

INTERNATIONAL TRIBUNAL ON FREEDOM OF ASSOCIATION

**RESOLUTION OF
THE CASE OF MEXICO. MAY 1, 2010**

In Mexico City, on May first of the year two thousand ten, **JAMES D. COCKCROFT, MARTA OLMO GASCÓN, 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, RUBÉN DARÍO GONZÁLEZ, MARÍA ESTRELLA ZÚÑIGA POBLETE, ROSARIO IBARRA DE PIEDRA, MIGUEL ÁNGEL GRANADOS CHAPA, RAÚL VERA LÓPEZ, MIGUEL CONCHA MALO, ANA COLCHERO, ALFREDO SÁNCHEZ ALVARADO, OSCAR ALZAGA, ENRIQUE LARIOS, EDUARDO MIRANDA ESQUIVEL y MARÍA ESTELA RIOS GONZÁLEZ**, members of the **INTERNATIONAL TRIBUNAL ON FREEDOM OF ASSOCIATION**, all of whom met together to definitively resolve the accusations and complaints formulated against the **MEXICAN STATE** for violations of the freedom of association of the workers of this country, with the following

RESULTS:

1. As a consequence of the public complaints at the national and international level that have been formulated by distinct organs of civil society, union organizations and groups of workers, alleging that the Mexican Government has acted in gross neglect of its tutelary and protective functions with regard to Labor Rights, violating freedom of association and other fundamental, universally recognized human rights, and tolerating, abetting and carrying out these violations together with private parties, thereby becoming an instrument in the service of non-elected powers, and national and transnational economic interests acting against the working class of this Country, on **September thirtieth, two thousand and nine**, the decision was made to form this International Tribunal on Freedom of Association.

2. Once installed, this Tribunal invited interested parties to present complaints regarding the violation of the right to freedom of association by political, administrative, and judicial authorities of the Mexican Government. A period to receive complaints was opened from **October first through October twenty-fifth, two thousand and nine.**
3. On **October twenty-third, two thousand and nine**, the Mexican Government, represented by the Secretary of Labor and Social Security, was respectfully requested to present before the Tribunal whatever information it considered pertinent to the defense of its acts.
4. In a public hearing on **October twenty-sixth, two thousand and nine**, this Tribunal received the general accusation of gross neglect of the tutelary and protective functions and the violation of fundamental labor rights by the Mexican State, which was presented by Manuel Eduardo Fuentes Muñiz, in his capacity as Coordinator of the accusing group, who stated: "*The rights of association of Mexican workers have been systematically and flagrantly violated, including the rights to recognition of union leaders, to collective bargaining, to strike and to stability of employment, which have been enshrined in national and international legal norms. All of this has taken place with the tolerance, complicity and on many occasions, the direct action of the Mexican State through different levels of authority, with actions ranging from permitting the unpunished presence of hired thugs in the workplace and in the Boards of Mediation and Arbitration to the direct presence of the Federal Preventative Police and military troops occupying workplaces, as well as illegal and unconstitutional resolutions by the Secretary of Labor, the Federal Board of Mediation and Arbitration, the Local Boards of Mediation and Arbitration in the States of the Republic, the Federal Tribunal of Mediation and Arbitration, and bureaucratic Tribunals throughout the country that endorse impositions by the Federal Executive and the Governors of the States in order to annul freedom of association.*"
5. In the public sessions of the **twenty-sixth and twenty-seventh of October two thousand and nine**, complaints of the violation of freedom of association were received from numerous groups of workers. Thereafter, this Tribunal agreed to open a further period in which to receive new cases, background information and evidence, which was added to the facts previously presented in the first public sessions, and established that time period as **October twenty-ninth, two thousand and nine to March nineteenth, two thousand ten.** In each and every case presented before this Tribunal, the affected parties, through the Accusing Group, offered documentary evidence in the form of films and

photographs, testimonies, and other evidence they considered pertinent, which are contained in the record of this Trial.

6. Furthermore, in order to secure more items of proof, the Tribunal undertook to obtain the records of cases of different labor authorities, reports, photographs, and newspaper articles, and carried out its own inspection, as well as other elements that permitted this Tribunal to arrive at the conviction and certainty or lack thereof with respect to the gross neglect by the Mexican State of the tutelary and protective functions of labor rights placed upon it by universally accepted principles, and with respect to whether or not fundamental labor rights in Mexico had been violated. This evidence constitutes an integral part of the record of this case (**APPENDIX 19**).

7. On **March twenty-fifth, two thousand ten**, the accusing party presented the following conclusions: **"Mexican workers have experienced systematic, flagrant violations of their rights of association, to recognition of union leadership, to collective bargaining, to strike and to stability of employment, which are enshrined in national and international legal norms, all of which has taken place with the tolerance, complicity and on many occasions direct action by the Mexican State through different levels of authority. With actions ranging from permitting the unchecked presence of hired thugs in workplaces and in the boards of mediation and arbitration, to the direct presence of federal preventative police and military troops occupying workplaces, as well as illegal and unconstitutional resolutions by the Secretary of Labor, the Federal Board of Mediation and Arbitration, the Local Boards of Mediation and Arbitration in the states of the Republic, the Federal Tribunal of Mediation and Arbitration, and bureaucratic tribunals throughout the country that have endorsed impositions by the Federal Executive and the Governors of the States in order to annul freedom of association."**

Those who resort to this International Tribunal are doing so because the national tribunals have lost credibility due to their abject partiality to the interests of capital. We have irrefutable evidence that the Mexican Government, through the Secretary of Labor and Social Security, has abandoned its role of vigilance with regard to labor law and impartial arbitration of labor-management conflicts in the Federal Board of Mediation and Arbitration. We also demonstrate the ways in which the State has both ignored and permitted violations of labor law and freedom of association by employers, particularly in the form of tolerance and even collusion, including active participation in the diverse types of retaliation that workers have experienced while exercising their rights. This retaliation has

frequently included arbitrary dismissal and other labor aggression, and occasions of physical repression, as well as the criminalization of union activity. Finally, we also demonstrate that the Mexican State has failed in its obligation to respect and make respected the right of workers' organizations to govern themselves with autonomy; that it has intervened in the internal life of these organizations and in the election of their leadership and has openly promoted and facilitated union groups that do not represent the will of the workers and that constitute perverse and artificial, rather than authentic forms of union organization.

The systematic and ongoing nature of the violations of freedom of association and the norms and systems in which it is expressed can be illustrated through a great number of workers' experiences; in this regard, it is appropriate to mention the following violations: a) *Freedom of association: Is systematically restricted and often nullified by the State, which reserves to itself the ability to validate, by a discretionary mechanism, the registration of unions through various bodies, such as the General Directorship of Registry of Associations of the Secretary of Labor and Social Security, the Federal Tribunal of Mediation and Arbitration, the Local Boards of Mediation and Arbitration, bureaucratic Tribunals of the States, and Special Tribunals such as the Superior Chamber of the Federal Electoral Tribunal.* b) *Taking Note [Official Recognition]: In the same manner described in the previous section, the State refuses to recognize union leadership, on many occasions using this administrative procedure to override the will of workers who freely choose their leaders.* c) *Unjustified and discriminatory firings: In all the cases in which workers decide to organize, workers suffer intimidation and retaliation by their employers. The daily expression of this problem ranges from conditions placed on employment to having to prove that one has not previously belonged to a union to, frequently, unjustified firing.* d) *The right to collective bargaining: The State regulates this right through the requirement that collective bargaining agreements and the general conditions of work be filed with the Boards of Mediation and Arbitration. Workers' attempts to hold elections that would establish their right to administer these contracts through their authentic organizations are permanently blocked and subjected to multiple requirements, with the goal of favoring organizations that are outside the will of the union's members.* e) *The right to strike: Despite the fact that from the legal point of view, a strike consists in the suspension of work by workers, in fact strikes confront a panoply of bureaucratic and legal procedures that must be followed in order to make the exercise of this right valid. In that sense, when trying to gain legal permission to strike, unions face multiple barriers*

and requirements; once a strike begins, the labor authorities reserve the right to declare the strike nonexistent, because it is judged that it does not obey the prerequisites established by Law, which are interpreted arbitrarily.

f) Administrative Authorities: Although elements have been described in the previous sections, it is worth giving special mention to the role that the restriction and lack of exercise of freedom of association plays in the structure and administration of labor justice. The tutelary spirit of Labor Law which was the vision of the framers of the Constitution of 1917, in Article 123 of that Constitution, has been permanently distorted and denatured through an ongoing practice that is marked by corruption and collusion between employers and authorities.”

8. On April twenty-ninth, two thousand ten, the International Tribunal on Freedom of Association held a public hearing, where in addition to the presentation of updates on the cases presented earlier, other new cases were received as well.

9. The following unions and groups of workers and university researchers have presented their complaints to this Tribunal: 1) MEXICAN UNION OF ELECTRICAL WORKERS (SME); 2) NATIONAL UNION OF MINE, METAL, STEEL AND ALLIED WORKERS OF MEXICO (SNTMMSRM); 3) WORKERS OF SECTION 9 OF THE NATIONAL UNION OF EDUCATION WORKERS (SNTE); 4) NATIONAL UNION OF TECHNICIANS AND PROFESSIONAL WORKERS OF THE OIL INDUSTRY (UNTYPP); 5) WORKERS OF THE FEDERAL ELECTORAL INSTITUTE (IFE); 6) UNION OF WORKERS OF INDUSTRIA VIDRIERA DEL POTOSÍ (SUTEIVP) OF THE STATE OF SAN LUIS POTOSÍ; 7) WORKERS OF VAQUEROS NAVARRA IN THE STATE OF PUEBLA; 8) UNION OF WORKERS SERVING THE STATE OF QUERÉTARO (STSPEQ); 9) NATIONAL INDEPENDENT UNION OF EDUCATIONAL INSTITUTIONS, RELATED AND SUBSIDIARIES “20th OF NOVEMBER,” OF THE UNIVERSITY OF THE VALLE DE MÉXICO; 10) NATIONAL INDEPENDENT UNION OF HEALTH WORKERS (SINTS); 11) WORKERS OF ATENTO CALL CENTER; 12) WORKERS OF THE NATIONAL COLLEGE OF PROFESSIONAL TECHNICAL EDUCATION OF THE STATE OF MÉXICO; 13) AVON WORKERS; 14) GAS STATION WORKERS AFFILIATED WITH THE UNION OF WORKERS OF COMMERCIAL ESTABLISHMENTS, OFFICE AND STORES OF THE FEDERAL DISTRICT (STRACC); 15) UNION OF WORKERS OF THE AUTONOMOUS UNIVERSITY OF PUEBLA (SNTUAP); 16) UNION OF FLIGHT ATTENDANTS OF AVIACIÓN DE MÉXICO (ASSA); 17) MAQUILA WORKERS OF THE COALITION FOR JUSTICE IN THE

MAQUILADORAS (CJM); 18) ACADEMIC INVESTIGATION REGARDING COLLECTIVE AGREEMENTS OF EMPLOYER PROTECTION.

10. The facts that are complained of and the evidence that is attached with respect to the gross neglect by the Mexican Government of its duty to protect and guard Labor Rights and with respect to the violations of the right to freedom of association committed by the same, are summarized below:

1) MEXICAN UNION OF ELECTRICAL WORKERS - SME: Founded in 1914, the union, which has more than 44,000 active members, has the right to administer the collective bargaining agreement with the publicly-owned company Luz y Fuerza del Centro (Central Light and Power). In July 2009, the union replaced half of its Central Committee, including the General Secretary. The union notified the Secretary of Labor and Social Security so that it could take note of the changes to the Central Committee. With no legal justification whatsoever, the Secretary of Labor and Social Security refused to Take Note (legal recognition of the elected representative) of the Secretary General and the other elected leaders. On **October tenth, two thousand and nine**, by order of the Federal Executive, the Federal Preventative Police forcibly entered the company premises and violently removed the workers from the workplace, arbitrarily using the public force. The following day, **October eleventh, two thousand and nine**, a Presidential Decree (**APPENDIX 1.1**) was issued ordering the dissolution of the company and the massive and illegal firing of the over 44 thousand workers, with the goal of eliminating the Collective Bargaining Agreement and the union itself, in violation of the Political Constitution of the United States of Mexico, articles 1, 5, 9, 14, 16, 17, 25, 27, 28, 72 section F y 73 subsection X, 123 and Conventions 87 and 98 of the International Labour Organization (ILO).

On October 13, 2009, the federal government, acting through the Administrative Service and Alienation of Assets (SAE), the body that liquidated Luz y Fuerza del Centro, presented a demand before the Federal Board of Mediation and Arbitration, requesting: “your approval [of] the notice of termination of the collective work relationship between the extinct decentralized body Luz y Fuerza del Centro and the Mexican Union of Electrical Workers, and as a consequence of that, the termination of the collective bargaining agreement that existed with said union organization, as well as the individual termination of the work relationship of all of the unionized workers...” This demand for approval of the termination of the work relationship took place three days after the government had already fired the workers.

Given the serious nature of the complaint formulated by the SME, the Tribunal issued a communication in which it made a request of the Mexican

Government (**APPENDIX 1.2**), since, after analyzing the case, it became evident that the following constitutional provisions had been violated:

- **Article 1**, which provides that: “All discrimination is prohibited which is motivated by... the social condition... opinions... or anything else that violates human dignity and has as its objective the annulment or diminishment of people’s rights and freedoms.”
- **Article 5**, which states: “No one may be deprived of the product of his or her labor, except by judicial resolution,”
- **Articles 14 and 16**; by failing to exhaust the previous process and not failing to provide a hearing to the workers or bringing them to trial before depriving them of their right to work, a fundamental social guarantee which is recognized in Article 123 of the Constitution.
- **Articles 14, 16 and 17**, by carrying out the Decree, even before it was published, through an attack on the workplaces by the Army and the Federal Police, depriving the union and its members of the guarantees of legal certainty, legality and due process of law.
- **Article 72, Section F and Article 73, subsection X**; the Federal Executive dissolved a publicly-owned company without having the authority to do so, the company being for the generation of electric energy and therefore a strategic industry, governed by Articles 25, 26, 27 and 28; thereby invading the sphere of competence of the Congress of the Republic, which alone possesses the authority to create, extinguish or modify this type of public enterprise. Furthermore, the Federal Executive violated the National Development Plan and the Sectoral Plan for Energy, which emanate from the above-mentioned Article 26.
- **Articles 9 and 123**; by violating the rights of freedom of association and freedom of assembly, as well as the right to work, the right to unionization and the principles of employment stability and freedom of association; and
- **Article 128**, which establishes the obligation of all public officials to comply with and assure compliance with the Constitution and the laws emanating from the Constitution, which establish the protection of fundamental human rights, by carrying out actions against the human rights of integrity and human dignity of every worker and “the human right to a life project,” which has been broken by violently depriving them of their employment.

The Mexican government has not only violated the national legal framework, but it has also broken the international legal framework of Human Rights, which is fully in

effect in Mexico, relating to such fundamental rights as due process and the protection of justice; protection and respect for freedom of association enshrined in the Universal Declaration of Human Rights, in the Inter-American Convention of Human Rights, in Conventions 87, 98, and 158 of the International Labour Organization (ILO) and the Declaration of Fundamental Principles and Rights of the ILO, and other Pacts of the United Nations and the Organization of American States, in terms of Article 133 of the Constitution and Article 6 of the Federal Labor Law.

Subsequently, the Second District Court of Labor matters issued a resolution against the “amparo” [remedy for the protection of constitutional rights] (**APPENDIX 1.3**) of the union and the workers with regard to the legality of the Decree of Dissolution of the company Luz y Fuerza del Centro. In response, 18 thousand workers of the Mexican Union of Electrical Workers (SME) brought an application for review (**APPENDIX 1.4**) before the Supreme Court of Justice of the Nation, which is pending resolution. At the present time, workers are maintaining their demand before the Federal Board of Mediation and Arbitration to be reinstated to their jobs. In an extraordinary general assembly, the Mexican Union of Electrical Workers decided to begin a hunger strike in the Zócalo [main plaza] of Mexico City, starting on **April twenty-fifth, two thousand ten**, to demand that the authorities responsible for the administration of justice adhere to the law. Currently, 46 workers are participating in the hunger strike, without which, to date, they have received no response from the government.

In addition, the Mexican Government is promoting two campaigns against the Mexican Union of Electrical Workers and its members: First, it is offering severance packages greater than those established by Law and in the collective agreement to workers who agree to resign from the company and the Union, making discretionary and arbitrary use of public funds for the purpose of dividing and weakening the union; second, it is presenting publicity campaigns in the mass media, electronic media and print media defaming the members of the Union, with the objective of building hatred among the citizenry against the unionized workers. Both campaigns were being carried out in the public domain.

2) NATIONAL UNION OF MINE, METAL, STEEL AND ALLIED WORKERS OF MEXICO (SNTMMSRM): Founded in 1934, the union has 33,000 members in 73 active sections, one of which is Section 65, which is constituted by the mine workers of Cananea in the State of Sonora, employed by the mining company Grupo México. The union has presented a complaint that in open support of said company, the Executive Power, acting through the Secretary of Labor and Social Security and the Attorney General of the Republic, has systematically persecuted the union’s leaders, and especially the General Secretary, Napoleón Gómez Urrutia, beginning on **February sixteenth, two thousand and six** to the present date, denying him legal recognition, meddling in the internal affairs of the union and accusing him of mismanagement of

union assets; it has also, with no legal support, declared three strikes to be nonexistent [illegal] (in Cananea, Sonora; Taxco, Guerrero and Sombrerete, Zacatecas), from **July thirtieth, two thousand and seven** to date. It has frozen, and continues to freeze, the union's bank accounts, despite a judicial resolution ordering that the accounts be unfrozen. For these reasons, the union's representatives have had to resort to national and international bodies.

The mine workers have experienced many acts of violence, including: the attack by the army and the police at the Las Truchas foundry in Lázaro Cárdenas, Michoacán on **April twentieth, two thousand and six**, resulting in two deaths and hundreds wounded; the violent attempt to remove the striking workers of Cananea on **January ninth, two thousand and eight**; and the confrontation in Fresnillo, Zacatecas between miners and people believed to be sub-contracted workers who were armed with high caliber firearms on **June eleventh, two thousand and nine**, resulting in several wounded and one dead.

After lengthy proceedings regarding the three strikes mentioned above, as well as the controversies initiated by the company between **July thirtieth, two thousand and seven** and **April 14, two thousand and nine**, on the latter date the union gained legal recognition of the existence of the strikes (**APPENDIX 2.1**). In reaction, the company, in complicity with the Mexican Government, sought to terminate the collective bargaining relationship at the plant at Cananea.

On **February eleventh, two thousand and nine**, the Second Circuit Court of the Federal District on Labor Matters denied an “amparo” [remedy for the protection of constitutional rights] (**APPENDIX 2.2**) to the mine workers’ and upheld the ruling issued by the Federal Board of Mediation and Arbitration to end the collective work relationship between the mining company Grupo México and the mine workers of Cananea, Sonora, Section 65 of the National Union of Mine, Metal, Steel and Allied Workers of Mexico (SNTMMSRM). The ruling of **April fourteenth, two thousand and nine**, confirmed by the Judicial Power, violates the General Constitution of the Republic, because it gives priority to a right found in the Regulatory Law, which consists in terminating the collective work relationship, over the right to strike which is safeguarded in Article 123, Section XVI of the same Constitution. With the foregoing, the collective bargaining agreement was improperly dissolved and the constitutional and legally valid strike of the workers was purportedly ended. To accomplish this, the principal argument used was “the cause of superior force” [force majeure], which is not even found within the assumptions of Federal Labor Law, to bring a strike to an end. This has put the health and the lives of mine workers at risk, since at any time, they can be violently removed from their jobs by the police or by paramilitary groups paid by the company.

It should be pointed out that the Mexican Government has intervened in the internal life of the union, utilizing false union representatives, as in the case of Elías Morales, who was granted legal recognition in February of two thousand and six, based upon handwritten signatures that have been found to be apocryphal or false by a judicial

body. The Government later recognized “white” or company unions, unknown to the Mine and Metal Workers Union, in several sections where the company Grupo Mexico operates; the majority of these are disguised dissident groups as has been legally recognized in various trials. Napoleón Gómez Urrutia was re-elected by the majority of the miners, and the Secretary of Labor and Social Security refused to Take Note of [grant legal recognition to] this leader. The case is awaiting judicial resolution (**APPENDIX 2.3**).

Moreover, the Mexican Government continues to ignore the recommendations of the ILO in its Report No. 35 (**APPENDIX 2.4**), while the ILO issues a new recommendation. At the present time, in spite of constant harassment by the Mexican Government and by the employer Minera México, the Miners’ Union is maintaining the three strikes.

3) WORKERS OF SECTION 9 OF THE NATIONAL UNION OF EDUCATION

WORKERS (SNTE): The section has 66,000 members who work for the Secretary of Public Education, mainly in the Federal District. The workers of Section 9, members of the SNTE, were targets of an attack on their freedom of association on **the first and second of July, two thousand and eight**, when a union committee was imposed on them through alleged internal elections that did not conform to the Statutes that govern the internal actions of the organization. These acts were presented in the guise of an extraordinary convention that was called under irregular and illegal conditions which can be summarized in the following manner: The convention was convened by a union representative whose legal term of office had expired; neither the place nor the starting time of the congress was expressly stated; there was no registration or verification of the credentials of delegates; and there was no verification of the names of the electors. In light of the above, the complainants attempted to challenge the irregularities before the corresponding internal bodies of the union, which refused to permit them to do so. The workers then filed a labor law complaint with the Federal Tribunal of Mediation and Arbitration, requesting that the elections be nullified and that “taking note” not be granted to the improperly appointed Executive Committee of the Section. Nevertheless, contrary to this complaint, the Federal Tribunal granted official recognition, which was then revoked as the result of the filing of a Writ of “Amparo” before the Federal Judicial Power (**APPENDIX 3.1**). In spite of the above, the action to annul the electoral process continued before said Tribunal, which has delayed it in an irregular manner.

At several of the demonstrations that the professors of Section 9 have held to protest the spurious union committee, there have been confrontations with groups of thugs that are under the direction of the national leadership of the SNTE. As a result, several teachers have been injured.

4) NATIONAL UNION OF TECHNICIANS AND PROFESSIONAL WORKERS OF THE OIL INDUSTRY (UNTYPP): The union was founded in 2008, and currently has

260 members. In the sessions of **October two thousand and nine** of the Tribunal, this organization presented a complaint against the Secretary of Labor and Social Security (STPS) for denying and delaying the registration and official recognition of the UNTYPP, along with the unjustified firing of the union's members for belonging to the union.

The National Union of Technicians and Professional Workers of the Oil Industry was organized and formed in **two thousand and seven**, after the publicly-owned company Petróleos Mexicanos (Pemex) sought to require workers to sign a new and very unfavorable individual work contract that negatively affected their right to employment stability.

In **March, two thousand and eight**, the union asked the Secretary of Labor and Social Security (STPS) for its union registration, which after several months of "observation" and delays, was officially denied on **December nineteenth, two thousand and eight**. After that, in **January, two thousand and nine** the union sought an "amparo" and protection of the Federal Court (**APPENDIX 4.1**), which was granted in June 2009 by the First District Court of Labor Matters. Although the Court ordered the STPS to grant the requested union registration, the STPS refused to comply with the decision and filed a petition for review before the Fourteenth Court in Labor Matters (**APPENDIX 4.2**), which found in favor of the complainant and sustained the final Judgment of the District Court.

The supplemental testimony of the UNTYPP, presented in the Tribunal session of **April twenty-ninth, two thousand ten**, showed that parallel to the process described above, **between May and November of two thousand and nine**, the company carried out all types of workplace and physical pressure against the 260 unionized workers, resulting in some of them being fired unjustly. On **November fourteenth, two thousand and nine**, a group of armed paramilitaries used physical and verbal violence to remove union leaders and members from their jobs, who were then fired.

Once the UNTYPP had obtained their union registration (**APPENDIX 4.3**), the publicly-owned company Pemex continued to pressure the members of the union, pursuing and intimidating them in an effort to get them to resign from being members of the union, by means of threats of firing and harm to the members' physical integrity and the union leaders' families so that they would sign documents renouncing the union. The first demand the Union presented to Pemex was for the reinstatement of the 25 workers who were fired. To date, they have not received a response.

5) WORKERS OF THE NATIONAL FEDERAL ELECTORAL INSTITUTE (IFE): The IFE is an autonomous body of the Mexican Government, with 8 thousand employees. The IFE alleged that, on **August eleventh, two thousand and four**, the workers of that autonomous body, using their right to freedom of association, sought to have their union registered by the Secretary of Labor and Social Security, which declared itself incompetent to grant registration to the National Union of Workers of the Federal Electoral Institute (**APPENDIX 5.1**). Faced with that, the workers then filed a

Writ of “Amparo” before the Judicial Power. At the same time, the IFE sought to obtain registration and recognition of their Union before the Federal Tribunal of Mediation and Arbitration. Nevertheless, in each of these instances the workers were denied their right to organize a union. Finally, on **September nineteenth, two thousand and seven**, the Supreme Court of Justice of the Nation resolved, in clear violation of the freedom of association, that it is not possible to for a union to exist in the IFE, using an incorrect interpretation of Article 123 of the Constitution and Article 172 of the Federal Code of Electoral Institutions and Procedures (**APPENDIX 5.2**).

The resolution that denies the IFE workers the possibility of organizing a union—beyond their questionable classification as “confidential workers”—clearly violates the social guarantees and labor rights arising from Article 123 of the Political Constitution of the United States of Mexico, as well as Convention 87 of the ILO, of which the Mexican State is a signatory, along with other international treaties.

6) UNION OF WORKERS OF THE COMPANY INDUSTRIA VIDRIERA DEL

POTOSÍ (SUTEIVP): Complains that 826 workers of the company Industria Vidriera del Potosí S.A. de C.V., have suffered restrictions to their right to collective bargaining, attacks on their right of association, restrictions on their right to vote and unjustified firings, as well as being prevented from maintaining their democratic union while another union has been imposed on them by force. In 2007, the workers of this company succeeded in taking over the leadership of the union from the company union which had until then put in place its own leadership. Months later, the workers obtained an excellent salary increase and improved contract, but on **January second, two thousand and eight**, without legal justification, the company fired nearly 300 of the 826 workers, 36 percent of the workforce, including the entire union leadership (**APPENDIX 6.1**).

Later, after a demand for title [to the collective bargaining agreement] was presented by a union that had no members at the company—which in reality played the role of a union “of protection” for the company—another election was held at the plants of the company, in which workers were unable to freely express their will because the voters were intimidated by the occupation of the plants of the company by heavily armed Federal Police, as well as private security corps hired by the company (**APPENDIX 6.2**). After the fraudulent new election, which was plagued by irregularities, the right to administer the collective bargaining agreement was seized from SUTEIVP and granted to the Revolutionary Confederation of Workers and Peasants (CROC) (**APPENDIX 6.3**). The leadership of the democratic union has received threats in the form of telephone calls and messages, as well as criminal complaints by a supposed crime commission, which in reality do not exist.

Now, two years after being unjustly fired, 47 workers continue a legal process before the Federal Board of Mediation in an effort to be reinstated to their jobs, while the

delay by the authorities continues to impede said legal process from reaching a conclusion.

On **March sixteenth, two thousand ten**, Special Board No. 34 issued a Ruling through which it ordered the company Industria Vidriera del Potosí to reinstate Leobardo Manuel Ruíz Santillán to his job, and to pay him the wages he is owed. However, the company has filed an amparo to avoid complying with the aforementioned ruling, as part of the actions to impose the CROC union.

7) WORKERS OF VAQUEROS NAVARRA IN THE STATE OF PUEBLA.

Complaint against VAQUEROS NAVARRA, S.A. DE C.V., which is a maquiladora company that makes clothing for North American brands such as GAP and Levi's, located in the State of Puebla. On **November second, two thousand and seven**, 600 workers decided that the independent union "19th of September" was their representative. They filed for an election to establish their right to administer the collective bargaining agreement, and to establish that they should not be represented by the union belonging to CROC, since that union, without the workers' consent, had affiliated them as members and signed a contract of employer protection. During this conflict, while avoiding the company union, the workers demanded the profit sharing payments they were owed, for which ten workers were fired and a number of others were injured in an attack by 15 private security guards who were stationed inside the maquiladora. After the new election conducted as part of the Trial to establish which union had the right to administer the collective bargaining agreement, through which the democratic union emerged victorious (**APPENDIX 7.1**), the company, a subsidiary of a regional textile corporation, preferred to close the workplace rather than recognize the independent union. After a lengthy struggle, the workers managed to win the severance package to which they were legally entitled.

8) UNION OF WORKERS SERVING THE STATE OF QUERÉTARO (STSPEQ):

The union has 4,000 members that provide services to the Public Administration of the State of Querétaro. They complained of systematic violations of their right to freedom of association, as well as repression and firing of the members of the democratically elected union leadership, in contravention of ILO Convention 87 on freedom of association. In open invasion of trade union autonomy, in **August of two thousand and six**, the Local Board of Mediation and Arbitration in Querétaro refused to legally recognize the legitimately elected union leadership, granting it instead, along with the union dues, to a leadership that was not elected and that unconditionally supported the state authorities (**APPENDIX 8.1**). After the process was contested, a new election was held and the democratic union won again, but the Board continues to refuse to grant legal recognition of the elected leadership. In the meantime, the representatives of the democratic union have been subjected to various acts of retaliation in the workplace, and seven of them have been fired. In addition, five members of the democratically

elected Executive Committee have been falsely accused of financial fraud alleged to have occurred during their term of office.

9) NATIONAL INDEPENDENT UNION OF EDUCATIONAL INSTITUTIONS, RELATED AND SUBSIDIARIES, “20th OF NOVEMBER,” OF THE UNIVERSITY OF VALLE DE MÉXICO: The union was founded in 2008 by workers who provide services at the University of the Valley of Mexico (UVM), which employs 13,000 workers. The Complainant reported that in **February of 2008**, professors of the UVM formed the **NATIONAL INDEPENDENT UNION OF EDUCATIONAL INSTITUTIONS, RELATED AND SUBSIDIARIES, “20th OF NOVEMBER,”** through which they presented before the STPS the registration request. STPS denied the union’s registration without legal reason. 30 university professors were fired. One year and three months later, after the union obtained the “amparo” and protection from the Federal Court (**APPENDIX 9.1**), the Local Board of Mediation and Arbitration of the Valle Cuautitlán-Texcoco was obligated to register the union (**APPENDIX 9.1**). In the course of their movement, the workers became aware of the existence of a collective bargaining agreement with a union of which they had no knowledge and to which they did not belong. The workers had not been consulted about the content or the signing of said contract. The **NATIONAL INDEPENDENT UNION OF EDUCATIONAL INSTITUTIONS, RELATED AND SUBSIDIARIES “20TH OF NOVEMBER”** has filed a demand to have its right to administer the Collective Bargaining agreement recognized, which process has been blocked and delayed by the labor authorities (**APPENDIX 9.2**). In the meantime, several union leaders and members have been fired, and there have been several cases of intimidation in which explosives were thrown at people’s homes.

10) INDEPENDENT NATIONAL UNION OF HEALTH WORKERS (SINTS): Founded in 2000, the union has 15,000 members who provide services to the Secretary of Health of the Federal Public Administration. The Complainant stated that in the **year two thousand**, workers at the Secretariat of Health decided to form the **INDEPENDENT NATIONAL UNION OF HEALTH WORKERS**. Finally, in **January of two thousand and four**, the labor authorities granted legal recognition to the independent union, which was formed as an alternative to the already existing employer-controlled union. In retaliation, the General Secretary of the new union was fired and later jailed on the basis of false accusations by the employer. The General Secretary has now obtained his liberty and is struggling to be reinstated to his job, which has been denied several times (**APPENDIX 10.1**).

11) WORKERS OF ATENTO MEXICANA CALL CENTER: Complain on behalf of approximately 18,000 workers at the company Atento Mexicana S.A. de C.V., a subsidiary of Telefónica Móviles de México which provides services to the multinational corporation Telefónica Móviles España. The workers are suffering one of

the most extensive violations of the right to freedom of association in our country, with the existence of a contract of employer protection. Because of working conditions at the company, workers decided to organize to defend their labor rights and formed an independent union. As a result, the company has fired several workers, with the active and passive support of the government.

Through the Telephone Workers Union of Mexico, (STRM), the workers organized to demand an election which would establish their right to administer the collective bargaining agreement. On **June ninth, two thousand and nine**, they applied to have the STRM's membership list updated, and 24 ATENTO workers joined the union, as part of Section 187. On August 27 of that year, the Secretary of Labor and Social Security granted the request for legal recognition of said section. On **December fifteenth, two thousand and nine**, the union asked the Local Board of Mediation and Arbitration of the Federal District for an election which would establish their right to administer the Collective Bargaining Agreement.

In **February of two thousand ten**, the Local Board of Mediation and Arbitration (JLCA) issued a "prevention" (**APPENDIX 11.1**), in which it demanded documents such as the minutes of the meeting at which the union was formed and the accreditation of the legal personality of the workers, among others, to which the workers responded that the JLCA does not have the authority to ask for documentation of this type.

The delay of the JLCA in the proceeding for the right to administer the contract clearly demonstrates that the Mexican Government favors the existence of contracts of employer protection and, as such, maintains a situation plagued by corruption and clientelist and corporatist practices that are detrimental to the organization of the workers, who have decided to elect their representatives in a democratic and independent manner.

12) WORKERS OF THE NATIONAL COLLEGE OF PROFESSIONAL TECHNICAL EDUCATION OF THE STATE OF MEXICO (CONALEP): Complain that the National College of Professional Technical Education (CONALEP), which was created in 1978, has refused to recognize the most basic labor and union rights--established in the General Constitution of the Republic and in Federal Labor Law--of the approximately 4,724 teachers who teach classes to over 225 thousand students throughout the country. In particular, in the State of Mexico, 129 teachers were fired at the end of the February–July 2008 semester without cause and with no legal basis, affecting their right to stability of employment. To carry this out, they used forms of "contractual simulation," trying to evade their responsibilities as employer derived from the work relationship between CONALEP and the teachers. Later, on **April twenty-sixth, two thousand and eight**, the teachers organized a general assembly to form a union and defend their labor rights. They then sought their union registration before the Local Board of Mediation and Arbitration of the State of Mexico (**APPENDIX 12.1**), in conformity with the law. However, without any legal basis, this administrative

requirement has been blocked by the labor authority, to the prejudice of the workers. The labor authority has found it necessary to come up with requirements (**APPENDIX 12.2**) that delay the process so much that, to date, registration has not been granted.

13) AVON WORKERS: Complain that the Avon company denies the existence of a labor relationship with its workers, using the argument that they are self-employed vendors of the transnational company's products, and as such, there is no subordinate relationship that actualizes their character as employees. This denial has meant that these workers lack the most minimal labor rights, such as social security. In addition, all their legal interventions before the labor authorities to gain recognition of the labor relationship have been refused (**APPENDIX 13.1**). As a result, the workers have had their right to freely form a union totally annulled and, being unable to form a union, are therefore unable to collectively bargain and negotiate their working conditions. For this reason, they have been forced to create a civil Association.

14) GAS STATION WORKERS OF THE UNION OF COMMERCIAL ESTABLISHMENTS, OFFICES AND STORES OF THE FEDERAL DISTRICT (STRACC): Complain that when they legally called a strike, it was declared to be nonexistent by the Board of Mediation and Arbitration of the Federal District. On **March twenty-third, two thousand ten**, the Union of Commercial Establishments, Offices and Retail Stores of the Federal District (STRACC), sought to modify salaries and the collective bargaining agreement, calling a strike at the gas station Auto Servicio Belém S.A. de C.V. They had presented a demand before the Local Board of Mediation and Arbitration (JLCA) on **December tenth, two thousand and nine**. However, after complying with the legal formalities and maintaining intense negotiations with the company in an effort to resolve the conflict, the strike began, despite the presence of a large group of thugs the company had hired in order to prevent it. On **March twenty-sixth, two thousand ten**, the JLCA declared the strike nonexistent (**APPENDIX 14.1**). The workers then filed an amparo before the Second District Court, which granted a provisional and later a permanent suspension (**APPENDIX 14.2**), thereby ratifying the validity of the strike. On **March twenty-eighth**, the workers were attacked by scabs that had been hired by the company, which was also sponsoring another union that was attempting to seize the right to administer the collective bargaining agreement with the STRACC. The company refused to engage in any type of negotiation and the Local Board of Mediation and Arbitration did not convene to facilitate negotiation between the workers and the company.

15) UNITED UNION OF WORKERS OF THE AUTONOMOUS UNIVERSITY OF PUEBLA (SUNTUAP): Complains that, despite the amparo granted to the Union of Workers of the Autonomous University of Puebla, a resolution ordered by the Eighth District Judge of the State of Puebla (**APPENDIX 15.1**), on **July twenty-**

seventh, two thousand and nine, the responsible Authority defied the order by not granting the union recognition, arguing that the [union's] Statutes had not been modified since **November eighteenth, nineteen ninety-one**, and insisting that the Executive Committee had 14 officers and that the writing had not been signed by all of the members of the Executive Committee. These arguments have no legal foundation in administrative proceedings relating to the request for and delivery of official recognition, and the union has therefore filed a petition for amparo.

16) UNION OF FLIGHT ATTENDANTS OF AVIACIÓN DE MÉXICO

(ASSA): Complains that since **March second, two thousand and seven**, by means of a complaint of "collective bargaining conflict of an economic nature" presented before the Federal Board of Mediation and Arbitration (JFCA), the company Mexicana de Aviación (CMA) attempted to change its collective bargaining agreement with the ASSA. On **August seventh, two thousand and seven**, the ASSA was notified of the order through which, supposedly based on Article 919 of the Federal Labor Law, the JFCA issued a decision siding with the company, imposing on the workers a drastic reduction in pay of 50 percent of that established in their Collective Bargaining Agreement (**APPENDIX 16.1**).

The ruling went into effect during the months of **September, October and November of two thousand and seven**, months in which the workers' pay fell between 50 and 54 percent. It became necessary for the union to seek recourse via amparo from the Judicial Power and obtain a suspension of the ruling in order to roll back the cuts in salaries and benefits, in the face of which the airline—in open defiance—refused to comply with the judicial resolution. In a genuine legal aberration, the review of the collective bargaining agreement, which was to have taken place in September of that year, was not carried out because the Federal Board of Mediation and Arbitration argued that it does not know what document to base the revisions on—its initial ruling or the collective bargaining agreement. The case, therefore, remains *sub judice*.

Until **September of two thousand and nine**, CMA invested in remodeling Terminal 1 of the Mexico City International Airport and in new computer systems, while acquiring, on the **sixteenth of March thousand nine**, Mesoamerican Airlines, which are actions contrary to those of a company facing financial problems. In **September of two thousand and nine**, the date on which the review of the collective bargaining agreement should have been carried out, the JFCA suspended the case using the argument that the union leadership did not have the relevant legal personality. For all the foregoing reasons, it is considered that the labor authorities have acted in a partial manner, issuing arbitrary rulings and blocking legal recognition of the union's representatives. For the last three years, the company has not provided contractual raises or improvements to workers who belong to the ASSA. Based on the above-identified elements, the case was presented before the Supreme Court of Justice of the Nation, which to date has not resolved the matter (**APPENDIX 16.2**).

17) THE COALITION FOR JUSTICE IN THE MAQUILADORAS (CJM) has presented the following cases of violation of the freedom of association:

a) SONY: MAGNÉTICOS DE MÉXICO S. A. DE C. V. THE UNION OF WORKERS IN INDUSTRIES ESTABLISHED IN NUEVO LAREDO, UNDER THE INDUSTRIALIZATION PROGRAM FOR THE NORTHERN BORDER ZONE, signed a collective bargaining agreement with the assembly company before it had been physically established in Nuevo Laredo, Tamaulipas and before any workers had been hired. On **January fourth, nineteen ninety-four**, José María Morales Domínguez proclaimed himself to be General Secretary of the organization. In response, the workers decided to freely elected their own representatives, but the Company fired the democratically elected Secretary General and delegates. A new rigged election was held, in which the labor authorities declared the group supported by the company to be the winner. The workers demonstrated. Three hundred workers were fired, and several were beaten and arrested for attempting to defend the right to freedom of association. On **May thirtieth, nineteen ninety-four**, the workers decided to form the SOLE UNION OF WORKERS OF THE COMPANY MAGNÉTICOS DE MÉXICO, but its union registration was denied by the Local Board of Mediation and Arbitration of Tamaulipas, citing “technical errors” and the existence of another union representing the workers. The movement was finally dissolved.

b) HAN YOUNG OF MÉXICO, S. A. DE C. V. In the face of flagrant violation of their labor rights, the workers organized and applied to the Local Board of Mediation and Arbitration of Tijuana, Baja California to require the company to redress the violations. The labor authorities informed the company of the conflict and the company contracted the services of a union leader who was not part of the workers.

On **June fifteenth, nineteen ninety-six**, the workers decided to join the UNION OF , METAL, STEEL, IRON AND RELATED INDUSTRIES (STIMAHCS). The company responded with harassment and attacks against the members of the independent union.

On **July thirty-first, nineteen ninety-seven**, the members of the Executive Committee were suspended for four days as a “punishment for their union activities.” In **August of nineteen ninety-seven**, the company began firing union activists. STIMAHCS demanded an election which would establish their right to administer the collective bargaining agreement, which was in the hands of the official CTM union, a company union. The Local Board delayed the new election, and when it was finally held and the independent union won, it declared the election invalid. Nevertheless, on **January twelfth, nineteen ninety-eight**, the independent, democratic union finally obtained the right to administer the collective bargaining agreement. Nevertheless, the corporatist and official unions, as well as the company, with the complicity of the labor authorities, continued to try to wrest the right to administer the collective bargaining agreement from the union, which they eventually succeeded in doing.

c) CUSTOM TRIM LIMITED OF MÉXICO, S. A. DE C. V. In 1996, the workers at this maquila plant held several demonstrations to demand improvements to their health plan. The company immediately fired the leaders. In **nineteen ninety-seven**, the workers asked the company union—which belongs to the CTM—if they could participate in the negotiation of their collective bargaining agreement through their presence on the bargaining committee. The company denied the request. In response, the workers' committee held two work stoppages of one hour each. The company responded by refusing to let the union's bargaining committee into the plant and by filing a criminal complaint for 75 thousand dollars against three members of the negotiating committee. The company continued refusing to negotiate a collective bargaining agreement until **May twenty-second, nineteen ninety-seven**, on which date it fired all of the workers. When the workers tried to leave the plant, they were locked inside and held against their will. In spite of these acts, the Prosecutor refused to launch a complaint. In the presence of the authorities and the official union, the workers signed an agreement in which the company would let the workers come back to work without reprisals. The company did not comply with the agreement and one by one, the participating workers were fired.

Some of the workers were invited by the United Steel Workers of Canada to come to Canada to report on the abuse they experienced at the hands the company. When they returned to Mexico, they experienced violence on the part of the municipal government: a worker and his wife were threatened. Once more, the Prosecutor refused to act. The homes of the workers who had struggled for reinstatement to their jobs were looted and destroyed. Other workers were pursued by cars or received telephone threats. The factory was later sold to the U.S. company BREED TECHNOLOGIES. The unstable working conditions have continued under the new owner.

d) CASE OF DURO DE RÍO BRAVO S. DE R. L. DE C. V. In April of 2000, the workers at this company decided to try to improve their working conditions by participating in negotiations for their collective bargaining agreement, which was held by the UNION OF WORKERS OF PAPER, CARDBOARD, LUMBER, CELLULOSE, RAW MATERIALS AND RELATED AND SUBSIDIARY INDUSTRIES OF MEXICO, (STIPCMCMPSCRM), which belongs to the CTM. The workers elected a bargaining committee, which was ignored by the officially-recognized union. On **April fourteenth, two thousand**, the workers who formed the bargaining committee were fired. At a later date, the company failed to comply with an agreement it had made to reinstate the fired workers. In response, the workers stopped work for one shift on **June twelfth, two thousand**. In retaliation, three workers were struck by a company-owned vehicle. The workers filed a complaint but the authorities did not respond. On **June nineteenth, two thousand**, local and federal police, armed with machine guns, attacked and arrested workers who were camped near the plant. Two of the organizers had guns pointed at their heads and a female worker was struck with a rifle in the abdomen by a policeman. Following these acts of repression, the leader of the union was approached by leaders

of the official union, who proposed to grant his union recognition if and when it affiliated with the CTM.

The Secretary of the Government intervened and attempted to convince the workers to join a local union that belonged to the CTM. Sometime later, the President of the Board of Mediation and Arbitration of the State of Tamaulipas presented a statement to the Governor of the State, supposedly written by the workers, in which the workers admitted that they had “carried out an illegal work stoppage, which justified the intervention of the authorities to re-establish order.” The workers were pressured by the Board to sign the statement. In **August of two thousand**, the union was granted official recognition and demanded an election which would establish their right to administer the collective bargaining agreement. The process was prolonged until the CROC intruded in the conflict and demanded the right to administer the contract as well. On the day of the election, the workers from the independent union were forcibly confined inside the factory by armed thugs sent by the CROC. The local Board refused to hold a secret ballot election and required workers to vote verbally in front of the company’s management and thugs. Finally, the union was denied the right to administer the contract. The company continues to operate with unstable labor conditions, while making sure that there will be no further union dissidence.

e) **CASE OF MANUFACTURAS LAJAT, S. DE R. L. DE C. V.** After many labor rights violations, the workers at this Company, which makes garments for LEVI STRAUSS, formed a coalition to defend themselves and succeeded in the signing of an agreement to have their basic labor rights respected. The company has not complied with the agreement and has fired several workers who had been active in the lobbying. In April of 2005, the majority of the workers decided to form a union, whose registration was denied by the Local Board of Mediation and Arbitration of Gómez Palacio, Durango on **May sixth, two thousand and five**. As an alternative, with the support of another union, the workers demanded an election which would establish their right to administer the collective bargaining agreement. The Director of Human Resources threatened the workers, telling them not to vote for the independent union. The intimidation reached the point where a company manager physically injured a female worker. On **August twenty-ninth, two thousand and five**, the company cut the workers’ pay by 50 percent and announced that it was sending the final process of production to other plants. Without a warrant and using force, local authorities arrested and jailed a worker. Finally, on **January twelfth, two thousand and six**, the outcome of the amparo the union had presented was resolved and the union was registered, following which the union demanded an election which would establish their right to administer the collective bargaining agreement. The labor authorities prolonged the process and the company intimidated and fired workers. A new election was never held, since the Board never permitted the workers to exercise this right. In **April of two thousand and six**, the company closed the plant and fired all the workers. The workers found it impossible to get other jobs because they have been blacklisted by the company.

f) CASE OF KEY SAFETY SYSTEMS OF MÉXICO, S. DE R. L. DE C. V. Workers in this factory were working in conditions that were below the minimum standard specified by law. For this reason, on **December eighth, two thousand and seven**, the workers decided to form the COALITION OF WORKERS FOR JUSTICE AND THE DEFENSE OF OUR LABOR RIGHTS. In January of 2008, the workers presented a petition. The company told the workers that they already had a CTM union and introduced them to “their General Secretary”— someone they had never seen before. The workers demanded that an election be held, but this was denied. With the complicity of the official union, the workers who started the coalition were fired and the company put in place a policy of systematic harassment toward sympathizers and members of the coalition. On **October thirty-first, two thousand and eight**, the workers applied for union registration with the Local Board of Mediation and Arbitration Number Six, in the city of Matamoros, Tamaulipas. On **November fourteenth, two thousand and eight**, the company fired 200 workers that supported the coalition. On November 18, the workers once more filed their request for union registration with the Secretary of Labor and Social Security of the State and the Local Board of the State of Tamaulipas in Ciudad Victoria, Tamaulipas. To date, the workers’ efforts to gain recognition for their union have not borne fruit. (**APPENDIX 17.1**)

18) COLLECTIVE BARGAINING AGREEMENTS THAT PROTECT THE EMPLOYER. Workers have complained of some cases [of this type], but at the International Tribunal on Freedom of Association, Dr. José Alfonso Bouzas Ortiz, a university researcher who coordinated the book *Evaluation of Collective Bargaining in the Federal District* (2009 edition), presented the basic complaint in the following terms: The filing of collective bargaining agreements with the Local and the federal Boards of Mediation and Arbitration without the participation of workers has become a common practice, in which said contracts appear to be legal but are really an arrangement between union leaders and the employers they serve. These Collective Bargaining Agreements of employer protection may emerge in the form a new contract or by revising the wage or contractual provisions of an existing agreement. They are signed and agreed on by the union leader and the owner, or by their lawyers, without the express participation or representation of the workers, without union meetings and without the agreement of a majority of the workers. In almost all cases, these contracts are in prefabricated formats, with blank spaces only to fill in the basic information that changes from one to another. Although this type of contract has existed for many years, there has been an increase in the number of such contracts since the signing of the North American Free Trade Agreement (NAFTA), which took place on **January first, nineteen ninety four**. Since that time, there has been a spectacular increase in this illegal practice, which distorts collective bargaining and the collective bargaining agreement, one of the fundamental rights of workers and their union organizations. The practice of putting in place a false collective bargaining agreement makes it possible to

impose unstable wages and benefits, the minimums that are established in the Federal Labor Law. For this reason, they are called “employer protection” contracts. Such contracts make it impossible for workers to exercise their most basic rights.

Since the Local Board of Mediation and Arbitration of the Federal District has now posted information on the internet about the collective bargaining agreements that have been filed and the unions that have been registered, thereby permitting direct access to such information, Dr. Bouzas has carried out a detailed investigation (**APPENDIX 18.1**). According to Professor Mario de la Cueva, the three basic institutions of collective work rights have been affected: the right freedom of association, the right to a collective bargaining agreement, and the right to strike, which are indivisible. By annulling the right to a collective bargaining agreement, the other two rights are annulled as well. These collective bargaining agreements of protection are increasingly found in small and medium-sized service and commercial companies. Nearly 90 percent of such companies are using this type of contract. The practice takes place in nearly all the Boards of Mediation and Arbitration in the country, so the labor authorities are responsible for allowing this practice to take place.

11. In carrying out its work of seeking resolution, this Tribunal sought more information about the accusations that have been made against the Mexican Government. A public hearing was held on **April twenty-ninth, two thousand ten**, in which the original denunciations were confirmed and reinforced, with the aggravating factor that the conduct that has been denounced has continued since the Tribunal began its work and has continued to this day. The denunciations have been supported through testimony by the affected parties; the showing of filmed documentation of such acts as police repression through the open and disproportionate use of force, the intervention of thugs without visible identification that would link them to the legally authorized public force; and photographs of physical injuries to workers engaged in a legal strike, caused by acts of repression.

12. On **April thirtieth, two thousand ten**, the Tribunal agreed that its work of receiving complaints and evidence had been completed, and began to formulate the following resolution.

CONSIDERING THAT

FIRST: The legitimacy of this International Tribunal on Freedom of Association is sustained by **our commitment as Global Civil Society to democratically reclaim labor justice**, our interest in making visible that which has intentionally been made invisible and presenting the situation as it really is, reclaiming truth and the defense of the rights of the working class, understanding that the exercise of freedom of association is the backbone of democracy for those who

earn their living through their labor, human rights, progress and **the global distribution of wealth.**

This Tribunal was formed for the purpose of receiving complaints about the gross neglect by the Mexican Government of the tutelary and protective functions of Labor Law and complaints regarding violations to the right of trade union freedom of association in all its dimensions.

We seek to preserve and restore ownership to workers and unions of the right to freedom of association, and all the powers that compose it. This Tribunal proposes to provide universal jurisprudence and to complement the work of such international bodies as the International Labour Organization, the Inter-American Commission of Human Rights, the Inter-American Court of Human Rights, the Human Rights Committee of the International Covenant on Civil and Political Rights of the United Nations, and others.

The need for a Tribunal of an international nature is not unusual. It has as precedents the Russell Tribunal—formed for the purpose of judging and condemning crimes committed by the United States in Vietnam—and the Russell Tribunal II, which judged crimes committed in Latin America during the 1970s. Both tribunals emerged as legitimate entities through which peoples could rebuild their just sovereignty in a way that was visible to governments.

Another precedent is the Independent International Tribunal on Child Labor, which met in Mexico City in 1996, at the proposal of Mexican and U.S. trade unionists, which was based on respect for ILO Convention 138. Of particular relevance is the Permanent People's Tribunal, which was formed in 1996 and has 133 members. This Tribunal has produced ethical and political judgments against the World Bank and the International Monetary Fund, and against impunity for representatives of repressive governments in Latin America. In addition, it has condemned the crimes that took place in Bhopal, India and the pernicious presence of transnational companies in Latin America and other parts of the world, basing all of its decisions on the human rights conventions and the Universal Declaration of the Rights of Peoples.

Other equally important precedents to be kept in mind are the International People's Tribunal on External Debt, the National Tribunal on the Latifundio Crimes in Brazil in 1986; the International Tribunal on Water; the Tribunal for the Economic, Social and Cultural Rights of Women of Peru in 2004; the Tribunal on Food Sovereignty in Quito in 2004; and the Tribunal on Climate Change, which took place in Colombia in 2007. All of these entities have been created by and consist of representatives of civil society.

Taking all of this into account, the citizens who make up this International Tribunal wish to manifest our will to collaborate in the restitution of a sense of justice that makes law an instrument for people's development and authentic policies, and that is at the collective service of working women and men.

The resolution of this Tribunal seeks to begin a global jurisprudence and a series of measures or actions that will have multiplying political effects and that permit the transformation and the elimination of an unjust reality in order to make way for a better distribution of wealth.

SECOND: The normative configuration of freedom of association—like the doctrinal and consensual—is identified by the notion of “*rights-guarantees*.” Freedom of association belongs in the special group of subjective powers termed *guarantees*, which belong to the universal citizenry. Consequently, freedom of association is a fundamental human right and as such, it belongs to every worker, without distinction, as is declared in Article 2 of ILO Convention No. 87. As expressed by the ILO Committee on Freedom of Association: “*Free exercise of the right to form and join unions implies free determination of the structure and composition of those unions.*” This statement reaffirms our conviction of the importance of Law as a tool for building spaces of integration and social participation in the *national and global public good*. But it by no means implies that freedom of association, as a fundamental right, has its original basis in the Constitution or in the international instruments of justice, but rather it is the fruit of historic energy of which workers are the universal bearers and the law is a consequence. This means that a free and democratic union movement can only develop in a framework of respect and guarantees of fundamental rights, which the State should guarantee and promote, and in the case of Labor Law, provide effective protection everywhere, in all spheres, whether public or private, national or global, especially if we understand such rights to be the “rights of the weakest.”

As a fundamental universal right, freedom of association is enshrined by and in the principles of international treaties: Article 8 of the International Covenant on Economic, Social and Cultural Rights; Article 22 of the International Covenant on Civil and Political Rights; Article 23.4 of the International Declaration of Human Rights of the UN; Article 22 of the American Declaration of the Rights and Duties of Man (OAS); Article 16 of the American Convention on Human Rights; Article 2 of the ILO Declaration on the Fundamental Principles and Rights at Work and those that follow from it; parts I and III of the Declaration on the goals and objectives of the ILO.

In keeping with international law, workers have the power to autonomously and independently constitute the union institutions that they deem necessary for the defense of their rights and interests, without need for prior authorization. They also have the right to join existing union organizations, to establish the form of their organization, its administration and participation, the way its representatives will be elected and the way decisions will be made.

Freedom of association is a central pillar of the principle of collective autonomy. Its ultimate goal is to achieve full realization of the working class of the world—an aspiration that is universally valid for all human beings. Human rights can be defined as those prerogatives that, in keeping with International Law, every individual has before the bodies of power for preserving their human dignity; the function of which is to exclude interference by the State in specific areas of individual or collective life, and to assure that determined guarantees for the satisfaction of peoples' needs, that reflect the fundamental demands that every human being makes of the society to which she or he belongs, are assured by the State.

In Mexican Law, freedom of association is recognized as a social guarantee in the Political Constitution of the United States of Mexico, in Article 123, Section XVI. Freedom of association is also recognized in Federal Labor Law in Article 357, which provides: "**Workers and employers have the right to form unions, without the need for prior authorization.**" On the other hand, Article 133 of the Constitution provides the following: "**This Constitution, the laws which arise from it, and all treaties that are in agreement with it, honored by the President of the Republic, with the approval of the Senate, will be the supreme law of the Nation.**" Article 6 of the Federal Labor Law provides: "**The respective laws and treaties celebrated and approved in terms of Article 133 of the Constitution will be applicable to labor relations in all that benefits the worker, from the time such laws enter into force.**" Therefore, the Mexican State has the obligation to respect all international norms to which it is a signatory and which is binding. This is reinforced in jurisprudence 77/99 of the Plenary of the Supreme Court of Justice of the Nation.

In this sense, the following international norms should be respected:

- THE UNIVERSAL DECLARATION OF HUMAN RIGHTS OF 1948:
Article 23, Number 4 establishes that: "Everyone has the right to form and to join trade unions for the protection of his interests;"
- ILO CONVENTION 87 "FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE": Article 2 establishes that "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organisations of their own choosing, without previous authorization." Article 3.1: "Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs." 3.2. "The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

AMERICAN CONVENTION ON HUMAN RIGHTS, signed at the Inter-American Specialized Conference on Human Rights (San José, Costa Rica, November 7 – 22, 1969), established in Article 16 that: “**1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.**” “**2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.**”

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, “PROTOCOL OF SAN SALVADOR,” in Article 8, establishes that: “**1. The States Parties shall ensure: a. the right of workers to organize trade unions and to join the union of their choice, for the protection and promotion of their interests. As an extension of that right, the States Parties shall permit unions to establish national federations or confederations, and to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with those of their choice. The States Parties shall also permit trade unions, federations, and confederations to function freely;**”

- THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, adopted December 16, 1966 and entering into force on January 3, 1976, prescribes in Article 8: “**1. The States Parties to the present Covenant undertake to ensure: a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order, or for the protection of the rights and freedoms of others; b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations; c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order, or for the protection of the rights and freedoms of others,**” and the
- INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS,

adopted December 16, 1966 and entering into force on March 23, 1976, in Article 22 also establishes that: “**1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society, in the interests of national security, public safety or public order, or for the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces and of the police. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948, concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would impair, or to apply the law in such a manner as to impair, these guarantees.”**

Scientific doctrine recognizes the principles established in international norms, which conceives of freedom of association as a fundamental human right, both individual and collective, binding on the State or whoever injures this right, nationally or globally; in which there should be no type of distinction or discrimination, with no requirement of previous authorization, and without interventions by the State or private entities, in which workers have the power to resort to international entities in search of protection when, at the national level, they are denied the ability to establish, autonomously and independently, the union organizations that they deem necessary for the defense of their rights and interests, as well as the ability to join or not join existing union organizations, to establish the type of organization, its administration, participation, the election of its representatives and the way in which decisions are made. The union is recognized as a continuous and permanent organization, created by workers to guarantee the defense of their class interests: to improve wages and working conditions, to promote general improvement in their living conditions, to democratize society and improve the global distribution of income, and to be an organization from which workers’ voices can be heard with regard to the economic, political and social problems they experience in the society to which they belong.

As expressed by the competent bodies of the ILO: “**The Committee of Experts itself, the Conference Committee on the Application of Standards and the Committee on Freedom of Association, has on many occasions stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can**

only develop in a climate of respect for fundamental human rights. The exercise of civil liberties in the relation to trade union rights should be examined on the basis of the provisions contained in Article 3 of Convention No. 87. It is in connection with this norm that the respect of certain basic human rights acquires its full importance for trade union life”
International Labour Office, *Freedom of Association and Collective Bargaining*, 1994, Para.26, p. 14).

THIRD: It must be stressed that all labor rights should be considered to be universal human rights. Freedom of association —the right on which the other labor rights are based—especially should have maximum protection and guarantees that preserve it in the face of all illegitimate conduct by any public or private, national or international actor. Therefore, governments are obliged to defend and promote freedom of association, and any act or omission by a government or by third parties, be they national or international, that obstructs or encourages obstruction of this right, thereby preventing the development of the right to freedom of association in any of its manifestations, constitutes a violation of freedom of association (ILO Convention 98). In this respect, the Mexican Government must comply with international law and its own Constitution, which in Article 123 proclaims the right of the working class to “***join together in defense of their respective interests, forming trade unions.***” It is time to reflect on **making fundamental labor rights universal.**

Freedom of association is the pillar that sustains the other labor rights because it is a collective tool for building society that has proven itself to be a principle of social justice, as opposed to the principle of private autonomy, as a legal solution to violations of fundamental collective and individual labor rights. Without freedom of association, it is impossible to imagine the realization of the other rights.

Freedom of association and the rights that establish it are absolutely inalienable and universal. As such, they do not depend on any sovereign act of ratification of an international norm by the State. They extend beyond national sovereignty. Today, it is conceivable to speak of the need for true globalization of fundamental labor rights, which should become the basis for national law and international jurisprudence.

In consequence, the unrestricted respect of freedom of association, as with any other human right, involves not only the people of the country in question, but the international community, whose members are authentically charged with monitoring and demanding that the nation States and national and transnational private corporations make this right fully effective for the benefit of the workers of that country. This legitimacy springs from the universally recognized fact that freedom of association is a fundamental human right that is inherent to every

individual in their capacity as a working person, regardless of their nationality. When this right is systematically violated by a nation State or by a national or transnational private corporation, the legal, ethical and moral force of a **universal citizenry** should make it a priority to demand that the right to freedom of association be made effective. When violation to this right harms the working class in one country, it implies the violation of this right for all the workers in the world. For this reason, given the repeated violation of this right in Mexico, the national and international community is in a legitimate position to judge and resolve whether or not the right to freedom of association is being violated in this country by the public powers and by privately-owned national and transnational corporations.

In these circumstances, workers make their voices heard by civil society and the international community through such entities as the International Tribunal on Freedom of Association.

FOURTH: Based on the legal considerations outlined above and on the facts and evidence that have been presented, this body concludes that the Mexican Government has committed the following violations of Freedom of Association:

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

As can be seen from the facts complained of, the practice of using thugs and/or paramilitaries, on the part of the employers with the tolerance of the authorities, clearly affects workers' physical and psychological integrity. In this country, it is a normal practice for employers to use aggressive methods to stop workers from authentic organizing. The aggression may be psychological or physical, and it may be direct or through false or company-controlled unions. Sometimes the authorities are merely complacent about the aggression. On other occasions, they are complicit with the aggression, by acts of commission or omission.

These acts of aggression are a violation of the fundamental individual guarantees of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and of the rights enshrined in the National Constitution. In this respect, the ILO Committee of Experts on the Application of ILO Conventions and Recommendations has stated that: "***the rights conferred on workers' organizations (...) are based on respect of civil liberties, especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and on the concept that***

freedom of association is totally meaningless in the absence of civil liberties.”

Such violations can be seen in the following cases:

Union of Workers of Industria Vidriera del Potosí; UNTYPP; Independent Union of Educational Institutions “20th of November”; Workers of Section 9 of the National Union of Education Workers; Workers of the Belem Gas Station in Mexico City; and all of the cases documented by the Coalition for Justice in the Maquiladoras. Of special note are the cases of the Mexican Union of Electrical Workers, which suffered an attack at the Luz y Fuerza del Centro plant, where workers were ejected on Saturday night, **October tenth, two thousand and nine**; the Union of Mine and Metal Workers, where on **April twentieth, two thousand and seven**, the army and the police attacked the Siderúrgica de Las Truchas plant at Lázaro Cárdenas, resulting in the death of two workers and hundreds of people wounded, and the attempt to remove the striking workers of Cananea on **January ninth, two thousand and eight**; along with the cases of the democratic teachers of the SNTE - APPO, in which the teachers of Section 22 were attacked on **November twenty-fifth, two thousand and six**.

2. Arbitrary management of the registration of unions and legal recognition (“Taking Note”).

From the complaints presented to this Tribunal, it can be seen that the Government, acting at the local and federal levels through the STPS and the local Boards of Mediation and Arbitration, arbitrarily uses its discretionary powers to deny or accept the registration of unions and the “taking note” [official recognition] of union leaders, delaying their delivery, thereby denying workers their rights. This practice includes the use of criteria that do not exist in the law to deny registration and taking note, especially when independent unions are involved.

We have seen evidence that corroborates that there has been excessive delay in carrying out administrative and jurisdictional procedures related to the recognition of a union and the right to administer the collective bargaining agreement. During these periods, unions are severely repressed and resolutions by the competent bodies are delayed so long as to be superfluous.

According to the ILO, “certain legislation confers on the competent authority an authentic discretionary power to accept or deny an application for union registration or to give the organization the necessary consent to exist and function.” The Committee of Experts in the Application of Conventions and Recommendations states that these

provisions are the equivalent of imposing a prior authorization requirement, which is incompatible with Article 2 of Convention 87.

Thus, the Mexican Government violates Article 8 of the **International Covenant on Economic, Social, and Cultural Rights**, which establishes the right to form unions without any restriction, subject only to that which is established in the unions' statutes; Article 3, No. 2 of **ILO Convention 87**, which expressly prohibits intervention by the authorities that tends to limit this right, or to hinder the legal exercise of freedom of association. In national law, it infringes on Article 123, Sub-Section XVI of the Mexican Constitution, which recognizes the broad right and freedom of workers to join together in defense of their interests; on **Article 9** of the Mexican Constitution, which guarantees freedom of association; and **Article 17**, which establishes that everyone has the right to justice administered by the courts, which should be carried out expeditiously within the time and terms established by law, issuing decisions in a prompt, complete and impartial manner. Regarding the Regulatory Law established by Section A of Article 123 of the Constitution, the conduct complained of violates Article 354, which allows the free coalition of workers. The statutory law in section A, Article 123 of the Constitution violates Article 354, which permits workers to freely form unions, and Article 357, which gives workers the right to form a union without prior authorization. At the same time that it makes arbitrary use of the provisions in Article 365, regarding the requirements that must be fulfilled in order to form a union and the documents that must be presented to the competent labor authority, and Article 366, which establishes the only reasons for which registration of a union can be denied, none of which apply to the unions which applied for registration. This establishes the existence of prior authorization on the part of the State, which is prohibited by ILO Convention 87 and is not established in Article 123 of the Mexican Constitution, to systematically deny the human right of freedom of association to thousands of Mexican workers when they try to organize in an independent manner.

We found, through the testimony and accompanying documentation, that in nearly all of the cases the right to freedom of association is being violated. The following unions have complained of this violation: the National Union of Oil Industry Technical and Professional Workers (SNTYPP); the National Union of Workers of the Federal Electoral Institute (SNTIFE); the Independent Union of Educational Institutions, "20th of November"; the Independent Union of Health Workers; the Union of Education Workers of the State of Mexico – CONALEP, as well

as the cases presented by the Coalition For Justice in the Maquiladoras, particularly those regarding Magnéticos de México, S. A. DE C. V. and KEY SAFETY SISTEM, S. A. DE C. V.

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

According to the cases presented, it can be observed that the Mexican government, in complicity with company owners, limits the possibility of workers electing their representatives by imposing unions that respond to the interests of the government and the companies. This practice can also be observed in the imposition of so-called procedural requirements that are not found in law and that are impossible to comply with, the new election being only one of its facets.

Concretely, in the practice of the new election, despite the existence of jurisprudence issued by the Supreme Court holding that elections to determine who holds the right to administer a contract or whether or not to strike must be by secret ballot, the labor authorities do not respect this norm. They require workers to vote openly in the presence of company representatives, competing unions and government officials. They are required to show their identification in order to verbally manifest their vote and then are required to place their signature on documents that are shown to the authority. In this manner, the workers' voting is coerced.

With these practices, the Government is in violation of ILO Convention 87, which in Article 3, No. 1, states that workers' organizations have the right to freely elect their representatives, and in No. 2, prohibits government authorities from intervening in order to limit or hinder the legal exercise of this right. Article 359 of the Federal Labor law establishes the right of unions to draw up their own statutes and to freely elect their representatives. Article 371, Section IX points out that the union statutes must establish the procedure for electing the union's leadership. Article 377, Section II establishes the obligation of the unions to notify the STPS or the state JLCAs, depending on the case, of changes to the union leadership, and it obliges the labor authorities to take note of these changes.

Nevertheless, the labor authorities unlawfully and in an arbitrary manner refuse to "take note" in those cases in which workers have organized independently of the interests of the companies or of the official unions. This practice interferes in the internal life of the unions, in clear violation of ILO Convention 87, the Universal Declaration of Human Rights, other

above-cited international treaties which Mexico has signed, and of Article 123 of the Mexican Constitution.

The complaints submitted by the Union of Mine, Metal, Steel and Allied Workers were verified by acts of the authority to ignore forms of government and repeatedly deny the recognition of the union's representatives. This was only obtained after the union applied for an Amparo from the federal courts, in a lengthy process, to obtain recognition of the union's representation. It has also been found that that there was intervention with regard to the representative of Section 9 of the National Union of Education Workers and of the Union of the Autonomous University of Puebla. Furthermore, as stated above, the labor authorities and the companies act in complicity with government unions to deny recognition of the unions' freely elected representatives, which occurs regularly in the northern part of the country, as demonstrated in the cases presented by the Coalition for Justice in the Maquiladoras.

The limitation to freedom of association is also found through the trials regarding the right to administer the collective bargaining agreement, to which unions are required to submit. After a lengthy process, registration was obtained through a judicial order, not by the voluntary action of the labor authorities. Federal Labor Law prescribes that the right to administer the collective bargaining agreement belongs to the union that can show that it has the vote of the majority of the company's workers. To show in a legal process that a union has the majority an election should be held.

In the practice of holding these elections, in spite of the existence of jurisprudence issued by the Supreme Court which holds that elections should be by secret ballot in the cases of the right to administer the contract and of a strike, the majority of labor authorities do not respect this jurisprudence, requiring workers to vote openly in the presence of representatives of the company, competing unions and the labor authorities. Workers are required to show their identification papers, and vote verbally, following which they are required to sign documents that are shown to the authorities. This was demonstrated in the cases presented, particularly by the Coalition for Justice in the Maquiladoras, as in those of Han Young of Mexico, SA. DE CV. and DURO DE RÍO BRAVO S. DE R. L. DE C. V.

4. Interference in union structure and programs.

Based on the complaints presented to this Tribunal, it has been found that the Mexican labor authorities, at both the federal and local levels, carry out actions of interference in the unions, by requiring modifications in their structures and statutes, in acting on their applications for registration and in the opportunity presented when the union tries to gain the right to administer the contract or wants to strike. Thus, the Government infringes on ILO Convention 87, which in Article 3, numbers 1 and 2, establishes workers' right to freely elect their representatives and prohibits public authorities from intervening with the intention of limiting this right or hindering its legal exercise. It also violates the internal law established in Article 123 of the national Constitution in Section B, subsection X, which provides for the freedom to form and join unions.

This was demonstrated in the cases of the National Union of Technicians and Professional Workers in the Oil Industry and Section 9 of the National Union of Education Workers.

5. Acts of discrimination against unions and retaliation against those who organize unions.

Analysis of the cases presented warrants a finding of violation of the right to union activity by means of discriminatory firing of union activists. According to the Report by the ILO Committee of Experts on the Application of Conventions and Recommendations, "the protection that is offered to workers and union leaders against acts of anti-union discrimination is an essential element of the right to organize because such acts can result in the practice of denying the guarantees established in Convention No. 87."

The Mexican Government infringes on Article 1 of ILO Convention 98, in that it does not provide adequate protection for union activity.

This conduct can be observed in the complaints brought by the Union of Workers of Industria Vidriera of Potosí, the Union of Workers in the Service of the State of Querétaro (STSPEQ), the National Independent Union of Health Workers, and the National Union of Technicians and Professional Workers in the Oil Industry, as well as in all of the cases presented by the Coalition for Justice in the Maquiladoras, where workers were fired without justification because they attempted to exercise their right to freedom of association by choosing to form a union.

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

Based on the presentations to this Tribunal by union representatives, we have found the existence of contracts of employer protection that are signed by unions that do not represent the workers and have seized the right to administer the collective bargaining agreement from the organized workers.

According to the report by the ILO Committee of Experts referred to above, “in the cases in which the national legislation provides for the application of an obligatory procedure for the recognition of unions as exclusive negotiating agents, the following guarantees must be observed: a) the grant of recognition by an independent body; b) the election of the representative organization through a vote of the majority of workers in the relevant bargaining unit; c) the right of every organization that, in a previous vote, did not obtain a sufficient number of votes, to apply for a new election after a determined period of time has passed; and d) the right of a new, non-certified organization to ask for a new election after a reasonable waiting period has passed.”

In this area, noncompliance with ILO Convention 87, as well as Convention 98 in its entirety and Convention 154, is found in relation to the lack of authentic union representation in the process of collective bargaining.

We have found violations in the cases of the Mexican Union of Electrical Workers, the Union of Workers at the Atento Call Center, the Union of Workers at the Autonomous University of Puebla, the Union of Workers of the Company Industria Vidriera del Potosí, the Avon Workers, and the cases presented by the Coalition for Justice in the Maquiladoras, including HAN YOUNG OF MÉXICO, S. A. DE C. V., CUSTOM TRIM LIMITED OF MÉXICO, S. A. DE C. V., DURO DE RÍO BRAVO, S. DE R. L. DE C. V., MAGNÉTICOS OF MÉXICO, S. A. DE C. V., MANUFACTURERS LAJAT, S. DE R. L. DE C. V. and KEY SAFETY SYSTEMS OF MÉXICO, S. DE R. L. DE C. V.

7. Limits on the exercise of the right to strike.

Limitations on the exercise of the right to strike constitutes a serious interference with trade union freedom, since together with freedom of association and collective bargaining, the right to strike is one of the three pillars of collective workers' rights. This right is being limited through the use of force by the police, the military and paramilitary troops and by thugs hired by the employers. For this reason, the Mexican Government is violating the International Covenant on

Economic, Social and Cultural Rights of the UN, and the ILO Declaration on Fundamental Principles and Rights at Work of 1998, as well as the criteria issued by the ILO Committee on Freedom of Association and the Inter-American Commission on Human Rights.

The ILO Committee on Freedom of Association has correctly affirmed the principle of the right to strike since its second meeting, which took place in 1952, in which it declared that the strike is one of the essential elements of trade union rights.

Such violations are found in the complaints and videos presented by the Union of Workers of Commercial Establishments, Offices and Stores and Allied Workers of the Federal District (STRACC) and the workers of Section 65 of the National Union of Mine, Metal, Steel and Allied Workers of Mexico in the mines of Cananea, Sonora, where the right to strike for contract modifications has been cancelled. The right to strike was also weakened when the labor relationship was broken during the conflict in the case of the Mexican Union of Electrical Workers.

8. Administrative dissolution or suspension of unions.

In several of the cases presented to this Tribunal, the fact has emerged that the Mexican Government, at both the federal and local levels, has administratively dissolved unions, in contravention of the national law and of ILO Convention 87, which contain specific provisions prohibiting this practice.

With regard to the dissolution or suspension of unions by administrative means, the ILO Commission of Experts has stated that such measures *"imply grave risk of interference by the authorities to the very existence of the organizations and consequently, the necessary guarantees should be put in place, especially through judicial means, in order to avoid any risk of arbitrariness."*

The most obvious example can be seen in the issuance of the presidential decree on **October fourteenth, two thousand and nine**, which dissolved the Luz y Fuerza del Centro company, firing 44 thousand workers affiliated with the Mexican Union of Electrical Workers, thereby *de facto* cancelling the exercise of the contractual rights of the organization.

FIFTH: Although the Mexican Government has been duly notified with regard to this Tribunal and has been invited to make a presentation during this process of whatever information best suits its purposes, as can be seen from the document dated October twenty-third, two thousand and nine, acknowledging receipt of notification by the Secretary of Labor and Social Security, the Government has failed to appear before the

Tribunal and to present any argument in its own defense or to offer evidence. Given the failure of the accused party to appear, the Tribunal proceeded *in absentia*.

SIXTH: To ensure complete adjudication, the Tribunal was given the task of collecting more information about the charges against the Mexican government through a public hearing on **April twenty-ninth, two thousand ten**, in which the original complaints were confirmed, with the aggravating factor that the conduct complained of has continued since the formation of the Tribunal up to the present date, which has been confirmed through the testimony of the affected parties, the viewing of filmed documents which confirm the acts complained of, such as police repression with the use of excessive and disproportionate force; the intervention of thugs without any visible identification linking them to the legally authorized public force; and photographs of bodily wounds derived from acts of repression received by workers engaged in a legal strike.

SEVENTH: This Tribunal, having learned of the facts presented, which have been proven by multiple means and background evidence, including a personal inspection by the entire Tribunal, has formed the conviction that it is precisely those who are mandated by the Constitution and Mexican law, by International Labor Law and by the founding principles of Universal Humanitarian Law, to promote, foster and protect freedom of association as the collective guarantee of Labor Law, who are found to be in gross neglect of their functions to effectively promote, guard and protect freedom of association against their own acts and those of third parties, public and private, national and multinational.

The act or omission of the obligation by the entity that is in a position to guarantee the right is aggravated in the case of violation of a fundamental right like freedom of association, and authorizes those affected to resort to all necessary national and international instances for the purpose of obtaining the reestablishment of their rights and due protection of those affected.

EIGHTH: Freedom of association and all of its attributes or essential elements, constitute essential and fundamental rights of human beings, respect for which constitutes a limitation on the exercise of sovereignty on the part of governments and by all institutions and intermediate bodies, as well as by private entities, individuals and national and transnational corporations. These limits are widely recognized in all the international charters that address the matter.

Given the cases we have heard and taking into account the information and evidence provided by the accusing parties, and given the accused party's default, this Tribunal has arrived at the following conclusions:

As established above, and taking into consideration the provisions of the International Treaties on Human Rights, such as the UNIVERSAL DECLARATION OF HUMAN

RIGHTS OF 1948, THE COVENANTS OF THE INTERNATIONAL LABOUR ORGANIZATION, NUMBER 87 ON FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE, NUMBER 98 ON THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING OF 1949, NUMBER 135 ON THE REPRESENTATION OF WORKERS, NUMBER 151 ON LABOR RELATIONS OF PUBLIC ADMINISTRATION OF 1978, NUMBER 154 ON COLLECTIVE BARGAINING; Recommendation Numbers 143 ON REPRESENTATION OF WORKERS of 1971, Number 159 ON LABOR RELATIONS AND THE PUBLIC ADMINISTRATION of 1981, Number 163 ON COLLECTIVE BARGAINING OF 1981, NUMBER 91 on collective bargaining agreements of 1981; THE AMERICAN CONVENTION ON HUMAN RIGHTS, signed at the Inter-American Specialized Conference on Human Rights (San José, Costa Rica, November 7 to 22, 1969), THE ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, THE PROTOCOL OF SAN SALVADOR, THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, adopted on December 16, 1966, entering into force on January 3, 1976, and the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, adopted on December 16, 1966, and entering into force on March 23, 1976; THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN; the provisions of Articles 1, 3, 6, 9, 17, 123 and 133 of the Political Constitution of the United States of Mexico, Articles 1, 2, 6, 17, 18, 356, 357 and other pertinent norms of the Federal Labor Law, and attending to the principles that inform the Labor Law, including among others, its tutelary or protective character towards workers; the primacy of reality, of the good faith which should prevail in labor relations, the pro-worker principle, the principle of equal treatment, labor stability; and the principles that inform freedom of association, which are understood to include, among others, union autonomy, non-interference in the internal life of the union, non-discrimination, free election of union representatives, free affiliation and union democracy; in addition to the general principles of law, equity, the national and international doctrine of Collective Labor Law, national jurisprudence and the criteria of the controlling bodies of the International Labour Organization, such as the Committee of Experts and the Committee on the Application of Standards of the Conference, the Committee on Freedom of Association, as well as the criteria issued by the various controlling bodies of each of the conventions and international treaties mentioned, as well as the principle of national and international solidarity:

BE IT RESOLVED:

In keeping with the standards of sound judgment and appreciating the facts as sufficient and substantial indication and having considered the evidence in light of the universally accepted principles of human rights, this Tribunal on Freedom of Association resolves in conscience:

FIRST: THE TRIBUNAL DECLARES THAT THE COMPLAINTS PRESENTED BY THE FOLLOWING UNIONS AND WORKERS' GROUPS ARE BASED ON SUFFICIENT AND SUBSTANTIAL INDICATORS: 1) MEXICAN UNION OF ELECTRICAL WORKERS (SME); 2) NATIONAL UNION OF MINE, METAL, STEEL AND ALLIED WORKERS OF MEXICO (SNTMMSRM); 3) WORKERS OF SECTION 9 OF THE NATIONAL UNION OF EDUCATION WORKERS (SNTE); 4) OIL WORKERS OF THE NATIONAL UNION OF TECHNICIANS AND PROFESSIONAL WORKERS OF THE OIL INDUSTRY (UNTYPP); 5) WORKERS OF THE NATIONAL FEDERAL ELECTORAL INSTITUTE (IFE); 6) WORKERS OF INDUSTRIA VIDRIERA DEL POTOSÍ; 7) WORKERS OF VAQUEROS NAVARRA IN THE STATE OF PUEBLA; 8) UNION OF WORKERS IN SERVICE OF THE STATE OF QUERÉTARO (STSPEQ); 9) NATIONAL INDEPENDENT UNION OF EDUCATIONAL INSTITUTIONS, RELATED AND SUBSIDIARIES "20th OF NOVEMBER"; 10) NATIONAL INDEPENDENT UNION OF HEALTH WORKERS (SINTS); 11) WORKERS OF ATENTO CALL CENTER; 12) WORKERS OF THE NATIONAL COLLEGE OF PROFESSIONAL EDUCATION OF THE STATE OF MEXICO (CONALEP); 13) AVON WORKERS; 14) UNION OF WORKERS OF COMMERCIAL ESTABLISHMENTS, OFFICES AND STORES OF THE FEDERAL DISTRICT (STRACC), 15) UNION OF WORKERS OF THE AUTONOMOUS UNIVERSITY OF PUEBLA, 16) COALITION FOR JUSTICE IN THE MAQUILA, 17) UNION OF WORKERS OF THE AUTONOMOUS UNIVERSITY OF PUEBLA, 18) THE CASES PRESENTED BY THE COALITION FOR JUSTICE IN THE MAQUILADORAS (CJM), a) SONY WORKERS, b) MAGNÉTICOS OF MÉXICO S. A. DE C. V., c) HAN YOUNG OF MÉXICO, S. A. DE C. V., d) CUSTOM TRIM LIMITED OF MÉXICO, S. A. DE C. V., e) DURO DE RÍO BRAVO S. DE R. L. DE C. V., f) MANUFACTURAS LAJAT, S. DE R. L. DE C. V. and g) KEY SAFETY SYSTEMS OF MÉXICO, S. DE R. L. DE C. V.

SECOND: THE TRIBUNAL DECLARES THAT THE MEXICAN GOVERNMENT HAS COMMITTED GROSS NEGLECT OF ITS FUNCTIONS OF PROMOTING, GUARDING 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 THE FUNDAMENTAL HUMAN RIGHT OF FREEDOM OF ASSOCIATION.

THIRD: THE TRIBUNAL CALLS ON AND DEMANDS THE MEXICAN GOVERNMENT TO IMMEDIATELY CEASE ITS ANTI-UNION CONDUCT, WHICH CONSISTS OF ACTS OF INTERFERENCE WITH UNIONS, DISCRIMINATION AGAINST UNIONS, FIRING OF UNION LEADERS, VIOLATION OF FREEDOM OF UNION AFFILIATION AND UNION AUTONOMY, AND IMPAIRMENT OF THE PHYSICAL AND

PSYCHOLOGICAL INTEGRITY OF WORKERS BECAUSE OF THEIR UNION MEMBERSHIP, BY THE MEXICAN ADMINISTRATIVE AND JUDICIAL AUTHORITIES AT THE THREE LEVELS OF THE STATE—FEDERAL, STATE AND MUNICIPAL— AGAINST THE UNIONS AND WORKERS NAMED IN THE FIRST RESOLUTION, FOR WHICH IT MUST ADOPT THE NECESSARY MEASURES TO REESTABLISH THE RULE OF LAW AND DUE PROTECTION FROM ITS OWN ACTS OF ACTION OR OMISSION AND THOSE OF THIRD PARTIES, PRIVATE INDIVIDUALS AND NATIONAL AND TRANSNATIONAL CORPORATIONS, AND PARTICIPATE IN THE REPAIR OF THE DAMAGE TO THOSE AFFECTED BY SAID CONDUCT.

FOURTH: THIS TRIBUNAL DEMANDS, BECAUSE OF THE ATTACK ON INTERNATIONAL LAW AND ARTICLE 123 OF THE POLITICAL CONSTITUTION OF THE UNITED STATES OF MEXICO, THE REPEAL AND THE IMMEDIATE CESSATION OF THE USE OF THE PROCEDURES OF REGISTRATION AND TAKING NOTE AS A REQUIREMENT FOR THE EXISTENCE AND EXERCISE OF FREEDOM OF ASSOCIATION IN THE AUTONOMOUS FORMATION OF UNION ORGANIZATIONS.

FIFTH: THE TRIBUNAL DEMANDS RECOGNITION OF THE UNION LEADERS AS WELL AS THE WORKERS WHO WERE ARBITRARILY FIRED FOR EXERCIZING THEIR RIGHT TO ORGANIZE A UNION, THEIR RESTORATION TO THE WORKPLACE, THAT THEY BE GRANTED PAID EMPLOYMENT, AS WELL AS CONSEQUENTIAL DAMAGES, SUCH AS PAYMENT OF THE WAGES, OTHER BENEFITS AND SOCIAL SECURITY THAT THEY HAVE ACCRUED DURING THE TIME THAT THEIR LABOR HUMAN RIGHTS HAVE BEEN VIOLATED.

SIXTH: THE TRIBUNAL ORDERS THAT ALL OF THOSE WORKERS WHO HAVE BEEN INJURED BY THE ILLEGAL CLOSURE OF COMPANIES MUST BE RESTORED TO THEIR JOBS, AND PAID THE WAGES AND OTHER REMUNERATION THEY HAVE ACCRUED DURING THE PERIOD OF THEIR UNEMPLOYMENT.

SEVENTH: THIS TRIBUNAL RESOLVES THAT SOCIAL SECURITY FORMS AN INTEGRAL PART OF THE PROMOTIONAL, TUTELARY AND PROTECTIVE CHARACTER OF LABOR LAW. CONTINGENCIES SUCH AS OLD AGE, DISABILITY, AND SURVIVAL SHOULD NOT BE UNPROTECTED ONCE A PERSON ENDS ACTIVE WORK LIFE. FOR THIS REASON, THIS TRIBUNAL ORDERS THAT ALL VIOLATIONS OF RIGHTS THAT HAVE AFFECTED THE WORKERS WHO BELONG TO THE GROUPS THAT HAVE PRESENTED COMPLAINTS MUST BE SPEEDILY AND FULLY REMEDIED BY THE MEXICAN GOVERNMENT OR BY THE ENTITIES WHO HAVE VIOLATED THEM.

EIGHTH: THE TRIBUNAL RESOLVES THAT FREEDOM OF ASSOCIATION ENCOMPASSES FREEDOM OF CONSCIENCE, FREEDOM OF OPINION AND THE RIGHT TO DEMONSTRATE IN PUBLIC, SUCH THAT ITS CRIMINALIZATION IN ALL OF ITS DIMENSIONS AND INTERFERENCE WITH THOSE WHO POSSESS THESE RIGHTS, THROUGH ACTS OR OMISSIONS BY PUBLIC OR PRIVATE ENTITIES OR BY NATIONAL OR TRANSNATIONAL CORPORATIONS, MAKE THE MEXICAN GOVERNMENT RESPONSIBLE BEFORE THE INTERNATIONAL COMMUNITY, ENABLING THE PURSUIT OF ANY CASE OF VIOLATION OF FUNDAMENTAL HUMAN RIGHTS BEFORE THE APPROPRIATE INTERNATIONAL AUTHORITIES, AND THE DEMAND FOR THE IMMEDIATE CESSATION OF SUCH PRACTICES, IN PARTICULAR IN THE CASE OF THE COMMUNITY OF CANANEA, WHERE THE LABOR CONFLICT HAS NOT ONLY BEEN CRIMINALIZED, BUT THE VIOLATION OF FUNDAMENTAL LABOR RIGHTS HAS BEEN MILITARIZED.

NINTH: THE TRIBUNAL RESOLVES AND DEMANDS THAT THE MEXICAN GOVERNMENT RESTORE THE LABOR RIGHTS OF THE WORKERS OF THE COMPANY LUZ Y FUERZA DEL CENTRO, ANNUL THE ORDER TO CLOSE THE COMPANY AND REMEDY THE ECONOMIC AND SOCIAL DAMAGE AND THE DAMAGE TO PHYSICAL AND MENTAL INTEGRITY THAT WAS CAUSED BY THE ARBITRARY CLOSING OF THE COMPANY, WITH SPECIAL REFERENCE TO THOSE DAMAGES ARISING FROM THE HUNGER STRIKE AS A MEANS OF PEACEFUL PROTEST OF LAST RESORT.

TENTH: THE TRIBUNAL RESOLVES THAT DENIAL OF AND DELAY IN THE ADMINISTRATION OF JUSTICE IS A PROVEN FACT IN MANY OF THE CASES PRESENTED, ALONG WITH UNNECESSARY BUREAUCRACY IN ADMINISTRATIVE PROCEDURES, BOTH CONSTITUTING OBSTACLES THAT THREATEN FREEDOM OF ASSOCIATION, MAKING ITS EXERCISE ILLUSORY, FOR WHICH REASON THIS TRIBUNAL DEMANDS THE ADOPTION OF ALL MEASURES THAT LEAD TO SPEEDING UP ADMINISTRATIVE AND JUDICIAL PROCESSES, AT BOTH THE FEDERAL AND THE LOCAL LEVELS, WITH THE OBJECTIVE OF OBTAINING EFFICIENT AND EFFECTIVE JUSTICE.

ELEVENTH: THE TRIBUNAL RESOLVES THAT HAVING CONFIRMED THAT THE BODIES CHARGED WITH CARRYING OUT JUDGMENTS THAT RECOGNIZE AND DECLARE LABOR RIGHTS DO NOT DO SO, AND SUCH ARBITRARY AND UNJUSTIFIED BREACH OF DUTY CONSTITUTES A GRAVE VIOLATION OF ACCESS TO JUSTICE, THE TRIBUNAL DEMANDS THE ADOPTION OF ALL MEASURES THAT WILL MAKE THE RECOGNIZED RIGHTS EFFECTIVE IN ENFORCEABLE JUDICIAL JUDGMENTS.

TWELTH: THE TRIBUNAL RESOLVES THAT THE MEXICAN GOVERNMENT MUST RESPECT AND MAKE RESPECTED BY PRIVATE THIRD PARTIES AND NATIONAL AND INTERNATIONAL CORPORATIONS ALL OF THE INTERNATIONAL TREATIES MEXICO HAS SIGNED AND RATIFIED, ESPECIALLY THOSE THAT RELATE TO THE PROMOTION, GUARDING AND PROTECTION OF FREEDOM OF ASSOCIATION, ADAPTING INTERNAL LEGISLATION TO THE POSTULATES OF THOSE INSTRUMENTS.

THIRTEENTH: APPEAL TO NATIONAL AND INTERNATIONAL UNION ORGANIZATIONS SO THAT WITH THEIR MORAL FORCE AND SOLIDARITY, THIS RESOLUTION WILL HAVE GREATER SCOPE.

ISSUED BY THE INTERNATIONAL TRIBUNAL ON FREEDOM OF ASSOCIATION CONSTITUTED FOR THIS PURPOSE ON MAY 1, 2010, IN MEXICO CITY.

ENTER, NOTIFY THOSE WHO TO WHOM IT APPLIES, PUBLISH AND REMIT A COPY OF THIS JUDGMENT TO THE PERTINENT NATIONAL AND INTERNATIONAL BODIES.