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Complaint of the *Sindicato de Trabajadores de la Empresa Manufacturera de Componentes Eléctricos de México S.A. de C.V.* against Mexico for Violating the Rights of Macoelmex Workers in Piedras Negras, Mexico, particularly the Right to Freely Associate, Organize and Bargain Collectively

I. INTRODUCTION

The *Sindicato de Trabajadores de la Empresa Manufacturera de Componentes Eléctricos de México S. de R.L. de C.V.* (“Macoelmex Union”) submits this complaint against Mexico to the Committee on Freedom of Association (CFA) at the International Labor Organization (ILO). Between January and November of 2002, Mexico violated the rights to freely associate, organize and bargain collectively of workers at the Alcoa Corporation’s *Empresa Manufacturera de Componentes Eléctricos de México S.A. de C.V.* (“Macoelmex”), in Piedras Negras, Coahuila, Mexico.¹ The Macoelmex Union requests that the CFA demand immediate action from Mexico in order to: (1) abolish the exclusion clause, a provision of Mexican Federal Labor Law (FLL) that in its application violates the fundamental rights of these workers; (2) ensure a neutral union registration process in Piedras Negras, Coahuila, Mexico; and (3) protect union organizers from interference tactics, including the use of violence, intimidation, harassment, retaliatory firings, and blacklisting. Furthermore, we request that the CFA demand that Mexico insure the reparation of the damage caused to the members of the Macoelmex Union, including the registration of the union; the restoration of those fired with lost wages; the investigation and sanction of those responsible for the intimidation and violence, and assurances that the actions against the workers will not be repeated.

In January of 2002, Mexico violated the fundamental labor rights of the Macoelmex workers that are guaranteed under ILO Conventions No. 87 and No. 98. First, sheltering itself in the possibility that a collective contract could include an exclusion clause allowed by the FLL, Macoelmex and the *Sindicato de Trabajadores de la Industria Maquiladora del Estado de Coahuila C.T.M.* (“CTM Union”)² stipulated an exclusion clause in their collective bargaining agreement, and applied it as a means of restricting the right of the Macoelmex workers to freely associate. This clause obligated the Macoelmex workers to belong to the CTM union as a requirement for attaining or keeping their job.

Secondly, Mexico hindered the legalization of the Macoelmex Union. Furthermore, it did not guarantee the impartiality of the corresponding authority so that the union could acquire official recognition so that the workers could create an organization of their own choosing. Lastly,

¹ Alcoa, Inc. is a United States based multi-national that manufactures aluminum. It owns four maquiladoras in Piedras Negras, Coahuila, Mexico, which operates under its subsidiary, *Manufacturera de Componentes Eléctricos de México, S.A. de C.V.* (the Electrical Components of Mexico Manufacturing Company, L.L.C., Inc. (“Macoelmex”).

² *El Sindicato de Trabajadores de la Industria Maquiladora del Estado de Coahuila C.T.M.* (The Union of Workers of the Maquiladora Industry of the State of Coahuila, CTM), has used other names such as the Union of *Trabajadores de Industria Maquiladora de la Industria Nacional de Accesorios y Maquinaria Pesada* (Maquiladora Industry Workers of the National Industry of Accessories and Heavy Machinery) and of *La Manufacturera de Muebles Metálicos del Estado de Coahuila, C.T.M.* (Manufacture of Metallic Furniture of the State of Coahuila, C.T.M.) C.T.M. refers to the Confederation of the Workers of Mexico.

throughout the struggle of the Macoelmex workers to exercise their right to freely associate, organize and bargain collectively, they had to confront violence, intimidation, retaliatory firings, and other forms of interference that impeded them from exercising their fundamental labor rights. Mexico did not prevent these violations, nor has it investigated or sanctioned their authors. With this violation of rights, Mexico impeded the functioning of the Macoelmex Union and the Macoelmex workers from joining the Union.

II. ADMISSIBILITY

The Macoelmex Union has the authority to submit this complaint because it is an organization of workers that represents the interests and defends the rights of the workers at Alcoa's Macoelmex *maquiladora* and is directly involved in the matters addressed by this complaint.³ The Macoelmex Union is a *de facto* organization of workers established by the workers of Macoelmex during a general assembly on April 30, 2002. (See Appendix D, April 30, 2002 Incorporation Meeting Minutes of Macoelmex Union).⁴ During the assembly it formally signed the charter and elected an Executive Board. (See Appendix F, Macoelmex Union By-laws of the Union of Workers of *la Empresa Manufacturera de Componentes Eléctricos de México*; Appendix A, Affidavit of Javier Carmona Gaviña (Affidavit of Carmona) ¶ 16). At the same assembly, 502 Macoelmex workers became members of the Macoelmex Union and signed a petition to register with the *Junta Local de Conciliación y Arbitración* (Local Conciliation and Arbitration Board). (See Appendix M, Petition for Registration as a Union before the Local Board of Conciliation). This complaint directly pertains to Mexico's violation of the fundamental labor rights of the workers that participated in the formation of the Macoelmex Union.

III. THE FACTS

In the beginning of 2002, Javier Carmona Gaviña ("Javier Carmona"), Rafael Salinas Aranda ("Rafael Salinas"), and other workers at Alcoa's Macoelmex plants in Piedras Negras, Coahuila, Mexico began organizing to establish the Macoelmex Union, a union independent of the CTM. The workers sought to form a union that would represent the interests of the majority of the workers at Alcoa's four Macoelmex plants (Plant #1, Plant #2, Plant Subaru, and Plant Bodega) in Piedras Negras.

A. The Exclusion Clause in the Collective Bargaining Agreement Between Macoelmex and the CTM Union

³ "Complaints lodged with the ILO, either directly or through the United Nations, must come either from organizations of workers, from employers or from governments. Allegations will only be admissible if they are submitted by a national organization directly interested in the matter . . ." Procedure for the examination of complaints alleging violations of union rights ("CFA Procedure") ¶ 34.

⁴ Since the organization is a *de facto* workers' organization, the Macoelmex Union can bring this complaint against Mexico before the CFA. The fact that an organization has not been officially recognized does not justify the rejection of any allegation when it is clear from the complaint that the organization at least has *de facto* status. (See CFA Procedures ¶ 38).

The Collective Bargaining Agreement between Macoelmex and the CTM union, which has existed since January 3, 2000, contains an exclusion clause that makes membership in the CTM union a condition for a worker to have permanent employment at Macoelmex. (See Appendix C, Collective Bargaining Agreement between *la Empresa Manufacturera de Componentes Eléctricos de México S.A. de C.V.* (“Macoelmex”) and the *Sindicato de Trabajadores de la Industria Maquiladora del Estado de Coahuila, CTM* (“Collective Bargaining Agreement” ¶ 8(c)). The exclusion clause also obliged the corporation to fire workers that were expelled from the CTM union. (See Collective Bargaining Agreement ¶ 34). This clause, authorized by Articles 395 and 413 of Mexican Federal Labor Law (“FLL”), states that “. . .the manager will fire members that renounce or are expelled from the contracted union.” (See Collective Bargaining Agreement ¶ 37). The Mexican Supreme Court has declared the exclusion clause unconstitutional on various occasions; this is still not enforced.⁵

B. Mexico, the CTM and Macoelmex Committed and Permitted Actions which Hindered the Establishment of the Macoelmex Union

On February 22, 2002, workers in Plant #2 held a general assembly meeting in the community center of Piedras Negras during which they made a *de facto* denial of the leadership of Leocadio Hernández (Hernández), Secretary General of the CTM union. The workers also decided to start to form the Macoelmex union. Hernández, accompanied by approximately 10 of his supporters, tried to forcefully interrupt the assembly but the people did not allow him to do so. Upon leaving the assembly, Hernández and his supporters attacked Amparo Reyes, a worker of Plant #1 of the same corporation, who had arrived to support the workers of Plant #2. Four women from Hernández’ group beat and insulted Reyes (Carmona Affidavit ¶ 10). When Reyes tried to escape, they threw her to the ground, kicked her and pulled her hair. (Carmona Affidavit ¶ 10). Furthermore, on the 25th of February 2002, supporters of the CTM union entered Plant #2 and there attacked various workers. One of them, Bruno Meléndez, received a head injury that required stitches. (Carmona Affidavit ¶ 11).

On Tuesday, February 26, 2002, Macoelmex, at the request of the CTM union, used the exclusion clause to fire six workers from Plant #1 that helped the Plant #2 workers organize the assembly of February 22nd. The six workers were told to report to Gerardo Vásquez, human resource manager of Plant #1, Maria Elena Cavazos, the corporation’s lawyer and Miguel Portillo, Macoelmex’s human resources manager. Portillo explained that they were fired because the collective bargaining agreement between Macoelmex and the CTM union gave this union the authority to expel workers and direct Macoelmex to terminate their employment. (See Appendix C, Collective Bargaining Agreement ¶ 37).

On March 4, 2002 an election was held at the entrance of the factory to reelect the Sectional Union Committee of Plant #2. On this occasion, the workers had the option of voting for either an independent slate of candidates or the slate supported by the CTM union. (Carmona Affidavit ¶ 13). During the morning of the election, Macoelmex supervisors threatened the workers saying

⁵ For example, see *Novena Época. Instancia Segunda Sala. Source: Semanario Judicial de la Federación y su Gaceta (Weekly Judicial of the Federation and its Gazette) Tomo (Vol.) XIII, May 2001. Tesis(Thesis): 2a. LIX/2001, page 443, materias constitucional, laboral (constitutional, labor matters.)*

that Macoelmex would leave Piedras Negras if they did not vote for the CTM union slate. (Carmona Affidavit ¶ 14). The CTM union representatives and the Macoelmex management also campaigned against the independent slate and intimidated workers by looking over their shoulder to monitor their voting. (Carmona Affidavit ¶ 14). Despite threats from both the Macoelmex management and the CTM union, the independent slate won by a wide majority.

The Local Conciliation Board⁶ verified that the workers in Plant #2 chose a new sectional union committee by a vote of 892 to 592. (See Appendix E, Certification of Election Results, Local Conciliation and Arbitration Board).

On April 30, 2002, there was a general assembly of all of the unionized workers in Plant #1 and the Plant Subaru. (Carmona Affidavit ¶ 16). The purpose of this meeting was to formally establish a union independent of the CTM that truly represented the workers' interests. This meeting became the incorporation meeting of the Macoelmex Union, and the 502 workers who attended the meeting adopted the Macoelmex Union by-laws and elected Carlos Briones, José Luis Rodríguez, and Bruno Meléndez to its executive committee. (See Appendix D, Incorporation Meeting Minutes of the Macoelmex Union).

On the October 3rd and 4th of 2002, Macoelmex fired approximately sixteen Macoelmex workers from Plant #1 who had showed interest in joining the Macoelmex Union (Carmona Affidavit ¶ 23; Appendix B, Affidavit Rafael Salinas Aranda ¶ 8 (Salinas Affidavit)). Furthermore, Macoelmex fired Carlos Briones, Bruno Meléndez, José Luis Rodríguez, and Guadalupe Rivera, four of the five leaders of the Macoelmex Union in Plant #2. (Carmona Affidavit ¶ 23). Prior to the firings, Macoelmex management monitored the activities of the independent union organizers by sending security agents to videotape the union meetings.⁷ (Salinas Affidavit ¶ 11).

Those fired employees were placed on a CTM-generated blacklist that was circulated among the factories in Piedras Negras. This blacklist prevented participants and supporters of the independent union movement from obtaining employment in other factories. As a result, many of the fired Macoelmex workers, and in some cases members of their families, have found it difficult, if not impossible, to find work in other factories. (Salinas Affidavit ¶¶ 16-21).

C. The Macoelmex Union Was Denied Legal Status by the Local Conciliation and Arbitration Board

In Mexico, a workers' organization must register with the appropriate Conciliation and Arbitration Board to obtain legal status as a union. Under Article 366 of the FLL, the Conciliation and Arbitration Board cannot deny a union official registration if it fulfills all the requirements demanded by Article 365 of that law.⁸ See Appendix L, FLL, Article 365-66. The

⁶ In Mexico, there is a Local Conciliation and Arbitration Board in each state of the Republic that deals with labor disputes that are not subject to federal jurisdiction. The governor of each state supervises the Local Board of Conciliation and Arbitration. See FLL, articles 601, 603, 622 and 623.

⁷ See *Justice for All: The Struggle for Worker Rights in Mexico* (Solidarity Center 2003).

⁸ The union must have at least twenty members and its the purpose must be to study, improve and defend the workers' interests. The union must submit an authorized copy of the minutes of the incorporation meeting; a list with the number, names and addresses of its members; an authorized copy of the bylaws, and minutes from the meeting where the union elected its executive committee. See Attachment L, FLL Article 365.

Macoelmex Union fulfilled the requirements: (1) it had at least twenty members; (2) its purpose was to study, improve and defend the workers' interests; and (3) it submitted with its petition to register as an official union: (a) an authorized copy of the minutes of the incorporation meeting; (b) an authorized copy of the minutes from the meeting where the union elected its executive committee; (c) its by-laws; and (d) a list with the number, names and addresses of its members. The Macoelmex Union applied to register before the Local Conciliation and Arbitration Board in Piedras Negras on June 27, 2002; however, this Local Conciliation and Arbitration Board denied it official status on August 23, 2002. (See Appendix M, Macoelmex Union's Petition to the Local Conciliation and Arbitration Board to Register as a Union; Appendix G, Verdict of the Conciliation and Arbitration Board Denying Legal Registration; (Carmona Affidavit ¶18)).

Subsequently, on September 2, 2002, the Macoelmex Union appealed to the Third District Court of the Eighth Circuit for the aid of federal justice against the resolution decided by the Conciliation and Arbitration Board (Appeal 389/2002). On October 22 of 2002, the Third District Court denied the Macoelmex Union the requested constitutional protection regarding the appealed action of the Local Conciliation and Arbitration Board. (See Appendices H and I, Appeal to the District Court; Appendix J, Resolution of the District Court). The Macoelmex Union appealed the decision of the Third District Court before the Collegiate Court of the District of the city of Torreón, state of Coahuila. (See Appendix K, Appeal of the Resolution of the District Court to the Collegiate Court).

On one occasion, the interference of the President of the Local Conciliation and Arbitration Board, Francisco Javier Morales Berlanga ("Berlanga"), directly hindered the Macoelmex Union's registration process. Berlanga approached the Macoelmex Union organizers at close to midnight on September 25, 2002, and told the organizers that they should not attempt to form an independent union. He threatened that the workers would be wise not to be so open and vocal about their dissent with the CTM union (Salinas Affidavit ¶ 22-23). Berlanga was one of the members of the Local Conciliation and Arbitration Board that signed the denial of the registration of the Macoelmex Union.

A leader in the CTM union, José Ángel Aranda Hernández ("Aranda Hernández"), served as the worker representative on the Local Conciliation and Arbitration Board that denied the registration of the Macoelmex Union. The Local Conciliation and Arbitration Board has a tripartite structure that includes a government representative, an employer representative and a worker representative. According to FLL Article 707, the members of the Local Conciliation and Arbitration Board that have a personal interest should not take part in the decision. (See Appendix L, FLL, Article 707.) Aranda Hernández signed the denial of the registration of the Macoelmex Union.

Additionally, many of the most prominent actors in the injustices committed against the Macoelmex Union organizers in Piedras Negras held offices in the municipal government and on the CTM union executive committee. Leocadio Hernández, the Secretary General of the CTM union in Piedras Negras, was the *Partido Revolucionario Institucional* (PRI) candidate for *Primer Regidor* (Principal Alderman) of Piedras Negras (he was elected in January 2003 and currently serves in that position) and Jesús Muñoz, the Secretary General for the CTM union in

Macoelmex Plant #1, was the *Sindico* (Township Representative) for the municipality of Piedras Negras (Salinas Affidavit ¶¶ 3,4 and 22).

The *Comité Fronterizo de Obreras* (“CFO”)(Committee of Border Workers), a local non-governmental organization that promotes and spreads information about the labor rights of workers, supported the Macoelmex workers at Alcoa’s plants in Piedras Negras throughout their efforts to organize the Macoelmex Union.

IV. ARGUMENT

Mexico curtailed the Alcoa-Macoelmex workers’ fundamental labor rights, which are the right to freely associate, organize and bargain collectively, in open violation of their obligations under the framework of the ILO Conventions No. 87 and No. 98.⁹ First, Mexico continues to authorize the exclusion clause, a provision of Mexico’s Federal Labor Law (FLL) that in its application undermines the guaranteed rights of the Macoelmex workers provided for in Conventions No. 87 and No. 98. The exclusion clause in the Macoelmex-CTM Union Collective Bargaining Agreement allows the interference of both which impeded and discriminated against the workers that organized the Macoelmex Union, and prevented other workers from joining the union of their choosing. Second, Mexico allowed the members of the Local Conciliation and Arbitration Board of Piedras Negras, who were biased, to deny legal registration to the Macoelmex Union, ultimately denying the Macoelmex workers their rights under the framework of Convention 98 to freely associate with an organization of their own choosing and bargain collectively with Macoelmex. Through each and every one of these enumerated violations, Mexico failed to fulfill its ILO obligations; that is, to protect the rights of Macoelmex workers’ to freely associate, organize and join an organization of their choosing and bargain collectively.

A. The Authorization of an Exclusion Clause in the Macoelmex-CTM Union Collective Bargaining Agreement, Directly Violates Mexico’s Obligations Under ILO Conventions No. 87 and No. 98 because this Clause in its Application Violates the Rights of the Workers to Associate Freely, to Organize and to Bargain Collectively

Mexico’s authorization of an exclusion clause in the Macoelmex-CTM Union Collective Bargaining Agreement directly contravenes its obligations under ILO Conventions No. 87 and 98 because the application of this clause is used as a means of curtailing the workers right to associate freely. The exclusion clause contained in the Collective Bargaining Agreement between these groups violates the rights of the Macoelmex workers to freely associate, organize

⁹ Mexico ratified Convention 87 on April 1st, 1950. Under Article 133 of the Political Constitution, ratified treaties, including Convention 87 of the ILO- have a status below the constitution but above domestic laws such as the (FLL). see *Novena Epoca. Instancia Pleno*. Source: *Semanario Judicial de la Federación y su Gaceta* (Weekly Judicial of the Federation and it’s Gazette) Tomo (Vol.) X, November 1999, Thesis: P.LXXVII/99, page 46, constitutional matters. Mexico has not ratified Convention No. 98 but is obligated to comply with it and its substantive provisions under the ILO obligations. Additionally, Mexico committed to the principles set forth in Convention No. 98 through the 1998 ILO Declaration on *Principios y Derechos Fundamentales en el Trabajo* (Principles and Fundamental Rights of Employment).

and bargain collectively. First, Mexico interfered with the ability of Macoelmex workers to form and join a union of their choosing by allowing Macoelmex and the CTM union to use the exclusion clause to fire, intimidate, and harass the organized workers, thereby violating Article 2 of Convention No. 87 and Articles 1, 2 and 3 of Convention No. 98. Mexico did not adequately protect the workers against acts of anti-union discrimination, and workers were prejudiced and fired because of their affiliation with the Macoelmex Union. Second, Mexico prevented the Macoelmex workers from exercising their right to bargain collectively with Macoelmex, in violation of Convention No. 98. Mexico violated Article 4 of this Convention because it did not provide the appropriate measures to “encourage and promote the full development and utilization voluntary negotiation procedures” between Macoelmex and the Macoelmex Union.

La Comisión de Expertos en la Aplicación de Convenios y Recomendaciones (The Commission of Experts in the Application of Conventions and Recommendations) of the ILO affirms that exclusion or union security clauses are only compatible with Convention No. 98 if they are the result of a free negotiation between the worker and employer organizations, which is not the case here.¹⁰ In fact, the clause impedes the workers’ ability to join a union that represents them adequately before their employer. In Mexico, the so-called protection contracts are widely practiced in the *maquiladora* industry of which Macoelmex forms a part, and they are signed between companies and unions generally before the company has workers and begins to operate. When the workers want to later organize a union to have the possibility to ask for an election to determine the control of the collective bargaining agreement of their contract, the workers are threatened with the exclusion clause, and in many cases this is effectively applied to fire the workers. In this context of the existence of contracts that limit *a priori* the freedom of association, the application of the exclusion clause curtails the rights of the workers to form and join a union of their choosing and to seek control of the collective bargaining agreement. The combined impact of these limitations is the denial of the right to collectively bargain a collective contract.

1. The Exclusion Clause in the Macoelmex-CTM Union Collective Bargaining Agreement Allows the Interference of the CTM, which Hinders the Macoelmex Workers’ Rights to Form and Join an Organization of Their Choosing

The exclusion clause allows Macoelmex to interfere with the Macoelmex workers’ ability to establish and join an organization of their choosing, a violation of Article 2 of Convention No. 87 and Convention No. 98. Article 2 ¶ 1 of Convention No. 98 provides that “workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other whether it be directly or through its agents or members, in their establishment, functioning or administration.” Although the Macoelmex Union was the organization that the Macoelmex workers had just elected to represent their interests, workers could not freely join the Macoelmex Union without risking losing their job. The exclusion clause gave plant managers the authority to fire workers who did not support the CTM union. Two of the six fired, Amparo Reyes and Adrián Garcia filed petitions for reinstatement. Mexico delayed the decision for both workers,

¹⁰ *Conferencia Internacional de Trabajo* (International Work Conference), Conference Session 81, Report III (Part 4B), *Libertad Sindical y Colectiva* (Union and Collective Freedom) (Geneva, International Labor Office, 1994), ¶ 102.

postponing the hearings of their cases. These complaints were not resolved until the year 2003 and neither case resulted in the restoration of employment.

Furthermore, Macoelmex abused its firing power, terminating Amparo Reyes and the other five Macoelmex workers in reprisal for their fully legal organizing activities. Likewise, the exclusion clause enabled Macoelmex and the CTM union to engage in intimidation tactics short of firing, such as verbal threats and the use of violence, whose interference directly impeded the establishment, functioning, and administration of the Macoelmex Union.

The harassment, violence, intimidation, and firing of the workers constitute discrimination against the workers that organized the Macoelmex Union, a violation of Convention No. 98, Article 1, which guarantees the workers “adequate protection against all acts of discrimination tending to limit their freedom to assemble in relation to their employment.” Specifically, the use of the exclusion clause violates Article 1 ¶2(b) of Convention No. 98 because it resulted in the dismissal of workers who joined the Macoelmex Union.¹¹ Following the general assembly meeting of February 22, 2002, Macoelmex fired workers that supported a union independent of the CTM union. Macoelmex’s human resources manager, Miguel Portillo, informed the workers that the Macoelmex-CTM Union Collective Bargaining Agreement authorized the CTM to expel the workers from the union and direct Macoelmex to terminate the contract of the workers. (See Appendix B, Collective Bargaining Agreement ¶ 37). In October 2002, Macoelmex fired all the members of the Macoelmex executive board who had been instrumental in establishing the Macoelmex Union except for one, Javier Carmona. Macoelmex also fired 16 other Macoelmex workers associated with the organization of the Macoelmex Union in Plant #1. Mexico protected the corporation and the CTM union and did not act to prevent the rise of a conflict that led to these clearly anti-union dismissals. The President of the Conciliation Board, Berlanga declared in various occasions his opposition to a union independent of the CTM.

The firing of organizing workers, including many of the leaders, frustrated the workers’ most basic labor rights and crippled the ability of the Macoelmex Union to function. As Human Rights Watch reported, “efforts to form [an] independent union[sic] in factories that produced for the Alcoa Corporation in Piedras Negras, Coahuila, failed in October when management fired independent union leaders, elected in March, in one of the plants, as well as a slate of independent candidates who had announced their intention to run in future union leadership elections in another of the plants.”¹² Therefore, by permitting the use of the exclusion clause in the Macoelmex-CTM Union Collective Bargaining Agreement, Mexico did not adequately protect the jobs of the organizing workers, particularly from acts of anti-union discrimination for their labor activities, interfering with their ability to establish and join the Macoelmex Union, the union of their choosing.

Blacklists generated after the firings of the Macoelmex Union organizers are a prejudicial by-product of the exclusion clause that is authorized in Mexico and that violates the workers’ fundamental labor rights. After directing Macoelmex to fire the workers, the CTM placed the

¹¹ Article 1 ¶2(b) of Convention No. 98 says that “[s]uch protection shall apply more particularly in respect to acts that have as an object to: dismiss or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, during working hours.”

¹² Human Rights Watch Report on Mexico (2002).

names of the workers on blacklists, causing prejudice against the workers who organized the Macoelmex Union, in violation of Article 1 ¶2(b) of Convention No. 98. The blacklisting of the names of workers tied to the formation of the Macoelmex union prevented them from obtaining employment at other *maquiladoras* in Piedras Negras. As the CFA has recognized, the practice of blacklisting “constitute[s] a serious threat to the free exercise of trade union rights.” (Summary of Decisions, Protection against Anti-union Discrimination, Acts of Discrimination ¶ 709).

Furthermore, the use of the exclusion clause in the Macoelmex-CTM Union Collective Bargaining Agreement further violated Article 1 ¶2(b) of Convention No. 98 in that it resulted in prejudice to the workers because of their association with the Macoelmex Union. The CTM union abused the power granted to it under the exclusion clause to intimidate the workers organizing the Macoelmex Union through violence and harassment. For example, on February 22, 2002, Leocadio Hernández and his supporters interrupted the general assembly meeting in the community center of Piedras Negras, and tried to intimidate workers who were discussing the establishment of the Macoelmex Union. Then, Hernández and his followers attacked Amparo Reyes who was outside of the assembly lending her support to the Macoelmex union. Also, on February 25, 2002, Macoelmex worker Bruno Meléndez suffered a head injury after Hernández’ supporters attacked him.

2. In Spite of its Awareness that the Exclusion Clause Violated the Workers’ Right to Freely Associate, Organize and Bargain Collectively Under Conventions No. 87 and 98, Mexico Has Not Taken Adequate Measures to Protect the Workers

The exclusion clause contained in the Macoelmex-CTM Union Collective Bargaining Agreement, valid under Articles 395 and 413 of the FLL, was nevertheless used to undermine the Macoelmex workers’ freedom of association. This is in direct contravention of Mexico’s international obligations to take compensatory measures that promote “the full development and use of mechanisms for voluntary negotiation between employers...and workers’ organizations.” (Convention No. 98, Article 4; *see also* Convention No. 98, Article 3).¹³ The exclusion clause therefore violates Article 8(2) of Convention No. 87, which states that “[t]he law of the land shall not impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.” (Convention No. 87, Article 8(2)). In a report presented to the Inter-American Human Rights Convention on March 3, 2004, el *Centro de Reflexión y Acción Laboral* (Center of Reflection and Labor Action “CEREAL”) emphasized that the exclusion clause is a structural obstacle for the exercise of the freedom of association in Mexico.¹⁴

Since the National Supreme Court declared the exclusion clause unconstitutional on various occasions, Mexico is aware that articles 395 and 413 of the FLL are in violation of the workers’

¹³ Article 3 states that “agencies appropriate to national conditions shall be established, where necessary, in order to guarantee respect for the right to organize as defined in the preceding articles.”

¹⁴ See *Centro de Reflexión y Acción Laboral (CEREAL) Informe sobre la situación del derecho a la libertad sindical en México: Audiencia en el marco del 119º periodo ordinario de sesiones de la Comisión Interamericana de Derechos Humanos* (Report on the Situation of the Right to Freely Associate in Mexico: Hearing in the Framework of the 119th Ordinary Period of Sessions of the International Commission on Human Rights, March 3, 2004. CEREAL is a Mexican civil organization that promotes labor rights and popular education.

right to freely associate, organize and bargain collectively, and has not taken adequate steps to remedy the situation. The result is that the exclusion clause, which is part of the “law of the land,” continues being a part of collective bargaining agreements, such as the Collective Bargaining Agreement between Macoelmex and the CTM union. This severely impairs the ability of workers to exercise their right to establish and join a union that adequately represents their interests. By upholding these articles in the current law, Mexico has not only allowed Macoelmex to interfere with the workers’ ability to establish and join the Macoelmex Union, but has also not taken the necessary and appropriate measures to ensure that the Macoelmex workers may freely exercise their right to freely associate, to organize and to bargain collectively. (Convention No. 98, Articles 3 and 4; *see also* Convention No. 87, Article 11 mandating that the States “take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize”).

B. Mexico’s Union Registration Process Interfered with the Ability of the Macoelmex Union to Establish an Organization of the Workers’ Choosing and Bargain Collectively

Mexico interfered with the rights of the Macoelmex workers to establish and join an organization that they had freely chosen; this is a violation of Conventions No. 87 and No. 98. Without the status of a legally registered union, the Macoelmex workers were not able to establish an independent union of their choosing and exercise their right to freely associate, organize and collectively bargain. First, the Macoelmex workers were not able to acquire legal status because of acts of interference of the Mexican government, the CTM union and the employer (Macoelmex). Second, the procedure to acquire legal status was carried out in such a manner as that allowed the Local Conciliation and Arbitration Board to create pretexts for denying the registration of the Macoelmex Union.

1. Mexico Engaged In and Allowed Acts of Interference That Prevented the Macoelmex Union from Freely Exercising Its Rights Under Conventions No. 87 and No. 98 of the ILO

The local Conciliation and Arbitration Board’s favoritism towards the CTM union was as an interference that impeded the right of the Macoelmex Union to freely associate, organize and bargain collectively in violation of Conventions No. 87 and No. 98. Article 3 of Convention No. 87 guarantees that worker’s organizations “shall have the right to draft their statutes and by-laws, to elect their representatives in *full freedom*, to organize their administration and activities and to formulate their plan of action ” (emphasis added). Additionally, Article 3 of Convention No. 87 mandates that “public authorities shall refrain from all intervention which would limit” the right to organize in full freedom. Convention No. 98 also requires that the Mexican government avoid acts of interference that hinder the organizing activities of worker’s organizations, and should protect these organizations from the interference of employers’ organizations. (Convention No. 98, Article 2).

Mexico violated its obligations to the ILO by allowing for a tri-partite structure on the Local Conciliation and Arbitration Board that in turn permitted a rival union representative to participate in the decision-making process regarding the Macoelmex Union. Where there is a

close working relationship between a trade union and labor authorities, the government should refrain from showing favoritism towards or discriminate against any trade union, and should adopt “a neutral attitude in its dealings with all workers’ organizations, . . .so that they are all placed on equal footing.” (*See Summary of Decisions, Right of the Workers and Employers to Freely Constitute Organizations they Find Convenient and Join them, Favoritism or Discrimination in Respect to Particular Organizations*, ¶ 305). At the Local Conciliation and Arbitration Board in Piedras Negras, the workers’ representative, José Ángel Aranda Hernández, was a prominent CTM union leader. Even though there was a clear conflict of interest between Aranda Hernández’s affiliation with the CTM union and his ability to effectively and neutrally consider the petition of the Macoelmex Union, Aranda Hernández participated in the decision-making process to deny registration of the Macoelmex Union. The Local Conciliation and Arbitration Board structure was therefore inherently biased in favor of the CTM union, interference that hindered the rights of the Macoelmex workers to freely establish and join an organization of their own choosing. (*See Summary of Decisions, Committee on Freedom of Association, Report 295 (1994), Case No. 1756 ¶ 416* where the CFA emphasizes the importance it attaches to the independence of the union movement and neutral attitudes of governments when dealing with workers’ organizations).

Mexico did not enforce its own FLL, which demands that members of the Local Conciliation and Arbitration Board with a personal interest in the matter at hand recuse themselves from the decision process. (*See Appendix L, Mexican FLL, Article 707*). The United States Department of State observed that the presence of a union representative on the Local Conciliation and Arbitration Board could result in “unfair partiality in representation disputes.”¹⁵ Mexico should have ensured that Aranda Hernández recused himself from the decision regarding the Macoelmex Union. Because Mexico did not ensure Aranda Hernández’s recusal, Mexico violated its obligation to provide a neutral union registration process.

Mexico allowed the interference of public authorities to directly hinder the workers’ efforts to form an independent union, in violation of Article 3(2) of Convention No. 87. Article 3(2) of Convention No. 87 states that public authorities shall avoid any interference that would restrict or impede the full exercise of the rights provided for in this Convention. Additionally, the CFA recognizes that “by according favorable or unfavorable treatment to a given organization as compared with others, a government may be able to influence the choice the workers make as to which organization they try to join.” (*See Summary of Decisions, Freedom of Association, Favoritism of Discrimination with Respect to Particular Organizations*, ¶ 304). On September 25, 2002, Francisco Javier Morales Berlanga, the president of the Local Conciliation and Arbitration Board in Piedras Negras, went to Macoelmex Plant #1 to silence the workers’ efforts to organize an independent union.¹⁶ (Salinas Affidavit ¶¶22-23). When the independent union organizers informed Berlanga that they wanted to elect a new executive committee, Berlanga warned the workers to not be so vocal about their concerns nor so public about their struggle. (Salinas Affidavit ¶ 23). The involvement of Berlanga in discouraging the Macoelmex workers from establishing a representative union illustrates how the interference of public authorities

¹⁵ U.S. Department of State Human Rights Report (2002).

¹⁶ *See Justice for All: The Struggle for Worker Rights in Mexico (Solidarity Center 2003)*, p. 13 (It observes that “[i]n many states, the governor and the state administration openly favor investors, executives, and pro-government, pro-employer unions at the expense of independent labor organizations”).

hindered the workers' right to establish and join a union of their choosing, which is in direct contravention of Article 3 of Convention No. 87.

Moreover, the Macoelmex Union was not able to exercise "the full enjoyment of the rights and freedoms set out in Convention Nos. 87 and 98" since they were subject to "a climate of violence, pressure and threats . . ." perpetrated by Macoelmex and the CTM union and permitted by Mexico. (Summary of Decisions, Right to Life, Personal Security and the Physical and Moral Integrity of the Person, Trade Union Rights and Civil Liberties, ¶ 62). Mexico had the obligation to take "all necessary and appropriate measures" to ensure that workers the freedom to organize. (Convention No. 87, Article 11). In preparation for the registration of the Macoelmex Union, the workers were engaging in fundamental membership activities (distributing educational fliers, organizing meetings, establishing by-laws and electing representatives). These peaceful and lawful activities were met with physical violence, verbal threats, surveillance and retaliatory firings. Mexico did not recognize nor do anything to prevent the interference of Macoelmex and the CTM union from hindering the activities of the Macoelmex Union organizers. Mexico violated its "undeniable duty to promote and encourage a social climate" where the Macoelmex workers could safely organize and establish an organization of their choosing. (Summary of Decisions, Right to Life, Personal Security and the physical and moral integrity of the person, ¶ 62).

2. Mexico Used Pretexts To Deny The Legal Personality of the Macoelmex Union, Infringing on the Right of the Macoelmex Workers to Establish an Organization of Their Own Choosing

Mexico violated its duty to ensure that the acquisition of legal personality be free from such restrictions as set forth in Article 7, Convention No. 87. When the members of the Macoelmex Union fulfilled the administrative guidelines for registration, Mexico unfairly refused them. Article 7 of Convention No. 87 provides that "the acquisition of legal personality by workers' organizations...shall not be made subject to conditions of such a character as to restrict the application of the provisions established in Articles 2, 3, and 4". Mexico allowed the Local Board of Conciliation and Arbitration in Piedras Negras to arbitrarily deny the registration of the Macoelmex Union, thereby violating their obligations under the framework of these provisions of ILO Convention No. 87.

Mexico used pretexts to restrict the Macoelmex workers' right to establish an organization of their choosing. The CFA has recognized in a report that the legal formalities for establishing a union "should not be applied in such a way as to delay or prevent the formation of organizations." (See Summary of Decisions, Legal Formalities for the Establishment of Organizations, ¶ 249; see also Report No. 244, Cases Nos. 1176, 1195, 1215, and 1262 ¶ 275(f)). Although Mexico may exercise its right to create legal requirements for the registration of a trade union (legal personality), the Mexican government has conceded that it would not apply those requirements "in a way that constitutes a major obstacle to the exercise of freedom of association." (Complaint against the Government of Mexico presented by the *Sindicato Nacional de Trabajadores Académicos del Colegio Nacional de Educación Técnica Profesional* (SINTACONALEP), (Academic Workers' Union of the National Association of Technical Occupational Education) Report No. 324, Case No. 2013, ¶709). The Macoelmex Union

fulfilled the necessary requirements as provided for in Mexican FLL Article 365 when it applied for registration on June 27, 2002.¹⁷ However, the local Board of Conciliation and Arbitration denied the registration of the Macoelmex Union on August 23, 2002. (See Appendix G, Denial of Union Registration). The Local Conciliation and Arbitration Board cited problems with the registration for their denial, but never sought to consult the Macoelmex Union to clarify or resolve doubts that the board could have had with the registration application; nor did they give the union the opportunity to clarify or specify points, in accordance with the FLL which says that, in the case of doubt, the authority must decide in favor of the workers. Mexico used the administrative registration procedure to impede the functioning of the Macoelmex Union. The decision of the Local Conciliation and Arbitration Board to deny the union registration constituted an unfair restriction to the acquisition of legal personality for the union, in violation of Convention No. 87.

The use of pretexts by the Local Conciliation and Arbitration Board to deny registration of certain unions, as seen in Piedras Negras, is not an anomaly in Mexico. As the United States Department of State Human Rights Report (2002) has recognized, other organizations that have satisfied the criteria for union registration “have complained that they have found it difficult to obtain registration, especially from some Local Conciliation and Arbitration Boards.” In the State of Puebla, the Local Conciliation and Arbitration Board rejected the application for legal personality of the *Sindicato Independiente de Trabajadores de la Empresa Matamoros Garment S.A. de C.V.(SITEMAG)*(Independent Union of the Workers of the Matamoros Garment Corporation). (On June 24 of 2003 the *Confederación Internacional de Organizaciones Sindicales Libres (CIOSL)*(International Confederation of Free Labor Unions) filed a complaint before the ILO against the Mexican government in this matter). Furthermore, the National Administration Office (NAM) of the United States has recognized that there are serious problems with the impartiality of the Boards of Conciliation and Arbitration in Mexico.¹⁸

V. CONCLUSION

By failing to ensure the compliance of the Federal Labor Law and by permitting the interference of public authorities to hinder the organizing activities of the workers, Mexico violated the rights that Convention No. 87 and Convention No. 98 guarantee the Macoelmex workers. The direct and indirect involvement of the Mexican government in the actions against the organizers of the Macoelmex Union is a clear violation of the rights to the freedom to associate, to organize and to bargain collectively. Through its negligence, Mexico has allowed violence, threats, retaliatory firings and the appearance of blacklists; all actions against the workers who exercised their rights. Mexico continues to authorize the use of the exclusion clause in the Macoelmex-CTM Union Collective Bargaining Agreement, which forced the workers to join the union that Macoelmex chose and prevents the workers from joining organizations of their choosing.

¹⁷ The Macoelmex Union submitted documentation showing that it: (1) it had at least twenty members and (2) its objective was to study, improve and defend the workers’ interests. Additionally, they submitted with their registration application, as required: (1) an authorized copy of the minutes of the incorporation meeting; (2) the minutes from the meeting where the union elected its executive committee; (3) its by-laws; and (4) a list with the number, names and addresses of its members.

¹⁸ See Public Report of the NAM of the United States of Case No. 9703 (ITAPSA)(December 15, 1997); Public Report of the NAM of the United States of Case No. 94003 (SONY)(April 11, 1995).

Moreover, Mexico did not guarantee a fair process so the Macoelmex Union could gain official recognition by the Local Conciliation and Arbitration Board, which had a close working relationship with the CTM union. Although the Macoelmex Union truly represented the interests of the workers in Macoelmex *maquiladoras* in Piedras Negras, Mexico failed to comply with its obligations before the ILO, to which it is subject, leaving the workers unprotected. The result is that the Macoelmex workers lack adequate representation, and are still being denied their fundamental rights to organize in order to establish and freely join an organization of their choosing.

By: _____

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