nation, the conciliation and arbitration boards must order and guarantee that workers' vote be personal, free, direct and secret. Generally speaking, a *recuento* is used to resolve a dispute as to which of two or more contending trade unions is the workers' duly elected bargaining agent, with the right to administer the collective bargaining agreement. In this context, we have translated *recuento* as "vote to resolve a representation dispute."

As a means of evidence, a *recuento* can also be used in a labor proceeding to determine whether it is the will of the workers to remain in strike position.

⁸ TRANSLATORS' NOTE: The term used here is "juicio político."

leadership of the SNTMMSSRM and for putting company interests above those of the workers, thereby violating the union's freedom of association.

III. WORKERS OF SECTION 9 OF THE NATIONAL UNION OF EDUCATION WORKERS (*Trabajadores de la Sección 9 del Sindicato Nacional de Trabajadores de la Educación, SNTE*):

a) In mid-2008 an *amparo* application was lodged against a decision made by the Federal Conciliation and Arbitration Tribunal ("TFCA"), which acknowledged the Executive Committee of a union section without following the corresponding union constitution procedures.

b) On June 17, 2009, the Third Collegiate Court for Labor Matters of the First Circuit granted a constitutional protection order in the *amparo* proceedings against the TFCA decision, forcing it to be changed.

c) The TFCA complied with the constitutional protection order, changed the decision and revoked the legal acknowledgment of the election of the Executive Committee. The Executive Committee then lodged direct and indirect *amparo* applications against the new TFCA decision.

d) On August 6, 2010, the Third Collegiate Court for Labor Matters of the First Circuit denied the Committee's *amparo* application, which had formerly been recognized by the labor authorities, thereby officially denying the Committee's legal acknowledgment.

e) Nonetheless, the Secretariat of Education and the Educational Services Administration of the Federal District maintained the Executive Committee's privileges and retained their staff: 400 commissioners at a cost to the treasury of more than two hundred million Mexican Pesos. In addition, the State Workers' Social Security and Social Services Institute ("ISSSTE") provided discretionary loans and other benefits that belong to the legitimate teachers of Section 9.

f) While the *amparo* application against the legal acknowledgment granted by the TFCA worked its way through the courts, the teachers of Section 9 filed a labor lawsuit against that authority, seeking that the elections be annulled and that a re-run be ordered. To date, the union has been waiting three years for a decision.

g) In August and September 2010, three teachers, members of the democratic Executive Committee, were physically assaulted as they fulfilled their daily union responsibilities.

h) The violation of the right to trade union freedom of association of Section 9 of the SNTE, by means which include violent repression, has also affected Sections 22 in Oaxaca and 7 in Chiapas, as well as others. For example, on February 15,

2011 during a demonstration against Felipe Calderon and the poor educational conditions in the country, teachers were violently repressed by federal and state police, resulting in several injuries and five arrests. On March 14, 2010, the teacher Carlos René Román Salazar was disappeared. His whereabouts are still unknown.

IV. NATIONAL UNION OF TECHNICAL AND PROFESSIONAL OIL WORKERS (*Unión Nacional de Técnicos y Profesionistas Petroleros, UNTyPP*):

a) A year and four months after the union being registered, the company Petróleos Mexicanos (“PEMEX”) continues to fire and threaten union leaders and members, ignoring their representatives and refusing to negotiate.

b) Francisco Ríos Piñeyro, Organizing Secretary of the National Executive Committee (“CEN”), was arbitrarily moved from his position in Tamaulipas to Monclova (Coahuila).

c) Moisés Flores Salmerón, after having been democratically elected as General Secretary of Section 1 of the Eastern Region of the State of Veracruz, was forced into retirement.

d) Twenty-six workers, dismissed without just cause and violently removed from their places of work on November 14, 2008, have not yet been reinstated.

e) PEMEX has ignored requests from thousands of union members from 94 countries demanding that the UNTyPP’s right to organize be respected and that dismissed workers be reinstated. It has also ignored requests from the House of Representatives, which reached a bipartisan agreement to request that the workers be reinstated.

f) Workers under investigation have been denied their legitimate right to union representation by their CEN and leaves for union business have been denied.

g) Eight months after union activist Silvia Ramos was reinstated to her position at PEMEX in compliance with a court decision, she was subjected to a proceeding to disqualify her from the performance of her functions. This proceeding was initiated by the Internal Affairs department of the SEMARNAT,⁹ a body where she worked during her reinstatement trial. The disqualification proceeding was characterized by numerous violations of due process, as well as violations of the guarantees of legality and legal security and certainty protected by Articles 14 and 16 of the Constitution, and resulted in her being unjustly dismissed again after her reinstatement.

⁹ TRANSLATORS’ NOTE: SEMARNAT is the Spanish acronym for “Secretaría del Medio Ambiente y Recursos Naturales” (Secretariat of the Environment and Natural Resources), a federal secretariat.

V. SECTION 187 OF THE TELEPHONE OPERATORS UNION OF THE MEXICAN REPUBLIC (*Sección 187 del Sindicato de Telefonistas de la República Mexicana, STRM*):

a) The Telephone Operators Union of the Mexican Republic (“STRM”), which represents workers at Atento call center, requested a vote to resolve a representation dispute and attempt to win the right to administer the collective bargaining agreement. The vote was ordered for July 2, 2010, at 5:00 pm.

b) The STRM was told by the Local Conciliation and Arbitration Board of the Federal District (“JLCADF”) that two more unions had previously filed for the right to administer the collective bargaining agreement and that these unions had already been notified.

c) The vote to resolve the representation dispute took place under the watch of more than 150 thugs brought in by Atento managers and confidential employees, and by the [incumbent]¹⁰ Progressive Union of Communications and Transportation Workers of the Mexican Republic (“SPTCTRM”). The JLCADF and the Federal District authorities did nothing to prevent their presence. In the days leading up to the vote, the same group of thugs had shown up at the company facilities to threaten workers of Section 187 and members of the STRM National Executive Committee.

d) The vote did not take place as per the conditions established by Jurisprudence 150/2008 [of the Supreme Court of Justice of the Nation],¹¹ namely that workers vote freely and in secret. The list of eligible voters was neither credible nor faithful. Workers were selected to vote and transported to the JLCADF in buses by the company and the SPTCTRM. Their identification cards were taken away to make the threat of being dismissed clear.

e) The JLCADF took six months to make a decision regarding the results of the vote. In spite of the obvious violations and irregularities that took place during the voting process, the SPTCTRM was declared the winner.

f) An *amparo* application was filed against the JLCADF decision, and a request submitted to repeat the vote under conditions that guarantee the safety and physical integrity of the workers, so that they can vote freely and in secret.

VI. UNION OF WORKERS OF COMMERCIAL ESTABLISHMENTS, OFFICES, STORES AND SIMILAR AND RELATED BUSINESSES OF THE FEDERAL DISTRICT (*Sindicato de Trabajadores de Casas Comerciales, Oficinas y Expendios, Similares y Conexos del Distrito Federal, STRACC*):

¹⁰ Translators’ clarification.

¹¹ Translators’ clarification.

a) In a climate of violence at the Belem gas station in Mexico City, as the company brought in thugs during a strike, the JLCADF called the workers to vote on whether or not they wanted to maintain such strike. Only those included in a company list of alleged workers were allowed to vote, to the exclusion of the members of the union. The vote took place with no adherence to Jurisprudence 150/2008. The alleged “workers” voted not to strike and the strike was declared non-existent.

b) STRACC filed an *amparo* application against the decision, which was granted. In July 2010 the JLCADF declared that the strike was legal, but ordered that the strike symbols be taken down and that work be resumed. This allowed the employer to hire scabs. The standing of STRACC to make representations was rejected and the real workers were forcibly removed from the premises. A year after the strike, workers are still resisting and continue the legal proceedings against what happened.

c) In the meantime, gas station attendants from Servicio Bonar S. A. de C. V., also affiliated with STRACC, filed for the right to administer the collective bargaining agreement currently held by the National Union of Plastics, Commercial and Allied Workers of the Mexican Republic, that represents workers at company headquarters and at the subcontracting company Teucro Administración de Personal, S.A. de C.V. Once the request for bargaining rights was filed with the JLCADF, the company, in collusion with the existing union, harassed workers and dismissed 23 of those who refused to sign blank resignation forms. The workers were removed from the building, with assistance from public security forces and a civic judge.

d) 12 lawyers and 130 alleged “workers” attended the hearing held to carry out the vote pertaining to Servicio Bonar S. A. de C.V. Only 15 people work at this gas station. Notwithstanding this fact, the vote did not take place because the JLCADF deemed that Servicio Bonar, S. A. de C.V. did not in fact employ any workers. It found that the workers who perform their services in that workplace were from Teucro Administración de Personal, S. A. de C.V.

VII. POTOSI GLASS INDUSTRY WORKERS UNION (*Sindicato Único de Trabajadores de la Empresa Industria Vidriera del Potosí*, SUTEIVP)

a) A year after the TILS’ first session, the dispute caused by the company’s anti-union conduct, and collusion with federal authorities, is ongoing.

b) The company has refused to comply with the decision to reinstate Fortino Salazar Leija, member of SUTEIVP.

c) SUTEIVP made a formal complaint to the ILO’s Freedom of Association

Committee (Case No. 2774). The proceedings have been hindered by the Federal Government which has not presented the corresponding report, necessary for the case to be discussed in the meetings of the Committee.

d) Fired workers have been blacklisted, which has made it impossible for them to find work.

B) New cases during this period:

VIII. UNITED HONDA WORKERS' UNION OF MEXICO (*Sindicato de Trabajadores Unidos de Honda de México, STUHM*):

a) Automaker Honda de México S. A., located in El Salto, Jalisco, has a collective agreement with the Union of Employees and Workers of the Structural, Assembly and Manufacturing Industry of the State of Jalisco. This contract affords only the minimum benefits required by law and has not been revised in many years, regardless of the fact that the company is financially able to do so.

b) The union holding the collective agreement does not protect or defend its members. The union does not involve them when revising salaries and contracts, nor do the workers participate in the union's daily functions, leadership elections or decision-making processes. This union has worked with the company to keep workers under precarious working conditions, has made unilateral changes regarding days off, has presided over a lack of safety precautions and poor hygiene, and does not enforce respect of worker seniority, among other violations of workers' human rights.

c) As a result of the above-mentioned poor working conditions, in February 2010, Honda workers organized and created the United Honda Workers' Union of Mexico ("STUHM"). This provoked immediate retaliation by the company, including the dismissal of union leaders, and constant surveillance of workers in and outside the plant.

d) The STUHM's request for registration at the STPS was denied on August 4, 2010, with the argument that the existence of the company had not been proven and that this was not a case within the jurisdiction of the federal authorities, despite the filing of documentary evidence proving otherwise.

e) The workers filed an *amparo* application on August 27, 2010, requesting full compliance with the law.

f) On January 23, 2011, the Second District Court for Labor Matters of the Federal District found that the union had fulfilled all the requirements required by law and ordered the General Directorate of Registry of Associations of the STPS

to grant union registration.

g) Notwithstanding the court's decision, the DGRA petitioned illegally for a review process, without being eligible to do so, as union registration is an administrative procedure which causes no prejudice to the DGRA.

h) To this day, the STUHM has not received registration—the procedure having been blocked by the review request filed by the DGRA.

i) Since the union's founding, the company has used a series of repressive acts against the organized workers, such as dismissing five leaders and making threats to prevent workers from joining the union. Violence by police has also been used at the worksites.

IX. INDEPENDENT UNION OF RESEARCHERS OF THE NATIONAL RESEARCH INSTITUTE OF FORESTRY, AGRICULTURE AND LIVESTOCK (*Sindicato Independiente de Investigadores del Instituto Nacional de Investigadores Forestales, Agrícolas y Pecuarios, SIIINIFAP*):

a) In February 2009 a group of researchers from the National Research Institute of Forestry, Agriculture and Livestock ("INIFAP") created the SIIINIFAP after losing a series of benefits from the Institute's authorities.

b) Registration of the union at the STPS and the Federal Conciliation and Arbitration Tribunal, was delayed by a discussion as to whether these workers fell under Paragraph "A" (governing workers in the private sector and public decentralized bodies) or Paragraph "B" (pertaining to workers in the public sector) of Article 123 of the Constitution.

c) On April 14, 2010 the Third Collegiate Court for Labor Matters of the First Circuit ruled that since the Institute is a public decentralized body, the union could be registered by the STPS. The STPS issued the legal acknowledgment of the union's internal election results on July 15, 2010.

d) On February 1, 2011, the union requested to the JFCA that the Institute be required to engage in collective bargaining. The Institute refused to appear, leaving the workers unable to bargain their work conditions.

e) Simultaneously, the JFCA issued a decision contrary to law ruling that collective bargaining would be inappropriate. The argument used was that the researchers' general conditions of employment are those applicable to workers of the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food ("SAGARPA"). This decision is being challenged by the SIIINIFAP and legal proceedings before the Collegiate Courts are still pending.

f) As a reprisal, 300 young researchers have not had their contracts renewed and researchers from Campo Coaxtla have not been allowed to enter their worksites.

X. WORKERS FROM THE MEXICAN INSTITUTE OF SOCIAL SECURITY (*Trabajadores del Instituto Mexicano del Seguro Social, IMSS*)

a) The Constitution of the National Union of Social Security Workers (“SNTSS”) bans the re-election of union leaders, specifically the General Secretary. It also stipulates that its leaders must be elected in an assembly convened for that purpose and establishes rules in order to modify by-laws. Ignoring this, the General Secretary convened an assembly before his mandate ended, in which his term was extended for another 6 years (2012-2018), giving him the power to nominate all other leaders. The assembly had no power to make these decisions.

b) Regardless of these irregularities, Valdemar Gutiérrez, Secretary General, requested the legal acknowledgment of his new mandate and the power to designate the members of the National Executive Committee and National Union Commissions, from the STPS.

c) On November 3, 2010, the DGRA issued the legal acknowledgment for the General Secretary’s mandate from October 16, 2012 to October 15, 2018 (before he had even concluded his current term), indicating that the Ordinary Assembly held on October 11, 2010 had acted legally. The DGRA also granted him a legal acknowledgment allowing him to designate, on a sole and unprecedented occasion, the other members of the National Executive Committee and the national union commissions beginning October 16, 2012.

XI. SOLE UNION OF WORKERS OF THE AUTONOMOUS UNIVERSITY OF MEXICO CITY (*Sindicato Único de Trabajadores de la Universidad Autónoma de la Ciudad de México, SUTUACM*):

a) The Executive Committee of the SUTUACM was elected by a free and secret ballot election in November 2009, using a voter list that was certified by union members. The election took place according to union by-laws and with 80% voter participation. In spite of this, the JLCADF unjustly delayed issuing the legal acknowledgment.

b) Since September 2010, the administration of the Autonomous University of Mexico City (“UACM”) has deducted union dues at source, without depositing them in the SUTUACM bank account. It has also refused to disclose the amount retained, in what constitutes an improper use of funds that do not belong to it, which blocks union actions and programs for lack of funds.

c) The UACM has not paid social security quotas to the ISSSTE, thus failing to

comply with the legislation in force, arguing that the University's finance commission does not have a copy of the union leadership's legal acknowledgment. The UACM only pays according to the base salary, without taking benefits earned into consideration. It is paying less than a quarter of what it should, an irregularity which, if maintained, could have a negative impact on workers' benefits, especially their pension funds. There was also an agreement in 2009 to gradually increase salaries, something the UACM administration has not done.

d) During salary negotiations in 2010, the UACM Administration, supported by the JLCADF, tried to break negotiations by using scab labor and offering individual salary hikes. In order to resolve the dispute the President of the JLCADF guaranteed that workers would receive a salary increase within a week – which they did – the lowest hike granted in the country that year. To date, union dues are still being withheld and union leaders and members participating in protests are still being threatened with being fired.

e) University authorities rejected the union's proposal to establish joint commissions for dispute resolution.

f) The University remains in constant control, through the use and support of pressure groups and provocateurs during union assemblies and decision-making entities.

XII. HOSPITAL ESPAÑOL WORKERS' UNION (*Sindicato de Trabajadores del Hospital Español*):

a) On November 19, 2010, judges from the Fifteenth Collegiate Court for Labor Matters refused to recognize the results of a vote to resolve a representation dispute, held in the premises of the JLCADF on April 30, 2008. Through this vote, the Hospital Español Workers' Union sought to win the exclusive right to administer the collective agreement, in order to end the more than 23-year imposition of a sweetheart union belonging to the Confederation of Workers and Farm Workers ("CTC"). The Second Chamber of the Supreme Court of Justice of the Nation refused to hear the case and fined the union lawyers \$25,424.00 Mexican Pesos for insisting in the recognition of the results of the vote.

b) This case is preceded by another from 1988, when an independent union was dissolved and the CTC was reaffirmed in its right to the collective contract with the support of hundreds of thugs. A later ruling forced "shared administration" of the collective bargaining agreement despite the fact that the independent union won a majority in the vote held to resolve that representation dispute.

XIII. INDEPENDENT UNION OF MAQUILA WORKERS OF THE STATE OF

BAJA CALIFORNIA SUR (*Sindicato Independiente de Trabajadores y Trabajadoras de la Industria Maquiladora en el Estado de Baja California Sur, SINTTIM*):

a) Avon Cosmetics workers have been denied a formal labor relationship with their employer, excluding them from certain labor rights including the right to associate freely and bargain collectively. Until November 2004, they had social security, for they enjoyed certain rights such as medical attention, sick leave, a pension and retirement benefits. However, they never had other benefits established by the Federal Labor Law, including an end-of-year bonus, vacation pay and profit sharing. As a result, 28 workers filed a labor lawsuit in February 2005 before Special Board No. 58 of the JFCA. The JFCA found against the workers, issuing a decision in December 2010 which was not notified to the workers until March 2011. The decision absolved the company. The workers have recently filed an *amparo* application against this decision before the Twenty-sixth Collegiate Court for Labor Matters in the city of La Paz.

b) Hundreds of workers who process giant squid for re-export by transnational corporations HANJIN MÉXICO and HANJIN TRADING, BRUMAR DE SAN BRUNO and PESQUERA LONGIN were unjustly dismissed in 2002, 2006 and 2010 for their involvement in organizing the Independent Union of Maquila Workers of the State of Baja California Sur (SINTTIM) to defend their labor rights. Labor rights violations included: nightshifts from 10 pm to beyond 10 am (dependant on the arrival of the fishing boats); salary reductions from 0.75 pesos per kilo before 2002, to 0.30 pesos currently; unpaid over-time; irregular and unstable social security benefits, given that the employer does not pay for the entirety of the social security premiums; as well as aggression and threats to workers by company management. Lastly, state and federal labor inspections act in an irregular fashion and therefore encourage impunity for the foreign companies.

9. Events which violate the right to trade union freedom of association are taking place in a national context marked by a deep erosion of the rule of law in general. Like never before, there is an increasing level of illegality and violence in the country, especially in connection with the so-called war against drug trafficking, whose death toll has reached almost 40,000 people. Against this backdrop, violence and criminalization by the State against legitimate worker organizations has increased at an alarming rate. At the same time, workers are in dire straits due to low salaries and the loss of formal employment in the past 30 years, as well as labor flexibility, outsourcing, and precarious employment—all of which undermines worker organizations and collective bargaining. In particular, the rate of unemployed and uneducated youth has reached 7 million people, and almost 5 million children are forced to work.

In this context, Congress is debating two legislative reform bills which, if passed, would further weaken the future of workers and society:

a) The labor reform bill tabled by the PRI¹² and PAN¹³ political parties, aspires to *legalize* what today is illegal. It would increase precarious employment, allow employers to freely hire and fire workers, and make it easier for employers to resort to abusive outsourcing practices, among other measures which, in addition to diminishing job security, would undermine unions by taking away job stability and posing obstacles to collective bargaining.

b) The bill to amend the National Security Law aspires to *legalize* State violence against social, political and union struggles as the Federal Executive sees fit. It attempts to provide the President of Mexico with unlimited power to use the armed forces in any type of social or political conflict, which would not only alter the rule of law, but also reinforce the militarization of the country.

10. On **April 30th, 2011**, the Tribunal closed the period for the reception of complaints and evidence and turned over the file to the full Tribunal in order to review the material at hand and issue the present Resolution.

CONSIDERING THAT:

FIRST. The legitimacy of the International Tribunal for Trade Union Freedom of Association is derived from **our commitment as global civil society actors to democratically reappropriate labor justice**; from our interest in making visible what has deliberately been made invisible and exposing the reality of things by vindicating the truth and defending the rights of the working class. The exercise of the right of trade union freedom of association is the backbone of democracy, human rights, progress **and the equitable distribution of global wealth for those who make a living from their labor; therefore, it is essential to recuperate it in order to dignify the lives of workers.**

SECOND. This Tribunal has met to hear complaints made against the Mexican Government in its role as guardian and protector of Labor Law, and complaints of violations of the right to trade union freedom of association in all its forms.

THIRD. Trade union freedom of association is as fundamental a right in a democratic society as the right to vote or the right to express oneself freely. Trade union freedom of association is an essential instrument that generates the conditions for an equitable and fair distribution of wealth. Its loss implies a threat

¹² TRANSLATORS' NOTE: "PRI" is the Spanish acronym for "Partido Revolucionario Institucional" (Institutional Revolutionary Party).

¹³ TRANSLATORS' NOTE: "PAN" is the Spanish acronym for "Partido Acción Nacional" (National Action Party).

and damages other citizen and worker guarantees.

FOURTH. All labor rights must be considered universal human rights. Trade union freedom of association, in particular, must be given the utmost protection and be shielded from all illegal actions. Governments are obligated to defend and protect these rights. Any act of omission that hinders their fulfillment or leads to violations by the State itself or by national or international third parties is a violation of the right to trade union freedom of association In any of its forms (ILO Convention No. 98).

The Mexican Government must adhere to international law and its own Constitution, whose Article 123 proclaims the right of the working class to ***“unite in the defense of its own interests by forming unions”***.

Trade union freedom of association is the pillar on which all other labor rights stand, constituting a collective tool for the construction of society. As such, it has proven to be a principle of social justice which serves as a counter-balance to the principle of private autonomy. It provides a legal solution to the violation of fundamental labor rights, whether collective or individual, without which it would be impossible to obtain all other rights.

Trade union freedom of association and, therefore, the rights that constitute it are absolutely inalienable and universal. They do not even depend on a sovereign act of ratification of an international norm by the State because they go beyond national sovereignty.

Consequently, unrestricted respect for trade union freedom of association, like any other human right, pertains not only to the nationals of one country, but to the international community, whose members have the legitimacy to safeguard and demand that States and private national and international corporations make that right fully effective for the benefit of workers, regardless of their nationality. When trade union rights are systematically violated, the legal, ethical and moral force of a **universal citizenry** must prevail to demand that the right to trade union of freedom of association be made effective. Its violation to the detriment of the working class in one country implies a violation to the detriment of all workers around the globe.

For these reasons, faced with the violation of the right to trade union freedom of association in Mexico, the national and international communities have the legitimacy to judge and rule on the repeated violations of this right by the public authorities and by private national and international corporations in this country.

In these circumstances, workers must make their voices heard before civil society and the international community through civil entities such as this International Tribunal for Trade Union Freedom of Association.

FIFTH. Taking into account the evidence offered by the complainants, particularly the documentary evidence (ANNEXES III and IV), videos, press articles, workers' testimonies, and the decisions of international adjudicative bodies, especially the ILO (ANNEX V), and having assessed other means of evidence to which the Tribunal has had access, such as testimony from various representatives of organized civil society, the Tribunal has confirmed the veracity of the facts denounced.

SIXTH. Therefore, the TILS concludes that the rights violated in each individual case are the following:

1. Attacks on the physical and psychological integrity of workers and union leaders (persecution, arrest, arbitrary detention, exile and disappearance).

As shown by the complaints, the use of goons and/or paramilitary forces by employers with the tolerance of the authorities, and/or the acts of persecution, arrest, arbitrary detention, exile and disappearance by the government, demonstrate that the physical and psychological integrity of workers has been affected. In Mexico the use of aggression, physical or psychological, directly or through fake unions or subordinates, is a normal practice by employers to prevent worker organization in collusion with the government.

These acts violate fundamental individual guarantees established by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as those enshrined by the National Constitution. The Committee of Experts on the Application of Conventions and Recommendations of the ILO, has declared: *"the rights given to worker organizations (...) are based on the respect of civil liberties, specifically those in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and the concept of union rights lacks sense when these civil rights do not exist"*.

These violations can be seen in the following cases:

- The Mexican Union of Electrical Workers (SME): in May 2010 workers staging a sit-in in the substations in Cuernavaca, Morelos, were violently removed by federal police, and arrest warrants were issued against two union leaders. In June 2010 José Juan Rosales Pérez, in charge of a sit-in camp on the corner of Insurgentes and Reforma in Mexico City, was assassinated. On June 28, 2010, AFI officers detained Marco Antonio García Barrera, Under-Secretary of the Interior of the Cuernavaca division. On October 28, 2010, Miguel Ángel Márquez Ríos, Pro-Secretary of the Central Committee of the SME was detained and remains in prison. On April 11, 2010, workers were blamed for violence that broke out during a protest, where eleven workers were arrested and remain in prison.
- The National Union of Mine, Metal, Steel and Allied Workers of the Mexican

Republic (SNTMMSSRM): its leader remains in exile to this day. On June 6, 2010 the army took over the Cananea (Sonora) and Pasta de Conchos (Coahuila) mines. In May 2010 federal police beat Mario García Ortiz, special representative of the SNTMMSSRM in Lázaro Cárdenas. In September 2010 the company Altos Hornos de México persecuted, harassed and opened an investigation against all the committee members in Monclova. In addition, workers were harassed and sweetheart unions were present at the vote held on December 3, 2010 to resolve a representation dispute.

- Workers of Section 9 of the National Union of Education Workers (SNTE): physical abuse against teacher members of the democratic Committee of that Section; repression against teachers of Section 22 in Oaxaca for protesting against the poor state of education in the country; and the disappearance of Carlos René Román Salazar.
- Section 187 of the Telephone Operators Union of the Mexican Republic (STRM): the vote to resolve the representation dispute took place in the presence of more than 150 thugs brought in by Atento managers, confidential employees and the Progressive Union of Communications and Transportation Workers of the Mexican Republic (SPTCTRM). The JLCADF and the Federal District authorities did nothing to prevent their presence. Before the vote, the same group of thugs had shown up at the company's premises to threaten workers of Section 187 and members of the National Executive Committee of the STRM.
- Union of Workers of Commercial Establishments, Offices, Stores and Similar and Related Businesses of the Federal District (STRACC): the company Servicio Bonar, in collusion with the incumbent union, started a campaign of harassment of workers, and dismissed the 23 workers who refused to sign blank documents and resignation forms. The workers were removed from the worksite with the assistance of public security forces and a civic judge.
- United Honda Workers' Union of Mexico (STUHM): the workers were subjected to strict surveillance both within and outside the plant while the union was being formed; employer threats against the physical and psychological integrity of workers in order to stop them from joining the union; violence against these same workers with police presence at the worksites. Dismissal of five workers, four of whom were members of the union leadership.
- Sole Union of Workers of the Autonomous University of Mexico City (SUTUACM): university control of the union through the use of pressure groups and provocateurs in union meetings and decision-making processes.

- Hospital Español Workers' Union: dissolution of the independent union and transfer of its right to administer the collective bargaining agreement to the CTC with the support of hundreds of thugs.
- Independent Union of Maquila Workers of the State of Baja California Sur (SINTTIM): aggressions and threats to workers by company management.

2. Arbitrary application of the rules to register unions and legally acknowledge their leadership (*toma de nota*).

The local and federal government, through the Secretariat of Labor and Social Welfare and the Local Conciliation and Arbitration Boards, continue to arbitrarily use their powers to refuse or accept the registration of unions. They also abuse the grant of legal acknowledgments to union leaderships (*toma de nota*), a requirement established by neither the Constitution nor the Federal Labor Law, but rather by a mere regulation of the Secretariat of Labor. In addition to refusing these requests, excessive delays in the administrative and jurisdictional proceedings for the grant of registrations and legal acknowledgments have been confirmed. These delays affect the rights of workers, particularly when it comes to independent unions.

During those delays, union organizations have been strongly repressed. Moreover, the decisions of the competent bodies have been untimely.

According to the ILO, "certain legislation provides the competent authority with discretionary power to accept or deny the requests to officially register or give the organization the necessary approval for its constitution and operation". The Committee of Experts on the Application of Conventions and Recommendations considers that these provisions are tantamount to asking for previous authorization, which is incompatible with Article 2 of Convention No. 87.

Moreover, with respect to the registration of union leaderships and other elected representatives, the ILO Committee on Freedom of Association has reached numerous conclusions and made declarations regarding state interference in internal union affairs. With respect to the refusal to recognize the results of a union election, the Committee has stated that "as a general principle, governments should not interfere in union elections" and "labour authorities shall not act in a discretionary manner to interfere in union elections." The Committee has also observed that "[t]he registration of the leadership of unions **shall be automatic** upon filing of the union's notice and should only be challengeable upon request of the members of the union at issue" [emphasis added].

The Mexican Government maintains a policy of violating different international instruments, which include but are not limited to, the following:

- Article 8 of the International Covenant on Economic, Social and Cultural Rights, which establishes the right of persons to form a union without any restrictions, subject only to its own by-laws;
- Article 3.2 of Convention No. 87 of the ILO, which expressly prohibits any interference on the part of the public authorities which would restrict the right of workers' organizations to elect their representatives in full freedom, or impede the lawful exercise of this right; and Article 8 of the same Convention, which establishes that national legislation shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

In terms of national law, the Mexican Government has infringed upon:

- Article 123, "A," XVI of the Mexican Constitution, which recognizes the most ample right and freedom of workers to unite in the defense of their interests; Article 9, which establishes the guarantee of freedom of association; Article 17, which establishes that all persons have the right to a speedy administration of justice by courts which shall follow the deadlines and periods of time established by law, and issue their decisions in a prompt, complete and impartial manner.
- With respect to the Regulatory Statute of Paragraph "A" of Article 123 of the Constitution [i.e., the Federal Labor Law],¹⁴ there has been a violation of: Article 354, which permits the free association of workers; Article 357, which grants workers the right to form a union without previous authorization. Further, the Mexican Government has arbitrarily used: Article 365, on the requirements to constitute a union and the documents to be presented before the competent labor authority; and Article 366, which establishes the only cases in which a union registration can be denied (the unions requesting their registration did not fall within any of these cases).

These facts constitute a previous authorization on the part of the State, prohibited by ILO Convention No. 87 and not authorized by Article 123 of the Constitution. Through this previous authorization, the Government has denied thousands of Mexican workers the human right to trade union freedom of association, and has done so in a systematic manner when it comes to workers who attempt to organize independently.

We have confirmed, through the testimony heard and attached documentation, that in almost all cases the right to trade union freedom of association has been denied, a conclusion which was also reached in the Tribunal's May 1, 2010 Resolution.

¹⁴ Translators' clarification.

It became evident from the public hearing, the complaint and the evidence attached, that violations of this right have occurred in the following cases:

- National Union of Mine, Metal, Steel and Allied Workers of the Mexican Republic (SNTMMSSRM): denial on two occasions of the legal acknowledgment of the election of the Secretary General (still pending); registration in record time of sweetheart unions by the labor authority as well as the granting to these unions of the right to administer collective bargaining agreements previously administered by the SNTMMSSRM.
- Workers of Section 9 of the National Union of Education Workers (SNTE): the teachers of Section 9 filed a labor lawsuit before the TFCA, seeking that the elections be annulled and that a re-run of the electoral process, which had previously been declared illegal, be ordered. Three years have passed and the TFCA has not yet issued a decision.

United Honda Workers' Union of Mexico (STUHM): on August 4, 2010, union registration was denied by the STPS, arguing that the company did not exist and that the federal authority was not competent in this matter, despite the fact that the STUHM had presented the documents which proved otherwise. The STUHM filed an *amparo* application on August 27, 2010, requesting full compliance with the requirements provided for in the law. On January 28, 2011, the Second District Court for Labor Matters of the Federal District decided that the union had fulfilled all the requirements required by law and ordered the DGRA to grant the corresponding registration. Illegally, the DGRA requested a review of the *amparo* decision, without having standing to do so, for the registration is an administrative proceeding which causes the DGRA no prejudice. To this day, the STUHM has not been registered due to the review requested by the DGRA.

- Independent Union of Researchers of the National Research Institute of Forestry, Agriculture and Livestock (SIINIFAP): when the union requested its formal registration, the STPS and the Federal Conciliation and Arbitration Tribunal declined jurisdiction citing confusion over whether the workers fell under Paragraph "A" (governing workers in the private sector and public decentralized bodies) or Paragraph "B" (pertaining to workers in the public sector) of Article 123 of the Constitution.
- Workers from the Mexican Institute of Social Security (IMSS): the DGRA of the STPS arbitrarily granted a legal acknowledgment to the Secretary General, violating the union's by-laws, given that no elections had been held for the period from October 16, 2012 to October 15, 2018.
- Sole Union of Workers of the Autonomous University of Mexico City (SUTUACM): the union presented sufficient proof of a decision made by the JLCADF which delayed the issuance of the legal acknowledgment to the

union's Executive Committee elected to lead from November 6, 2009, to February 25, 2010. In addition, the JLCADF denied the legal acknowledgment of the union's Finance and Honor and Justice Commissions without any legal reasons.

3. Limitations to workers' right to freely elect their representatives

It is observed from the cases before the Tribunal that the Mexican Government, in collusion with employers, continues to restrict workers' ability to elect their representatives, by imposing unions that respond to government and company interests. This practice can also be observed in the enforcement of certain procedural requirements that are not established by law and are impossible to fulfill. The vote to resolve a representation dispute is only one of them.

A jurisprudential decision by the Supreme Court of Justice of the Nation states that votes to resolve representation disputes or strikes must be secret. However, as shown by the evidence before the Tribunal, the labor authorities do not respect this decision, forcing workers to vote openly in front of employer representatives, competing unions and the labor authorities. Workers are forced to show their identification cards, cast their vote verbally and then sign documents presented to them by the labor authorities. In this way, workers are coerced when voting.

As a result, the Government has violated Convention No. 87 of the ILO, whose Article 3.1 states that worker organizations have the right to freely elect their representatives, whereas Article 3.2 prohibits public authorities from any interference which would restrict this right or impede its lawful exercise. Article 359 of the Federal Labor Law gives unions the right to write their own constitutions and freely elect their representatives. Article 371, fraction IX provides that those constitutions shall establish procedures for the election of their leadership. Article 377, fraction II imposes an obligation on unions to inform either the STPS or the state-level JLCAs of changes in union leadership, which in turn forces the labor authorities to register these changes. However, when workers have decided to organize independently from employer interests or the official union confederations, labor authorities have illegally and arbitrarily denied or delayed the issuance of legal acknowledgments of internal election results, affecting union operations in clear violation of Convention No. 87 of the ILO, the Universal Declaration of Human Rights, other international treaties subscribed to by Mexico, and Article 123 of the Constitution.

The cases which illustrate this point are as follows:

- National Union of Mine, Metal, Steel and Allied Workers of the Mexican Republic (SNTMMSSRM): where the SNTMMSSRM held collective bargaining rights, the labor authorities supported sweetheart unions in the

votes to resolve the representation disputes at hand.

- Workers of Section 9 of the National Union of Education Workers (SNTE): the Secretariat of Public Education and the Administration of Educational Services of the Federal District maintain control over the union through its illegally selected committee. The State Workers' Social Security and Social Services Institute (ISSSTE) grants the illegitimate union leaders loans and other benefits that belong to the teachers of Section 9.
- National Union of Technical and Professional Oil Workers (UNTyPP): the union's National Executive Committee (CEN) has been refused the right to represent its members, and in particular those who are subject to investigation that might lead to disciplinary action; they are also denied leaves for union business.
- Section 187 of the Telephone Operators Union of the Mexican Republic (STRM): days before the vote to resolve a representation dispute was held, thugs entered the call center threatening workers and members of the union's National Executive Committee. There is video proof of illegal actions taking place during the vote, in which workers could not vote secretly or freely. Workers were selected to vote from a company control voter registration list and were transported to the offices of the JLCA by the company and the Progressive Union of Communications and Transportation Workers of the Mexican Republic. Workers had their identification cards taken away and were under constant threat of dismissal. The JLCA took six months to issue its decision and did not take into consideration the well-founded objections and complaints made by the STRM's legal representatives. Regardless of the obvious violations and irregularities that took place during the process, the JLCA ultimately declared the Progressive Union winner of the election.
- Union of Workers of Commercial Establishments, Offices, Stores and Similar and Related Businesses of the Federal District (STRACC): presence of thugs in the workplace during the strike; the fact that in the midst of violence instigated by the Belem company, the JLCADF convened the workers for a vote in which union members were not allowed to vote whilst confidential employees did. After workers of Servicio Bonar S. A. de C.V. affiliated with STRACC sued for the right to administer the collective agreement held by the National Union of Plastics, Commercial and Allied Workers of the Mexican Republic, a campaign of harassment ensued, resulting in the dismissal of the 23 workers who had refused to sign blank documents and resignation forms. After much resistance the workers were forcibly removed by public security forces and a civic judge. The vote did not take place because the JLCA ruled that Servicio Bonar, S. A. de C. V. did not have any workers because they all worked for the subcontracting company.

- Workers from the Mexican Institute of Social Security (IMSS): regardless of limitations on the election of union representatives contained in the union constitution, the General Secretary elect, whose mandate was coming to an end, requested that the STPS legally acknowledge the extension of his mandate and grant him the power to designate National Executive Committee members and National Union Commissions. His requests were granted, thus preventing free elections for the workers.
- Sole Union of Workers of the Autonomous University of Mexico City (SUTUACM): deduction at source of union dues since September 2010 by the UACM Administration, without depositing them into the SUTUACM bank account. No information is given on the amount that is retained, blocking all union actions and programs for lack of funds.

4. Interference in the structure and programs of union organizations

As a result of the complaints presented before this Tribunal, it was confirmed that federal and local Mexican labor authorities interfere with union organizations, have infringed upon Article 3.1 of ILO Convention No. 87, which establishes the right of workers to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programs; and upon Article 3.2 of the same Convention, which requires public authorities to refrain from any interference which would restrict this right or impede its lawful exercise. Similarly, the Mexican labor authorities have violated Paragraph “A,” section XVI and Paragraph “B,” section X of Article 123 of the Constitution, which establish trade union freedom of association.

This is illustrated by the following cases:

- Mexican Union of Electrical Workers (SME): bank accounts are frozen with the aim of making the financial survival of the union unviable.
- National Union of Mine, Metal, Steel and Allied Workers of the Mexican Republic (SNTMMSSRM): bank accounts are frozen with the aim of making the financial survival of the union unviable.
- Workers of Section 9 of the National Union of Education Workers (SNTE): the TFCA hinders free union representation of workers by delaying a decision regarding a labor lawsuit that seeks to have a re-run of the electoral process ordered.
- Section 187 of the Telephone Operators Union of the Mexican Republic (STRM): unjustified six-month delay for a vote to resolve a representation dispute, which was finally carried out in the presence of thugs who inhibited

workers' free choice and threatened their integrity.

- United Honda Workers' Union of Mexico (STUHM): following the creation of the union in February 2010, its registration was denied because of a claim that the company did not exist.
- Independent Union of Researchers of the National Research Institute of Forestry, Agriculture and Livestock (SIINIFAP): arbitrary declaration of lack of jurisdiction by the JFCA to delay the registration of the union based on confusion regarding the legal status of the workers' employment relationship.
- Workers from the Mexican Institute of Social Security (IMSS): arbitrary legal acknowledgment of the election of the General Secretary by the labor authorities, violating union by-laws, which prohibit the extension of a term for more than four years.
- Sole Union of Workers of the Autonomous University of Mexico City (SUTUACM): interference by University authorities to control union assemblies and decision-making; illegal retention of union dues; refusal of University authorities to work in joint commissions.
- Hospital Español Workers' Union: imposition of "shared union representation" with the CTC, regardless of having won a majority in the vote to resolve the representation dispute.

5. Discriminatory acts against unions and reprisals against those who form unions

The cases presented demonstrate that the right to union activity has been violated through discriminatory and unjust dismissals of union activists.

According to the Committee of Experts on the Application of Conventions and Recommendations of the ILO, *"the protection offered to workers and union leaders against acts of anti-union discrimination, is an essential part of the right to freedom of association because these acts may deny the guarantees granted in Convention 87."*

The Mexican Government has infringed upon Article 1 of Convention No. 98 of the ILO by not providing sufficient protection for union activities.

These violations can be observed in the following cases:

- Mexican Union of Electrical Workers (SME): in May 2010 workers staged a sit-in at a substation in Cuernavaca, Morelos, and were violently removed

by federal police whilst arrest warrants were issued against two leaders. On June 28, Antonio García Barrera, Under-Secretary for the Interior in the Cuernavaca division was arrested. On October 28, Miguel Ángel Márquez Ríos, Pro-Secretary of the Central Committee of the SME was arrested. On April 11, 2011, workers were blamed for the violence that broke out during a protest, and 11 workers were arrested and remain in prison to this day.

- National Union of Mine, Metal, Steel and Allied Workers of the Mexican Republic (SNTMMSSRM): eight arrest warrants against leader Gómez Urrutia, who is exiled in Canada. On June 6, 2010 the army occupied the Cananea mine and violently removed the strikers. Dozens of union members were dismissed at the plants of Altos Hornos in Monclova, Coahuila, in order to weaken that section of the mining union.
- National Union of Technical and Professional Oil Workers (UNTyPP): union leaders and members are threatened and dismissed. 26 workers who were dismissed for having founded the union in November 2008 have not yet been reinstated. Silvia Ramos, who was reinstated pursuant to a judicial decision 14 years after her discriminatory dismissal, was dismissed again because her name appeared on a website linked to the Zapatistas, fact which was said to cause damage to the social interest.
- Union of Workers of Commercial Establishments, Offices, Stores and Similar and Related Businesses of the Federal District (STRACC): 23 workers were dismissed for refusing to sign blank documents and resignation forms. Removal of workers from the workplace by public security officials and a civic judge.
- Potosi Glass Industry Workers Union (SUTEIVP): to date a conflict with the company for anti-union actions goes unresolved; workers were dismissed.
- United Honda Workers' Union of Mexico (STUHM): repression of the union by the company, including the dismissal of 5 leaders and a climate of threats at the workplace—reinforced with police presence—to prevent workers from becoming union members.
- Independent Union of Researchers of the National Research Institute of Forestry, Agriculture and Livestock (SIINIFAP): non-renewal of contracts and denial of worker access to the worksites as a reprisal for their union activities.
- Hospital Español Workers' Union: physical and psychological violence against workers to neutralize union activities and the collective bargaining agreement.

6. Restrictions to the exercise of the right to collective bargaining

According to the Committee of Experts on the Application of Conventions and Recommendations of the ILO, *“in cases where the national legislation provides for the application of a compulsory procedure for the recognition of unions as exclusive bargaining agents, the following guarantees must be observed: a) a certificate of recognition shall be granted by an independent body; b) the representative organization shall be elected through a majority vote of the workers in the bargaining units interested; c) the right of every organization which, in a previous election, was unable to obtain a sufficient number of votes, to request a new vote after a certain period of time has gone by; and d) the right of a new, non-certified organization to request a new vote after a reasonable period of time has passed.”*

Through testimony presented by union representatives, this Tribunal confirmed the existence of “collective agreements for employer protection” signed by non-representative unions or “protection unions” allied with the employer to protect it from *bona fide* collective bargaining. These collective agreements for employer protection, characterized by the fact that they guarantee minimum rights only, strip workers of the possibility of obtaining greater benefits and labor protections through the exercise of their right to collective bargaining through the independent union of their choice. The Tribunal received reliable information revealing the existence of an alarming number of collective agreements for employer protection in Mexico, reaching more than 75% of all collective agreements registered before the Boards. Confirming this reality, the Committee on Freedom of Association of the ILO, in its 310th session of March 2011, issued recommendations to the Government of Mexico in connection with the complaint filed by the International Metalworkers’ Federation (“IMF”) and supported by the International Trade Union Confederation (“ITUC”). This complaint questions **the labor relations system as a consequence of the extremely pervasive use of collective agreements for employer protection (ANNEX V).**

Moreover, two other widespread practices have also been uncovered: 1. Cases in which employers and/or state authorities refuse to recognize a union leadership despite the existence of a legal acknowledgement. 2. Cases in which a union leadership to which the legal acknowledgement has been denied is nevertheless recognized by employers or state authorities as the legal representative of the union, with capacity to exercise the right to collectively bargaining to the detriment of the collective rights of workers and their legitimate representatives.

These practices, by federal and local governments, violate Conventions 87, 98 and 154 of the ILO.

These violations, confirmed on the basis of the complaints and videos presented before this Tribunal, can be observed in the following cases:

- National Union of Mine, Metal, Steel and Allied Workers of the Mexican Republic (SNTMMSSRM): in November 2010 the STPS granted, with unusual speed, the registration of a new union to Carlos Pavón, who a few days later sued for the right to administer several collective bargaining agreements. As a result, votes to resolve the representations disputes were set for December 3, 2010. The votes were held in a climate of harassment and open support for the employer, thus preventing authentic bargaining from taking place and depriving the union of its bargaining capacity.
- Workers of Section 9 of the National Union of Education Workers (SNTE): the Secretariat of Education and the Educational Services Administration of the Federal District granted privileges and benefits that should only be conferred to legally recognized representatives, even though the legal acknowledgment had been denied to the elected Committee in violation of the procedure in the union by-laws, which denial was effective immediately.
- National Union of Technical and Professional Oil Workers (UNTyPP): a year and four months after the union's registration, the company Petróleos Mexicanos (PEMEX) refused to recognize the union's representatives and refused to negotiate with them. PEMEX also refused to recognize the National Executive Committee (CEN) as representative of workers who are being subject to investigation, and denied paid leaves that would enable members to perform union duties in defense of the rights of their members.
- Independent Union of Researchers of the National Research Institute of Forestry, Agriculture and Livestock (SIINIFAP): after receiving a court decision in its favor stating that National Institute workers are subject to Paragraph "A" of Article 123 of the Constitution, thus granting the union the right to collectively bargain with the Institute, the Institute refused to negotiate with the union. Meanwhile, the JFCA contravened the court's decision by ruling that collective bargaining would be inappropriate under the argument that the researchers are subject to the collective agreement signed by SAGARPA (established under Paragraph "B").
- Sole Union of Workers of the Autonomous University of Mexico City (SUTUACM): during the 2010 round of salary negotiations, and with the support of the President of the JLCADF, the University administration sought to negotiate directly with the individual workers, thus ignoring the union's right to negotiate on behalf of its members, in order to ensure salary increases lower than those which the union could have obtained through collective bargaining (the salary increase was the lowest in the country for that year).
- Hospital Español Workers' Union: despite a January 2008 JLCA decision granting the union the exclusive right to administer the collective bargaining

agreement (based on a vote in which it obtained a majority of 876 votes to 7), the 15th Collegiate Court later issued a decision refusing to recognize the free will of the majority of the workers, preventing them from exercising their right to bargain collectively with a representative of their choice.

- United Honda Workers' Union of Mexico (STUHM): automaker Honda de México, S.A. has a collective bargaining agreement with a union that was not chosen by the workers. This contract is a collective agreement for employer protection, as evidenced by the fact that it contains the minimum benefits required by law, thus keeping the workers in precarious working conditions, and depriving them of the possibility of exercising their right to collectively bargain through a legitimate union representative.
- Union of Workers of Commercial Establishments, Offices, Stores and Similar and Related Businesses of the Federal District (STRACC): the infringement of the right of Servicio Bonar's gasoline attendants to negotiate a collective bargaining agreement is twofold: firstly, they were subject to a collective agreement for employer protection that Servicio Bonar and its subcontractor Teucro Administración de Personal had entered into with a sweetheart union; and secondly, after having sued both companies for the right to administer the collective agreement, the JLCADF did not allow a vote to resolve the representation dispute on the basis that the workers did not provide their services to Servicio Bonar, but rather to Teucro, thus legitimizing the employers' fraudulent actions and condoning the use of collective agreements for employer protection.
- Section 187 of the Telephone Operators Union of the Mexican Republic (STRM): after an election in which workers were harassed by thugs and coerced to vote a particular way, the Progressive Union of Communications and Transportation Workers of the Mexican Republic (SPTCTRM), a pro-employer union, secured the right to administer the collective agreement of Atento workers.

7. Limitations to the exercise of the right to strike

Limitations to the exercise of the right to strike constitute a grave infringement of trade union freedom of association. Together with freedom of association and the right to collectively bargain, the right to strike is one of the pillars of collective labor rights. This right is curtailed, however, by the deployment of police, military forces and paramilitary troops, and the use of thugs hired by employers. For that reason, the Mexican Government is in violation of the International Covenant on Economic, Social and Cultural Rights and the ILO Declaration regarding the Principles and Fundamental Rights of 1998, as well as criteria put forth by the Committee on Freedom of Association of the ILO and the Inter-American Commission on Human Rights.

The ILO Committee on Freedom of Association has affirmed the principle of the right to strike since its second meeting in 1952, when it declared that the right to strike is one of the essential elements of labor law.

These violations, proven through complaints and videos presented to the Tribunal, are illustrated by the following cases:

- National Union of Mine, Metal, Steel and Allied Workers of the Mexican Republic (SNTMMSSRM): although the courts had declared the existence of the strike led by the union in the Cananea mine, the workers' right to strike was violated by the JFCA, which issued a decision terminating the employment relationships with the strikers (in irregular proceedings), and by the Federal Executive which, on the basis of the illegal decision of the JFCA, sent in the army to take back the mine and violently remove the strikers on June 6, 2010. The Tribunal points out, with great concern, that if the bill to amend the National Security Law is passed, the illegal use of the army to suffocate this kind of conflict would be legitimized, thus threatening to destroy the right to strike.
- Union of Workers of Commercial Establishments, Offices, Stores and Similar and Related Businesses of the Federal District (STRACC): exercise by gas station attendants at the Estacion de Servicio Belem of the right to strike under conditions of intimidation generated by the presence of thugs. In addition, the strikers suffered procedural violations by the JLCADF, which deprived the strikers of voice and resulted in a declaration that the strike was non-existent. Although this decision was later overturned and the JLCADF declared that the strike was legal, this same Board ordered that all strike symbols be removed and that work be resumed. This ruling permitted the use of scab labor, depriving the strike of all effectiveness as a pressure instrument aimed at forcing the employer to engage in collective bargaining with the union.
- Hospital Español Workers' Union: the federal judiciary imposed a shared administration of the collective bargaining agreement onto two unions despite the fact that the independent union had received majority in the representation vote.

SEVENTH. While it has been shown that the State has systematically violated the right to trade union freedom of association (FIFTH point, above), we have confirmed an increase during the past year in the level of violence used against workers and their fundamental rights and public freedoms, putting at risk the free and unfettered development of human dignity and social justice.

Therefore, based on the above and grounded in the

APPLICABLE LABOR LAW NORMS, PRINCIPLES AND CRITERIA:

- The Universal Declaration of Human Rights, 1948.
- The Constitution of the ILO, 1919.
- ILO Conventions 87 on Freedom of Association and Protection of the Right to Unionize, 98 on the Right to Unionize and Bargain Collectively of 1949, 135 on Worker Representation, 151 on Labor Relations in Public Administration of 1978, and 154 on the Promotion of Collective Bargaining.
- The ILO Declaration on the Principles and Fundamental Labor Rights, 1998.
- The ILO Declaration on Multinational Companies, 1977 and attached Conventions and Recommendations.
- The American Convention on Human Rights, derived from the Special Conference on Human Rights (San José de Costa Rica, from November 7th to 22nd, 1969).
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Protocol of San Salvador, 1988.
- The International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966 and ratified January 3, 1976.
- The International Covenant on Civil and Political Rights, adopted December 16, 1966 and ratified March 23, 1976.
- The American Declaration of the Rights and Duties of Man, 1948.
- Articles 1, 5, 6, 9, 17, 123 and 133 of the Political Constitution of the United States of Mexico and the regulating laws of Article 123.
- The principles of Labor Law, including its character as guardian or protector of workers; the principle of good faith, which must prevail in labor relations; the principle of *pro-operario*;¹⁵ the principle of equal treatment; the principle of labor stability; and the principles that inform the right to trade union freedom of association, including union autonomy, non-interference in union affairs, free election of union representatives, free membership and union democracy.
- The general principles of Labor Law: equity; the national and international doctrine of Collective Labor Law; national jurisprudence; and the findings of the ILO's control bodies, such as the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association.
- Criteria derived from the different control bodies under the various international Conventions and Treaties, and the jurisprudence of the Inter-American Court of Human Rights; and the principle of National and International Solidarity (ANNEX II).

¹⁵ TRANSLATORS' NOTE: Pursuant to this principle, when in doubt, labor law must be interpreted in favour of workers.

In accordance with the norms of healthy debate, and considering that the facts and evidence given are sufficient, substantial and reasoned, and with full respect to universally accepted human rights principles, this International Tribunal for Trade Union Freedom of Association hereby

CONCLUDES AND RESOLVES, IN CONSCIENCE, THAT:

FIRST. The complaints brought forth by the following unions and worker organizations are founded on sufficient and substantial proof and serve to bring up to date cases brought before previous sessions of the Tribunal: **MEXICAN UNION OF ELECTRICAL WORKERS (SME), NATIONAL UNION OF MINE, METAL, STEEL AND ALLIED WORKERS OF THE MEXICAN REPUBLIC (SNTMMSSRM), WORKERS OF SECTION 9 OF THE NATIONAL UNION OF EDUCATION WORKERS (SNTE), NATIONAL UNION OF TECHNICAL AND PROFESSIONAL OIL WORKERS (UNTyPP), SECTION 187 OF THE TELEPHONE OPERATORS UNION OF THE MEXICAN REPUBLIC (STRM), UNION OF WORKERS OF COMMERCIAL ESTABLISHMENTS, OFFICES, STORES AND SIMILAR AND RELATED BUSINESSES OF THE FEDERAL DISTRICT (STRACC), POTOSI GLASS INDUSTRY WORKERS UNION (SUTEIVP);** and the organizations that presented their case to the Tribunal for the first time: **UNITED HONDA WORKERS' UNION OF MEXICO (STUHM), INDEPENDENT UNION OF RESEARCHERS OF THE NATIONAL RESEARCH INSTITUTE OF FORESTRY, AGRICULTURE AND LIVESTOCK (SIINIFAP), WORKERS FROM THE MEXICAN INSTITUTE OF SOCIAL SECURITY (IMSS), SOLE UNION OF WORKERS OF THE AUTONOMOUS UNIVERSITY OF MEXICO CITY (SUTUACM), HOSPITAL ESPAÑOL WORKERS' UNION, and INDEPENDENT UNION OF MAQUILA WORKERS OF THE STATE OF BAJA CALIFORNIA SUR (SINTTIM).**

SECOND. The Mexican State, through its executive, legislative and judicial branches of government, has incurred in gross neglect of its role as promoter, guardian and protector of fundamental labor rights, and continues to gravely and systematically endanger, through anti-union acts of its own or by omission, the right to trade union freedom of association.

THIRD. The procedure of "legal acknowledgment," the way it is applied in practice, is incompatible with ILO Convention No. 87, ratified by the Mexican State.

FOURTH. The arbitrariness and lack of objectivity on the part of the STPS regarding union registration violates ILO Conventions 87 and 154, given that "*workers have the right to organize as they see fit*" and this type of interference contributes to the existence of the so-called "collective agreements for employer protection."

FIFTH. Collective agreements for employer protection run counter to the right to

collectively bargain insofar as they simulate a bargaining situation with fictitious representatives and do not reflect a “free and voluntary negotiation.” This practice violates fundamental conventions of the ILO, in particular Conventions 87, 98 and 154.

SIXTH. The Mexican State and all of its branches of government owe full respect to and compliance with the International Treaties that it has signed and ratified, especially those that relate to the promotion and guardianship of fundamental labor rights, in particular trade union freedom of association as the backbone of a Social and Democratic Rule of Law.

SEVENTH. This Tribunal admonishes and demands that the Mexican Government immediately cease and desist from its anti-union conduct, comprised of acts of union interference on the part of the executive power and the employers; discrimination on the basis of union membership; discriminatory dismissals of union representatives; and violation of the rights to freely organize and to union autonomy.

EIGHT. This Tribunal demands the adoption of necessary and urgent measures to reestablish the full validity of the Social and Democratic Rule of Law as well as the free and full exercise and due protection of trade union freedom of association against its own actions or omissions and those of third parties (private individuals and/or national and transnational corporations). This Tribunal also demands that the damages caused to those affected by such conduct be repaired. In particular, the Tribunal demands that the government immediately act to deter the use of thugs against workers who seek to enjoy their collective labor and worker rights.

NINTH. The Mexican government is responsible before the international community for violations against the right to trade union freedom of association. The international community is thus empowered to act against such violations of fundamental labor rights by resorting to the relevant and competent international bodies, and by demanding the immediate cessation of these practices, as in the case of Cananea, where not only has the labor conflict been criminalized, it has been militarized.

TENTH. This Tribunal demands that the Mexican government exhaust all possible efforts to recover the bodies of the miners trapped in the Pasta de Conchos mine, and undertake a serious investigation aimed at assigning labour, civil and criminal liability for the events, thus ending the impunity which has prevailed since the events took place.

ELEVENTH. This Tribunal demands the immediate release of all political prisoners of the Mexican Union of Electrical Workers and an end to the smear campaign and criminalization of union workers striving for the vindication of their rights.

TWELFTH. This Tribunal reiterates that denial and delay in the administration of justice in the cases heard, as well as unnecessarily bureaucratic administrative procedures, constitute violations of the right to trade union freedom of association and contribute to making its exercise illusory.

THIRTEENTH. This Tribunal demands the adoption of timely administrative and judicial processes at the federal and local levels, in order to obtain an efficient, effective, impartial and autonomous labor justice system.

FOURTEENTH. This Tribunal reiterates the demand that those union representatives who were arbitrarily dismissed be reinstated in their employment; that effective employment be granted; and that damages be awarded for back wages and other social security benefits which have gone unpaid since their fundamental labor rights were first violated.

FIFTEENTH. This resolution shall be presented before all relevant international bodies, including the Special Rapporteur on the Independence of Judges and Lawyers of the United Nations' Economic and Social Council, so that the Rapporteur can review it and take it into consideration at the time of rendering her report on the State of Mexico, following her visit to Mexico in October 2010.

SIXTEENTH. This Tribunal assigns responsibility for the efficient and complete fulfillment of this resolution (Recommendations of the Tribunal to social organizations ANNEX VII) to civil society and national and international union organizations

NOTIFY ALL PARTIES AND PUBLISH ITS CONTENT

Mexico, D.F., May 1, 2011.