DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

PUBLIC REPORT OF REVIEW OF U.S. SUBMISSION 2012-01 (HONDURAS)

OFFICE OF TRADE AND LABOR AFFAIRS
BUREAU OF INTERNATIONAL LABOR AFFAIRS
U.S. DEPARTMENT OF LABOR

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PUBLIC REPORT OF REVIEW OF U. S. SUBMISSION 2012-01 (HONDURAS)

Executive Summary

U.S. Submission 2012-01 (Honduras)

This report responds to U.S. Submission 2012-01 (Honduras) ("The Submission"), filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and 26 Honduran unions and civil society organizations on March 26, 2012, with the Office of Trade and Labor Affairs (OTLA).[1] The Submission alleges violation of the Labor Chapter of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), which has been in force between the United States and Honduras since April 1, 2006.[2]

In response to the Submission, the OTLA conducted a thorough and detailed review of all information obtained related to the allegations in the Submission. This report presents the OTLA's findings and recommendations based on the information obtained, in accordance with OTLA's Procedural Guidelines.[3] The report concludes that the OTLA has serious concerns regarding the protection and promotion of internationally recognized labor rights in Honduras, including concerns regarding the Government of Honduras's enforcement of its labor laws.

Throughout the review process, the Government of Honduras has demonstrated a willingness to engage the U.S. government concerning the issues raised in the Submission and the actions needed to remedy the problems identified. In addition to this engagement and open communication with the OTLA, the Government of Honduras took the important step of launching a dialogue and holding regular meetings with representatives from unions and non-governmental organizations (NGOs) interested in the Submission. While the OTLA welcomes the Honduran government's efforts and engagement with civil society, there has not yet been measureable systemic improvement in Honduras to address the concerns raised.

The report recommends consultations under Article 16.4 of the CAFTA-DR and a meeting of the CAFTA-DR Labor Affairs Council as appropriate next steps for the U.S. government to engage constructively with the Government of Honduras on these critical labor rights issues. The United States believes that the development and implementation by the Government of Honduras and the U.S. government of a Monitoring and Action Plan based on the recommendations in this report and ongoing engagement with civil society would be an important step in addressing the concerns identified in this report and strengthening the protection of labor rights throughout Honduras.

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[1] U.S. Submission 2012-01 (Honduras), *Formal Public Submission*, March 26, 2012 (Submission), *available from:* http://www.dol.gov/ilab/reports/pdf/HondurasSubmission2012.pdf.

[2] Office of the United States Trade Representative, The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), *available from:* http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta.

[3] 71 Fed. Reg. 76691 (Dec. 21, 2006), *available from:* http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=12492.

Summary of U.S. Submission 2012-01 (Honduras)

The Submission alleges that the Government of Honduras has violated its commitments under the CAFTA-DR Labor Chapter, including those under Article 16.2.1(a) not to "fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties."

In large part, the Submission alleges that the Government of Honduras has failed to effectively enforce its labor laws as defined under CAFTA-DR Article16.8 with respect to:

- the right of association;
- the right to organize and bargain collectively;
- the minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The Submission specifically asserts such failures with respect to seven factories in the apparel and auto parts manufacturing sectors, nine plantations or farms in the agricultural sector, and enterprises at the Port of Cortés.

Findings

The OTLA conducted a thorough and detailed review of all information obtained related to the allegations in the Submission, focusing the analysis on events after April 1, 2006, when the CAFTA-DR entered into force in Honduras. The OTLA found evidence of labor law violations in nearly all of the cases in the Submission in which the identified companies remained in business as of the drafting of this report and has serious concerns regarding the Government of Honduras's enforcement of its labor laws in response to evidence of such violations.[4]

The OTLA review identified cross-cutting issues in the labor inspection process that undermine efforts by the Secretariat of Labor and Social Security (*Secretaría de Trabajo y Seguridad Social,* STSS) to enforce Honduran labor laws, as defined under CAFTA-DR. While individual inspectors expressed a general willingness to execute their duties, the OTLA has serious concerns with respect to:

- responding to inspection requests alleging labor law violations;
- gaining access to worksites;
- inspecting for all alleged, potential, or previously identified violations in a workplace;
- calculating and imposing fines in a manner that effectively deters future violations; and,
- ensuring enforcement of remediation orders.

The OTLA found that these issues detrimentally impacted the STSS's enforcement of labor laws in a number of cases. In particular, the labor inspectorate:

[4] Two companies identified in the Submission have since ceased operating.

- Did not appear to impose sanctions on the employer in 32 of the 33 instances in which an inspector was denied access to the worksite.
- Did not appear to ensure, in at least 43 cases of unlawful dismissals of union leaders, that employers pay a fine equivalent to six months of the dismissed leaders' salaries to the workers' union, as required by the Labor Code.
- Did not appear to investigate for violations of Labor Code provisions that protect unions and their members from anti-union discrimination and other retaliation in cases involving founding union members and union leaders who suddenly resigned, despite receiving complaints that the resignations were the result of employer pressure.
- Does not appear to have a process to ensure that the negotiation and registration of collective pacts do not impair workers' rights to freedom of association and collective bargaining.
- Did not appear to enforce laws protecting legitimately organized independent unions in cases where employers used employer-dominated unions to undermine workers' right to freely associate.
- Did not appear to impose sanctions or verify remediation in nine of the ten cases in which the STSS confirmed a failure to pay the minimum wage. In the one case where a fine was imposed, the OTLA received documents from the STSS indicating that, although the fine had been collected, the minimum wage violation continues without remediation, potentially affecting hundreds of workers.
- Did not appear to impose sanctions or verify remediation in any of the five agricultural enterprises where the OTLA found the STSS had identified occupational safety and health violations.

The OTLA review also found evidence of the use of illegal child labor in two cases, as well as in numerous nation- and sector-wide reports. This evidence raises concerns regarding the enforcement of Honduran labor laws related to the minimum age for work and the worst forms of child labor, especially in the agricultural sector.

Recommendations

According to the OTLA's Procedural Guidelines for submissions, its public report shall include any recommendations made to the Secretary of Labor.[5]

While the Government of Honduras has taken certain steps to address the concerns identified in this report, the OTLA has not seen measureable progress and important concerns remain. For example, many of the specific labor law violations identified during STSS inspections undertaken in September 2012 in 14 of the workplaces noted in the Submission have still not been remediated, and STSS inspection records indicate that in several instances inspectors did not address violations alleged in prior inspections and complaints, including in the Submission.

[5] 71 Fed. Reg. 76691 (Dec. 21, 2006).

The recommendations set out seven core elements of a Monitoring and Action Plan with steps that include specific actions to address the underlying systemic labor law enforcement concerns discussed in this review.

The recommendations are set forth with the hope that the Government of Honduras will build on its positive engagement with the OTLA during the submission review process and its dialogue with civil society to take the additional steps needed to resolve the issues addressed in this Report with respect to the enforcement of Honduran labor laws.

Recommendations to the Government of Honduras

The OTLA makes the following seven core recommendations to facilitate compliance by the Government of Honduras with its commitments under Chapter 16 (Labor) of CAFTA-DR.

The Government of Honduras should ensure that STSS inspectors:

1. respond to written and verbal requests for inspections, in accordance with the applicable laws and internal protocols;
2. compel access to worksites and impose fines and notify Labor Courts when access is denied, in accordance with the applicable laws and internal protocols;
3. investigate all known violations of law and, upon receipt of notice, all potential, alleged or previously identified violations, in accordance with the applicable laws and internal protocols;
4. impose sanctions for labor law violations, in accordance with applicable laws, calculate fines that create a significant penalty to deter violations, and collect fines in a timely fashion;
5. enforce their remediation orders and compel employer compliance;
6. improve enforcement of laws related to freedom of association and collective bargaining; and
7. improve enforcement of laws related to child labor.

Recommendations to the Secretary of Labor

The OTLA recommends to the Secretary of Labor that the U.S. government engage with the Government of Honduras to address the concerns identified in this report and the recommendations to the Government of Honduras set forth above, and that the U.S. government continue its cooperative engagement with the Government of Honduras to develop a Monitoring and Action Plan, with the intention to develop time-bound steps and benchmarks to measure progress, taking into consideration the accompanying recommended actions to address the underlying systemic problems.

The OTLA recommends to the Secretary of Labor that the U.S. government initiate consultations through the contact points designated in the CAFTA-DR Labor Chapter under Article 16.4 to develop the Monitoring and Action Plan described above.

The OTLA recommends to the Secretary of Labor that the U.S. government convene a meeting of the representatives from Honduras and the United States of the CAFTA-DR Labor Affairs

Council to discuss the findings and recommendations of the report and the outcome of the consultations, at the level of Trade and Labor Ministers or their designees.

The OTLA, in consultation with the U.S. Trade Representative and the U.S. Department of State, will review the progress of this engagement and any efforts by the Government of Honduras to address the concerns identified in this report, within 12 months after the report's publication, and will consider appropriate action under the CAFTA-DR, including a recommendation by OTLA to the Secretary of Labor that the United States request Cooperative Labor Consultations under Article 16.6 the Labor Chapter.

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List of Acronyms

AFL-CIO – American Federation of Labor and Congress of Industrial Organizations

AHM – *Asociación Hondureña de Maquiladores* (Honduran Association of Manufacturers)

CAFTA-DR – Dominican Republic – Central America – United States Free Trade Agreement

CDM – *Centro de Derechos de Mujeres* (Women's Rights Center)

CFA – International Labor Organization Committee on Freedom of Association

CGT – *Central General de Trabajadores* (General Workers' Confederation)

CONADEH – *Comisionado Nacional de los Derechos Humanos* (National Commission for Human Rights)

COSIBAH – *Coordinadora de Sindicatos Bananeros y Agroindustriales de Honduras* (Coordinator of Honduran Banana and Agro-industrial Unions)[6]

COVERCO – *Comisión para la Verificación de Códigos de Conducta* (Commission for the Verification of Codes of Conduct)

CTH – *Confederación de Trabajadores de Honduras* (Confederation of Workers of Honduras)

CUTH – *Confederación Unitaria de Trabajadores de Honduras* (Unified Confederation of Workers of Honduras)

ENP – *Empresa Nacional Portuaria* (National Port Company)

FESITRADEH – *Federación de Sindicatos Democráticos de Honduras* (Federation of Democratic Unions of Honduras)

FESITRANH – *Federación Sindical de Trabajadores Nacionales de Honduras* (Federation of Honduran Workers' Unions)

FHIA – *Fundación Hondureña de Investigación Agrícola* (Honduran Foundation for Agricultural Research)

FITH – *Federación Independiente de Trabajadores de Honduras* (Independent Federation of Workers of Honduras)

FLA – Fair Labor Association

GOH – Government of Honduras

HNL – Honduran Lempira (currency)

IHSS – *Instituto Hondureño del Seguro Social* (Honduran Institute of Social Security)

ILO – International Labor Organization

INE – *Instituto Nacional Estadistica* (National Statistics Institute)

OSH – Occupational Safety and Health

[6] In May 2013, COSIBAH became the Federation of Unions of Agro-industrial Workers (*Federación de Sindicatos de Trabajadores de la Agroindustria*, FESTAGRO). For the purposes of clarity in this report, the OTLA uses COSIBAH to describe the organization.

OTLA – Office of Trade and Labor Affairs

SGTM – *Sindicato Gremial de Trabajadores de Muelle* (Dockworkers' Trade Union)

SINTRAENP – *Sindicato de Trabajadores de la ENP* (Union of ENP Workers)

SITEDIKHOSA – *Sindicato de Trabajadores de la Empresa Dickies de Honduras* (Dickies of Honduras Workers' Union)

SITRACOSTURA/SITRAINCOSI – *Sindicato de Trabajadores de la Industria de la Costura y Similares* (Sewing Workers' Union)

SITRAFHIA – *Sindicato de Trabajadores de la Fundación Hondureña de Investigación Agrícola* (Union of Honduran Foundation for Agricultural Research Workers)

SITRAFMARIA – *Sindicato de Trabajadores de las Fincas Ana María, Bárbara, y María* (Union of Workers of the Ana Maria, Barbara, and Maria Farms)

SITRAKYUNGSHINLEAR – *Sindicato de Trabajadores de la Empresa Honduras Electrical Distribution Systems S de R.L. Kyungshin-Lear* (Honduras Electrical Distribution Systems Kyungshin-Lear Workers' Union)

SITRAMCETEX – *Sindicato de Trabajadores de la Empresa Ceiba Textiles* (Ceiba Textiles Workers' Union)

SITRAPETRALEX – *Sindicato de Trabajadores de la Empresa Petralex* (Petralex Workers' Union)

SITRAPINEHURST – *Sindicato de Trabajadores de la Empresa Pinehurst* (Pinehurst Workers' Union)

SITRATION – *Sindicato de la Empresa A.tion* (A.tion Workers' Union)

SPS – San Pedro Sula, Honduras

STSS – *Secretaría de Trabajo y Seguridad Social* (Secretariat of Labor and Social Security)

UPP – *Unidad de Protección Portuaria* (Port Protection Unit)

USAID – United States Agency for International Development

USDOL – United States Department of Labor

USTR – Office of the United States Trade Representative

WRC – Worker Rights Consortium

I. Introduction

Honduras signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) on August 5, 2004, and the Agreement entered into force between the United States and Honduras on April 1, 2006.[7] The CAFTA-DR Labor Chapter (Chapter 16) states that each Party shall designate an office within its labor ministry or equivalent entity to serve as a contact point with the other Parties and with the public.[8] For the United States, the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA) was designated as this contact point in a *Federal Register* notice published on December 21, 2006.[9]

On March 26, 2012, the OTLA received a public submission under the Labor Chapter from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and 26 Honduran unions and civil society organizations alleging violation of the Labor Chapter.[10] U.S. Submission 2012-01 (Honduras) ("the Submission") alleges that the Government of Honduras (GOH) violated its commitments under the Labor Chapter, including those under Articles 16.1, 16.2.1, and 16.3. The Submission highlights 17 worksites spanning factories in the apparel and auto parts manufacturing sectors, plantations and farms in the agricultural sector, and enterprises at the Port of Cortés.

The Submission also expresses concern regarding the establishment of a hiring scheme for temporary workers under the National Plan for Employment by Hours.[11] In addition, the Submission alleges that the GOH has failed to investigate and prosecute violence and threats against trade unionists, noting that violence against trade unionists and the failure to fully investigate such violence can have a broad chilling effect on the exercise of workers' rights. The OTLA does not make findings with respect to the issue of labor violence in this report of review; however, the United States Government (USG) will continue to engage extensively with the GOH on this issue.

Under the Labor Chapter, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* and commit to "strive to ensure that such labor principles and internationally recognized labor rights set forth in Article 16.8 are recognized and protected by its law"[12] in Article 16.1. In Article 16.2.1, each Party commits not to "fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement."[13] Article 16.8 of the Labor Chapter defines "labor laws" as:

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[7] Office of the United States Trade Representative, The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), *available from:* http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta.

[8] CAFTA-DR, Article 16.4.3.

[9] 71 Fed. Reg. 76691 (Dec. 21, 2006), *available from:* http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=12492.

[10] U.S. Submission 2012-01 (Honduras), *Formal Public Submission*, March 26, 2012 (Submission), *available from:* http://www.dol.gov/ilab/reports/pdf/HondurasSubmission2012.pdf.

[11] *See*: Annex 2 for the OTLA's discussion of the National Plan for Employment by Hours on page 95.

[12] CAFTA-DR, Article 16.1.1.

[13] CAFTA-DR, Article 16.2.1(a).

> a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.[14]

In Article 16.3, each Party commits to ensuring "that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws…"[15]

Under the Labor Chapter, each Party's contact point shall provide for the submission, receipt, and consideration of communications on matters related to the Chapter and reviews such communications in accordance with domestic procedures.[16] The same *Federal Register* notice that designated the OTLA as the U.S. contact point also sets out the Procedural Guidelines that the OTLA follows for the receipt and review of public submissions. According to the definitions contained in the Procedural Guidelines, a "submission" means "a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under a labor chapter."[17]

On May 14, 2012, the OTLA accepted the Submission for review, stating that it met the criteria for acceptance. The OTLA announced its decision to accept the Submission in a *Federal Register* notice on May 22, 2012.[18]

Under the Procedural Guidelines, the OTLA shall issue a public report within 180 days of the acceptance of a submission for review, unless circumstances as determined by the OTLA require an extension of time. The Guidelines further state that the report shall include a summary of any findings and recommendations.[19] Due to the scope of the submission and the large amount of information received from the GOH and stakeholders, on November 2, 2012, the OTLA notified the GOH and the submitters that it was extending the period for review and announced this decision in a *Federal Register* notice published on November 7, 2012.[20]

The OTLA conducted a review to gather information to better understand and publicly report on the issues raised by the Submission as they relate to the GOH's commitments under the CAFTA-DR Labor Chapter. In doing so, the OTLA consulted with the U.S. Department of State (State) and the Office of the U.S. Trade Representative (USTR). The OTLA submitted questions related to the Submission to the contact point at the Honduran Secretariat of Labor and Social Security (*Secretaría de Trabajo y Seguridad Social*, STSS) and engaged with the Embassy of Honduras in

[14] CAFTA-DR, Article 16.8.
[15] CAFTA-DR, Article 16.3.1.
[16] CAFTA-DR, Article 16.4.3.
[17] 71 Fed. Reg. 76691 (Dec. 21, 2006).
[18] 77 Fed. Reg. 30329 (May 22, 2012), *available from:* http://www.dol.gov/ilab/reports/pdf/20120522.pdf.
[19] 71 Fed. Reg. 76691 (Dec. 21, 2006).
[20] 77 Fed. Reg. 66870 (Nov. 7, 2012), *available from:* http://www.dol.gov/ilab/reports/pdf/20121107.pdf.

Washington, D.C. The OTLA thoroughly reviewed approximately 1,500 documents provided by the submitters, employers, and the GOH. In addition, the OTLA undertook four missions to Honduras (July 9-20, and December 12-14, 2012, and May 20-21 and October 23-25, 2013) to interview relevant stakeholders and to gather additional information on the issues raised in the Submission. During these missions, representatives from the U.S. Department of Labor (USDOL) and the U.S. Embassy in Tegucigalpa, Honduras, met with officials from the GOH, employers, employer associations, workers, unions, and judges. USDOL officials interviewed approximately 100 workers individually or, in a limited number of cases, in groups of two to three; managers from all the companies named in the Submission that were still in operation;[21] and eight inspectors from the STSS. In all cases, no one was present other than the USDOL officials and interviewees.

II. OTLA's Factual Findings

This section provides a detailed review of the OTLA's findings with respect to the issues raised in the Submission. Unless referenced specifically as a Submission allegation in this section, the information herein is derived from the OTLA's fact-finding efforts, including its review of documentation and interviews with relevant parties.

Section A addresses the OTLA's findings regarding the Submission's allegations related to specific factories in the manufacturing sector: (1) Kyungshin-Lear; (2) Dickies de Honduras; (3) Ceiba Textiles; (4) A.tion; (5) Pinehurst; (6) Petralex; and (7) Hanesbrands.

Section B addresses the OTLA's findings regarding the Submission's allegations related to specific plantations or farms in the agricultural sector: (1) Honduran Foundation for Agricultural Research; (2) Sur Agrícola de Honduras; (3) Las Tres Hermanas; (4) Okra Sur; (5) Agroexportadora Dome; (6) Agripac; (7) La Pradera; (8) Plantas Ornamentales; and (9) Azucarera la Grecia.

Section C addresses the OTLA's findings regarding the Submission's allegations related to enterprises at the Port of Cortés involving the following: (1) subcontracted stevedores; (2) security workers; (3) fork lift operators, container checkers, and planners; and (4) the September 2012 inspection at the Port.

A. Manufacturing Sector (Apparel and Auto Parts)

1. Kyungshin-Lear Honduras Electrical Distribution Systems

Kyungshin-Lear Honduras Electrical Distribution Systems (Kyungshin-Lear) is an auto harness factory located in San Pedro Sula, Honduras. It is a joint venture between the U.S.-based Lear Corporation and the Korea-based Kyungshin Corporation. It manufactures parts for Hyundai and Kia cars.[22] The Submission alleges that the GOH failed to enforce labor laws related to anti-

[21] The OTLA did not meet with management of the shipping companies that employ stevedores except for Seaboard.
[22] OTLA interview with Kyungshin-Lear management, July 18, 2012.

union retaliation, including dismissal of union leaders, as well as acceptable conditions of work at Kyungshin-Lear.[23]

Workers at Kyungshin-Lear began organizing a union with the help of the General Workers' Confederation (*Central General de Trabajadores*, CGT) in May 2011 and officially founded the Honduras Electrical Distribution Systems Kyungshin-Lear Workers' Union (*Sindicato de Trabajadores de la Empresa Honduras Electrical Systems S. de R.L. Kyungshin-Lear*, SITRAKYUNGSHINLEAR) on July 16, 2011.[24] In September 2011, union members presented documentation of the union's founding to the STSS and requested that an inspector accompany workers to notify the company.[25] That notification formally triggers protections (*protección del estado*) for the union's founding members under Article 517 of the Labor Code, prohibiting their dismissal, transfer, or demotion absent a finding of just cause by the respective authority while the union's legal personality *(personería jurídica*) is pending before the STSS.[26,27] While sometimes performed in tandem with union founding, filing for legal personality is a second and distinct step required to legally establish a union.

On September 28, 2011, an STSS inspector attempted to notify the company of the union's founding and investigate the company's vacation policy.[28] The security guard denied the inspector access, claiming that the Director of Human Resources, who was out of the country, was the only person able to respond to labor-related complaints.[29] According to the Submission, the worker who accompanied the inspector was called into the human resources office the same day and threatened by management with dismissal for attempting to form a union.[30] The next day, the inspector again attempted to deliver the notification but a security guard again denied him entry because the Director of Human Resources was abroad.[31] A security guard once again denied the inspector access on October 4, 2011, because the Director of Human Resources was again not present.[32] On October 5, 2011, the inspector submitted a request to the Regional Head of Labor Inspections that the legally-established fine be applied for impeding a labor inspector's work on three separate occasions.[33] The GOH provided no evidence that the STSS applied the

[23] Submission, pages 20-23.
[24] Submission, page 20; SITRAKYUNGSHINLEAR request for labor inspection at Kyungshin-Lear, February 21, 2012; SITRAKYUNSGHINLEAR founding document, July 16, 2011.
[25] The CGT requested an inspection in writing regarding Kyungshin-Lear's allegedly unlawful vacation policy on September 22, 2011. Although the inspection request was limited to the vacation policy issue, both government and civil society have identified the practice of requesting an unrelated inspection on paper and simultaneously verbally requesting that the inspector deliver a notification, so as to protect nascent unions. Submission, page 20; CGT request for labor inspection at Kyungshin Lear, September 22, 2011.
[26] The OTLA consulted the 50th anniversary edition of the Labor Code of Honduras. *Código de Trabajo, Legislación Laboral Vigente en Honduras, Edición Quincuagésimo Aniversario 1959-2009,* published January 27, 2012 (hereinafter "Labor Code"). See Annex 3(a) on page 96 for the full text of Labor Code Articles cited in this report.
[27] Labor Code, Article 517.
[28] STSS order designating an inspector to notify Kyungshin Lear of SITRAKYUNGSHINLEAR's foundation, September 28, 2011; STSS report of inspection at Kyungshin Lear, September 28, 2011.
[29] STSS report of inspection at Kyungshin Lear, September 28, 2011. The CGT accompanied the labor inspector during the September 28 and 29 and October 4 inspections and alleged that the management was in Mexico in the Submission (page 21), though the inspection reports simply say "out of the country."
[30] Submission, page 21.
[31] STSS report of inspection at Kyungshin Lear, September 29, 2011.
[32] STSS report of inspection at Kyungshin Lear, October 5, 2011.
[33] STSS report of inspection at Kyungshin Lear, October 5, 2011.

recommended fine, ever notified the courts of the obstruction of a labor inspector, sought the assistance of the authorities or police to gain access to the premises, or made any further attempt to enforce the law regarding inspectors' access to worksites.[34,35]

In December 2011, SITRAKYUNGSHINLEAR members went to the STSS in Tegucigalpa to request legal personality (*personería jurídica*) for the union.[36] In its application, SITRAKYUNGSHINLEAR communicated the identities of the members of its elected union leadership committee to the STSS, as required by law.[37,38] Elected union leaders receive protection under Article 516 of the Labor Code, which prohibits employers from dismissing union leadership without a prior finding by the Labor Court of just cause, from the moment of their election until six months after they finish their terms (*fuero sindical*).[39] By January 26, 2012, the company had dismissed four of the nine SITRAKYUNGSHINLEAR leadership committee members, citing "reductions in personnel," without any prior court approval.[40] One of the four dismissed leaders told the OTLA that the Human Resources Director informed the three other fired union leaders that management had received a list of SITRAKYUNGSHINLEAR members from the STSS in Tegucigalpa, threatened to blacklist the union leaders, and told them they were dismissed for making bad decisions.[41]

On January 27, 2012, the Minister of Labor recognized the union's legal personality and signed the union's legal registration, retroactively triggering from the date of the leadership committee members' election their *fuero sindical* protection under Labor Code Article 516.[42] The Labor Code requires the company to pay a fine equivalent to six months of fired union leaders' salaries to the union. The individual unionist still retains their private right to severance, and this does not affect the STSS's duty to impose the fine.[43]

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[34] Labor Code, Article 617(b).

[35] The OTLA requested information from the GOH on their efforts to gain access or enforce the union's *protección del estado* protection. In response to a question about the steps they took to gain access to Kyungshin-Lear to deliver the *protección del estado* notification, the GOH noted that they applied a fine in May 2011, but this precedes the attempts to deliver notice of *protección del estado* and the inspector's recommendation that a fine be applied. GOH answers to OTLA's specific questions, page 13, August 22, 2012. For additional discussion of the legal requirements of and tools provided to inspectors to gain access to facilities to carry out their duties, see the section on Access to Worksites on page 59.

[36] SITRAKYUNGSHINLEAR application for legal personality, December 14, 2011; STSS receipt for SITRAKYUNGSHINLEAR application for legal personality, December 19, 2011.

[37] SITRAKYUNGSHINLEAR application for legal personality, December 14, 2011.

[38] Labor Code, Article 481.

[39] Unions are required to notify the STSS of the change in leadership and the STSS then certifies the leaders as being protected by *fuero sindical;* however, the protection against dismissal applies from the moment a leader is elected. Article 516 states that union leaders are protected from dismissal from the time of their election until six months after their term expires, and they are required under Article 481 to submit an application to the STSS in order to be certified as protected by *fuero sindical*. Article 510(c) of the Labor Code of Honduras requires, *inter alia*, that union leaders be employed for at least six months prior to their election to a union leadership committee.

[40] Termination letters for [redacted] and [redacted], January 26, 2012 (names of individual workers withheld for privacy); OTLA interview with Kyungshin-Lear worker, July 2012.

[41] OTLA interview with Kyungshin-Lear worker, July 2012.

[42] STSS certification of SITRAKYUNSHINLEAR legal registration, January 27, 2012; STSS publication of SITRAKYUNGSHINLEAR legal personality, February 7, 2012; Labor Code, Article 516.

[43] Labor Code, Article 516.

Three of the dismissed leaders eventually accepted severance. One has taken her case to a Labor Court to secure reinstatement and back pay after the STSS attempted to facilitate two conciliation sessions.[44] The company failed to send a representative to any of the sessions.[45] The STSS summons for the conciliation meetings note that the company's appearance is required by law. If the company fails to attend, the STSS shall demand its attendance through the corresponding judicial process.[46] However, the OTLA found no evidence that the STSS sought to have the labor court compel the company's attendance.

The company dismissed a fifth member of the leadership committee on February 10, 2012, again without prior judicial approval.[47] As a member of the leadership committee, he was protected by *fuero sindical.* According to the Submission, the Director of Human Resources requested that leader's resignation in the days prior to his dismissal and then demanded the names of workers sympathetic to the union and other information about the union's activities in exchange for his severance payment.[48]

On February 21, 2012, the CGT and one of the five dismissed union leaders requested that the STSS investigate the dismissals of the union leadership committee and threats of blacklisting and that the STSS officially notify the company of the union's registration.[49] When the OTLA asked the GOH in August 2012 for updates on whether the STSS investigated the company for the dismissals of union leaders, the GOH responded that they had no records of complaints related to freedom of association in this case.[50] The OTLA requested all relevant information from the GOH, but it provided no evidence that the STSS ever applied a sanction for the dismissals of the SITRAKYUNGSHINLEAR leaders with *fuero sindical* protection.[51]

On February 27, a month after granting SITRAKYUNGSHINLEAR legal personality, the STSS notified the company of the union's establishment.[52] The STSS scheduled a conciliation session between the company and the union for March 7, 2012, to discuss labor concerns. When an inspector attempted to deliver the summons for the session to the company, a security guard denied him access and left the summons at the factory entrance. He noted the denial in his

[44] OTLA interview with Kyungshin-Lear worker, July 2012.
[45] OTLA interview with Kyungshin-Lear worker, July 2012; STSS summons for Kyungshin-Lear to appear for conciliation, March 24, 2012; STSS summons for Kyungshin-Lear to appear for conciliation, April 17, 2012.
[46] The summons reads "*Se le advierte que su comparecencia es obligatoria de no comparecer se le demandara por la vía judicial correspondiente."* ("You are advised that your attendance is obligatory; and; should you not attend, your attendance will be demanded through the corresponding judicial process."); STSS summons for Kyungshin-Lear to appear for conciliation, March 24, 2012; STSS summons for Kyungshin-Lear to appear for conciliation, April 17, 2012.
[47] Termination letter for [redacted], February 10, 2012.
[48] Submission, page 22.
[49] The STSS is the responsible GOH authority for overseeing compliance with all labor laws, including those granting the right of freedom of association. SITRAKYUNGSHINLEAR request for labor inspection at Kyungshin-Lear, February 21, 2012.
[50] GOH answers to OTLA's specific questions, page 14, August 22, 2012.
[51] The OTLA requested information from the GOH on their efforts to impose a sanction for the dismissal of SITRAKYUNGSHINLEAR leaders with *fuero sindical* protection. GOH answers to OTLA's specific questions, pages 13-14, August 22, 2012.
[52] GOH answers to OTLA's specific questions, page 14, August 22, 2012.

report.[53] The company did not attend the conciliation session and the STSS provided no evidence to the OTLA that it sought to have the labor court compel the company's attendance.[54]
In March, SITRAKYUNGSHINLEAR elected new leaders to replace the four dismissed leadership committee members who had accepted their severance.[55] The Submission alleges that on March 12, 2012, the company dismissed three of the newly elected union leaders.[56] It is unclear whether the union notified the STSS of this round of dismissals.

In June, the union held an election to replace these three most recently dismissed leaders.[57] On June 13, factory staff denied access to an STSS inspector attempting to verify the tenure of the newly elected union leaders (*constancia de antigüedad*) to ensure that they qualified for their positions under Honduran law and thus *fuero sindical* protection.[58]

In addition to the incidents discussed above in which Kyungshin-Lear staff denied STSS inspectors access, an inspector reported that Kyungshin-Lear denied him access twice on May 18, 2011, and once on May 20, 2011, after which he recommended a fine for such denial.[59] The GOH stated that the STSS fined the company 5,000 HNL (US $240);[60] however, the supporting documentation shows only that STSS in Tegucigalpa received the inspector's fine recommendation.[61] The GOH again did not provide any evidence that the STSS sanctioned the company for those actions preventing inspector access, notified the relevant Labor Court of the denials of access, sought the assistance of authorities or police to gain access, or made any further attempt to enforce the law regarding inspectors' access to worksites.[62]

Four months after the OTLA began its review, on September 11, 2012, the STSS attempted to conduct a self-initiated, general inspection (*inspección de oficio*) at Kyungshin-Lear, but the inspectors decided to cancel the inspection because upon their arrival at the worksite, they were informed that no high-level managers were present.[63] That same day, the union requested that an STSS inspector deliver a request to begin collective bargaining (*pliego de peticiones*) to the company. The STSS returned the next day, September 12, and conducted the general inspection

[53] STSS summons for Kyungshin-Lear to appear for conciliation, March 6, 2012 (this document is incorrectly dated March 6, 2011).
[54] OTLA interview with Kyungshin-Lear worker, July 2012.
[55] OTLA interview with Kyungshin-Lear worker, July 2012.
[56] Submission, page 22.
[57] OTLA interview with Kyungshin-Lear worker, July 2012.
[58] STSS report regarding SITRAKYUNSGHINLEAR application for registration of leadership committee, June 13, 2012.
[59] STSS report of attempted inspection at Kyungshin-Lear, May 23, 2011.
[60] The OTLA used the U.S. Treasury Department's Bureau of Fiscal Service current exchange rate of 20.82 HNL to US $1, last updated September 30, 2014, *available from:* http://fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/currentRates.htm.
[61] GOH answers to the OTLA's specific questions, page 13, August 22, 2012. The volumes of documents given to the OTLA by the GOH did not include any information on follow-up action to the inspector's recommendation.
[62] The OTLA requested all relevant documents from the GOH. GOH answers to the OTLA's specific questions, page 13, August 22, 2012; Notice to Kyungshin-Lear Human Resources Manager from the STSS Inspector General, Oficio 264/IGT/2011, June 16, 2011.
[63] A general inspection is a whole-workplace labor inspection (not including Occupational Safety and Health), usually carried out by a team of inspectors. The STSS can determine on its own to carry out a general inspection, or order one as a result of complaints of a general nature at a particular company. STSS record of inspection at Kyungshin-Lear, September 11, 2012.

they intended to conduct the preceding day but did not deliver the union's collective bargaining request.[64] During the inspection, the STSS found that Kyungshin-Lear treated workers in an abusive manner and failed to provide vacation in accordance with the law, in addition to denying access to inspectors in the past.[65] The STSS did not deliver the SITRAKYUNGSHINLEAR request for bargaining until November 1, 2012, seven weeks after the union made its request to the STSS.[66] The STSS reported that the factory management has subsequently refused to negotiate and denied access to STSS inspectors attempting to verify that the five-day deadline to begin negotiating has indeed passed, but did not provide further information regarding any follow-up action with respect to the denial of access.[67,68]

In December 2012, the OTLA interviewed an attorney from the Solidarity Center in San Pedro Sula who had reviewed the information provided to the STSS by workers during the September 12, 2012, inspection. She stated that, in addition to the labor law violations noted above, the records of worker interviews conducted by the STSS also included allegations that the company was retaliating against union leaders.[69] During its review, the OTLA met with workers who confirmed the labor law violations identified by the STSS and also reported additional unlawful conduct, including anti-union retaliation; punishment for illness, including docking more time for going to the doctor than was taken in practice and directing the company-run medical center to deny approval to leave work to ill or injured workers; being denied breaks for bathroom use; and improper payment for overtime hours.[70]

In December 2012, workers also reported to the OTLA that management escalated anti-union activity in the second half of 2012, including by prohibiting workers from going outside during breaks, effectively preventing union leaders from conversing with workers without management present; switching some union leaders from day shifts to night shifts; and pressuring union members to resign and accept severance.[71] Workers also reported that management pressured workers prior to their interviews with STSS inspectors not to speak freely to inspectors (for example, telling workers to be careful about what they said to the inspectors) and that management prevented some workers from speaking to or approaching the inspectors during the inspection through the use of a yellow police tape barricade around the interview room.[72]

In January 2013, management at the Lear Corporation in the United States stated to the OTLA that all of the allegations in the Submission, with the exception of those related to vacation pay, were untrue but declined to provide the OTLA with corroborating evidence despite OTLA's

[64] STSS record of inspection at Kyungshin-Lear, September 11, 2012; OTLA interview with Maria Elena Sabillon, Solidarity Center, and Evangelina Argueta, CGT, December 13, 2012.
[65] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[66] OTLA meeting with STSS officials, May 20, 2013; OTLA interview with Maria Elena Sabillon, Solidarity Center, and Evangelina Argueta, CGT, December 13, 2012; *see also*: General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[67] Labor Code, Article 791.
[68] General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[69] OTLA interview with Maria Elena Sabillon, Solidarity Center, December 14, 2012.
[70] OTLA interviews with Kyungshin-Lear workers, July 2012.
[71] OTLA interview with Kyungshin-Lear worker, December 2012.
[72] OTLA interview with Evangelina Argueta, CGT, December 13, 2012; OTLA interview with Kyungshin-Lear worker, December 14, 2012.

request for such information, citing privacy concerns.[73] Additionally, Lear Corporation management denied to the OTLA having any knowledge of any union activity at the Kyungshin-Lear plant in Honduras.[74]

On March 4, 2013, the SITRAKYUNGSHINLEAR leadership committee met with Kyungshin-Lear management, including the Plant Manager and Human Resources Director.[75] The union leadership committee wrote a follow-up letter to Kyungshin-Lear management to set a date to begin the collective bargaining process, but the company did not respond.[76] Kyungshin-Lear management has asserted that SITRAKYUNGSHINLEAR is not legally constituted and that it therefore will not negotiate with the union, despite numerous assurances from the STSS and the Minister of Labor that the union is, in fact, legally constituted.[77]

On April 24, 2013, Kyungshin-Lear dismissed all nine members of the leadership committee without the required prior authorization from the Labor Court, as well as approximately 200 additional workers.[78] High-ranking officials from the STSS, including the Minister of Labor, were in San Pedro Sula and met with the dismissed union leaders the same day.[79] It appears that the union elected another leadership committee after the April 2013 dismissals, and in September 2013, the company reportedly pressured two of the newly elected union leaders to resign and was allegedly harassing the union's president.[80]

In August 2013, the STSS conducted a general inspection at Kyungshin-Lear and found that the company was in violation of ILO Conventions 87 (Freedom of Association and Protection of the Right to Organize) and 98 (Right to Organize and Collective Bargaining) for illegally dismissing the nine members of the union leadership committee in April 2013; improper payment of vacation, overtime, and severance pay; and unduly restrictive bathroom policies.[81] On September 25, 2013, the STSS ordered the company to pay 12,327,547 HNL (US $592,101) in back wages, allow workers to undertake union activities, and change its policies on bathroom use, but did not order the company to pay the union the equivalent of six months of the dismissed union leaders' salaries as required by the Labor Code. [82] The same day, an STSS inspector delivered a notification to the company that it had illegally obstructed the work of STSS inspectors by

[73] OTLA phone interview with Lear management, January 16, 2013. The STSS has indicated, however, that Kyungshin-Lear provided it with documents showing it had corrected the problem with vacation pay. General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[74] OTLA phone interview with Lear management, January 16, 2013.
[75] Letter from Kyungshin-Lear General Manager Gustavo Saucedo to SITRAKYUNGSHINLEAR, March 4, 2013; Meeting minutes signed by Kyungshin-Lear management and SITRAKYUNGSHINLEAR leaders, March 4, 2013; Follow-up letter from SITRAKYUNGSHINLEAR leaders to Kyungshin-Lear management, March 6, 2013.
[76] OTLA meeting with SITRAKYUNGSHINLEAR president, May 20, 2013.
[77] STSS, Presentation to Kyungshin-Lear Management, "*Obtención de personalidad jurídica*," September 11, 2013.
[78] Dismissal letters of five SITRAKYUNGSHINLEAR leadership committee members and three additional workers, April 24, 2013; Follow-up Commission meeting, May 20, 2013, statement by Evangelina Argueta.
[79] OTLA meeting with STSS officials, May 20, 2013.
[80] OTLA meeting with Maria Elena Sabillon, Solidarity Center, and Evangelina Argueta, CGT, October 23, 2013.
[81] Under Honduran law, ratified international treaties are self-executing and can be directly enforced. Honduras ratified both ILO Conventions 87 and 98 on June 27, 1956. *See*: Constitution of Honduras, Chapter III, Article 16. STSS notification report of inspection at Kyungshin-Lear, September 25, 2013.
[82] STSS notification report of inspection at Kyungshin-Lear, September 25, 2013.

denying access to the factory on June 10, July 9, and August 5, 2013.[83] The company was given three business days to remedy the violations.[84] In June 2014, the regional STSS office in San Pedro Sula reported to the U.S. Embassy that it was in the process of notifying the company of a fine as the company had lost its appeal against the findings of unlawful conduct.[85]

Kyungshin-Lear continued in 2014 to dismiss union leaders without prior judicial approval, most recently in May 2014, when it dismissed the three remaining leaders elected after the April 2013 dismissals.[86] The company did attend STSS-ordered conciliation sessions after the U.S. Ambassador to Honduras notified the company herself of the summonses.[87] The dismissed union leaders reported that they accepted severance from the company at the conciliation sessions, rather than pursuing legal cases for reinstatement, due to a sense of futility with the STSS and Labor Court processes for petitioning for reinstatement.[88]

The submitters reported to the OTLA that since 2011, Kyungshin-Lear has dismissed every SITRAKYUNGSHINLEAR union leader ever elected without following the steps required to do so legally.[89] The union reports that the company continues to refuse to bargain with the union and the company has reportedly failed to send a representative to two STSS-led mediation sessions regarding bargaining.[90]

2. Dickies de Honduras, S.A.

Dickies de Honduras (Dickies) is an apparel manufacturing plant in Choloma, Honduras. The factory is owned and operated by the U.S.-based Williamson-Dickies Manufacturing Company and produces apparel under the Dickies label.[91] The Submission alleges that the GOH failed to enforce labor laws related to freedom of association when the company dismissed workers attempting to unionize on three different occasions.[92]

Workers began organizing the Dickies of Honduras Workers' Union (*Sindicato de Trabajadores de la Empresa Dickies de Honduras*, SITEDIKHOSA) in May 1998.[93] A security guard denied access to the inspector attempting to verify the tenure of the union leadership committee (*constancia de antigüedad)*, but the STSS still formally granted legal personality to

[83] STSS notification report of inspection at Kyungshin-Lear, September 25, 2013.
[84] STSS notification report of inspection at Kyungshin-Lear, September 25, 2013.
[85] US Government Official meeting with STSS San Pedro Sula Regional Director Bessy Lara, June 11, 2014.
[86] US Government Official meetings with Maria Elena Sabillon, Solidarity Center; Evangelina Argueta, CGT; three SITRAKYUNGSHINLEAR members; and Kyungshin-Lear management, June 10, 2014.
[87] Email from Ambassador Kubiske to Kyungshin-Lear management, May 25, 2014; US Embassy Official meeting with Kyungshin-Lear management, June 10, 2014.
[88] US Government Official meetings with three SITRAKYUNGSHINLEAR members, June 10, 2014.
[89] OTLA meeting with Maria Elena Sabillon, Solidarity Center, and Evangelina Argueta, CGT, October 23, 2013.
[90] OTLA meeting with Maria Elena Sabillon, Solidarity Center, and Evangelina Argueta, CGT, October 23, 2013; US Government Official meetings with Maria Elena Sabillon, Solidarity Center, and Evangelina Argueta, CGT, June 10, 2014.
[91] Dickies video presentation to the OTLA, July 18, 2012.
[92] Submission, pages 11 and 12.
[93] SITEDIKHOSA record of union foundation and election of provisional leadership committee, May 3, 1998.

SITEDIKHOSA at that time.[94] The union organizer involved in the founding of SITEDIKHOSA stated that shortly after the founding of SITEDIKHOSA, the company dismissed the majority of the founding union members, and workers abandoned the organizing effort until 2006.[95]

In May 2006, an organizer for the Unified Confederation of Workers of Honduras (*Confederación Unitaria de Trabajadores de Honduras*, CUTH) requested copies of the SITEDIKHOSA bylaws from the STSS to assist Dickies workers with the reactivation of the SITEDIKHOSA union.[96] In October 2006, the STSS published notice of the legal personality of the SITEDIKHOSA union.[97] SITEDIKHOSA members elected a new six-member leadership committee on November 10.[98]

Documents provided by the submitters show that on November 28, factory staff denied STSS inspectors access to the facility to deliver notification of the union's reactivation and the identities of the union leaders protected by *fuero sindical*.[99] When the OTLA requested that the GOH explain what actions the STSS had taken to compel entry after STSS inspectors were denied access, the GOH responded that it had not found anything in its files related to this case and could not provide any evidence that it had imposed a fine or notified the courts of the denial, as the Labor Code requires.[100]

When the factory staff denied the STSS inspector access on November 28, three of the union leaders themselves informed a manager of the leadership committee's protected status.[101] Dickies workers alleged that management interrogated workers regarding their union membership at that time.[102] The company immediately dismissed the entire union leadership committee without prior approval from the court.[103] The company also dismissed other union members, including some who had witnessed the notification.[104] Dismissals began on November 28, 2006 and continued for approximately two weeks.[105]

The STSS offered to mediate the conflict between the dismissed union leaders and Dickies, and on November 29, issued a summons for management to appear at a conciliation session.[106]

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[94] STSS Chief Inspector's Certification of Inspection Report, May 12, 1998. Certification of SITEDIKHOSA Legal Personality, September 23, 1998.
[95] OTLA interview with SITEDIKHOSA organizer, July 2012.
[96] Letter from CUTH to STSS requesting copies of SITRADIKHOSA bylaws, May 25, 2006.
[97] La Gaceta, No. 31,138, Sección B, Avisos Legales, October 26, 2006; No. 31,139, October 27, 2006; No. 31,140, October 28, 2006.
[98] SITEDHIKOSA document certifying election of leadership committee, November 10, 2006.
[99] STSS report of inspection at Dickies, November 28, 2006.
[100] GOH answers to the OTLA's specific questions, page 5, August 22, 2012.
[101] STSS report of inspection at Dickies, November 28, 2006.
[102] STSS report of inspection at Dickies, November 28, 2006.
[103] Dickies termination letter, November 28, 2007; STSS report of inspection at Dickies, November 28, 2006; press release in solidarity with SITEDIKHOSA by the Federation of Democratic Unions of Honduras (*Federación de Sindicatos Democráticos de Honduras*, FESITRADEH) addressed to STSS and the Honduran Association of Manufacturers (*Asociación Hondureña de Maquiladores*, AHM), December 4, 2006 (OTLA cannot confirm that the complaint was actually delivered to the STSS or AHM).
[104] Press release in solidarity with SITEDIKHOSA by FESITRADEH addressed to STSS and the AHM, December 4, 2006 (OTLA cannot confirm that the complaint was actually delivered to the STSS or AHM).
[105] OTLA reviewed numerous termination letters of SITEDHIKOSA members.
[106] STSS summons for Dickies to appear at December 14, 2006 conciliation, November 29, 2006.

Dickies management stated to the OTLA that it never received such a summons and that Dickies does not keep any human resources records for longer than five years.[107] When the OTLA requested information from the GOH about the STSS's efforts to compel the company to attend the conciliation, the GOH indicated that it had not found anything in its files related to any such conciliation.[108]

On December 4, an STSS inspector attempted to investigate the dismissals and to notify the company of the union's reactivation and identities of the union's leaders protected from dismissal by *fuero sindical*.[109] Factory staff denied him access, though two police officers accompanied the inspector to the worksite.[110] The OTLA requested that the GOH provide all evidence of the STSS's efforts to enforce *fuero sindical* in connection with the November 2006 dismissals, but the GOH indicated that it had not found anything in its files related to this case.[111]

The union organizer apparently requested inspections regarding compliance with laws protecting freedom of association at Dickies on at least two occasions in December 2006 and early January 2007.[112] Although the submitters provided the OTLA with copies of the December and January requests they sent to the STSS, the GOH reported that it had no records of these inspection requests.[113] The Submission alleges that the dismissed workers accepted severance payments from the company and did not seek reinstatement and back pay because they felt they were left with no alternative.[114]

As part of its effort to inspect companies named in the Submission, on September 11, 2012, the STSS conducted a general inspection of the Dickies factory.[115] In a follow-up report the STSS noted that it found no labor law violations at the company.[116] Although the STSS was aware of the allegations included in the Submission regarding dismissals of protected unionists at Dickies, the STSS did not investigate compliance with relevant laws on freedom of association, including laws related to illegal dismissals.[117]

[107] OTLA interview with Dickies management, July 18, 2012.
[108] GOH answers to the OTLA's specific questions, page 6, August 22, 2012.
[109] STSS report of inspection at Dickies, December 5, 2006.
[110] STSS report of inspection at Dickies, December 5, 2006.
[111] The OTLA requested all evidence of efforts to enforce *fuero sindical*, including the STSS response to the company denying inspectors access just a week before. GOH answers to the OTLA's specific questions, pages 6 and 7, August 22, 2012.
[112] SITEDIKHOSA request for inspection at Dickies, December 11, 2006; SITEDHIKOSA request for inspection at Dickies, January 3, 2007 (note that one request was on an STSS form and the other was a letter addressed to Director Rosales, but neither has a receipt stamp from the STSS).
[113] GOH answers to OTLA's specific questions, August 22, 2012.
[114] Submission, page 11.
[115] STSS record of inspection at Dickies, September 11, 2012; STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[116] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[117] OTLA meeting with STSS officials, May 20, 2013; *see also*: General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.

3. Ceiba Textiles S. de R.L.

Ceiba Textiles is a garment factory located in Santa Barbara, Honduras, in the Green Valley Industrial Park. It is owned and operated by U.S.-based Delta Apparel and manufactures apparel under Delta and Wal-Mart labels.[118] The Submission alleges that the GOH failed to enforce labor laws related to freedom of association when the company coerced union members to resign from their jobs.[119]

An STSS-approved agreement between the company and non-unionized workers, known as a collective pact, has been in effect at the factory since 2008.[120] Under the collective pact, a coalition of worker representatives meets regularly with management to negotiate benefits and working conditions.[121]

On February 15, 2010, 46 workers founded the Ceiba Textiles Workers' Union (*Sindicato de Trabajadores de la Empresa Ceiba Textiles*, SITRAMCETEX), a union affiliated with the national-level Independent Federation of Workers of Honduras (*Federación Independiente de Trabajadores de Honduras*, FITH) and the CUTH.[122]

On March 2, 2010, FITH requested STSS assistance to notify Ceiba Textiles of the union's founding.[123] On March 10, 2010, an STSS inspector went to the factory to carry out the notification; the Human Resources Manager at Ceiba Textiles received the document but refused to sign the notification.[124] The same day, the STSS issued a certificate of *protección del estado* to the 46 founding members of SITRAMCETEX.[125,126]

On March 4, 2010, the coalition of worker representatives under the collective pact formally requested to negotiate severance for workers who voluntarily resign.[127] A meeting between the worker representatives and the Human Resources Director took place on March 17 in the company's Human Resources office.[128] The outcome of the meeting was a policy that allows four workers per month to resign from their jobs and receive their full severance payment,

[118] OTLA interview with Ceiba Textiles management, July 18, 2012.
[119] Submission, pages 12-14.
[120] Ceiba Textiles collective pact, March 10, 2008; STSS registration of collective pact at Ceiba Textiles, August 26, 2008.
[121] Ceiba Textiles collective pact, March 10, 2008; see page 73 for discussion of Employer-Controlled Collective Pacts.
[122] SITRAMCETEX notification of foundation to Ceiba Textiles, February 15, 2010; SITRAMCETEX notification of foundation to the STSS, February 15, 2010.
[123] Request for STSS inspection at Ceiba Textiles, March 2, 2010.
[124] STSS record of delivery of SITRAMCETEX notification documents, March 10, 2010.
[125] STSS certification of *protección del estado* for SITRAMCETEX members, March 10, 2010.
[126] Labor Code, Article 517 grants this special protection to founding members of a union while the union's legal personality is pending. They cannot be demoted, transferred, or dismissed without a prior finding of just cause by the Labor Court.
[127] In Honduras, workers who resign are not entitled to severance pay under Labor Code Articles 112 and 113; Memo from the Coalition of Ceiba Textiles Workers to negotiate benefits under the collective pact, March 4, 2010.
[128] Meeting minutes from Coalition/management meeting, March 17, 2010.

provided they give the company two months' notice and the company approves.[129] Ceiba management confirmed this process and resulting policy in an interview with the OTLA.[130]

The Submission alleges that all of the 46 founding SITRAMCETEX members were called into private meetings with management and pressured to resign under the March 17 resignation policy.[131] A SITRAMCETEX leader interviewed by the OTLA stated that the workers were told that voluntarily resigning from their job was the only way they could get the severance benefits owed to them, that management had already determined the amount of their benefits, and that they would be fired if they did not resign voluntarily.[132] Management told the OTLA that although the policy is typically limited to four workers per month, they allowed a higher number of participants to resign with severance for the first few months of this program.[133] Management provided the OTLA with resignation letters signed by 41 of the 46 SITRAMCETEX members. Most were dated between March 17 – 21, 2010, about one week after the date of the SITRAMCETEX notification by the STSS.[134] According to the Submission, union officials from the FITH informed the STSS of the allegedly coerced resignations in August 2010, but the STSS took no follow-up action.[135] The GOH stated that it has no records of anyone reporting the resignations or of a follow-up investigation.[136]

As part of its effort to inspect companies named in the Submission, on September 7, 2012, the STSS conducted a general inspection of Ceiba Textiles.[137] In a follow-up report the STSS noted that it found no labor law violations at the company.[138] Although the STSS was aware of the allegations included in the Submission regarding coerced resignations of protected unionists at Ceiba Textiles, the STSS did not investigate compliance with relevant laws on freedom of association, including laws related to employer interference in the exercise of workers' rights.[139]

4. A.tion Honduras, S.A. de C.V.

A.tion is a Korean-owned apparel manufacturing factory in Choloma, Honduras, that produces apparel for the Foot Locker, Ecko, and Zoo York brands.[140] The Submission alleges that the GOH failed to enforce labor laws related to the company's illegal dismissal of union members.[141]

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[129] Meeting minutes from Coalition/management meeting, March 17, 2010; OTLA interview with Ceiba Textiles management, July 18, 2012.
[130] OTLA interview with Ceiba Textiles management, July 18, 2012.
[131] Submission, page 13 (Submission incorrectly states that these events occurred in April rather than March.)
[132] OTLA interview with Ceiba Textiles worker, July 2012.
[133] OTLA interview with Ceiba Textiles management, July 18, 2012.
[134] Resignation documents provided to OTLA by Ceiba Management.
[135] Submission, page 13; see pages 66 and 70 for discussions of protections for founding union members and anti-union reprisals and page 61 for a discussion of the STSS's obligation to inspect.
[136] The OTLA requested that GOH provide any information about its investigation of the dismissal of workers with *protección del estado* or any evidence of investigating alleged violations of freedom of association. GOH answers to OTLA's specific questions, page 8, August 22, 2012.
[137] STSS record of inspection at Ceiba Textiles, September 7, 2012. In OTLA interviews with Ceiba Textiles workers in July 2012, workers noted that management continues to engage in anti-union retaliation.
[138] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[139] OTLA meeting with STSS officials, May 20, 2013; *see also*: General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[140] OTLA interview with A.tion management, July 18, 2012.

On June 12, 2009, 68 workers founded the A.tion Workers' Union (*Sindicato de Trabajadores de la Empresa A.tion*, SITRATION).[142] In July, workers requested STSS inspections for what they regarded as an unlawful production quota increase.[143] They also asked the STSS to notify the company of the union's founding and the identities of the 68 founding SITRATION members, officially placing them under *protección del estado*.[144,145] An STSS inspector attempted to access the factory on July 21, 22, 28, and 29.[146] Each time the security guard told him that he could not enter because the Human Resources Manager was not on the premises, although on three of those occasions the inspector confirmed that the Human Resources Manager was indeed on site by having workers outside the factory gates call workers inside the factory to inquire about the manager's whereabouts.[147]

From late July through early August 2009, a "strong majority" of the 68 founding members of SITRATION were dismissed.[148] The Submission alleges that most of the dismissed workers took their severance payments, believing they had no other option,[149] after which both the CGT and the Worker Rights Consortium (WRC) intervened on behalf of the SITRATION members.[150] Communications between those two organizations and the factory's owners indicate that the owners claimed to have no knowledge of the union and that decreases in production required corresponding layoffs.[151] The WRC informed the company that it "[could not] accept these claims as accurate," and claimed that the company had unlawfully dismissed founding union members under *protección del estado*.[152]

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[141] Submission, pages 14-16.
[142] SITRATION notification to STSS of union formation, June 12, 2009; Worker Rights Consortium letter to A.tion owner, September 9, 2009.
[143] Request for an STSS inspector to notify A.tion of SITRATION formation, July 11, 2009; Worker Rights Consortium letter to A.tion owner, September 9, 2009; GOH answers to the OTLA's Specific Questions, August 22, 2012.
[144] Request for an STSS inspector to notify A.tion of SITRATION formation, July 11, 2009; Worker Rights Consortium letter to A.tion owner, September 9, 2009; GOH answers to the OTLA's Specific Questions, August 22, 2012 (confirming that as alleged, the production increase would be in violation of the law as a breach of contract).
[145] Labor Code, Article 517 grants this special protection to founding members of a union while the union's legal personality is pending. They cannot be demoted, transferred, or dismissed without a prior finding of just cause by the respective authority. Request for STSS inspector at A.tion, July 21, 2009; Worker Rights Consortium letter to A.tion owner, September 9, 2009.
[146] STSS record of inspection at A.tion, July 29, 2009; STSS record of inspection at A.tion, July 28, 2009; STSS record of inspection at A.tion, July 22, 2009; STSS record of inspection at A.tion, July 21, 2009; Worker Rights Consortium letter to A.tion owner, September 9, 2009.
[147] STSS record of inspection at A.tion, July 21, 2009; STSS record of inspection at A.tion, July 22, 2009; STSS record of inspection at A.tion, July 28, 2009; Worker Rights Consortium letter to A.tion owner, September 9, 2009.
[148] Worker Rights Consortium letter to A.tion owner, September 9, 2009. In an interview with A.tion management, A.tion told the OTLA that there was a reduction in orders in the summer of 2009, resulting in massive layoffs. OTLA reviewed six termination letters. OTLA interview with A.tion management, July 18, 2012.
[149] Submission, page 15.
[150] The Worker Rights Consortium (WRC) is an independent labor rights organization that monitors working conditions in apparel factories throughout the world. WRC conducts worksite investigations, issues public reports and provides assistance to workers on labor rights issues.
[151] Letter from A.tion owner to Evangelina Argueta, August 18, 2009.
[152] Worker Rights Consortium letter to A.tion owner, page 3, September 9, 2009; Labor Code, Article 517.

On August 25, 2009, the inspector who attempted to carry out the union notification in July recommended that A.tion be sanctioned for denying the STSS access to the factory and obstructing the inspector's work.[153] However, the GOH has no record of the STSS having ever applied the fine.[154] Additionally, there are no records that the STSS ever informed the corresponding labor court that the company denied the inspectors' access.[155]

Additionally, on May 7 and 12, and June 13, 2011, the factory staff again denied access to an STSS inspector attempting to deliver an unrelated notification.[156] The GOH reported that it has no record that it has ever fined the company for denying access or notified the courts of the denials, as required by the Labor Code.[157]

As part of its effort to inspect companies named in the Submission, on September 11, 2012, the STSS conducted a general inspection of the A.tion factory.[158] In a follow-up report the STSS noted that it found no labor law violations at the company.[159] Although the STSS was aware of the allegations included in the Submission regarding dismissals of union members at A.tion, the STSS did not investigate compliance with relevant laws on freedom of association, including laws related to illegal dismissals or anti-union retaliation[160]

5. Pinehurst Manufacturing, Inc.

Pinehurst is a U.S.-owned apparel factory located in San Pedro Sula, Honduras, with approximately 1,200 employees.[161] The factory produces apparel for the Nike, Adidas, Armani, Kenneth Cole, and Calvin Klein brands, among others.[162] The Submission alleges that the GOH failed to enforce labor laws related to violations of freedom of association stemming from the formation of an employer-dominated union at the factory, as well as laws related to acceptable conditions of work.[163]

[153] STSS record of inspection at A.tion, August 25, 2009; Worker Rights Consortium letter to A.tion owner, September 9, 2009.
[154] The OTLA requested all information related to the GOH response to A.tion denying STSS inspectors access to the factory. GOH answers to the OTLA's specific questions, page 9, August 22, 2012; Labor Code, Article 617(b).
[155] The OTLA requested all information related to the GOH response to A.tion denying STSS inspectors access to the factory. GOH answers to the OTLA's specific questions, page 9, August 22, 2012; Labor Code, Article 617(b).
[156] STSS report of inspection at A.tion, June 14, 2011.
[157] The OTLA requested all information related to the GOH response to A.tion denying STSS inspectors access to the factory. GOH answers to the OTLA's specific questions, page 9, August 22, 2012; Labor Code, Article 617(b).
[158] STSS record of inspection at A.tion, September 11, 2012.
[159] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[160] OTLA meeting with STSS officials, May 20, 2013; *see also:* General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[161] OTLA interview with Pinehurst management, July 18, 2012.
[162] OTLA interview with Pinehurst management, July 18, 2012.
[163] Submission, pages 16-20.

a) Freedom of Association and Collective Bargaining

In 2010, Pinehurst employees began meeting with the CGT to form a union.[164] On August 14, workers founded the Pinehurst Workers' Union (*Sindicato de Trabajadores de la Empresa Pinehurst*, SITRAPINEHURST).[165] Soon after, management began to retaliate against union members, including by dismissing founding union members.[166]

On September 6, 2010, the union requested that the STSS assist it in notifying Pinehurst of the union's founding.[167] Also in early September, the Center for Women's Rights (*Centro de Derechos de Mujeres*, CDM) requested that the STSS investigate Pinehurst for numerous alleged Labor Code violations, including the dismissals of workers involved in founding the union.[168] In October, the STSS conducted a general inspection.[169] However, the dismissals of the founding union members are not discussed in the resulting inspection report. The report also does not indicate whether the STSS inspector attempted to deliver the notification of SITRAPINEHURST's founding to management, as requested by the union in September.[170]

The STSS received SITRAPINEHURST's paperwork to formally request legal personality (*personería jurídica*) for the union on October 28, 2010,[171] and formally approved that legal personality on November 26.[172]

A report by the WRC found that in October 2010, management invited workers and paid transportation costs to attend a meeting regarding the reactivation of a second union, known as the Sewing Workers' Union (*Sindicato de Trabajadores de la Industria de la Costura y Similares*, SITRAINCOSI).[173] The WRC report concluded that Pinehurst management "initiat[ed] the establishment of, and direct[ed] the development of, the Sitraincosi union as a management-dominated rival body to Sitrapinehurst..."[174] OTLA interviews with workers and

[164] Submission, page 16 (says workers began organizing in August); Fair Labor Association, "Independent External Monitoring Report," (Factory Code 53002912021), October 26-27, 2010 *(says workers began organizing in July)*; COVERCO Final Report, "Independent Assessment on Freedom of Association at Pinehurst Manufacturing," December 2010 (says workers began organizing in May).
[165] Record of SITRAPINEHURST founding assembly, August 14, 2010.
[166] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," July 13, 2012.
[167] SITRAPINEHURST request for STSS inspection, September 6, 2010.
[168] The particulars of this request and subsequent inspection are described in section (b) below. CDM request for STSS inspection on behalf of Pinehurst workers, September 8, 2010.
[169] STSS notification report of inspection at Pinehurst, December 7, 2010.
[170] STSS notification report of inspection at Pinehurst, December 7, 2010.
[171] SITRAPINEHURST application for legal personality, October 27, 2010.
[172] STSS registration of SITRAPINEHURST legal personality, November 26, 2010.
[173] The WRC conducted an investigation after receiving a complaint from SITRAPINEHURST in August 2010. Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," July 13, 2012 (states that the meeting occurred on October 18 on page 10); COVERCO Final Report, "Independent Assessment on Freedom of Association at Pinehurst Manufacturing," December 2010 (states that the meeting occurred on October 20 and asserts on page 7 that the SITRAINCOSI document was backdated).
[174] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 5, July 13, 2012.

outside observers confirmed that workers generally regarded SITRAINCOSI as an employer-dominated union.[175]

SITRAINCOSI submitted paperwork to the STSS regarding its new leadership committee on October 26, 2010.[176] Two days later, the STSS notified Pinehurst management of SITRAINCOSI's reactivation and the identities of the SITRAINCOSI leadership committee members.[177]

On October 26-27, 2010, the Fair Labor Association (FLA)[178] conducted an audit at Pinehurst and issued a report.[179] Investigators found "uncorroborated evidence of noncompliance" with the FLA Code of Conduct requirements on Freedom of Association regarding employer interference, blacklisting, and proper grievance procedures.[180] In light of those findings, the FLA commissioned a Guatemalan firm, the Commission for the Verification of Codes of Conduct (*Comisión para la Verificación de Códigos de Conducta*, COVERCO),[181] to conduct a more thorough investigation, carried out from November 28 to December 4, 2010, which resulted in a report (relevant findings cited below).[182]

On November 1, 2010, the STSS notified SITRAINCOSI that two of the leadership committee members had not worked for the required six months at Pinehurst to be eligible for union leadership positions.[183] On November 10, SITRAINCOSI sent new tenure letters issued by the Human Resources Department at Pinehurst for both workers, stating that the dates were in error on the originals.[184] Five days later, the STSS accepted the new documents and approved SITRAINCOSI's leadership committee.[185]

[175] OTLA interviews with Pinehurst workers, July 2012; OTLA interview with COVERCO official, October 18, 2012; OTLA interview with WRC staff, August 2, 2012.
[176] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," July 13, 2012; SITRAINCOSI application for change in leadership committee, October 26, 2010.
[177] STSS record of document delivery to Pinehurst, October 28, 2010; OTLA interview with STSS inspector.
[178] The Fair Labor Association (FLA) is an international nonprofit organization that works closely with universities, civil society groups and the private sector to promote fair labor practices in multiple employment sectors.
[179] FLA Statement on Remediation at Pinehurst Manufacturing in Honduras, May 4, 2011; FLA, "Independent External Monitoring Report," Factory Code 53002912021, October 26-27, 2010.
[180] Additionally, the FLA audit found other violations, including failure to follow the FLA Code of Conduct and/or Honduran law regarding occupational safety and health, discrimination, and childcare. Fair Labor Association, "Independent External Monitoring Report," Factory Code 53002912021, October 26-27, 2010.
[181] The Commission for the Verification of Codes of Conduct (COVERCO) is a Guatemalan nonprofit organization that monitors labor standards compliance in Central America's major export industries. COVERCO works with private employers to conduct worksite audits and investigations.
[182] FLA Statement on Remediation at Pinehurst Manufacturing in Honduras, May 4, 2011; COVERCO Final Report, "Independent Assessment on Freedom of Association at Pinehurst Manufacturing," December 2010.
[183] STSS Department of Social Organizations evaluation of SITRAINCOSI request for leadership committee registration, November 1, 2010.
[184] Letter from SITRAINCOSI to STSS, November 10, 2010; Tenure letters for two SITRAINCOSI leadership committee members, October 20, 2010 (stating they were hired in March and August 2009); Tenure letters for SITRAINCOSI leadership committee members, October 20, 2010 (stating one was hired in August 2010 and the other with a blank start date).
[185] STSS General Directorate decision to register SITRAINCOSI leadership committee, November 15, 2010.

The OTLA interviewed workers from Pinehurst who stated that it was well known that the two workers at issue had not been employed at Pinehurst for the full six months prior to their election to the leadership committee.[186] The COVERCO report concluded that Pinehurst provided false information to the STSS regarding the tenure letters, and that one of the employees in question was outside of the bargaining unit.[187] The Submission alleges that on November 15, 2010, CDM wrote to the STSS expressing concern that a new management-sponsored union had been formed inside the plant, which would be contrary to Honduran law.[188]

On December 2 and 6, 2010, SITRAINCOSI submitted a collective bargaining request to Pinehurst.[189] SITRAPINEHURST submitted its own request for collective bargaining on December 13.[190] Under the Labor Code, only one collective contract may be in effect at a workplace.[191] On December 20, the company sent a letter to the STSS to ask for assistance in determining which union had collective bargaining rights.[192] On January 4, 2011, after the issuance of the COVERCO and WRC reports, SITRAINCOSI withdrew its bargaining request and informed the company that it had disbanded.[193]

On January 10, 2011, the company reinstated the five founding SITRAPINEHURST members who were dismissed in August 2010.[194] Pinehurst management met with SITRAPINEHURST on January 14, 2011, and the company agreed to recognize and bargain with the union.[195] The parties formally initiated the collective bargaining process on February 11.[196] The direct negotiation phase ended in stalemate on June 17, 2011,[197] and an STSS-facilitated mediation phase began on July 4.[198] Additionally, on August 2, 2011, Pinehurst announced a 24 percent decline in orders and proportional layoffs. Over the next month, approximately 160 Pinehurst

[186] OTLA interviews with Pinehurst workers, July 2012.
[187] COVERCO Final Report, "Independent Assessment on Freedom of Association at Pinehurst Manufacturing," pages 8-9, December 2010.
[188] Submission, page 17; see page 75 of this report for the OTLA's discussion of Employer-Dominated Unions.
[189] COVERCO Final Report, "Independent Assessment on Freedom of Association at Pinehurst Manufacturing," December 2010.
[190] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 23, July 13, 2012; SITRAPINEHURST request to Pinehurst to bargain collectively, December 14, 2010.
[191] Labor Code, Article 53.
[192] Letter from Pinehurst to STSS, December 20, 2010; OTLA interview with Pinehurst Management, July 18, 2012.
[193] Letter from SITRAINCOSI to Pinehurst regarding SITRAINCOSI's decision to disband, January 4, 2011; Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," July 13, 2012.
[194] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 17, July 13, 2012; STSS record of Pinehurst rehiring of workers, January 10, 2011.
[195] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 17, July 13, 2012.
[196] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 23, July 13, 2012.
[197] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 23, July 13, 2012.
[198] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 23, July 13, 2012.

workers were dismissed, including seven of the sixteen SITRAPINEHURST union negotiators and 91 union members.[199]

Mediation sessions took place from October 25, 2011, through June 12, 2012, when the mediation was declared unsuccessful.[200] However, sometime in late August or early September, 2012, the parties signed a collective contract.[201] In August 2014, the company acknowledged previous anti-union activities and asserted its commitment to working with the union, including by replacing managers responsible for the actions described above.[202]

As part of its effort to inspect companies named in the Submission, on September 12, 2012, the STSS conducted a general inspection at Pinehurst.[203] In a follow-up report the STSS noted that it found no labor law violations at the company.[204] Although the STSS was aware of the allegations included in the Submission regarding dismissals of protected unionists and employer interference in union activities at Pinehurst, the STSS did not investigate compliance with relevant laws on freedom of association, including laws related to illegal dismissals.[205]

b) Acceptable Conditions of Work

In August 2010, workers at Pinehurst began requesting that the STSS conduct inspections regarding allegations of inaccurate payment of wages, verbal mistreatment of workers, and occupational safety and health (OSH) violations.[206] The STSS attempted three inspections, but factory staff did not allow the inspector to access the factory.[207] At least one of the STSS inspection reports recommended transferring the matter to the STSS Inspector General in Tegucigalpa and sanctioning the company for obstructing an STSS investigation.[208] When the OTLA requested information about whether the STSS followed up on the recommendation to sanction the company for denying access to a labor inspector, the GOH responded that it had "effectively applied a fine," but the fine that the GOH response cites was not applied until over a year later, in October 2011, and appears to be for the company's failure to pay overtime rather

[199] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 19, July 13, 2012.
[200] Worker Rights Consortium Assessment, "Pinehurst Manufacturing (Honduras) Findings, Recommendations, and Status," page 24, July 13, 2012.
[201] Email to OTLA from Pinehurst management, September 7, 2012.
[202] US Government representative meeting with Pinehurst General Manager, August 20, 2014.
[203] STSS record of inspection at Pinehurst, September 12, 2012.
[204] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[205] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[206] Worker request for STSS inspection at Pinehurst, August 6, 2010; Worker request for STSS inspection at Pinehurst, August 10, 2010.
[207] STSS record of inspection at Pinehurst, August 16, 2010; STSS record of inspection at Pinehurst, August 18, 2010; STSS record of inspection at Pinehurst, August 25, 2010; COVERCO Final Report, "Independent Assessment on Freedom of Association at Pinehurst Manufacturing," December 2010. Submission, page 16 alleges two additional instances of attempted inspections but the OTLA did not receive any corroboration.
[208] STSS record of inspection at Pinehurst, August 25, 2010.

than for denying an STSS inspector access.[209] The GOH response also does not indicate that the STSS informed the corresponding Labor Court of the denials of access.[210]

As discussed above, in early September 2010, SITRAPINEHURST and the CDM requested that the STSS investigate allegations of inaccurate payment of wages, verbal mistreatment of workers, and OSH violations.[211] According to the Submission, the STSS did make two attempts that month to conduct inspections based on those requests but was again denied access to the worksite.[212] The GOH reported that it had no records of inspectors being denied access at that time.[213]

On October 5, 2010, three STSS inspectors gained access to conduct a general inspection of the Pinehurst factory.[214] The report from that inspection documented nonpayment of overtime to 598 workers over a two month period and mandated that the company pay the workers the overtime premium of 25 percent per hour, for a total of 453,433 HNL (US $21,778) within three business days.[215] The report also found that Pinehurst violated Article 187 of the Social Security Regulation by deducting wages for time spent at the Honduran Institute for Social Security (*Instituto Hondureño del Seguro Social*, IHSS), the public health care institution.[216] The report does not indicate whether the STSS inspected for the OSH issues raised by CDM and Pinehurst workers. The STSS notified the company of its findings and orders regarding overtime payments and salary deductions on December 7, 2010.[217]

On February 9, 2011, the STSS conducted a re-inspection and found that the company had not paid the workers back wages owed to them and continued to fail to pay overtime in compliance with the law.[218] The STSS decided to impose a fine on March 23, 2011.[219] On October 26, 2011, over a year after the date of the initial inspection, the STSS officially imposed a 10,000 HNL (US $480) fine for the overtime violation and illegal deductions found in the October 5, 2010, inspection.[220] Pinehurst paid the fine on May 2, 2012.[221] In July 2012, CDM reported to the

[209] GOH answers to the OTLA's specific questions, pages 10-11, August 22, 2012; Decision of the STSS inspector general regarding Pinehurst, October 26, 2011.
[210] GOH answers to the OTLA's specific questions, pages 10-11, August 22, 2012.
[211] STSS Legal Services decision regarding Pinehurst, March 23, 2011; CDM request for STSS inspection at Pinehurst, September 8, 2010.
[212] Submission, page 16.
[213] The OTLA requested information from the GOH about their response to the September 2010 denials of access to labor inspectors, but the GOH indicated that it had no records of the denials of access. GOH answers to the OTLA's specific questions, page 10, August 22, 2012.
[214] STSS notification report of inspection at Pinehurst, December 7, 2010.
[215] STSS notification report of inspection at Pinehurst, December 7, 2010; GOH answers to the OTLA's specific questions, page 10, August 22, 2012.
[216] STSS notification report of inspection at Pinehurst, December 7, 2010.
[217] STSS notification report of inspection at Pinehurst, December 7, 2010; GOH answers to the OTLA's specific questions, page 10, August 22, 2012.
[218] STSS Legal Services decision regarding Pinehurst, March 23, 2011; STSS report of re-inspection at Pinehurst, February 9, 2011; GOH answers to OTLA's specific questions, page 10, August 22, 2012.
[219] STSS Legal Services decision regarding Pinehurst, March 23, 2011.
[220] Decision of the STSS inspector general regarding Pinehurst, October 26, 2011.
[221] Pinehurst receipt for payment of 10,000 HNL issued by the Treasury of Honduras, May 2, 2012.

OTLA that workers had still not received back wages despite the December 7, 2010, STSS order.[222]

As part of its effort to inspect companies named in the Submission, on September 12, 2012, the STSS conducted a general inspection at Pinehurst.[223] In a follow-up report the STSS noted that it found no labor law violations at the company.[224] Though unpaid overtime violations and unlawful wage deductions under Article 187 of the Social Security Regulation were the subject of the previous STSS inspections and fines, the 2012 inspection did not investigate whether Pinehurst had paid workers their back wages pursuant to their December 7, 2010 order.[225]

6. Petralex S. de R.L.

Petralex is a U.S.-owned apparel manufacturer located in the Zip Bufalo Industrial Park in Villanueva, Honduras. It produces garments for Family Dollar, Aeropostale, National Wholesale, and Prime Life.[226] The Submission alleges that the GOH failed to enforce labor laws related to the company's illegal dismissal of over 100 union members in 2007 and 2008.[227]

On June 24, 2006, a group of Petralex workers founded the Petralex Workers' Union (*Sindicato de Trabajadores de la Empresa Petralex*, SITRAPETRALEX).[228] The same day, the union elected a provisional (first) leadership committee consisting of six workers.[229] The union applied for legal personality (*personería jurídica*) on August 16, 2006.[230] On May 7, 2007, the STSS granted the union legal personality.[231] According to the Submission, members of SITRAPETRALEX elected their permanent (second) leadership committee on May 12.[232]

Evangelina Argueta, the Northwest Coordinator of the CGT and the main organizer of SITRAPETRALEX, requested that an STSS inspector verify that the union's second leadership committee members had sufficient tenure at Petralex to qualify for their positions, one of the steps required by the STSS to validate that union leaders qualify for *fuero sindical*.[233] On June 4, 2007, an inspector attempted to fulfill this request, but factory staff denied the inspector entry. The inspector confirmed the workers' tenure by checking the start dates printed on the workers' company badges as they left the facility.[234] The inspector wrote a report and recommended a fine for the denial of access, but the GOH could not find any record of the Regional STSS

[222] OTLA interview with CDM, July 17, 2012.
[223] STSS record of inspection at Pinehurst, September 12, 2012.
[224] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[225] OTLA meeting with STSS officials, May 20, 2013; *see also:* General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[226] OTLA interview with Petralex management, July 18, 2012.
[227] Submission, pages 5-11.
[228] SITRAPETRALEX founding document and record of leadership election, June 24, 2006.
[229] SITRAPETRALEX founding document and record of leadership election, June 24, 2006.
[230] STSS receipt for SITRAPETRALEX application for legal personality, August 16, 2006.
[231] STSS certification of SITRAPETRALEX legal personality, May 7, 2007.
[232] Submission, page 5.
[233] STSS report of inspection at Petralex, June 4, 2007.
[234] STSS report of inspection at Petralex, June 4, 2007.

Director proceeding further to request the application of the fine or notify the corresponding labor court that the company impeded the work of an inspector.[235]

Between June 6 and 8, 2007, Petralex dismissed all six members of the permanent SITRAPETRALEX leadership committee for "staff restructuring."[236] Shortly thereafter, those workers filed a lawsuit against the company contesting their dismissals; it was still pending at the time the Submission was filed.[237]

On June 30, 2007, SITRAPETRALEX elected a third leadership committee. On July 25, Evangelina Argueta met with the Regional Director of the STSS in San Pedro Sula.[238] Argueta requested that the factory and workers not be identified in STSS records until after the committee received *fuero sindical* protection from the STSS to prevent Petralex from learning their identities and dismissing them prior to receiving such protection.[239] Rosales agreed. Argueta returned the next day and met with the Regional Chief Inspector for the STSS in San Pedro Sula.[240] The Regional Chief Inspector allegedly wrote down the names of the workers in the STSS records,[241] asserting to the OTLA during an interview that Rosales had not requested anonymity at that time.[242] However, in a separate interview with the OTLA, Rosales confirmed that she requested anonymity in the records as described in the Submission.[243]

When Argueta and the inspector went to the factory on July 25, 2007, to verify that the union's third leadership committee members had sufficient tenure to qualify for their positions, they were again denied access.[244] The inspector verified the leadership committee members' tenure at the factory by waiting outside and checking the start dates printed on the workers' company badges.[245] The GOH reported that the inspector wrote a report and recommended a fine, but that there are no records of the Regional STSS Director requesting the application of the fine or notifying the corresponding labor court that the company impeded the work of an inspector.[246]

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[235] GOH answers to OTLA's specific questions, page 2, August 22, 2012.
[236] The OTLA reviewed dismissal letters for each of the leadership committee members. These dismissals occurred before the union could complete the certification process for its permanent leadership committee; however, the protection is retroactive from the date of elections. SITRAPETRALEX request for STSS registration of leadership committee, June 6, 2007; Petralex dismissal letters, June 2007; Labor Code, Article 516.
[237] OTLA interview with Petralex worker, July 2012; OTLA's specific questions for the GOH, June 11, 2012; Email from the OTLA to Evangelina Argueta, October 10, 2012.
[238] While the Submission states that these events occurred on the 24, 25, and 26 of July 2007, OTLA's review of the documents shows that they occurred on the 25, 26, and 27 of July 2007. CGT complaint filed against STSS San Pedro Sula Chief Inspector, August 6, 2007.
[239] CGT complaint filed against STSS SPS Chief Inspector, August 6, 2007; OTLA interview with Petralex worker, July 2012.
[240] CGT complaint filed against STSS SPS Chief Inspector, August 6, 2007.
[241] Submission, page 7.
[242] OTLA interview with Inspector [redacted], July 16, 2012.
[243] OTLA interview with former STSS SPS Regional Director, July 16, 2012.
[244] STSS certification of SITRAPETRALEX leadership *constancia de antigüedad,* July 25, 2007.
[245] STSS certification of SITRAPETRALEX leadership *constancia de antigüedad,* July 25, 2007.
[246] The OTLA requested information from the GOH about their response to Petralex's denials of access to the inspector, but the GOH could find no records of applying a fine or notifying the courts. GOH answers to the OTLA's specific questions, page 2, August 22, 2012.

Later that same day, Argueta returned to the factory and learned that the company dismissed three of the six leadership committee members, again for "staff restructuring" and without prior permission from the court.[247] The company dismissed the other three leadership committee members over the next few days under the same circumstances.[248] The STSS certified the third leadership committee on July 30, 2007, retroactively triggering from the date of the leadership committee members' election their *fuero sindical* protection under Labor Code Article 516.[249]

On July 27, 2007, Argueta approached Rosales to file a complaint against the Regional Chief Inspector regarding the dismissed workers, alleging that the Regional Chief Inspector leaked their names to the company.[250] The OTLA's review of photocopied STSS records revealed that names on the official STSS ledger had been erased, although neither the STSS nor the OTLA were able to conclusively determine when or why.[251] On August 6, Argueta filed a formal complaint against Regional Chief Inspector with the STSS headquarters.[252] The hearing records show that an investigator interviewed both parties and reviewed relevant documents.[253] The Regional Chief Inspector's statement of defense disputes all of the alleged facts except that she did erase the names in the STSS records, but at Argueta's insistence.[254] According to the GOH, there was insufficient evidence of serious misconduct, and the STSS sanctioned the Regional Chief Inspector under the Civil Service Law; she no longer serves as Chief Inspector.[255]

The union elected a fourth leadership committee on August 25, 2007, which the STSS certified on October 17, 2007.[256] On November 2, one of the union leaders requested an STSS inspector notify Petralex of both the union's legal status and the identities of the leadership committee members protected by *fuero sindical*.[257] On November 8 and 12, factory staff denied access to the STSS inspector attempting to notify the company.[258] As in prior cases, the inspector wrote a report and recommended a fine, but the STSS could not find any record of the Regional STSS Director proceeding with the fine or notifying the corresponding labor court that the company impeded the work of an inspector.[259]

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[247] The OTLA reviewed documents confirming that each of these workers was on the leadership committee and dismissed as alleged. STSS certification of SITRAPETRALEX leadership *constancia de antigüedad*, July 25, 2007; Petralex dismissal letters, June and July 2007.

[248] The OTLA reviewed documents confirming that each of these workers was on the leadership committee and dismissed as alleged. STSS certification of SITRAPETRALEX leadership *constancia de antigüedad*, July 25, 2007; Petralex dismissal letters, June and July 2007.

[249] STSS certification of SITRAPETRALEX leadership committee, July 30, 2007.

[250] CGT complaint filed against STSS SPS Chief Inspector, August 6, 2007; STSS hearing report, September 6, 2007; Ratification of complaint by the CGT, September 5, 2007.

[251] The OTLA received a photocopy of the list in question, and it indeed appears that workers' names were redacted. Undated handwritten list.

[252] CGT complaint filed against STSS SPS Chief Inspector, August 6, 2007.

[253] STSS hearing report, September 6, 2007.

[254] Record of Defenses, September 7, 2007.

[255] GOH answers to the OTLA's specific questions, page 4, August 22, 2012; OTLA interview with former STSS SPS Regional Director, July 16, 2012.

[256] Submission, page 7; STSS certification of SITRAPETRALEX leadership, October 24, 2007 (indicates that the certification was granted on October 17, 2007 with effect from August 25, 2007).

[257] Request for inspection at Petralex, November 2, 2007.

[258] STSS record of inspection at Petralex, November 8, 2007; STSS record of inspection at Petralex, November 12, 2007.

[259] GOH answers to OTLA's specific questions, page 2, August 22, 2012.

According to the Submission, Argueta sent then-Director Rosales a letter on December 18, 2007, requesting intervention at Petralex because of the dismissals of union leaders and denials of access to STSS inspectors.[260] The Submission also alleges that Rosales went to the facility and delivered a summons to the company to appear at the STSS on December 20.[261] However, the GOH claims no knowledge of this letter or summons,[262] and the OTLA did not receive any corroborating documentation from the submitters. The Submission alleges that on December 21, Petralex dismissed all six members of the fourth leadership committee, without the required prior approval from the court, along with three other union members, citing "staff restructuring" as the justification. According to the Submission, the company then dismissed 180 union members in January and February 2008.[263]

According to the Submission, SITRAPETRALEX elected a fifth leadership committee on January 19, 2008.[264] Petralex allegedly dismissed three of the newly elected leaders on February 11 and 12, before the union could complete the process for applying for certification for its leadership committee.[265] The union held an election to replace those committee members on February 13.[266]

On February 14, 2008, an STSS inspector attempted to notify Petralex both that it had granted legal personality to SITRAPETRALEX and the identity of the union's fifth leadership committee members who were protected by *fuero sindical*; factory staff denied him access.[267] The inspector called Rosales, who arrived and called the police.[268] Upon their arrival, the STSS officials were allowed to enter the industrial park office, though not the factory premises,[269] where they delivered the notification to a Petralex human resources assistant.[270] Following prior practices, the inspector wrote a report and recommended a fine, but the GOH could not find any record of the Regional STSS Director proceeding further to request the application of the fine or to notify the corresponding labor court that the company impeded the work of an inspector.[271]

On April 13, Daniel Durón, the head of the CGT, filed a complaint about the January and February 2008 dismissals of 180 SITRAPETRALEX union members with the STSS.[272] On April

[260] Submission, page 8.
[261] Submission, page 8.
[262] GOH answers to the OTLA's specific questions, page 1, August 22, 2012.
[263] Submission, page 8. An STSS inspector concluded that 134 union members were dismissed at that time. Petralex management told the OTLA that approximately 333 workers were dismissed in 2008 as well as 50 on December 21, 2007, due to a reduction in personnel. STSS Inspector General decision imposing fine on Petralex, June 8, 2009; OTLA interview with Petralex management, July 18, 2012.
[264] Submission, page 8.
[265] Submission, page 8.
[266] Submission, page 8.
[267] STSS report of inspection at Petralex, February 25, 2008.
[268] STSS report of inspection at Petralex, February 25, 2008.
[269] STSS report of inspection at Petralex, February 25, 2008.
[270] STSS record of inspection at Petralex, February 14, 2008; STSS report of inspection at Petralex, February 25, 2008; STSS certification of delivery of notification of SITRAPETRALEX legal personality and identity of union leaders protected by *fuero sindical*, February 21, 2008.
[271] GOH answers to OTLA's specific questions, page 2, August 22, 2012.
[272] CGT request for STSS inspection at Petralex, April 13, 2008.

18 and April 25, 2008, an STSS inspector attempted to investigate the dismissals, but the factory staff denied the inspector access.[273] The inspector's report, issued May 23, 2008, concluded that Petralex violated the law by dismissing leadership committee members and other union members and denying the STSS access on multiple occasions.[274] The report ordered Petralex to reinstate the workers within three business days,[275] which it failed to do.[276] Although the STSS found that Petralex had unlawfully dismissed leadership committee members, it did not order Petralex to pay the union an amount equivalent to six months of the dismissed leaders' salaries as required under Labor Code Article 516.[277]

On September 19, 2008, the STSS conducted a re-inspection, led by Inspector Erazo.[278] Although the re-inspection report states that the violations identified in the May 23 report were corrected, it lists the only violation as "payroll records" and does not address the failure to reinstate the dismissed SITRAPETRALEX members.[279] Nevertheless, on December 2, 2008, the STSS in Tegucigalpa recommended that Petralex be sanctioned 10,000 HNL (US $480) for dismissing the leadership committee and 134 other SITRAPETRALEX members.[280] Petralex paid the fine on December 11, 2009.[281] The GOH indicated that it could not locate the related documentation about its response to PETRALEX's failure to reinstate the dismissed workers or those about whether the STSS had re-inspected or imposed an additional fine for failure to comply with the reinstatement order.[282] The STSS provided no evidence that it took further action with regard to the union members and elected union leaders dismissed in 2007 and 2008, in support of its order that Petralex reinstate the illegally dismissed workers.

As part of its effort to inspect companies named in the Submission, on September 12, 2012, the STSS conducted a general inspection of Petralex.[283] In a follow-up report the STSS noted that it found no labor law violations at the company.[284] Though alleged freedom of association violations were the subject of CGT and SITRAPETRLEX complaints and previous STSS inspections, fines, and orders as noted in this section and in the Submission, the 2012 inspection did not investigate whether Petralex was in compliance with laws guaranteeing the right of freedom of association, had paid the legally-required payment of six months of the previously

[273] STSS report of inspection at Petralex, May 5, 2008.
[274] STSS report of inspection at Petralex, May 23, 2008; STSS Inspector General decision imposing fine on Petralex, June 8, 2009.
[275] STSS report of inspection at Petralex, May 23, 2008; STSS Inspector General decision imposing fine on Petralex, June 8, 2009.
[276] STSS Legal department ruling on Petralex, December 2, 2008.
[277] Labor Code, Article 516.
[278] STSS report of re-inspection at Petralex, September 19, 2008.
[279] STSS report of re-inspection at Petralex, September 19, 2008.
[280] STSS Inspector General decision imposing fine on Petralex, June 8, 2009; GOH answers to the OTLA's specific questions, page 1, August 22, 2012.
[281] STSS receipt for Petralex's payment of 10,000 HNL fine, December 11, 2009.
[282] The OTLA requested information about the GOH response to Petralex's failure to reinstate dismissed workers and any STSS efforts to re-inspect or impose a fine for the company's failure to comply. GOH answers to OTLA's specific questions, page 3, August 22, 2012.
[283] STSS report of inspection at Petralex, September 12, 2012.
[284] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.

fired union leaders' salaries to the union, or had complied with the prior order to reinstate the wrongly dismissed union members and leaders.[285]

7. Hanesbrands, Inc.

Hanesbrands is a U.S.-based company that owns and operates 11 factories in Honduras that produce exclusively for Hanesbrands, which include Hanes, Champion, Playtex, Bali, L'eggs, Just My Size, Barely There, Wonderbra, and Duofold.[286] The Submission alleges that the agreements between management and non-unionized workers, known as collective pacts (*pactos colectivos*), that are in place at eight of the Hanesbrands factories impede workers' rights to freedom of association and collective bargaining by facilitating interference with freedom of association, and that the GOH has failed to enforce labor laws protecting workers from such conduct.[287]

Hanesbrands management confirmed, in interviews with the OTLA, that Hanesbrands introduced collective pacts, including worker committee structures, at eight of its factories in Honduras beginning in October 2008. The introduction of the collective pacts allegedly coincided with a union organizing effort at the Confecciones del Valle factory. The OTLA reviewed signed statements from 41 workers at Confecciones del Valle that alleged anti-union statements by management and dismissals of workers trying to form a union.[288] The Submission alleges that Hanesbrands introduced collective pacts in reaction to and to counteract the union organizing effort.[289] Hanesbrands management told the OTLA that they initiated the pacts to alleviate concerns from workers that their existing non-contractual benefits, for example funding for continuing education, would be eliminated as a part of the company's response to the global economic crisis.[290]

According to Hanesbrands' management, management selected representatives for the worker committees at all eight factories and workers could have nominated their own candidates yet did not do so.[291] Management also told the OTLA that they chose the committee members on the same day that the pacts were negotiated, finalized, signed, and read aloud to and approved by the workers and that the STSS was present for the entire same-day process.[292] Management's account of events is corroborated by the collective pacts from the Jasper and Confecciones del Valle factories, provided to the OTLA by Hanesbrands, and from the Hanes Choloma factory, provided to the OTLA by the STSS.[293] When the OTLA reviewed three examples of the collective pacts provided by Hanesbrands, the OTLA found them to be substantially similar to

[285] OTLA meeting with STSS officials, May 20, 2013; *see also*: General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[286] *See:* http://www.hanesbrands.com.
[287] Submission, pages 23-27; Labor Code, Articles 53, 72, and 96 (9).
[288] Written statements of former Confecciones del Valle workers taken by the WRC, undated, received August 2, 2012.
[289] Submission, page 24.
[290] OTLA interview with Hanesbrands management, July 18, 2012.
[291] OTLA interview with Hanesbrands management, July 18, 2012.
[292] OTLA interview with Hanesbrands management, July 18, 2012.
[293] Jasper Factory collective pact; Confecciones del Valle collective pact; Hanes Choloma collective pact.

each other, with only three articles differing.[294] The other articles were identical, including the article relating to the election process that outlines the election of workers' representatives to the worker committees as being conducted under the supervision of "the Department Manager, a Supervisor, the Human Resources Manager" and the other delegates.[295]

The Labor Code prohibits employers from infringing or restricting rights granted to workers in the Labor Code, including those related to freedom of association.[296] When the OTLA inquired about the STSS's role in ensuring that there is no employer interference in the collective pacts' process, STSS officials informed the OTLA that it accepts workers signatures on the collective pacts in good faith.[297]

B. Agriculture Sector

1. Honduran Foundation for Agricultural Research

The Honduran Foundation for Agricultural Research (*Fundación Hondureña de Investigación Agrícola*, FHIA) was founded by the GOH and the United States Agency for International Development (USAID) in 1984.[298] It is a nonprofit research center that develops seeds for use throughout Central America.[299] FHIA continues to receive funding as a subcontractor for various USAID projects.[300] The Submission alleges that the GOH failed to enforce labor laws related to the coerced resignations from the union and illegal dismissals of most of the founding union members, and that the GOH subsequently authorized the dissolution of the union based on an insufficient number of members that resulted from those illegal dismissals of union members.[301]

On March 2, 2008, FHIA workers formed the FHIA Workers' Union (*Sindicato de Trabajadores de la Fundación Hondureña de Investigación Agrícola*, SITRAFHIA).[302] On March 3, the STSS

[294] At Confecciones del Valle, workers who are signatories to the collective pact receive two days paid leave in the event they get married; workers who are signatories to the Jasper agreement receive one day of paid leave. At Confecciones del Valle, Article 7 provides for a free psychological counseling service; at Jasper, Article 7 provides for a 16 HNL (US $.77) lunch subsidy. At Confecciones del Valle, Article 11 provides for a 1,000 HNL (US $48) funeral benefit for workers' immediate family members; at Jasper, Article 11 provides for a transportation benefit.
[295] Article 26 in Jasper Factory collective pact and Confecciones del Valle collective pact; Article 25 in Hanes Choloma S. DE. R.L. collective pact.
[296] Labor Code, Article 96(9).
[297] OTLA interview with STSS official, July 10, 2012.
[298] David D. Bathrick for USAID, September 2008. "Optimizing the Economic Growth and Poverty Reduction Benefits of CAFTA-DR: Accelerating Trade-Led Agricultural Diversification," Vol. II., page 135.
[299] OTLA interview with FHIA management, July 19, 2012.
[300] OTLA interview with FHIA management, July 19, 2012; Email from USAID to the OTLA, January 9, 2013.
[301] Submission, pages 27-30.
[302] SITRAFHIA request to STSS for legal registration, March 2, 2008; SITRAFHIA founding document and record of election of leadership committee, March 2, 2008. On March 1, 2008, 34 workers signed a letter addressed to the "labor prosecutor," complaining that FHIA management subjected the workers to verbal abuse. Note that the addressee, the "*Fiscalía del Trabajador*" is not an office within the GOH and the OTLA was unable to confirm whether the GOH received the document. Letter from FHIA workers to *"Fiscalía del Trabajador,"* March 1, 2008.

certified that the 34 founding members of SITRAFHIA would be under *protección del estado* as soon as FHIA management was notified of their intent to form a union.[303]

On March 5, 2008, the Coordinator of Honduran Banana and Agro-industrial Unions (*Coordinadora de Sindicatos Bananeros y Agroindustriales de Honduras*, COSIBAH), a worker rights organization focused on the agricultural sector in Honduras,[304] requested that an STSS inspector notify FHIA of the founding of the union.[305] The same day, the STSS assigned an inspector to carry out the notification.[306] FHIA's Human Resources Manager met the inspector and received the relevant documents but refused to sign the inspector's record.[307] Nevertheless, the STSS considered FHIA legally notified of the union's founding as of that date and placed the 34 founding SITRAFHIA members under *protección del estado*.[308]

Within a day, FHIA allegedly dismissed four of the 34 founding SITRAFHIA members without requesting prior authorization from the respective authority, as required by the Labor Code.[309] The same day, at least two other founding members resigned from the union.[310] Additional dismissals without prior authorization from the STSS and resignations from the union occurred through October 2008.[311] Most of the dismissed workers received their severance payments.[312] According to the Submission, SITRAFHIA reported the dismissals to the STSS several times beginning in March 2008, alleging that they were unlawful, including because they occurred without the required prior authorization from the respective authority.[313] The STSS conducted inspections to investigate the dismissals on August 5 and 7.[314] The FHIA Director and Human Resources Manager were unavailable to meet with the inspector on both occasions and FHIA was instead represented by a Human Resources Assistant and later the Administrative Chief.[315,316] Both told the STSS that the founding union members had not been fired but, instead, had quit and requested severance.[317]

[303] STSS certification of SITRAFHIA founding members' *protección del estado*, March 3, 2008; GOH answers to the OTLA's specific questions, page 15, August 22, 2012.
[304] In May 2013, COSIBAH became the Federation of Unions of Agro-industrial Workers (*Federación de Sindicatos de Trabajadores de la Agroindustria*, FESTAGRO). For the purposes of clarity in this report, the OTLA uses COSIBAH to describe the organization.
[305] COSIBAH request to STSS for inspector to notify FHIA of SITRAFHIA formation, March 5, 2008.
[306] STSS order to inspector to carry out SITRAFHIA notification, March 5, 2008; STSS record of delivery of SITRAFHIA notification documents, March 5, 2008.
[307] STSS record of notification at FHIA, March 5, 2008.
[308] GOH answers to the OTLA's specific questions, page 15, August 22, 2012.
[309] STSS report of inspection at FHIA, June 4, 2009 (recording statement of SITRAFHIA president); COSIBAH press release regarding dismissals of SITRAFHIA members, March 6, 2008; OTLA interview with FHIA worker, July 2012.
[310] The OTLA reviewed copies of both resignation letters.
[311] The OTLA reviewed copies of 14 dismissal letters and 11 resignation letters.
[312] OTLA interview with FHIA worker, July 2012.
[313] Submission, page 28.
[314] STSS record of inspection at FHIA, August 5, 2008; STSS record of inspection at FHIA, August 7, 2008.
[315] STSS record of inspection at FHIA, August 5, 2008.
[316] STSS record of inspection at FHIA, August 7, 2008.
[317] STSS record of inspection at FHIA, August 7, 2008; OTLA interview with FHIA management, July 19, 2012.

On April 28, 2008, the STSS notified the union that its application for legal registration contained errors.[318] Several rounds of communication between SITRAFHIA and STSS resolved the issues, and on August 4, 2008, the STSS granted SITRAFHIA legal personality.[319] By this time, however, due to at least 11 dismissals and additional resignations from the union, fewer than 13 of the original 34 founding SITRAFHIA members remained employed with FHIA and with the union.[320] Under Labor Code Articles 475 and 527, a union must have a minimum of 30 members at all times.[321]

On September 22 and 25, 2008, SITRAFHIA requested further inspections regarding the dismissals.[322] On September 30, the STSS conducted an inspection.[323] FHIA's Human Resources Director said that the dismissals were part of a reduction of personnel due to the end of a project.[324] It appears from the inspection record that the inspector did not interview any workers.[325]

On September 22, 2008, an attorney filed for dissolution of the union on behalf of six FHIA workers,[326] arguing that fewer than 30 SITRAFHIA members remained.[327] This petition also suggested that at least some of the founding union members thought they were joining a cooperative and not a union.[328] The OTLA interviewed one of the parties to this petition, however, who stated unequivocally that he was not aware of such a filing, did not know the attorney of record, and at all times knew that he had participated in founding a union.[329]

According to the court decision, the Court attempted to notify the SITRAFHIA president about the case to give him an opportunity to challenge the dissolution request. The notification was sent to the workplace, however, rather than the address noted in the union's bylaws as its official address for any and all legal notifications related to the union (on file with the STSS),[330] and as a

[318] STSS report on SITRAFHIA request for recognition, April 28, 2008.
[319] STSS notification report of inspection at FHIA, July 28, 2009; STSS Resolution regarding SITRAFHIA, August 4, 2008; STSS report on SITRAFHIA request for recognition, April 28, 2008; STSS decision on STRAFHIA request for recognition, May 5, 2008; SITRAFHIA submission of amendments, May 12, 2008; STSS admission of SITRAFHIA amendments, May 15, 2008; STSS report on STRAFHIA amendments, May 28, 2008; STSS order of receipt of STRAFHIA amendments, May 30, 2008; STSS order of receipt of SITRAFHIA amendments, June 10, 2008; STSS decision on SITRAFHIA amendments, July 7, 2008; STSS order on STRAFHIA request for recognition, July 18, 2008; STSS notice on STRAFHIA request for recognition, July 22, 2008; STRAFHIA submission of additional documents, July 22, 2008; STSS admission of STRAFHIA additional documents, July 23, 2008; STSS decision on STRAFHIA, August 1, 2008. *See also:* Labor Code, Articles 482 and 483.
[320] OTLA reviewed copies of the dismissal and/or resignation letters of 21 SITRAFHIA members; *see also:* STSS record of inspection at FHIA, August 7, 2008.
[321] Labor Code, Article 475.
[322] SITRAFHIA request for STSS inspection at FHIA, September 22, 2008; SITRAFHIA request for STSS inspection at FHIA, September 25, 2008.
[323] STSS notification report of inspection at FHIA, July 28, 2009; STSS report of inspection at FHIA, September 30, 2008.
[324] STSS report of inspection at FHIA, September 30, 2008.
[325] STSS FHIA inspection report, September 30, 2008.
[326] Petition to dissolve SITRAFHIA, filed September 22, 2008.
[327] Petition to dissolve SITRAFHIA, filed September 22, 2008, page 2.
[328] Petition to dissolve SITRAFHIA, filed September 22, 2008, pages 3 and 4.
[329] OTLA interview with FHIA worker, July 2012.
[330] The union's address is listed in the SITRAFHIA statutes, Chapter 1, Article 2.

result, the union president never received the notification, as it was sent after his dismissal on October 9, 2008.[331] The Labor Chamber of the Supreme Court of Justice in San Pedro Sula granted the petition to dissolve SITRAFHIA on January 26, 2009.[332] At the time of the decision, 21 of the founding SITRAFHIA members no longer worked at FHIA, including the SITRAFHIA president.[333]

On June 4, 2009, COSIBAH requested an STSS inspection to investigate the 2008 dismissals of the union members fired and to verify that eight of the founding union members were forced to quit the union in order to maintain their jobs.[334] An STSS inspector attempted to conduct an inspection that same day but was informed that neither FHIA's Director nor Human Resources Director was on site and that no other company representative was present to receive the inspector.[335] The inspector nonetheless took worker statements regarding the dismissals and submitted a report to the Regional STSS Inspector General on July 9, 2009, indicating that the claim remained pending.[336]

On July 9, 2009, the same inspector conducted another inspection, specifically focusing on the application of provisions of ILO Convention 87 on Freedom of Association.[337] The inspector and the SITRAFHIA president met with FHIA's attorney. The attorney stated that the union had only caused internal problems for FHIA and that many of the founding members did not know they were joining a union when they affiliated, instead believing they were joining a cooperative.[338]

As a result of the July 9 inspection, the STSS found that FHIA was noncompliant with both Convention 87 and *protección del estado* for dismissing the founding union members without prior authorization. The resulting inspection report stated that FHIA had violated national and international labor standards covering the right to organize when firing the founding union members and specifically found that the workers named in the August 6 and September 30, 2008, inspection reports had been fired illegally.[339] On July 20, the STSS attempted to serve a summons on FHIA regarding these violations, but FHIA staff refused to give the inspector access.[340] The STSS did not provide any evidence that it issued a sanction or reported the denial of access to the corresponding labor court.[341] The STSS delivered the report detailing both the

[331] Supreme Court communication to STSS, January 26, 2009.
[332] Supreme Court communication to STSS, January 26, 2009.
[333] Supreme Court communication to STSS, January 26, 2009. At least seven of the SITRAFHIA members had been fired and six had resigned at the time of the original filing on September 22, 2008.
[334] COSIBAH request for STSS inspection at FHIA, June 4, 2009; STSS report of inspection at FHIA, June 4, 2009; GOH answers to the OTLA's specific questions, page 18. August 22, 2012.
[335] STSS report of inspection at FHIA, June 4, 2009; STSS record of inspection at FHIA, July 9, 2009.
[336] STSS report of inspection at FHIA, June 4, 2009; STSS record of inspection at FHIA, July 9, 2009; STSS inspector report to regional STSS Inspector General regarding FHIA, July 9, 2009.
[337] STSS report of inspection at FHIA, July 9, 2009.
[338] STSS report of inspection at FHIA, July 9, 2009.
[339] STSS notification report of inspection at FHIA, July 28, 2009.
[340] STSS report of inspection at FHIA, July 20, 2009.
[341] The OTLA requested all documents relevant to the allegations in the submission from the GOH. The volumes of documents given to the OTLA by the GOH did not include any information on follow-up action to the July 20, 2009, denial of access. OTLA's questions to the GOH, June 11, 2012.

June and July inspections to FHIA's attorney on July 28 and ordered the company to correct the violations within three business days.[342]

FHIA appealed the finding to the STSS on July 30, 2009.[343] On November 16, 2009, the STSS upheld the finding and levied a 10,000 HNL fine (US $480) against FHIA.[344] FHIA appealed the fine with the STSS on December 3.[345] Nearly eight months later, on July 15, 2010, Honduran Minister of Labor Ávila declared that FHIA's appeal was without merit.[346] According to the STSS, the defense presented in the appeal was not sufficient to show compliance with Convention 87.[347] The STSS transferred the 10,000 HNL (US $480) fine levied on FHIA to the Attorney General for collection.[348] FHIA paid the fine on January 10, 2011.[349] On February 2, 2011, the STSS closed the case because FHIA had paid the fine.[350] The STSS provided no evidence, however, that it followed up on its July 28, 2009 order that FHIA correct its Convention 87 and *protección del estado* violations with respect to the unlawful dismissals of founding union members. Only three of those workers were rehired, and the STSS played no part in their rehiring.[351]

On July 3, 2012, the STSS conducted a general inspection of FHIA and found that the employer had failed to pay the minimum wage, improperly paid the 13th and 14th month bonuses,[352] and failed to provide legally required vacation.[353] The STSS notified FHIA of the July 3 findings on September 12, 2012. FHIA appealed the new findings on October 17, 2012, and STSS granted a ten-day period to present evidence.[354] In May 2013, the STSS stated that a sanction against FHIA was in progress for the violations identified on July 30, 2012.[355] The OTLA, despite requesting, had not received any further information about whether the sanction was imposed or paid as of January 26, 2014.

2. Sur Agrícola de Honduras and Cultivos de Vegetales del Sur

Sur Agrícola de Honduras and *Cultivos de Vegetales del Sur* (SurAgro) are farms on the same plantation operating in Choluteca, Honduras, under the auspices of a company called *Grupo Sol,*

[342] STSS notification report of inspection at FHIA, July 28, 2009.
[343] FHIA response to STSS findings, July 30, 2009.
[344] STSS Inspector General decision regarding FHIA, November 16, 2009; GOH answers to the OTLA's specific questions, page 18, August 22, 2012.
[345] STSS Legal Services department decision regarding FHIA, February 16, 2010.
[346] STSS decision on FHIA's appeal, July 15, 2010.
[347] STSS decision on FHIA's appeal, July 15, 2010.
[348] Receipt for file No. PGR-804-2010 by the *Procuraduría General*, November 26, 2010.
[349] Receipt for FHIA's payment of fine, January 10, 2011.
[350] STSS Inspector General order to close FHIA investigation, February 2, 2011.
[351] OTLA interview with SITRAFHIA leader, July 2012.
[352] The 13th and 14th month bonuses are mandatory payments to permanent workers equivalent to one month's salary, paid in June and December. Legislative Decree 135-94 (October 12, 1991), Legislative Decree 131 (January 11, 1982).
[353] STSS record of inspection at FHIA, July 3, 2012.
[354] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[355] OTLA meeting with STSS officials, May 20, 2013; *see also*: General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.

which exports melons to the United States.[356] According to the Submission, the plantation employs between 3,000 and 5,000 workers.[357] The OTLA found that the farms have the same management and that the STSS does not differentiate between them for purposes of labor law enforcement actions.[358] The Submission alleges that the GOH failed to enforce labor laws related to acceptable conditions of work at SurAgro.[359]

Workers interviewed by the OTLA reported that the plantation has consistently failed to pay the minimum wage since 2005.[360] According to the Submission, beginning in May 2006, COSIBAH made verbal complaints to the STSS regional office in Choluteca about the non-payment of minimum wages, and other violations, on a monthly basis and the STSS allegedly told COSIBAH that it did not have a vehicle or inspector available.[361] The STSS did not conduct an inspection of SurAgro until March 2007. [362]

On March 8, 2007, the STSS conducted a general inspection and found numerous Labor Code violations: [363]

- a range of OSH violations, including:
    - failure to provide potable water,
    - failure to report OSH incidents to the proper authorities,
    - allowing children to use hazardous chemicals, and
    - failure to provide personal protective equipment;[364]
- employment of eight children (all age 17) without STSS permission;[365]
- failure to pay the minimum wage;
- failure to pay overtime;
- failure to provide the inspector with requested documents;
- the employment of five foreign executives without work permits (including the owner) and 10 Nicaraguan workers without work authorizations;
- failure to provide written work contracts;
- failure to adopt internal work rules;
- failure to enroll workers in the IHSS;
- lack of payroll/employment records in accordance with the IHSS model;
- failure to provide the required day of rest;

[356] Email from U.S. Embassy in Honduras to the OTLA, November 30, 2012; OTLA interview with SurAgro owner, July 14, 2012.
[357] Submission, page 31.
[358] For example, see GOH answers to the OTLA's specific questions, August 22, 2012.
[359] Submission, pages 31-34.
[360] OTLA interviews with SurAgro workers, July 2012.
[361] Submission, page 31. The STSS does not have records of such requests and OTLA was unable to confirm whether the requests were made.
[362] STSS report of inspection at SurAgro, July 9, 2007; Request for inspection and STSS order to conduct inspection at SurAgro, March 8, 2007.
[363] STSS report of inspection at SurAgro, July 9, 2007; Request for inspection and STSS order to conduct inspection at SurAgro, March 8, 2007.
[364] STSS report of inspection at SurAgro, July 9, 2007.
[365] STSS report of inspection at SurAgro, July 9, 2007; STSS notification report of inspection at SurAgro, November 2, 2007; STSS report of re-inspection at SurAgro, December 14, 2007.

- failure to give workers legal holidays;
- failure to pay or allow vacations;
- failure to pay the 13th month bonus;
- failure to pay the 14th month bonus; and
- failure to pay the education bonus.[366]

This inspection resulted in several follow-up notifications to the company. The STSS notified the company of the child labor findings on June 2, 2007, and gave the company 15 business days to remediate the violations.[367] The STSS notified the company of the OSH findings on July 9, 2007, and gave the company 60 business days to remediate the violations.[368] The STSS notified the company on November 2, 2007, of the other Labor Code violations found in the March 8 inspection.[369] In total, the STSS calculated that SurAgro owed workers 5,166,818 HNL (US $248,166) in unpaid compensation for failing to pay the minimum wage, overtime payments, legal holidays, and other compensation related violations.[370] The notification ordered the company to pay the workers the unpaid compensation and correct the violations within three to 30 business days depending on the violation.[371]

On December 14, 2007, the STSS re-inspected to check for continued use of child labor and found that the violations had been corrected.[372] Also on December 14, the STSS re-inspected to determine whether SurAgro had corrected the violations that were the subject of the November 2, 2007, notification and found that SurAgro had not corrected them.[373] On March 6, 2008, the STSS re-inspected again and found that the company had not corrected the OSH violations found in the March 8, 2007, inspection.[374] The STSS gave the company another 60 business days to remediate the violations.[375]

In August 2008, workers conducted a work stoppage to protest the continued nonpayment of the minimum wage.[376] Shortly thereafter, the company raised wages from 65 to 80 HNL (US $3.12 to 3.84) per day.[377] In 2008, the minimum wage for employees of agricultural sector businesses that employed 16 or more workers was 104 HNL (US $4.99) per day.[378]

On October 14, 2008, the STSS imposed a 90,000 HNL (US $4,323) fine on the company for some, but not all, of the violations found in the March 8, 2007, inspection.[379] The illegal

[366] STSS notification report of inspection at SurAgro, November 2, 2007.
[367] STSS receipt for notification of child labor findings at SurAgro, June 2, 2007.
[368] STSS report of inspection at SurAgro, July 9, 2007.
[369] STSS notification report of inspection at SurAgro, November 2, 2007.
[370] This included 2,702,821 HNL (US $129,818) owed to workers for failure to pay the minimum wage. STSS notification report of inspection at SurAgro, November 2, 2007, page 33.
[371] STSS notification report of inspection at SurAgro, November 2, 2007.
[372] STSS report of re-inspection at SurAgro, December 13, 2007; GOH responses to the OTLA's specific questions, August 22, 2012, page 22.
[373] STSS report of re-inspection at SurAgro, December 14, 2007.
[374] STSS report of re-inspection at SurAgro, March 6, 2008.
[375] STSS report of re-inspection at SurAgro, March 6, 2008.
[376] Submission, page 31; OTLA interview with SurAgro worker, July 2012.
[377] OTLA interviews with SurAgro workers, July 2012.
[378] STSS Minimum Salary Table 2008, Decree No. STSS-258-07.
[379] STSS notice of sanction to SurAgro, October 14, 2008.

employment of eight children carried a 25,000 HNL (US $1,201) fine,[380] and fines of 5,000 HNL (US $240) each were imposed for 13 of the other Labor Code violations.[381] The STSS did not levy any fines for the failure to correct the OSH violations or the failure to follow legal requirements for legal holidays. On October 22, 2008, the company paid the 90,000 HNL (US $4,323) fine but not the 5,166,818 HNL (US $248,166) in unpaid compensation owed to workers or correct the underlying violations, other than child labor.[382] On November 14, 2008, the STSS Inspector General closed the case because SurAgro had paid the fine.[383] It does not appear that the STSS took steps to ensure compliance with its remediation order.

On November 19, 2009, the STSS conducted another inspection and found a lack of individual work contracts, failure to adopt internal work rules, lack of IHSS model payroll records, and failure to pay the minimum wage.[384] On March 1, 2010, the STSS notified the company of the November 19, 2009, inspection results and gave the company three business days to remedy the violations.[385] The STSS re-inspected on March 9, 2010, and found that the violations had not been corrected.[386] At that time, the STSS in Choluteca forwarded the findings to the Inspector General at STSS headquarters to apply fines.[387] Despite the OTLA's request, the GOH did not provide the OTLA with any documents regarding the November 2009 inspection,[388] and the OTLA obtained all documents related to this inspection from the submitters. The documents did not contain evidence that the STSS applied fines or otherwise sanctioned the company based on the violations found in the November 2009 inspection.

In July 2012, SurAgro workers interviewed by the OTLA reported ongoing Labor Code violations, including that the company failed to pay the minimum wage, the 13th and 14th month bonuses, the seventh day bonus, and overtime; failed to provide personal protective equipment and potable water; imposed a 300 HNL (US $14.40) penalty for missing a day of work (even with permission from a supervisor) in addition to that day's salary; and threatened workers with dismissal for speaking with the STSS.[389] The workers that the OTLA interviewed reported that the company no longer employs children.[390] During a separate interview, a former manager called a current manager at the company in the presence of the OTLA and confirmed that the rate

[380] The STSS may impose a fine regardless of whether an employer has remediated the underlying violation. *See:* Child Labor Regulation, Article 27.
[381] STSS notice of sanction to SurAgro, October 14, 2008.
[382] SurAgro Receipt for payment of 90,000 HNL fine, October 22, 2008; OTLA interview with STSS Choluteca Director, July 12, 2012.
[383] STSS document closing SurAgro case, November 14, 2008.
[384] STSS notification report of inspection at SurAgro, March 1, 2010, page 2; Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010 (the date on the original document is erroneously listed as March 25, 2009).
[385] STSS notification report of inspection at SurAgro, March 1, 2010, page 2; Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.
[386] Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.
[387] Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.
[388] The OTLA requested documents from the STSS regarding the November 2009 inspection. GOH answers to the OTLA's specific questions, August 22, 2012, page 23.
[389] OTLA interviews with SurAgro workers, July 2012, OTLA interview with COSIBAH (Choluteca), July 11, 2012.
[390] OTLA interviews with SurAgro workers, July 2012.

of pay was 95 HNL (US $4.56) per day, or 15 HNL (US $.72) below the required minimum wage in July 2012.[391] That was the same amount that workers interviewed by the OTLA reported receiving.

As part of its effort to inspect companies named in the Submission, on September 10, 2012, the STSS attempted to conduct a general inspection at SurAgro, but the plantation staff denied the inspectors access.[392] On September 11, the inspectors requested that the Inspector General at STSS headquarters impose a sanction on the company for failing to allow them access but did not report the incident to the corresponding labor court.[393] In a follow-up report, the STSS stated that an inspector attempted to notify the company of the sanction for failure to grant access to an STSS inspector but was unable to do so because management was not onsite.[394] In that report, the STSS also noted that it found violations related to minimum wage, vacation, internal work rules, individual contracts, and record keeping, but did not specify when the STSS found those violations.[395] In May 2013, the STSS reported to the OTLA that it would conduct a re-inspection.[396] As of the publication of this report, despite its request, the OTLA had received no evidence regarding a re-inspection or other follow-up action by the STSS at SurAgro and has no evidence that the violations have stopped or been remediated.[397]

3. Las Tres Hermanas

Las Tres Hermanas is a banana plantation located in El Progreso, Honduras. It consists of three farms: *Santa Bárbara*, *Ana María*, and *María*. At the time of the Submission, the plantation supplied bananas exclusively to Chiquita through its subsidiary, the Tela Railroad Company.[398] The plantation was directly owned by Chiquita until 2005, when Hurricane Gamma forced the plantation to close.[399] Under Chiquita, workers were represented by the El Surco Workers' Union (*Sindicato de Trabajadores de El Surco,* SITRASURCO) and had a collective bargaining agreement in place.[400] The plantation reopened as Las Tres Hermanas in May 2006,[401] and COSIBAH began organizing at Las Tres Hermanas in 2007.[402]

[391] OTLA interview with former SurAgro manager, July 2012.
[392] STSS record of inspection at SurAgro, September 11, 2012.
[393] STSS record of inspection at SurAgro, September 11, 2012.
[394] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[395] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[396] OTLA meeting with STSS officials, May 20, 2013.
[397] On May 2, 2014, SurAgro workers reported to USG representatives that the company continues to fail to pay minimum wage and comply with OSH requirements.
[398] OTLA interview with Las Tres Hermanas management, December 13, 2012; List of Chiquita Subsidiaries filed with the Securities and Exchange Commission, March 18, 2013, *available from:* http://www.sec.gov/Archives/edgar/data/101063/000010106313000036/cqb10k-exhibit21x12312012.htm.
[399] Letter from Las Tres Hermanas General Manager to the OTLA, December 13, 2012.
[400] Report from submitters, received June 28, 2012 (undated); OTLA interview with Las Tres Hermanas Management, December 13, 2012.
[401] OTLA interview with Las Tres Hermanas management, December 13, 2012.
[402] A former organizer with COSIBAH confirmed this in an October 4, 2012 email to OTLA officials; Submission, page 35.

The Submission alleges that the GOH failed to enforce labor laws related to anti-union discrimination at Las Tres Hermanas.[403] The submitters also allege that, after the Submission was filed, the company sought to form an employer-dominated union.

According to the Submission, on January 24, 2010, COSIBAH met with 19 workers, all but one of whom signed documents to initiate the process of formally creating a union.[404] The following day, 17 of those workers were dismissed and escorted from the plantation by security guards.[405] The OTLA interviewed one of those workers as well as a representative from COSIBAH, who corroborated the general sequence of events alleged in the Submission.[406]

On January 26, 2010, the 17 dismissed workers signed a statement alleging that management told them that the company fired them because of their involvement in forming a union.[407] Las Tres Hermanas management told the OTLA, however, that the dismissals were a necessary reduction in personnel due to the slow pace of business after an October 2008 hurricane forced the plantation to close for four months.[408] Nonetheless, according to the Submission, on January 29, Las Tres Hermanas allegedly asked remaining workers to assist management in finding replacements for the fired workers.[409]

Throughout the month of February, COSIBAH and the dismissed workers met with Las Tres Hermanas management to negotiate reinstatement. According to the workers, on February 22, they came to a verbal agreement for reinstatement, including payment of a 2,000 HNL (US $96) production bonus owed to them from 2009, company recognition of the workers' seniority, and the option for workers to choose between permanent or temporary contracts.[410] The workers alleged, however, that when five of the dismissed workers returned to the plantation on March 8, 2010, pursuant to the February 22 agreement, Las Tres Hermanas asked each of them to sign a document that departed from the agreement by failing to include recognition of seniority, the 2,000 HNL (US $96) payment, and the possibility of a permanent contract.[411]

Further direct negotiations did not prove fruitful, and COSIBAH asked the STSS to intervene.[412] The STSS facilitated three conciliation meetings between the dismissed workers and Las Tres Hermanas management, but the parties did not arrive at a mutually agreeable solution.[413] The GOH did not provide any evidence that the STSS took further actions with respect to the dismissed workers.

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[403] Submission, pages 34-37.
[404] Submission, page 34.
[405] List of dismissed workers provided to the OTLA by the submitters, June 28, 2012; Letter from COSIBAH to Chiquita, April 6, 2010 (confirming that 17 were fired, but only gives specific date for 3 workers); Statement signed by dismissed Las Tres Hermanas workers, January 26, 2010.
[406] OTLA interviews with Las Tres Hermanas workers, July 2012; Email to the OTLA from former COSIBAH organizer, October 4, 2012; list of dismissed workers provided to the OTLA by the submitters, June 28, 2012.
[407] Statement signed by dismissed Tres Hermanas workers, January 26, 2010.
[408] OTLA interview with Las Tres Hermanas management, December 13, 2012.
[409] Submission, page 35.
[410] Letter from COSIBAH to Chiquita, April 6, 2010.
[411] Submission, page 35; Letter from COSIBAH to Chiquita, April 6, 2010.
[412] Submission, page 36.
[413] STSS record of conciliation with Las Tres Hermanas and workers, April 12, 2010; STSS record of conciliation with Las Tres Hermanas and workers, April 13, 2010.

On June 11, 2010, four workers filed a lawsuit against Las Tres Hermanas for unlawful dismissal.[414] Two dropped out of the lawsuit, and two others reportedly won a favorable ruling in the corresponding labor court.[415] Although the OTLA requested all relevant court documents, neither the submitters nor the GOH provided any court records pertaining to this case.[416] The Submission alleges that of the remaining workers, some returned to work under the condition that they would not organize a union and that the others were never reinstated.[417]

On September 3, 2012, workers at Las Tres Hermanas notified the company of their intent to form the Banana Workers' Union (*Sindicato de Trabajadores de la Industria de Banano*, SITRAINBA) and provided documentation of their legal personality on October 26, 2012.[418] The company refused to act upon a petition by SITRAINBA to engage in collective bargaining.[419] As of October 2013, the company had failed to send a representative to any of the three STSS-led mediation sessions, and the collective bargaining process had progressed to the conciliation phase.[420]

Workers allege that the company has sought to form an employer-dominated union, the Union of Workers of the *Ana María, Bárbara*, and *María Farms* (*Sindicato de Trabajadores de las Fincas Ana María, Bárbara, y María*, SITRAFMARIA), as a result of the SITRAINBA notification.[421] The company denied any involvement in SITRAFMARIA.[422] The STSS told the OTLA that it was aware of the allegations that SITRAFMARIA was an employer-dominated union being used to thwart the independent SITRAINBA, but its role in approving the legal personality of a union is supposed to be neutral and based on whether the union meets the standard criteria. As a result, the STSS did not investigate the allegations.[423]

SITRAINBA reported to the OTLA and the STSS that the company dismissed three of their members because of their union activities between October 2012 and January 2013.[424] COSIBAH reported to the OTLA that one additional SITRAINBA member was dismissed in October 2013 and that Las Tres Hermanas management failed to send a representative to an STSS conciliation session regarding that October 2013 dismissal.[425] According to the information the STSS has provided to the OTLA through the publication of this report, the STSS

[414] Submission, page 36.
[415] OTLA interview with Las Tres Hermanas management, December 13, 2012; Submission, page 36.
[416] STSS responses to the OTLA's specific questions, August 22, 2012, page 24; OTLA email exchange with former COSIBAH organizer, October 4, 2012.
[417] Submission, page 36.
[418] Emails from COSIBAH to the OTLA and Honduran Minister of Labor, February 2013.
[419] OTLA interview with Las Tres Hermanas management, December 13, 2012; OTLA interview with Las Tres Hermanas worker, December 2012; Emails from COSIBAH to the OTLA and Honduran Minister of Labor, February 2013.
[420] Labor Code Article 553 (a); OTLA meeting with former COSIBAH organizer, October 23, 2013.
[421] OTLA interviews with Las Tres Hermanas workers, December 2012; Email to the OTLA from Nelson Nuñez, October 22, 2012.
[422] OTLA interview with Las Tres Hermanas management, December 13, 2012.
[423] OTLA meeting with STSS officials, May 20, 2013, Statement by then-Minister of Labor Felícito Avila; Labor Code Article 96(9).
[424] Emails from COSIBAH to the OTLA and Honduran Minister of Labor, February 2013.
[425] OTLA meeting with former COSIBAH organizer, October 23, 2013.

has not facilitated conciliation or mediation sessions with respect to the three workers dismissed between October 2012 and January 2013, nor taken any other actions, including conducting an investigation, despite being notified of the allegedly anti-union dismissals on several occasions.[426]

In December 2013, Rainforest Alliance withdrew its certification of a consortium of banana plantations that included Las Tres Hermanas.[427] As a result, Chiquita purchased the plantation, and the union reported in December 2014 that the situation remains unchanged with respect to the union.[428]

4. Okra Sur S. de R.L.

Okra Sur is an okra and melon plantation located in Choluteca, Honduras. The Submission alleges that the GOH failed to enforce labor laws related to acceptable conditions of work at Okra Sur.[429] In addition, the OTLA found evidence that the GOH failed to enforce labor laws related to the minimum age for the employment of children.

According to the Submission, COSIBAH verbally requested that the STSS inspect Okra Sur on numerous occasions, beginning in 2007.[430] The STSS conducted a general inspection on February 26, 2010, nearly three years later.[431] The STSS inspection identified numerous Labor Code violations, including lack of written work contracts, failure to enroll workers in the IHSS, and failure to pay the minimum wage, education bonus, and 13th and 14th month bonuses.[432] The company was given eight days to correct the violations.[433]

[426] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012; OTLA meeting with STSS officials, May 20, 2013; General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.

[427] The withdrawal meant that the plantations were found to be non-compliant with standards related to the fair treatment of workers set by the Sustainable Agriculture Network, a group that promotes efficient and productive agriculture, biodiversity conservation and sustainable community development by creating and monitoring social and environmental standards. During a November 2013 visit, auditors found that Las Tres Hermanas engaged in anti-union discrimination. The company appealed the withdrawal but the certification body denied the appeal. Sustainable Agriculture Network, "Statement from the Rainforest Alliance and Sustainable Farm Certification International Ltda regarding the Las Tres Hermanas Banana Farms in Honduras," January 6, 2014, *available from:* http://san.ag/web/statement-from-the-rainforest-alliance-and-sustainable-farm-certification-international-ltda-regarding-the-las-tres-hermanas-banana-farms-in-honduras/; email to OTLA official from Sustainable Agriculture Network, February 25, 2014.

[428] Follow-up Commission Meeting, December 15, 2014, Statement by COSIBAH representative.

[429] Submission, pages 37-39.

[430] Submission, page 37. The STSS does not have records of such requests, and the OTLA was unable to confirm that the requests were made.

[431] Request for labor inspection at Okra Sur, No. IL-100318060102392, February 26, 2010; Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.

[432] Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.

[433] STSS notification report of inspection at Okra Sur, March 25, 2010; Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.

The STSS conducted an OSH inspection on April 9, 2010.[434] In addition to various OSH violations, such as failure to provide personal protective equipment and failure to provide potable drinking water, the inspectors found that the company was in violation of child labor laws in relation to four workers, who were 17 year-old children working without prior permission from the STSS.[435] The OSH inspectors found that the child laborers' shifts were longer than the maximum six hours permitted by law and that the company had failed to pay them the minimum wage.[436,437] The STSS gave the company 60 business days to correct the OSH violations and 15 business days to correct the child labor violations.[438]

On the same day as the OSH inspection, the STSS conducted a re-inspection to verify compliance with the orders stemming from the February 26 general inspection. The STSS found that the education bonus had not been paid but the inspection report was silent as to the remediation of the other violations, including the failure to pay the minimum wage.[439] Despite OTLA's request, the GOH did not provide the OTLA with any documentation to show that the STSS further pursued enforcement of any of the previously identified violations, including with respect to child labor.[440,441]

According to the Submission, in April 2010, Okra Sur workers conducted a work stoppage to protest working conditions at the plantation.[442] The Submission alleges that management made death threats against the workers participating in the work stoppage and that nine were fired as a result of their participation in the stoppage.[443] On April 12, the STSS facilitated a conciliation meeting between the fired workers and Okra Sur, but the parties did not reach an agreement.[444] The Submission states that the nine workers took their case to court and won a favorable ruling in October 2011.[445] The OTLA requested the relevant court documents from the GOH but the GOH did not provide any.[446] COSIBAH was unable to locate the court records, and the nine

[434] STSS report of inspection at Okra Sur, April 9, 2010.
[435] STSS report of inspection at Okra Sur, April 9, 2010.
[436] According to Article 7 of the Regulation on Child Labor in Honduras, workers between the ages of 14 and 15 may work up to 4 hours during the day, and workers between the ages of 16 and 17 may work up to 6 hours daily but never past 8:00PM. However, STSS and parental approval are both required in advance of employment.
[437] STSS report of inspection at Okra Sur, April 9, 2010.
[438] STSS report of inspection at Okra Sur, April 9, 2010.
[439] STSS report of re-inspection at Okra Sur, April 9, 2010.
[440] On August 2, 2010, the Inspector General at STSS headquarters nullified the original notification and re-inspection because the company should have been given three business days to respond rather than eight. STSS Inspector General order nullifying March 25 and April 9, 2010, Okra Sur inspection reports, August 2, 2010.
[441] Though the OTLA requested information about any further enforcement efforts, the documents referenced in the GOH's answer do not contain any evidence of further follow-up. GOH answers to the OTLA's specific questions, August 22, 2012.
[442] Submission, page 37.
[443] Submission, page 37.
[444] STSS document certifying the close of the conciliation process at Okra Sur, April 12, 2010.
[445] Submission, page 37.
[446] OTLA's specific questions to the GOH, June 11, 2012.

workers were unavailable to meet with the OTLA.[447] Therefore, the OTLA was unable to verify the details of the judicial proceedings.[448]

In July 2012, Okra Sur workers reported to the OTLA that labor law violations were ongoing, including the full-time employment of children as young as 14; failure to pay the minimum wage; lack of access to potable water; and 300 HNL (US $14.40) deductions, plus the day's salary, for missing a day of work.[449] Management also met with the OTLA in July 2012 and stated that the company does not employ children and that workers are paid according to the minimum wage law.[450]

As part of its effort to inspect companies named in the Submission, on September 12, 2012, the STSS conducted a general inspection at Okra Sur and found a range of OSH violations; the inspection record indicated that more analysis would be forthcoming after the STSS reviewed documents collected from the employer, including payroll records and copies of employment contracts.[451] The STSS did not find any child labor violations in that inspection. In a follow-up report, the STSS noted that it had identified violations related to minimum wage, internal work rules, and record keeping, and found during a re-inspection that those violations had not been corrected; however, the follow-up report made no mention of the OSH violations.[452] The STSS reported to the OTLA on May 20, 2013 that the company had not corrected any of the violations identified in September 2012 and that the STSS was in the process of imposing a sanction for each violation.[453] During the May 20, 2013, meeting with the STSS, COSIBAH leaders indicated that child labor violations have never been remediated at Okra Sur, despite the STSS finding none in September 2012.[454]

5. Agroexportadora Dome

Prior to closing in 2010, the okra plantation Agroexportadora Dome was located in Choluteca, Honduras, and employed approximately 150 workers.[455] The Submission alleges that the GOH failed to enforce labor laws related to the minimum age for the employment of children and acceptable conditions of work at Agroexportadora Dome.[456]

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[447] OTLA email to former COSIBAH organizer, October 4, 2012; OTLA interview with COSIBAH (Choluteca), July 11, 2012.
[448] The company's lawyer provided the OTLA with documentation of a 997,479 HNL (US $47,909) settlement reached between Okra Sur and nine different dismissed workers in September 2011; however, the OTLA compared the names and the settlement document names different individuals than the April 12, 2010 conciliation document and there does not appear to be a connection between this settlement and the nine workers dismissed in April 2010. October 5, 2012 email to the OTLA from Okra Sur legal representative.
[449] OTLA interviews with Okra Sur workers, July 2012.
[450] OTLA interview with Okra Sur management, July 17, 2012.
[451] STSS record of inspection at Okra Sur, September 12, 2012.
[452] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[453] OTLA meeting with STSS officials, May 20, 2013; *see also:* General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[454] Follow-up commission meeting, May 20, 2013, statement by COSIBAH representative.
[455] Submission, page 39.
[456] Submission, pages 39 and 40.

According to the Submission, COSIBAH requested inspections on six occasions between April 2008 and February 2010, claiming the plantation failed to pay the minimum wage, but the STSS did not conduct an inspection during that time period.[457] On March 11, 2010, the new regional director of the STSS in Choluteca ordered a general inspection of the plantation.[458] The inspection uncovered substantial violations of the Labor Code, including failure to pay the minimum wage, employment of 60 children in violation of child labor laws, failure to maintain payroll records, failure to adopt internal work rules, employment of 55 Nicaraguans without work authorizations, lack of written work contracts,[459] and various OSH violations.[460]

The STSS notified Agroexportadora Dome management of its findings with respect to the non-OSH violations on March 25, 2010, and gave the company deadlines that varied between three and 30 business days to correct the violations.[461] The STSS notified the company of its findings with respect to OSH violations sometime in April.[462] On April 21, the STSS conducted a re-inspection,[463] though the deadline for remedying certain violations had not yet expired.[464] The re-inspection report states that the child labor violation had been partially corrected but provides as evidence the dismissal of "foreign and Nicaraguan" workers,[465] although most of the children found working illegally were Honduran.[466] The STSS found that the company had not corrected the other violations, including failure to pay the minimum wage.[467]

The STSS in Choluteca sent its findings to the STSS headquarters in Tegucigalpa on May 7, 2010.[468] On August 2, the STSS Inspector General in Tegucigalpa nullified the notification due to the arbitrary three and 30 day deadlines granted to Agroexportadora to correct the violations, as well as the fact that the April 21 re-inspection was conducted before the 30 day deadline had expired.[469] On November 11, an inspector went to Agroexportadora Dome to re-notify the

[457] Submission, page 39. The STSS does not have records of such requests, and the OTLA was unable to confirm whether the requests were made.
[458] Request for inspection at Agroexportadora Dome, March 11, 2010; Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.
[459] STSS notification report of inspection at Agroexportadora Dome, March 25, 2010; Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.
[460] STSS record of inspection at Agroexportadora Dome, March 11, 2010.
[461] STSS Inspector General order nullifying March 25 and April 21, 2010, Agroexportadora Dome inspection reports, August 2, 2010.
[462] STSS notification report of inspection at Agroexportadora Dome, April 2010 (the day of the month was left blank).
[463] STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.
[464] STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.
[465] STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.
[466] STSS records of March 11, 2010 interviews with Agroexportadora Dome workers.
[467] STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.
[468] STSS Inspector General order nullifying March 25 and April 21, 2010, Agroexportadora Dome inspection reports, August 2, 2010.
[469] STSS Inspector General order nullifying March 25 and April 21, 2010, Agroexportadora Dome inspection reports, August 2, 2010.

company and found that the plantation was shut down.[470] The STSS took no further actions to follow up on its findings or sanction the company or its owners.[471]

In May 2013, the STSS reported that it found that the plantation had reopened in Choluteca and planned to conduct an inspection.[472]

6. Agroindustria Pacifico S. de R.L.

Agro Industrias Pacifico (Agripac) is a melon plantation located in Choluteca, Honduras. The Submission alleges that the GOH failed to enforce labor laws related to acceptable conditions of work at Agripac.[473]

According to the Submission, COSIBAH began requesting labor inspections at Agripac in September 2009 regarding minimum wage and overtime violations, as well as failure to enroll workers in the IHSS.[474] The STSS conducted an inspection on March 5, 2010, but the plantation staff denied inspectors access to part of the worksite.[475] The inspectors found various OSH violations, lack of payroll records, failure to adopt internal work rules, failure to pay the minimum wage, failure to enroll six workers in the IHSS, lack of written contracts, failure to pay overtime, and lack of employment records.[476] The STSS notified Agripac of the OSH violations on April 13 and gave the company 60 business days to correct the violations and notified Agripac of the remaining Labor Code violations on March 25 and gave the company three to 30 business days to correct the other violations.[477]

Agripac responded to the inspector access violation with a letter saying it had resulted from a failure of communication and would not be a problem in the future.[478] On April 30, 2010, the STSS conducted a re-inspection of the plantation.[479] The STSS closed the investigation on March 5, 2011, and later told the OTLA that the re-inspection document showed that all

[470] STSS report to regional inspector general regarding Agroexportadora Dome, November 11, 2010; GOH answers to the OTLA's specific questions, page 27, August 22, 2012.
[471] GOH answers to the OTLA's specific questions, pages 27 and 28 (the volumes of documents referenced in the response do not contain any information after November 11, 2010).
[472] OTLA meeting with STSS officials, May 20, 2013; *see also:* General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[473] Submission, pages 41-43.
[474] Submission, page 41. The STSS does not have records of such requests and the OTLA was unable to verify whether the requests were made.
[475] STSS notification report of inspection at Agripac, March 25, 2010, Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.
[476] Report on Labor Inspections at Foreign-owned Plantations in Choluteca, STSS Choluteca Director, March 25, 2010.
[477] STSS report of inspection at Agripac, March 5, 2010; STSS notification report of inspection at Agripac, March 25, 2010; STSS notification report of occupational safety and health inspection at Agripac, April 13, 2010.
[478] Letter from Agripac legal representative to the STSS, April 27, 2010.
[479] STSS report of re-inspection at Agripac, April 30, 2010.

violations had been corrected.[480] The re-inspection report, however, states only that the minimum wage violation had been corrected and is silent about the other violations.[481]

In July 2012, workers interviewed by the OTLA said that Agripac continued to fail to pay the minimum wage, overtime, 13th and 14th month benefits, seventh-day bonus, and holiday pay.[482] Workers also reported that when they take sick days, they are penalized with deductions from pay or dismissal and that the company suspends workers for two weeks if they miss work on a Sunday.[483]

As part of its effort to inspect companies named in the Submission, on September 12, 2012, the STSS conducted a general inspection at Agripac and found the following OSH violations: inadequate facilities, lack of a medical center, lack of a cafeteria, and lack of break areas. The inspection report did not specify a deadline by which Agripac would be required to correct the violations.[484] In a follow-up report, the STSS noted that it planned to conduct a general inspection in January 2013, during the harvest season.[485] As of the publication of this report, the STSS has not provided the OTLA with any information regarding further inspections, sanctions, or other follow-up actions by the STSS at Agripac, despite the OTLA's request for such information.[486]

7. La Pradera

According to the Submission, La Pradera was a small melon producer in Choluteca, Honduras, that employed approximately 30 workers.[487] The Submission alleges that the GOH failed to enforce labor laws related to acceptable conditions of work at La Pradera.[488]

The Submission alleges that, beginning in 2007, COSIBAH verbally requested every two to three months that the STSS conduct inspections at La Pradera for failure to pay the minimum wage, failure to pay overtime, and failure to pay the seventh-day bonus.[489] The GOH does not have any records of an inspection or a request for an inspection at La Pradera.[490] The plantation had closed by the time the OTLA began its investigation. Although the OTLA requested all relevant documents, neither the GOH nor the submitters were able to provide the OTLA with any

[480] STSS document closing Agripac investigation, March 5, 2011; GOH answers to the OTLA's specific questions, page 28, August 22, 2012.
[481] STSS report of re-inspection at Agripac, April 30, 2010.
[482] OTLA interviews with Agripac workers, July 2012.
[483] OTLA interviews with Agripac workers, July 2012.
[484] STSS record of inspection at Agripac, September 12, 2012.
[485] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[486] In December 2012, Agripac management reported to the OTLA that it had recently purchased personal protective equipment and had collaborated with the STSS to employ workers under the National Plan for Employment by Hours (*Plan Nacional por Empleo por Hora*). Under the Plan employers must be audited and inspected by the STSS prior to receiving permission to hire certain temporary employees. OTLA interview with Agripac management, December 12, 2012.
[487] Submission, page 43.
[488] Submission, page 43.
[489] Submission, page 43.
[490] OTLA interview with STSS Choluteca, July 12, 2012.

documents pertaining to La Pradera.[491] The OTLA was unable to locate any former La Pradera workers or a representative of the employer during the course of the submission review.

8. Plantas Ornamentales

Plantas Ornamentales is an ornamental plant farm in San Marcos, Honduras.[492] The Submission alleges that the GOH failed to enforce labor laws related to acceptable conditions of work at Plantas Ornamentales.[493]

The Submission alleges that in 2008, COSIBAH began making requests to the STSS for inspections of Plantas Ornamentales regarding minimum wage violations, failure to pay overtime, and failure to pay the seventh-day bonus, but were told each time that no inspector was available.[494] After the Submission was filed, Agrolibano became the majority shareholder of the company in April 2012.[495]

In April 2010, the STSS attempted to conduct an inspection, but inspectors were denied access to the plantation by the security guard.[496] The STSS confirmed that the company denied access to inspectors at least three times; however, the STSS has not indicated to OTLA whether it reported those denials of access to the corresponding labor court.[497] On April 30, the STSS in Choluteca sent a report to the STSS in Tegucigalpa requesting sanctions, citing these three different instances of the company denying access to inspectors.[498] The STSS notified Plantas Ornamentales of the inspector's report of denial of access on August 12 and gave the company three business days to respond;[499] an STSS inspector delivered the same notification again on November 10.[500] In July 2011, almost a year later, the STSS in Tegucigalpa determined that the three-day period for Plantas Ornamentales to respond to the notification had lapsed.[501] As of the publication of this report, the OTLA did not receive any evidence indicating that the STSS had collected a 5,000 HNL (US $240) fine stemming from the April 30, 2010, report.[502]

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[491] GOH answers to the OTLA's specific questions, page 29, August 22, 2012; OTLA email to former COSIBAH organizer, October 4, 2012.
[492] This company is often referred to in documents as Ornamentales del Valle. Although the Submission stated that the farm grows plants for export to the U.S. market, management at Agrolibano, the parent company, informed the OTLA that Plantas Ornamentales' exports exclusively to the Dutch market.
[493] Submission, pages 44 and 45.
[494] The STSS does not have records of such requests and the OTLA was unable to confirm whether the requests were made.
[495] OTLA interview with Agrolibano management, July 13, 2012; Plantas Ornamentales Stock certificate; Receipt for payment of taxes on transfer of Plantas Ornamentales shares to Agrolibano, April 2012.
[496] STSS report of inspection at Plantas Ornamentales, April 27, 2010; GOH answers to the OTLA's specific questions, page 29, August 22, 2012.
[497] OTLA's specific questions to the GOH, June 11, 2012; GOH answers to the OTLA's specific questions, page 30, August 22, 2012.
[498] STSS Choluteca report to STSS Tegucigalpa regarding Plantas Ornamentales' denial of access to the inspector, April 30, 2010.
[499] Letter from STSS Inspector General to Plantas Ornamentales, Oficio No. 268, August 12, 2010.
[500] STSS report confirming delivery of August 12, 2010 letter to Plantas Ornamentales, November 10, 2010.
[501] STSS determination regarding Plantas Ornamentales, July 2011.
[502] GOH answers to the OTLA's specific questions, page 30, August 22, 2012.

Plantas Ornamentales participates in the National Plan for Employment by Hours, a new hiring scheme that expands the allowable scope of temporary work contracts.[503] Under this plan, employers must be audited and inspected prior to receiving permission to hire certain temporary employees. Plantas Ornamentales underwent such an inspection on March 18, 2011.[504] The STSS uncovered numerous violations at the plantation, including failure to pay the minimum wage,[505] failure to adopt internal work rules, and failure to pay the 13th and 14th month bonus.[506] On November 21, the STSS notified the company of its findings, gave it three business days to correct the violations, and ordered it to pay workers a minimum of 224,445 HNL (US $10,780) total in back wages.[507] On January 26, 2012, the STSS conducted a re-inspection, which concluded that the company had corrected the violations and noted that most of the employees named in the March 2011 inspection report no longer worked at Plantas Ornamentales.[508] STSS documents show that workers who remained employed at Plantas Ornamentales at the time of the re-inspection did receive the back wages owed to them.[509]

As part of its effort to inspect companies named in the Submission, on September 11, 2012, the STSS conducted a general inspection of Plantas Ornamentales and uncovered minimum wage violations.[510] In a follow-up report, the STSS stated that it ordered a re-inspection related to minimum wage, individual contracts, and illegally employed foreign nationals.[511] In May 2013, the STSS reported to the OTLA that the violations had been corrected.[512]

9. Azucarera la Grecia

Azucarera la Grecia is a sugar plantation currently owned by the Guatemalan company Grupo Pantaleon in Choluteca, Honduras. The workers were unionized and had a collective bargaining agreement until Grupo Pantaleon bought the plantation in 1999.[513] The Submission alleges that the GOH failed to enforce labor laws related to acceptable conditions of work at Azucarera la Grecia.[514]

The plantation operates through at least three different sub-entities: Servisur, Serdiver, and Servimar.[515] Employees rotate among those companies on temporary contracts approximately

[503] *See:* Annex 2 for the OTLA's discussion of the National Plan for Employment by Hours on page 95.
[504] STSS report of inspection at Plantas Ornamentales, July 26, 2011.
[505] STSS notification report regarding minimum wage at Plantas Ornamentales, November 21, 2011.
[506] STSS notification report regarding various Labor Code violations at Plantas Ornamentales, November 21, 2011.
[507] STSS notification report regarding various Labor Code violations at Plantas Ornamentales, November 21, 2011; STSS notification report regarding minimum wage at Plantas Ornamentales, November 21, 2011.
[508] STSS report of re-inspection at Plantas Ornamentales, January 26, 2012; STSS notification report of inspection at Plantas Ornamentales, November 11, 2011.
[509] STSS notification report of inspection at Plantas Ornamentales, November 11, 2011 (the report notes whether individual workers received the back wages or were no longer employed at Plantas Ornamentales).
[510] STSS record of inspection at Plantas Ornamentales, September 11, 2012.
[511] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[512] OTLA meeting with STSS officials, May 20, 2013; *see also*: General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[513] Submission, page 45.
[514] Submission, pages 45-47.
[515] OTLA interviews with Azucarera la Grecia workers, July 2012.

every six months.[516] Under the Labor Code, temporary contracts are exceptions and are only legal where the nature of the work is temporary.[517] Workers reported to the OTLA that although the companies issuing their paychecks change, their actual jobs remain the same; they have the same supervisors, hours and locations of work, tasks, and tools regardless of which company is responsible for their temporary contracts.[518]

On May 21, 2008, the STSS ordered a general inspection of the company, which was carried out the same day.[519] Inspectors spoke with the 16 managers at Azucarera la Grecia but not with any of the hundreds of subcontracted workers.[520] On May 30, the STSS completed its inspection report and found no Labor Code violations.[521]

The STSS conducted an OSH inspection of Azucarera la Grecia on January 6, 2011, and found various violations, including failure to provide personal protective equipment, implement an OSH plan, report workplace accidents to the STSS and the corresponding labor court in accordance with Labor Code article 435, among others.[522] The STSS notified the company of its findings on February 1 and gave the company 60 business days to correct the violations.[523] The documents provided to the OTLA by the GOH show that Azucarera la Grecia was notified of a sanction on December 21, 2011; however, the document does not specify the underlying infractions or the amount of the fine, and the OTLA cannot determine whether this sanction relates to the January 2011 OSH violations or to other matters.[524] The OTLA requested all relevant documents from the GOH, but did not receive evidence as to whether Serdiver or Azucarera la Grecia has paid or appealed the fine, or remediated the OSH violations.[525]

In July 2012, workers interviewed by the OTLA reported numerous violations of the Labor Code, including failure to pay the 13th and 14th month bonuses, imposing a 300 HNL (US $14.40) penalty for missing a day of work in addition to that day's salary, failure to provide workers with copies of their contracts or time to review them before signing, requiring workers to pay for company-provided personal protective equipment, shifts of up to 24 hours during harvest, and failure to pay the night work premium.[526]

As part of its effort to inspect companies named in the Submission, on September 10, 2012, the STSS conducted a general inspection of Azucarera la Grecia.[527] The OTLA received no further information on that inspection; however, the STSS reported that during a subsequent inspection conducted on January 30, 2013, the STSS found that the company was in violation of minimum

[516] OTLA reviewed a substantial number of termination letters, paystubs, and other employment-contract related documents for a variety of workers.
[517] Labor Code, Article 47.
[518] OTLA interviews with Azucarera la Grecia workers, July 2012.
[519] STSS request for inspection at Azucarera la Grecia, May 21, 2008.
[520] STSS report of inspection at Azucarera la Grecia, May 30, 2008.
[521] STSS report of inspection at Azucarera la Grecia, May 30, 2008.
[522] STSS report of inspection at Azucarera la Grecia, January 6, 2011.
[523] STSS report of inspection at Azucarera la Grecia, January 6, 2011; STSS notification report of inspection at Azucarera la Grecia, February 1, 2011.
[524] STSS notification of sanction to Azucarera la Grecia, December 21, 2011.
[525] OTLA's specific questions to the GOH, June 11, 2012.
[526]OTLA interviews with Azucarera la Grecia workers, July 2012.
[527] STSS record of inspection at Azucarera la Grecia, September 10, 2012.

wage and overtime laws.[528] The company was notified of the violations, and the inspection report was sent to the STSS headquarters in Tegucigalpa.[529] In addition, the report notes that the STSS conducted an OSH inspection and provided recommendations.[530] The report on the January 2013 inspection provided to the OTLA in May 2013 did not provide information regarding the status of the violations or STSS follow-up efforts to ensure remediation of the identified violations or fine Azucarera la Grecia.[531]

C. Port Sector

Puerto Cortés, the largest port in Central America, is located on the Atlantic coast of Honduras. Operations at the port are managed by the National Port Company (*Empresa Nacional Portuaria,* ENP), a state-run entity in charge of Honduras' four ports.[532] Shipping companies operating out of Puerto Cortés often employ subcontracted workers through hiring agencies. The city of Puerto Cortés is also the site of a regional STSS office. The Submission alleges that violations of freedom of association and acceptable conditions of work related to minimum wage, hours of work, and OSH occur at the port with impunity, affecting subcontracted stevedores, security workers, fork lift operators, container checkers, and planners.[533]

1. Subcontracted Stevedores

Seaboard Honduras (Seaboard) is one of many shipping companies operating at Puerto Cortés.[534] On July 17, 2007, the Dockworkers' Trade Union (*Sindicato Gremial de Trabajadores de Muelle*, SGTM) filed a lawsuit on behalf of 19 workers against Seaboard in the Puerto Cortés Labor Court for allegedly unlawful dismissal and sought payment of severance, vacation time, 13th and 14th month bonuses, overtime wages, lost wages from the date of firing, and legal costs.[535] According to the lawsuit, the workers were dismissed verbally on April 18, 2007.[536]

Prior to the lawsuit, workers asked the STSS Labor Inspectorate in Puerto Cortés to intervene in order to confirm that they had been dismissed and to assist them in obtaining payment of their severance. According to the lawsuit, each time that the labor inspector attempted to interview

[528] OTLA meeting with STSS officials, May 20, 2013; *see also:* General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[529] OTLA meeting with STSS officials, May 20, 2013; *see also:* General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[530] General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[531] General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[532] *See:* http://www.enp.hn/web/index.html. The GOH recently contracted the operation and modernization of the port to the private company International Container Terminal Services, Inc. The events in this report occurred prior to the contract.
[533] Submission, pages 47-57. Planners are workers who check the weight balance on ships.
[534] OTLA interview with Seaboard management, December 12, 2012.
[535] Complaint filed by SGTM at the Cortés Labor Court, July 17, 2007; Dockworkers' Trade Union, Report on Workplace Accidents at Puerto Cortés, July 16, 2007. The SGTM alleged that Seaboard dismissed 36 workers because of their participation in a union. However, the July 17, 2007 complaint does not discuss any union activities.
[536] Complaint filed by SGTM at the Cortés Labor Court, July 17, 2007.

Seaboard's Regional Manager, he was unavailable.[537] On May 17, 2007, the labor inspector interviewed the Regional Manager, who confirmed that the workers were fired verbally and indicated that he had been instructed to not pay them severance because the company did not consider them permanent workers.[538] The lawsuit states that the workers had been working for Seaboard on a continuous basis since their dates of hire, three as early as 2002 and one since 1999.[539] The lawsuit also stated that the workers' hours exceeded the limits established by the Labor Code and that they were not paid overtime wages.[540] Despite requesting information from the SGTM and the GOH, the OTLA has not received information on the outcome of this case.[541]

The Submission alleges that on four occasions in 2008 and 2009, a former SGTM president, José Edgardo Contreras, verbally reported to the regional STSS office allegations of labor law violations committed by shipping companies at Puerto Cortés against subcontracted stevedores with respect to non-payment of minimum wages, nonpayment of 13th and 14th month bonuses, and lack of safety equipment.[542] The Submission alleges that in no instance did the STSS investigate or otherwise intervene and that the STSS responded on each occasion that it did not have inspectors available, did not have vehicles or funds to pay for gasoline to carry out the investigation, or both.[543] The GOH reported to the OTLA that it did not find anything in its files related to these inspection requests.[544] The STSS also does not appear to have inspected any of the shipping companies operating at Puerto Cortés when in September 2012 it conducted general inspections of companies discussed in the Submission.[545]

2. Security Workers

The Submission alleges that the GOH failed to enforce laws related to acceptable conditions of work with respect to security workers at the ENP.[546] On October 22, 2010, at the request of the security workers' legal representative, the STSS conducted inspections into wage and hour violations committed against security workers by ENP and produced two inspection reports.[547] The reports identified the following violations and ordered the ENP to correct them within three business days:[548]

- From 2008-2010, the ENP did not pay the correct amount in overtime wages to 117 security workers who worked a shift consisting of day and nighttime hours. The STSS

[537] Complaint filed by SGTM at the Cortés Labor Court, July 17, 2007.
[538] Complaint filed by SGTM at the Cortés Labor Court, July 17, 2007.
[539] Complaint filed by SGTM at the Cortés Labor Court, July 17, 2007.
[540] Complaint filed by SGTM at the Cortés Labor Court, July 17, 2007.
[541] The OTLA requested information on the outcome of the cases from the SGTM, but did not receive any documentation. Email from DOL official to SGTM President, November 30, 2012.
[542] Submission, page 51.
[543] Submission, page 51.
[544] GOH answers to the OTLA's specific questions, page 33, August 22, 2012.
[545] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[546] Submission, pages 51-54.
[547] STSS record of inspection at the ENP, August 12, 2010; STSS record of inspection at the ENP regarding hours of work, October 22, 2010; STSS record of inspection at the ENP regarding wages, October 22, 2010.
[548] STSS record of inspection at the ENP regarding hours of work, October 22, 2010; STSS record of inspection at the ENP regarding wages, October 22, 2010.

determined that the ENP owed the affected workers a total of 2,913,545 HNL (US $139,939) in back pay.[549]

- From 2008-2010, the ENP did not pay the correct seventh-day bonus to 119 security workers.[550] The STSS determined that the ENP owed the affected workers a total of 801,028 HNL (US $38,474) in back pay.[551]

On November 18, 2010, the ENP submitted a written defense to the STSS challenging the overtime and seventh-day violations described in the October 22 inspection reports.[552]

On April 6, 2011, after reviewing the evidence submitted by the parties, the Director of the STSS's Legal Services Division issued a ruling imposing a fine on the ENP for failure to correct the violations identified in the October 22, 2010, inspection reports.[553] On July 7, 2011, the Labor Inspector General issued a decision upholding the validity of the October 22, 2010, reports, declaring the ENP's defenses to be without merit, imposing a fine of 10,000 HNL (US $480) on the ENP for the overtime violations and the seventh-day bonus violations, and stating that a 50 percent surcharge would be added to the penalty if the ENP repeated the violations.[554] The ENP paid the fine on February 6, 2012.[555]

In July 2012, security workers reported to the OTLA that they have not been paid the overtime and seventh-day back wages for work performed in prior years, suggesting that the STSS did not take steps to ensure the ENP fully remedied the violations. The workers told the OTLA, however, that the ENP is now generally paying them overtime and the seventh-day bonus correctly.[556]

The Submission also alleges that the ENP employs between 130-150 security workers who have worked continuously but are on successive fixed-term, two-month contracts.[557] Under Article 47 of the Labor Code, when a temporary employment contract expires the presumption is that a permanent contract is established if the nature of the work performed is permanent or continuous and if the need for the employee to perform the work persists beyond the expiration of the contract.[558] Temporary contracts are the exception rather than the rule and can only be used when the service or job to be performed is of a temporary nature.[559] Several security workers interviewed by the OTLA indicated that they are misclassified as temporary employees by the ENP even though they have worked for the ENP continuously for several years and perform the same tasks as their permanent counterparts.[560] The Submission alleges that ENP has violated these workers' wage and hour protections by failing to properly calculate their overtime pay and

[549] Resolution issued by the Labor Inspector General, July 7, 2011.
[550] STSS record of inspection at the ENP regarding wages, October 22, 2010.
[551] Resolution issued by the Labor Inspector General, July 7, 2011.
[552] Referenced in Resolution issued by the Labor Inspector General, July 7, 2011.
[553] Referenced in Resolution issued by the Labor Inspector General, July 7, 2011.
[554] Resolution issued by the Labor Inspector General, July 7, 2011.
[555] Resolution issued by the Labor Inspector General, July 7, 2011.
[556] OTLA interviews with ENP workers, July 2012.
[557] Submission, page 53.
[558] Labor Code, Article 47.
[559] Labor Code, Article 47.
[560] OTLA interviews with ENP workers, July 2012.

failing to provide paid vacation and other compensation benefits.[561] Employees on temporary contracts reported to the OTLA that they are paid less than permanent employees performing the same job functions, do not receive overtime wages despite working more than eight hours per shift, do not receive the seventh-day bonus, are not enrolled in IHSS by the ENP, cannot use the ENP health clinic, and receive only 50 percent of their pay on sick days.[562]

The STSS conducted a general inspection at the ENP on September 13, 2012, discussed in further detail below.[563] Although the STSS reported that, with respect to temporary workers, the ENP does not pay the minimum wage, among other violations, the report did not specify which temporary workers were affected by these violations.[564] As a result, the OTLA cannot determine whether the STSS inspected for violations alleged against temporary security workers. Additionally, although the STSS was aware of the allegations included in the Submission regarding misclassification of security guards as temporary at the ENP, the STSS did not investigate compliance with Article 47 of the Labor Code.[565]

3. Fork Lift Operators, Container Checkers and Planners

The ENP also employs forklift operators, container checkers, and planners (who check the weight balance on ships). ENP management told the OTLA that it has temporary workers on call to assist the permanent workers during busy times.[566] Temporary workers are paid by the hour and earn the minimum wage.[567] The ENP stated that permanent workers' salaries are higher because they are governed by the terms of the collective bargaining agreement negotiated with the SITRAENP, which includes terms regarding pay raises tied to seniority and years of service.[568] According to a labor court finding, the temporary workers are outside of the bargaining unit and their employment relationships with the ENP are not governed by the collective bargaining agreement.[569]

Workers interviewed in July 2012 provided documentation to the OTLA demonstrating several instances when they worked well over 80 or 100 hours in one week, despite a legal maximum of 44 hours per week.[570] One worker reported working 48 hours straight over a weekend due to the high volume of work, but added that she did so voluntarily because she needed the extra

[561] Submission, page 52.
[562] OTLA interviews with ENP workers, July 2012.
[563] STSS report of inspection at the ENP, September 13, 2012.
[564] Temporary workers at the ENP include security workers, fork lift operators, container checkers, planners and others.
[565] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[566] ENP management explained that when temporary workers are called in to work they are not obligated to accept, and that temporary workers who are absent for a time are able to come back to work at a later date. OTLA interview with ENP management, July 19, 2012.
[567] OTLA interview with ENP management, July 19, 2012.
[568] OTLA interview with ENP management, July 19, 2012.
[569] Labor Complaint filed by [redacted] against ENP, July 31, 2009; Motion to dismiss [redacted]'s claim filed by the ENP, August 24, 2009; Decision issued by the Puerto Cortés Labor Court regarding [redacted]'s claim, September 28, 2010; Decision issued by the Puerto Cortés Labor Court regarding [redacted]'s claim, February 19, 2010.
[570] Paystub, undated; List of 17 workers, hours worked and pay received, undated, (indicating that one employee worked a total of 1,326.5 hours over 15 weeks, or an average of over 88 hours per week); Labor Code Article 213.

money.[571] ENP management similarly told the OTLA that there have been instances when workers worked, voluntarily, more than 24 consecutive hours.[572] The ENP indicated that all ENP temporary workers have had to work more than 12 hours in one day, the maximum allowed under the Labor Code.[573] The ENP further told the OTLA that it was in the process of training 20 new temporary workers to avoid having the current workers work more than a 12-hour shift.[574]

ENP management also told the OTLA that it pays workers the correct amount in overtime wages.[575] Workers told the OTLA, however, that they do not always receive correct overtime pay and have never received paid vacation time or any other benefits, such as the seventh-day or the 13th and 14th month bonuses.[576]

The Submission alleges that representatives from SGTM met with the Minister of Labor in Tegucigalpa and requested an inspection at the ENP in 2010 to investigate minimum wage and hours of work violations, including employees working 36 hour shifts.[577] The Minister ordered an inspection that was conducted by two inspectors who interviewed 49 workers.[578] In response to questions raised by the OTLA, the GOH indicated that no labor law violations were found at the ENP during the 2010 inspection, because the workers at issue were temporary employees.[579] However, the alleged violations pertained to rights available to temporary workers.[580] The OTLA requested documents from the GOH regarding this inspection, but the GOH did not provide any. As a result, the OTLA cannot determine whether the STSS inspected for all alleged violations.

On April 30, 2012, a group of temporary ENP employees submitted a written request to the STSS office in Puerto Cortés requesting its intervention due to the ENP's failure to raise the workers' minimum wage in accordance with the law.[581] On May 5, an STSS inspector and the temporary workers met with an ENP Human Resources representative, who stated that the ENP was waiting for authorization from the Finance Ministry to make the pay increase, because it had not been included in the ENP's budget.[582] The ENP Human Resources representative added that once the ENP received approval, it would apply the pay increase retroactively going back to

[571] OTLA interviews with ENP workers, July 2012.
[572] OTLA interview with ENP management, July 19, 2012.
[573] OTLA interview with ENP management, July 19, 2012; Labor Code, Article 325.
[574] OTLA interview with ENP management, July 19, 2012.
[575] OTLA interview with ENP management, July 19, 2012.
[576] OTLA interview with ENP workers, July 2012.
[577] Submission, page 54.
[578] GOH answers to the OTLA's specific questions, page 35, August 22, 2012 (stating that an inspection was conducted on August 10, 2010).
[579] GOH answers to the OTLA's specific questions, page 35, August 22, 2012.
[580] Labor Code Article 322 establishes that ordinary hours of daytime work are not to exceed eight hours per day and 44 hours per week and limits night hours to six per day and 36 per week. Labor Code Article 325 lists workers exempt from Article 322, but does not list temporary workers amongst those exempt. Similarly, Labor Code provisions pertaining to minimum wage and over-time protections do not specify exemptions for temporary workers. *See also:* Labor Code Articles 381 (minimum wage) and 330 (overtime).
[581] Referenced in STSS record of inspection at the ENP, May 4, 2012.
[582] STSS record of inspection at the ENP, May 4, 2012.

January 2012, and asked the workers to be patient.[583] Documentation submitted to the OTLA regarding a separate intervention request to the STSS from SITRAENP indicates that as of July 18, 2012, the ENP had not implemented the new minimum wage rates and the Puerto Cortés STSS office had forwarded the matter to the STSS Inspector General in Tegucigalpa to apply fines.[584]

During a September 13, 2012, general inspection, discussed in more detail below, the STSS found that the ENP does not pay minimum wage to temporary workers.[585] However, because the report did not specify the types of temporary workers affected by these violations, the OTLA cannot determine whether the STSS's finding pertained to the workers who submitted the April 30, 2012, inspection request.

4. September 2012 Inspection

As part of its effort to inspect companies named in the Submission, on September 13, 2012, the STSS conducted a general inspection of the ENP and interviewed 47 workers.[586] The STSS inspection report indicated that, with respect to temporary workers, the ENP does not pay the minimum wage, the seventh-day or the education bonuses, underpays the 13th and 14th month bonuses, and fails to provide vacation time and a day of rest.[587] However, the inspection report does not specify the types of temporary workers at issue in the inspections.[588] It also makes no mention of an investigation of potential OSH hazards, nor does it appear that the STSS conducted inspections of any of the shipping companies operating at Puerto Cortés, despite allegations that subcontracted stevedores at such companies are also not paid the minimum wage and are subject to other labor law violations.

The STSS Chief Inspector told the OTLA in May 2013 that the STSS found 15 infractions in total during the September 2012 inspection and that the ENP's appeals were still pending. The inspection report indicated that the STSS notified ENP of these violations and that the ENP has appealed the findings.[589] The STSS also stated that ENP staff had denied access to STSS inspectors on three occasions and that a fine was in the process of being applied for each denial.[590]

[583] STSS record of inspection at the ENP, May 4, 2012.
[584] STSS delivery record of notification to the ENP, July 17, 2012; STSS record of notification to the ENP, July 18, 2012.
[585] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[586] STSS report of inspection at the ENP, September 13, 2012.
[587] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[588] At the May 20, 2013 Follow-up Commission meeting, the SGTM representative stated that no stevedores were interviewed, the GOH disputed this in later conversations with the OTLA.
[589] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[590] OTLA meeting with STSS, May 20, 2013; *see also:* General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.

III. OTLA Analysis

The OTLA's detailed analysis below of the Submission presents the OTLA's evaluation of the GOH's enforcement of labor laws in the 17 cases set out above. Here, it refers to the CAFTA-DR definition of labor laws:

> "a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."[591]

The OTLA limited its analysis to events that occurred after the CAFTA-DR entered into force for Honduras on April 1, 2006.[592]

Section A reviews the GOH's general enforcement of its labor laws through the inspection, remediation, and sanction process. It analyzes the findings described above with regard to the STSS's effectiveness in inspecting worksites, including in instances in which the law requires inspections, such as when the STSS is presented with written or verbal allegations of violations; compelling employers to allow inspectors to access worksites; ensuring that the inspections conducted cover all known or alleged labor law violations; imposing sanctions on violating employers; calculating and applying sanctions in a manner that effectively deters violations; and verifying remediation of previously identified violations, including compliance with remediation orders. These cross-cutting procedural deficiencies undermine the government's capacity to enforce its labor laws related to particular rights, as discussed in the sections that follow.

Section B reviews the GOH's enforcement efforts with respect to labor laws as defined by CAFTA-DR. The first part evaluates enforcement of labor laws related to freedom of association and collective bargaining. This part analyzes the STSS's response to dismissals of protected founding union members (*protección del estado*) and union leaders (*fuero sindical*) and to other anti-union retaliation. It also assesses the specific case of judicial dissolution of the SITRAFHIA union at FHIA, and then analyzes the STSS's responses to additional alleged employer interference with workers' rights through the use of collective pacts and employer-dominated unions.

The second part of Section B reviews enforcement efforts related to the minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor.

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[591] CAFTA-DR, Article 16.8.

[592] The Labor Chapter of the CAFTA-DR, and the submission process, apply from entry into force of the CAFTA-DR and a change in administrations does not prevent the OTLA from reviewing information from previous administrations. *See:* Office of the United States Trade Representative, The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), *available from:* http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta.

The third part of Section B evaluates enforcement of labor laws related to acceptable conditions of work with respect to minimum wages, hours of work, and OSH.

A. Enforcement of Labor Laws: The Inspection, Remediation, and Sanction Process

The Submission alleges that the GOH, through the STSS, routinely fails to conduct requested inspections; fails to compel employers to allow inspectors access to worksites; where access to worksites is granted, fails to inspect for all known or alleged labor law violations; fails to sanction violating employers, or when it does sanction employers, fails to calculate and apply fine amounts that effectively deter future violations; and fails to ensure remediation of identified violations.

Obligation to Inspect

The Honduran Labor Code (*Código de Trabajo*) tasks the Ministry of Labor's inspectorate with overseeing compliance with labor laws,[593] including through workplace inspections.[594] According to the Labor Code, a worker or group of workers can lodge a complaint with the STSS, including by simply notifying any inspector, verbally or in writing, of the complaint.[595] Receipt of a complaint obligates the STSS to conduct a complaint-driven inspection.[596] The STSS can also self-initiate general inspections that investigate employers' overall compliance with the Labor Code.[597] Inspectors are also required to intervene if they have notice of labor conflicts to attempt to prevent their escalation.[598]

Resources

The STSS Labor Inspectorate has 137 posts for labor inspectors; 119 of which are occupied by personnel who perform inspection functions. The others perform general STSS functions. Of the 119 who perform inspection functions, 40 inspectors are located in Tegucigalpa; 19 in San Pedro Sula; seven in El Progreso; six each in La Ceiba and Choluteca; four each in Comayagua, Danli, Villanueva, and La Esperanza; three each in Choloma, Olanchito, Juticalpa, Santa Rosa de Copan, the Bay Islands, and Puerto Cortés; two in Quimistan; and one each in the remaining offices in Santa Barbara, Trujillo, Yoro, Tela, and La Mosquitia. [599]

[593] Labor Code, Articles 610 and 614(I).
[594] Labor Code, Article 614(I).
[595] Labor Code, Article 618; Labor Code, Article 617(d).
[596] Labor Code, Article 618.
[597] STSS Answers to the OTLA's general questions, July 20, 2012.
[598] Labor Code, Article 617(d).
[599] Verification Report on the Implementation of the White Paper Recommendations, Period: August 2010-December 2010, International Labor Organization, page 256, (this report states there are 118 inspectors, but the regional breakdown only includes 115); Email from Tania Casco, Honduran Embassy, to OTLA official, February 19, 2014 (updating the number and geographic distribution of inspectors).

Labor Inspectors' Access to the Worksite

The Labor Code empowers inspectors to enter workplaces at any hour of the day or night.[600] The Labor Code also requires employers to permit and facilitate inspections,[601] and Labor Code Article 625(b) establishes that employers who impede inspectors from fulfilling the duties of their job, including by obstructing worksite inspections, shall face a 50 – 5,000 HNL (US $2.40 to $240) fine.[602] The Labor Code does not require that management be present during an inspection; to the contrary, the STSS has the right to access worksites, even when management is not present.[603]

If an inspector encounters "unjustified resistance" during an inspection, the inspector is required to report the occurrence to the Labor Court to obtain a judicial order to compel access.[604] If immediate action is necessary, the inspector may call for the assistance of the police or other authorities. However, the Labor Code appears to place personal liability on the inspectors for any consequences that may result from calling on the police or other authorities, in such instances, including any violence or altercations, which STSS officials suggested to the OTLA may deter inspectors from requesting such police assistance.[605]

Inspecting the Worksite

Labor Code Articles 617 and 618 delineate labor inspectors' authority during an inspection. Article 617 empowers inspectors to review accounting books, payroll records, and other relevant documents, and to examine the health and safety conditions of the workplace.[606] Article 618 establishes inspectors' authority to interview workers outside the presence of management or other witnesses.[607] Inspections must cover all violations that are the subject of a written or verbal complaint.[608] The STSS is also required to intervene in workplace conflicts of which it has notice.[609] This intervention is not limited to inspections; rather, the STSS may conduct conciliation sessions to try to resolve the issues.[610]

To complement the requirements of the Labor Code, the STSS has compiled a manual for inspectors with administrative steps for conducting both general inspections and complaint-driven inspections.[611] While it does not have the force of law, and inspectors retain discretion over which steps to follow in any given inspection, the manual is designed to provide a basic procedural framework to help inspectors carry out their duties in a consistent manner.

[600] Labor Code, Article 618.
[601] Labor Code, Article 95.
[602] Labor Code, Article 625.
[603] Labor Code, Article 618.
[604] GOH Answers to the OTLA's general questions, July 20, 2012; Labor Code, Article 617(b). There are no criteria for determining what circumstances amount to "unjustified resistance," and the STSS did not pursue follow-up to denials of access through the Labor Courts in any of the 33 instances described above.
[605] OTLA interviews with current and former STSS officials; Labor Code, Article 617(b).
[606] Labor Code, Article 617(a) and (c).
[607] Labor Code, Article 618.
[608] Labor Code, Articles 617 and 618.
[609] Labor Code, Article 617(d).
[610] Labor Code, Article 617(d).
[611] *Manual de Procedimientos de la Inspección General de Trabajo.*

The manual states that during a general inspection, the inspector should first interview the employer to ascertain certain information, such as the number of workers employed.[612] The inspector should then interview workers, asking a specific set of questions to collect information such as their ages, when they started their jobs, their typical hours, what types of work they do, if they are paid correctly, and other basic information about their working conditions.[613] During a complaint-driven inspection, the inspector investigates the facts surrounding all of the issues raised in the underlying complaint and has the authority to inspect for any additional issues of which he or she is notified during the course of the inspection.[614]

There are also special protocols for investigating possible labor law violations related to freedom of association, child labor, and OSH.[615] OSH issues, however, are the only ones handled by a separate, specially-trained corps of inspectors.[616]

Reports

The results of inspections, including any recommended sanctions and remediation, are memorialized in inspection reports ("*actas*") prepared by STSS inspectors. An inspection report generally includes the information contained in the handwritten inspection record by an STSS inspector prepared at the site of an inspection, as well as data reviewed after the inspection, such as payroll records where the inspection identified related labor law violations. The inspector must draft the inspection report at the conclusion of an inspection, noting any irregularities identified, and must read the inspection report to the employer or his/her representative and to the worker or workers involved in any infraction, who then sign the record.[617]

The final inspection report is generally a typed report prepared in the office of the STSS inspector that identifies labor law violations based on the inspection. Labor Code Article 618 instructs an inspector to share this final inspection report with the "dependent authority."[618] Though Article 618 does not define "dependent authority," Labor Code Article 619 clarifies that final inspection reports shall be presented to the relevant Labor Inspectorate regional chief.[619]

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[612] Although the STSS may conduct inspections at worksites even if management is not present, where management is available, the manual recommends interviewing the employer first. *Manual de Procedimientos de la Inspección General de Trabajo*, page 59 (Fig. 54, *Datos Suministrados por el Empleador*).
[613] *Manual de Procedimientos de la Inspección General de Trabajo*, page 63 (Fig. 55, *Datos Suministrados por el Trabajador*).
[614] *Manual de Procedimientos de la Inspección General de Trabajo*, p. 22; Labor Code, Article 617(d).
[615] The Freedom of Association protocol was published in 2013 and was not available to inspectors at the time of most of the cases in the Submission. *See: Colección de Protocolos de Inspección*, STSS, received by the OTLA January 26, 2014 (this compendium also includes an OSH inspection protocol that updates a prior version). The Child Labor protocol was established in 2008. *See: Procedimiento para la atención integral a la niñez y adolescencia trabajadora desde la STSS*, 2008.
[616] OTLA meeting with STSS officials, July 10, 2012 (noting that there is no specialized corps of child labor inspectors although the law does reference Child Labor Inspectors). Additionally, both general and OSH inspectors found child labor violations in the documents reviewed by the OTLA.
[617] Labor Code, Articles 618 and 619.
[618] Labor Code, Article 618.
[619] Labor Code, Article 618.

Sanctions and Remedial Action

The Labor Code requires the STSS to issue sanctions for labor law violations.[620] If an inspector recommends sanctions and/or remedial actions, the regional STSS office sends the inspector's report to the STSS headquarters in Tegucigalpa for review, where the Inspector General must determine any "corresponding sanctions" for each violation and order any necessary steps for remediation.[621]

Sanctions vary depending on the underlying violation. Table 1 below lists the sanctions for some types of labor law violations. Despite OTLA requests, the GOH provided no other regulations or laws that prescribe how the STSS should calculate these fines.

Table 1: Sanctions for Labor Law Violations

Type of Violation	Minimum Sanction	Maximum Sanction	Authority
Obstructing the work of an inspector	50 HNL (US $2.40)	5,000 HNL (US $240)	Labor Code Art. 625[622]
Failure to pay minimum wage	100 HNL (US $4.80)	1,000 HNL (US $48)	Minimum Wage Law Art. 40[623]
Child labor	5,000 HNL (US $240)	25,000 HNL (US $1,201)	Code on Childhood and Adolescence, Art. 128[624]
Violence or threats to impede exercise of workers' rights	200 HNL (US $9.60)	10,000 HNL (US $480)	Labor Code Art. 469[625]
Any other violation of the Labor Code	50 HNL (US $2.40)	5,000 HNL (US $240)	Labor Code Art. 625
OSH violations	50 HNL (US $2.40)	500 HNL (US $24)	Legislative Decree 39, Art. 4[626]

If after reviewing the inspection report, the Inspector General determines that a fine is warranted, the Inspector General orders the labor inspector to prepare a notification report ("*acta de notificación*") delivered to the employer that indicates the sanction amount.[627] The notification report, in practice, also generally reiterates the violation(s) the STSS identified, the applicable law(s), and the process an employer must follow to appeal. Once notified, the employer has three business days from the date after notification to request that the Inspector General reconsider the sanction or submit an appeal to the STSS.[628]

According to STSS officials, an employer's obligation to remediate is independent from the sanction, and payment of a fine does not excuse an employer from correcting underlying Labor Code violations.[629] Labor Code Article 614, which outlines the powers of the Labor

[620] Labor Code, Articles 618 and 625(d).
[621] Labor Code, Articles 618 and 625(d).
[622] Labor Code, Article 625.
[623] Minimum Wage Law, Decree No. 103, April 30, 1971, Article 40.
[624] Code on Childhood and Adolescence, Decree No. 73-96, September 5, 1996, Article 128.
[625] Labor Code, Article 469.
[626] Legislative Decree No. 39, May 10, 1982, Article 4.
[627] Labor Code, Article 620.
[628] Labor Code, Articles 620 and 621.
[629] GOH answers to the OTLA's general questions, page 21, July 20, 2012.

Inspectorate, indicates that the Labor Inspectorate may also conduct re-inspections to verify remediation of previously identified labor law violations.[630]

1. Response to inspection requests

The Submission alleges that the STSS fails to respond to requests for inspections. As evidence, the Submission provided examples from nine workplaces: Dickies, Ceiba Textiles, SurAgro, Okra Sur, Agroexportadora Dome, Agripac, La Pradera, Plantas Ornamentales, and Puerto Cortés, in violation of Labor Code Article 618.

The Submission alleges that workers and workers' organizations made dozens of verbal requests for inspections regarding allegations of labor law violations at the following eight workplaces: Ceiba Textiles, SurAgro, Okra Sur, Agroexportadora Dome, Agripac, La Pradera, Plantas Ornamentales, and Puerto Cortés.[631] The OTLA asked the GOH and the Submitters to provide all documents pertaining to these verbal requests but did not receive any evidence that the STSS followed-up on any of them. There is no evidence that these verbal requests were ever successful at prompting statutorily required inspections of any of the employers named in the Submission.[632]

The OTLA also followed-up on the Submission's allegations that the STSS did not properly handle written requests. The OTLA received evidence that CUTH wrote to the STSS to request inspections regarding the dismissal of SITEDHIKOSA members at Dickies in November and December 2006. The GOH indicated that it could not find the request in its records and provided no evidence to the OTLA that the STSS responded to the request or attempted an investigation.[633]

Based on its review, the OTLA has serious concerns that the STSS has not effectively responded to verbal inspection requests.

2. Access to Worksites

The Submission alleges that STSS inspectors fail to compel access to worksites when denied entry and fail to impose fines for such denials. As evidence, the Submission provided examples from nine workplaces: Kyungshin-Lear, Dickies, A.tion, Pinehurst, Petralex, FHIA, SurAgro, Agripac, and Plantas Ornamentales. In addition, OTLA found in its review that the STSS inspectors were also denied entry and failed to compel access at SurAgro (see Table 2).

[630] Labor Code, Article 614(1)(d).
[631] Submission, pages 13, 31, 37, 39, 41, 43, and 44.
[632] GOH answers to the OTLA's specific questions, August 22, 2012, pages 8, 20, 25, 26, 28, and 29.
[633] GOH answers to the OTLA's specific questions, August 22, 2012, pages 5-6; SITEDIKHOSA request for inspection at Dickies, December 11, 2006; SITEDIKHOSA request for inspection at Dickies, January 3, 2007 (One request was on an STSS form and the other was a letter addressed to the STSS SPS Regional Director, but neither has a receipt stamp from the STSS and the STSS denies any knowledge of such requests).

Table 2: Documented instances at eight workplaces where employers denied access to STSS inspectors[634]

Number of times inspectors denied access	33
Number of times access denial reported to superiors	33
Number of instances for which the OTLA confirmed that access denials were reported to courts for "unjustified resistance"	0
Number of times inspectors determined that immediate attention was required and called the police for assistance	2
Number of times fines recommended by inspectors	6 requests covering 14 denials
Number of times the OTLA found evidence that the STSS imposed fines for access denial	1

The Labor Code requires that employers permit and facilitate inspections and not obstruct inspectors in the performance of their duties, and establishes labor inspectors' authority to enter workplaces at any time to conduct inspections.[635] Nonetheless, the OTLA found that employers routinely refused access to STSS inspectors. Employers commonly have security guards or other staff charged with turning away inspectors, claiming, sometimes falsely, that management is unavailable to receive them. For example, in the cases of A.tion and Kyungshin-Lear, inspectors were denied access four and two times, respectively, based on claims, which inspectors documented as untrue, that management was not on site to receive the inspectors.[636]

Although inspectors are empowered under the Labor Code to call the police for assistance when an employer denies them access and the situation requires immediate attention, the OTLA found that inspectors did not call the police in 31 of the 33 instances reviewed by the OTLA where an employer denied their access.[637] However, the criteria to determine whether a particular instance requires immediate attention and thus justifies calling the police are unclear and the Labor Code appears to place personal liability on the inspectors for any consequences of calling the police.[638] At Petralex, the inspector and then-Regional STSS Director Rosales called the police for assistance notifying the company of SITRAPETRALEX's legal personality and the identities of union leaders protected under *fuero sindical.* With police assistance, the inspector and Director

[634] Further details regarding each access denial can be found in the fact sections above. **Kyungshin-Lear:** May 18, 2011 (twice); May 20, 2011; September 28, 2011; September 29, 2011; October 4, 2011; March 6, 2012; June 13, 2012; September 11, 2012; **Dickies:** November 28, 2006; December 4, 2006; **A.tion:** July 21, 2009; July 22, 2009; July 28, 2009; July 29, 2009; May 7, 2011; May 12, 2011; June 13, 2011; **Pinehurst:** August 16, 2010; August 18, 2010; August 25, 2010; **Petralex:** June 4, 2007; July 25, 2007; November 8, 2007; November 12, 2007; February 14, 2008; April 18, 2008; April 25, 2008; **FHIA:** July 20, 2009; **SurAgro:** September 10, 2012; **Plantas Ornamentales:** Date unknown; Date unknown; April 27, 2010.

[635] Labor Code Articles 95(8) and 614.

[636] *See:* **Kyungshin-Lear**: September 28 and 29, 2011; **A.tion**: July 21, 22, 28 and 29, 2009.

[637] Instances in which inspectors were denied access and did not call the police for assistance: **Kyungshin-Lear:** May 18, 2011 (twice); May 20, 2011; September 28, 2011; September 29, 2011; October 4, 2011; March 6, 2012; June 13, 2012; September 11, 2012; **Dickies:** November 28, 2006; **A.tion:** July 21, 2009; July 22, 2009; July 28, 2009; July 29, 2009; May 7, 2011; May 12, 2011; June 13, 2011; **Pinehurst:** August 16, 2010; August 18, 2010; August 25, 2010; **Petralex:** June 4, 2007; July 25, 2007; November 8, 2007; November 12, 2007; April 18, 2008; April 25, 2008; **FHIA:** July 20, 2009; **SurAgro:** September 10, 2012; **Plantas Ornamentales:** Date unknown; Date unknown; April 27, 2010.

[638] Labor Code, Article 617(b).

Rosales were able to enter the worksite.[639] At Dickies, the inspector and Director Rosales called the police for assistance to investigate the dismissals of union leaders. Despite the call, the inspector and Director Rosales were not allowed to enter the worksite.[640]

In all 33 documented instances where an employer denied access to an STSS inspector, the inspector formally notified his or her supervisor in writing. However, the OTLA found no evidence that the STSS reported any of the denials to the Labor Courts as required under Labor Code Article 617(b) in cases of "unjustified resistance" by employers.[641] Similarly, of the 33 documented instances of an employer denying an inspector access to a worksite, the STSS fined the employer in only one.[642]

The OTLA notes that STSS inspectors often returned several times to try to gain entry; however, after reporting the repeated failed attempts to their supervisors, the inspectors abandoned their efforts in all but one case. Thus, based on its review, the OTLA has serious concerns that the STSS does not compel access to worksites, preventing the inspectors from fulfilling their duty to conduct worksite inspections to enforce labor laws.

3. Inspection of Alleged, Potential, or Previously Identified Violations

Key stakeholders interviewed by the OTLA noted that while STSS inspectors are generally knowledgeable about the content of the Labor Code and associated regulations, they commonly conduct deficient inspections and re-inspections.[643] In its review, the OTLA found that the STSS conducted such deficient inspections or re-inspections at nine workplaces: Kyungshin-Lear, Pinehurst, Petralex, SurAgro, Las Tres Hermanas, Okra Sur, Agroexportadora Dome, Azucarera la Grecia, and the ENP.

The OTLA found examples of the STSS failing to investigate potential violations of laws protecting freedom of association, even when the STSS was inspecting worksites for other labor law violations and was aware of allegations of labor law violations related to freedom of association and collective bargaining.[644] The October 2010 general inspection at Pinehurst,

[639] STSS report of inspection at Petralex, February 25, 2008; OTLA interview with former STSS SPS Director, July 16, 2012.
[640] STSS report of inspection at Dickies, December 5, 2006; OTLA interview with former STSS SPS Director, July 16, 2012.
[641] The OTLA requested all relevant documents from the STSS but did not receive any that indicate the STSS reported the denials of access to the Labor Courts.
[642] See Plantas Ornamentales (April 30, 2010) for the only case where the OTLA's review confirmed that the STSS fined an employer for unlawfully denying an inspector access to a workplace.
[643] They noted that some inspectors fail to inspect for all potential violations during general inspections, even violations of which there are allegations or previous findings. Further, some inspectors do not prepare for inspections and therefore are unprepared to investigate all relevant allegations, follow up on prior violations, or inspect on all relevant areas of law. Some conduct interviews with employees in the presence of management, deterring workers' from speaking freely on the matters under investigation and other labor concerns. OTLA interviews with civil society, workers, and private sector representatives.
[644] The STSS mandate includes oversight of compliance with laws that protect the right of freedom of association; however, the STSS's Inspection Manual, published in June 2012, includes interview formats for employers and workers that do not include any questions regarding freedom of association. The new Protocol for Inspectors on Freedom of Association, published in 2013, was not available when most of the facts in the Submission cases

which occurred in the wake of the August 2010 dismissals of founding union members, did not address freedom of association, despite the STSS's awareness of the dismissals and ongoing dispute.[645] More recently, the STSS's September 2012 inspection report from Kyungshin-Lear did not include any information regarding freedom of association, despite receiving ongoing complaints related to dismissals of union members and anti-union discrimination, including a February 2012 request from the CGT that the STSS investigate dismissals of the union leadership committee and blacklisting threats at Kyungshin-Lear.[646,647]

The OTLA also found examples where the re-inspection apparently failed to address violations found in the initial inspection.[648] At Petralex, an initial inspection in April 2008 found violations related to failure to grant the inspector access to the worksite and unlawful dismissal of union leaders and members. The inspection report, issued May 23, 2008, required reinstatement of the union leaders and members within three business days.[649] The subsequent re-inspection, which did not occur until September 19, 2008, failed to address the unlawful dismissals or ensure their reinstatement. Instead the subsequent re-inspection report listed the only item for re-inspection as "payroll records" and found that the violation had been corrected.[650] At Okra Sur, the February 26, 2010 general inspection found several labor code violations, including failure to pay minimum wage.[651] The April 9 re-inspection reported a failure to pay the education bonus but was silent on the status of the other previously identified labor law violations.[652] At Agroexportadora Dome, the STSS conducted a re-inspection on April 20, 2010, after an initial general inspection a month earlier had found several Labor Code violations, including prohibited child labor.[653] Although the re-inspection report states that the child labor violation was corrected, the inspector references remediation of a different violation in reaching that conclusion.[654]

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occurred. *Manual de Procedimientos de la Inspección General del Trabajo*, p. 59-66, June 2012. *Colección de Protocolos: Protocolo de Libertad de Asociación* (received by the OTLA on January 26, 2014).

[645] STSS notification report of inspection at Pinehurst, December 7, 2010.

[646] SITRAKYUNGSHINLEAR request for labor inspection at Kyungshin-Lear, February 21, 2012; STSS record of inspection at Kyungshin-Lear, September 11, 2012.

[647] In addition to the failure to inspect for freedom of association, the STSS did not investigate the working conditions for the majority of workers at certain worksites. For example, on May 21, 2008, the STSS conducted a general inspection of Azucarera la Grecia, a company that employs hundreds of subcontracted workers. The inspector did not inspect the working conditions of the subcontracted workers and instead only investigated the working conditions of sixteen managers directly employed by the company. STSS report of inspection at Azucarera la Grecia, May 30, 2008; STSS inspection data collected at Azucarera la Grecia, May 21, 2008; OTLA interview with Azucarera la Grecia Management, December 12, 2012.

[648] For example, STSS report of re-inspection at Okra Sur, April 9, 2010; STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.

[649] STSS report of inspection at Petralex, May 23, 2008.

[650] The STSS in Tegucigalpa noticed the oversight and proceeded to sanction the employer despite the omission of the freedom of association violations from the re-inspection report. STSS report of re-inspection at Petralex, September 19, 2008.

[651] Report on Labor Inspections at Foreign-Owned plantations in Choluteca, March 25, 2010, STSS Choluteca Director.

[652] STSS report of re-inspection at Okra Sur, April 9, 2010.

[653] STSS record of inspection at Agroexportadora Dome, March 11, 2010; STSS notification report of inspection at Agroexportadora Dome, March 25, 2010; Report on Labor Inspections at Foreign-owned plantations in Choluteca, March 25, 2010, STSS Choluteca Director; STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.

[654] The initial inspection report listed the child labor violations as item 2 and violations related to the illegal employment of foreign workers as item 3. The subsequent re-inspection report indicated that the employer had

Based on its review, the OTLA has serious concerns that STSS does not sufficiently inspect for all alleged, potential, or previously identified violations of labor laws.

4. Calculation and Imposition of Fines

The Submission alleges that the STSS generally fails to impose fines for identified labor law violations, and that when it does impose fines, the fines assessed are too low to deter future violations. As the ILO has noted, the current fine amounts are too low to be "sufficiently effective and serve as a deterrent."[655] Most fines range from 50 – 5,000 HNL (US $2.40 – $240), an amount that has not been increased or adjusted for inflation since 1980.[656]

As discussed above, the Labor Code empowers the STSS to issue fines for labor law violations,[657] and Article 618 specifically calls on STSS authorities to impose corresponding sanctions when they find labor law infractions. After any administrative appeals by the employer are exhausted, the STSS headquarters forwards the fine to the *Procurador de la República* for collection.[658] Under Honduran law, paying fines does not excuse compliance with remediation orders.[659]

In its review, the OTLA found that the STSS did not impose fines in approximately half of the instances where inspectors found Labor Code violations.[660] In none of the instances reviewed did the STSS fine an employer more than once, even when subsequent inspections showed that previously identified labor law violations had not been remedied and, instead, were ongoing contrary to the STSS's remediation orders. The STSS has asserted that it is empowered to increase the fines by 50 percent in those cases, but the STSS did not increase fines in any case.[661] In most instances where the STSS imposed fines, the STSS fined the employers for some, but not all, of the Labor Code violations that the inspectors identified.[662] Additionally, the OTLA found that the STSS failed to impose any fines in the eight cases where inspectors found OSH violations,[663] though Labor Code Article 400 specifically provides that in cases of OSH violations, it is the responsibility of STSS to impose fines.[664]

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partially corrected items 2 and 3 by dismissing the foreign workers, however, the majority of the child laborers were Honduran. STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.

[655] 372nd Report of the ILO CFA, June 13, 2014, page 81, *available from:* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_247039.pdf.

[656] Labor Code, Article 625 (last modified by Decree 978 on July 14, 1980).

[657] Labor Code, Article 625.

[658] The *Procurador de la República* is similar to the Attorney General in the United States but with only civil jurisdiction.

[659] GOH answers to the OTLA's general questions, pages 20-21, July 20, 2012. "*La multa o sanción impuesta, no libera de su obligación de corregir la violación a las leyes laborales*." (The imposed fine or sanction does not liberate them of their obligation to correct a violation of labor laws.)

[660] *See* Kyungshin-Lear, Dickies, FHIA, Sur Agro, Okra Sur, Agroexportadora Dome, Agripac, and ENP factual findings above.

[661] For example, STSS Inspector General decision imposing fine on Petralex, June 8, 2009 (stating the fine would increase by 50 percent if the violation occurred again).

[662] *See*: Petralex, Pinehurst, and Sur Agro factual findings above.

[663] *See*: Sur Agro, Okra Sur, Agroexportadora Dome, Agripac, and Azucarera La Grecia factual findings above.

[664] Labor Code, Article 400.

In addition to failing to impose fines when required by law, the STSS uses a fine calculation methodology that results in penalties that are generally too small to compel compliance with the law and, instead, are often treated as a minimal cost of doing business, although that methodology is not required by law.[665] For example, in cases involving enterprises that fail to pay the minimum wage, the STSS considers such failure to be one violation, calculating the fine accordingly, rather than multiple violations based on the number of workers not paid the minimum wage.

At Petralex, for example, the STSS imposed a 5,000 HNL (US $240) fine on the company in June 2009 for dismissing 134 founding union members in violation of *protección del estado*,[666] instead of levying the 5,000 HNL fine for each unlawfully dismissed worker, which would have totaled 670,000 HNL (US $32,180).

The STSS also often allows remediation deadlines to lapse by months or years before imposing fines, reducing still further the deterrent effect of the minimal fines imposed. As an illustration, the STSS gave Pinehurst three business days, beginning on December 7, 2010, to comply with an order to pay overtime payments owed to workers.[667] Although the STSS determined that Pinehurst had not complied during a follow-up inspection on February 9, 2011, the STSS did not impose a fine until October 26, 2011.[668] Pinehurst paid the fine on May 2, 2012, but never paid the back wages owed its workers.[669]

Based on this review, the OTLA has serious concerns regarding the imposition of fines by the STSS, including the apparent infrequent imposition of fines, the relatively low level at which fines are assessed, and the timeliness of fines that are imposed.

5. Remediation of Identified Labor Law Violations

The Submission alleges that the STSS generally fails to ensure remediation of identified labor law violations. Remediation is a critical component of an effective labor law enforcement regime, and paying a fine does not excuse an employer from remediating underlying labor law violations.[670] Instead, under Article 618, the STSS shall both impose corresponding fines and order the implementation of remedial measures.[671] However, the OTLA review of documents indicates that the STSS appears to regularly close cases upon payment of fines, regardless of whether the employer has corrected the underlying violations.[672] For instance, the STSS failed to

[665] Labor Code, Article 625.
[666] STSS inspector general decision imposing fine on Petralex, June 8, 2009; GOH answers to the OTLA's specific questions, page 1, August 22, 2012.
[667] STSS notification report of inspection at Pinehurst, December 7, 2010.
[668] Decision of the STSS inspector general regarding Pinehurst, IL-100914050107210, October 26, 2011.
[669] Receipt for payment of 10,000 HNL issued by the Treasury of Honduras regarding Pinehurst, May 2, 2012; OTLA interview with CDM representative, July 17, 2012.
[670] GOH answers to the OTLA's general questions, July 20, 2012.
[671] Labor Code, Article 618.
[672] GOH answers to the OTLA's general questions, July 20, 2012.

ensure remediation of violations of *protección del estado* and *fuero sindical* at Petralex, child labor at Okra Sur, and minimum wage, overtime, and OSH violations at SurAgro.

Numerous stakeholders told the OTLA that many employers choose to pay fines, rather than come into compliance.[673] The fine methodology calculation by inspectors, discussed above, often results in fines much lower than the cost of remediating the violations. As a result, employers are often willing to pay the fines, as long as they are not required by the STSS, in practice, to comply with remediation orders. Once a case is closed, the STSS does not follow up to ensure remediation, and in many cases, the underlying violations continue. As an illustration, at SurAgro, back wages due to the workers as a result of the employer's failure to pay the minimum wage totaled 2,702,821 HNL (US $129,818), but the fine for failure to pay minimum wage was only 5,000 HNL (US$240).[674] SurAgro paid the fine, and the STSS concluded the administrative process and closed the case without following up on its remediation order.[675] OTLA found evidence that SurAgro continues to pay workers less than the minimum wage.[676] Similarly, documents regarding FHIA indicate that upon receiving payment of the fine imposed, the STSS likewise closed the case and failed to verify reinstatement of the illegally dismissed union leaders and founding union members.[677]

Based on its review, the OTLA has serious concerns regarding the STSS's enforcement of remediation orders.

CONCLUSIONS ON LABOR LAW INSPECTIONS AND ENFORCEMENT

Based on its review, the OTLA has serious concerns regarding the GOH's inspection, sanction, and remediation of labor laws in the cases described above. The OTLA considers that these issues may undermine the GOH's capacity to effectively prevent, identify, and remedy violations of labor law.

B. Enforcement of Labor Laws: Subjects Defined by the CAFTA-DR Article 16.8

The issues identified with respect to inspection processes and procedures, discussed in the previous section, affect the GOH's ability to effectively enforce its labor laws in the substantive areas discussed below. The following sections assess GOH enforcement of labor laws that are directly related to: (1) the right of association and the right to organize and bargain collectively, (2) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor, and (3) acceptable conditions of work.

[673] OTLA interviews and meetings with stakeholders, July 2012, December 2012, May 2013, and October 2013.
[674] STSS notification report of inspection at SurAgro, November 2, 2007, page 33; STSS notice of sanction to SurAgro, October 14, 2008 (although the minimum wage law sets a maximum fine of 1,000 HNL (US $48), the STSS imposed a higher fine and the employer did not appeal the sanction).
[675] STSS document closing SurAgro case, November 14, 2008.
[676] OTLA interviews with SurAgro workers, July 2012 and May 2014; OTLA interview with COSIBAH (Choluteca), July 11, 2012.
[677] STSS document closing FHIA case, February 2, 2011.

1. The Right of Association and the Right to Organize and Bargain Collectively

The definition of "labor laws" in Article 16.8 of the CAFTA-DR includes statutes and regulations, or provisions thereof, that are directly related to the right of freedom of association and collective bargaining.[678] The Submission alleges that the GOH failed to effectively enforce Honduran laws protecting these rights, particularly in the manufacturing sector.

The Honduran Constitution enshrines the right to freedom of association and establishes that the Government has the responsibility to protect that right in Honduras.[679] The STSS is the arm of the Honduran executive branch charged with enforcing Honduran labor laws, including those that protect the right of freedom of association and collective bargaining.[680]

The first part of this section analyzes the STSS' enforcement of the Labor Code provisions protecting a union's founding members (*protección del estado).* The second part analyzes the STSS' enforcement of the Labor Code provisions protecting a union's executive board (*fuero sindical).* The third part analyzes the STSS' enforcement of the Labor Code provisions that protect workers from anti-union discrimination and other anti-union retaliation. The fourth part analyzes the GOH's role in the dissolution of a legally established union. The fifth and final part of this section analyzes the STSS' failure to effectively prevent or respond to employer interference with the right to freedom of association and collective bargaining, including through the use of collective pacts (agreements between an employer and a group of nonunionized workers) and employer-dominated unions.

a) Protection of Founding Union Members (*Protección del Estado*)

The Submission alleges that the STSS fails to protect the rights of founding union members as required under the Labor Code. As evidence, the Submission provided examples from four workplaces: Petralex (SITRAPETRALEX), Ceiba Textiles (SITRAMCETEX), A.tion (SITRATION), and FHIA (SITRAFHIA).

Before engaging in the official STSS registration process, a group of at least thirty workers must first notify their employer of their intent to found a union.[681] Once an employer is notified, the founding union members are protected from dismissal, demotion, and other adverse acts, unless and until the respective authority (undefined in the Labor Code) makes a determination that there is just cause to take adverse action against the protected worker.[682] This protection is referred to as *protección del estado* and runs from the moment the employer is notified of the workers' intent to form a union until the STSS grants the union's legal existence, known as its legal personality *(personería jurídica).*[683]

Although there is no legal requirement that they do so, in practice STSS inspectors generally accompany workers during employer notification of workers' intent to form a union. In some

[678] CAFTA-DR, Article 16.8.
[679] Constitution of Honduras, Chapter V, Article 128.
[680] Labor Code, Articles 54, 467, and 610.
[681] Labor Code, Article 517.
[682] Labor Code, Article 517.
[683] Labor Code, Article 517.

cases, STSS inspectors, rather than the workers, directly notify the employer of the workers' intention to organize. Workers view the STSS presence and involvement as reducing the risk that employers will claim they were not notified and did not know of the union and then dismiss the union's founders.[684]

When the OTLA interviewed employers, they often justified the dismissals of protected workers by stating that the dismissals were for legitimate causes, such as decreased purchase orders.[685] Unless the "respective authority" determines that such just cause exists, however, the dismissal is nonetheless unlawful.[686]

In the event that an employer illegally dismisses a founding union member with *protección del estado* without prior authorization from the "respective authority," the worker is owed back pay from the time of the dismissal, and may either accept a severance payment from his or her employer or invoke his or her legal right to reinstatement.[687] If a worker notifies the STSS of the illegal dismissal, the STSS must investigate.[688] Regardless of whether a worker has accepted severance or reinstatement, if the STSS finds the worker was illegally dismissed, the STSS can impose a sanction on the company for violating *protección del estado*.[689] The worker may also pursue reinstatement through the courts as a private remedy.[690]

The OTLA's analysis found that in the cases of Petralex and FHIA, where the employer was notified of the union's founding either by workers or the STSS, the employers dismissed the organizing workers without requesting and obtaining prior authorization as required by *protección del estado*. Together, these cases affected over 140 workers.[691] The STSS fined Petralex and FHIA 5,000 HNL (US $240) each for illegally firing workers in violation of *protección del estado;* in the case of Petralex, the fine amounted to approximately 37.31 HNL (US $1.79) per worker.[692] The STSS issued reinstatement orders in both cases; however, it failed to ensure the employers complied with the orders. None of the illegally dismissed workers at Petralex or FHIA have been reinstated due to the intervention of the STSS.[693]

Similar issues arose at A.tion. On June 12, 2009, 68 workers founded SITRATION.[694] In July, workers requested STSS inspections, in part to notify the company of the identities of the

[684] *See:* Kyungshin-Lear, Ceiba, A.tion, Petralex, and FHIA factual findings above.
[685] OTLA interviews with Kyungshin-Lear management, A.tion management, Petralex management, and FHIA management, July 18 and 19, 2012.
[686] Labor Code, Article 517.
[687] GOH answers to the OTLA's general questions, page 6, July 20, 2012; *see also*: Labor Code, Article 113(a).
[688] Labor Code, Article 618.
[689] GOH responses to the OTLA's general questions, page 6, July 20, 2012.
[690] Labor Code, Article 113.
[691] Petralex dismissed 134 founding SITRAPETRALEX members, and FHIA dismissed 12 founding SITRAFHIA members (the STSS grouped two SITRAFHIA leaders together with the 12 as 14 founding SITRAFHIA members – for purposes of this analysis the OTLA distinguishes the two groups and has not double-counted them), totaling 146.
[692] STSS inspector general decision imposing fine on Petralex, June 8, 2009; GOH answers to the OTLA's specific questions, page 1, August 22, 2012 (the 10,000 HNL fine included 5,000 each for violation of *fuero sindical* and *protección del estado)*.
[693] *See:* Petralex and FHIA factual findings above.
[694] SITRATION notification to STSS of union formation, June 12, 2009.

founding SITRATION members and trigger *protección del estado*.[695] An STSS inspector attempted to access the factory on July 21, 22, 28, and 29.[696] Each time, the security guard told him that he could not enter because the Human Resources Manager was not on the premises, although on three of those occasions the inspector confirmed through workers who were inside the factory that the Human Resources Manager was indeed on site.[697] From late July through early August 2009, A.tion dismissed a "strong majority" of the 68 founding SITRATION members.[698] The STSS attempted to conduct an investigation of the dismissals, but was denied access on multiple occasions and did not report the occurrence to the Labor Court to obtain a judicial order to compel access. Therefore, it did not further investigate or make findings in this case.[699] Without an STSS reinstatement order, the dismissed founding union members accepted severance and were never reinstated.

b) Protection of Union Officials (*Fuero Sindical*)

The Submission alleges that the STSS fails to effectively enforce the right of *fuero sindical* for union leaders. As evidence, the Submission provided examples from four workplaces: Petralex (SITRAPETRALEX), Dickies (SITEDIKHOSA), Kyungshin-Lear (SITRAKYUNGSHINLEAR), and FHIA (SITRAFHIA).

Labor Code Article 516 prohibits employers from dismissing union officials from the moment they are elected until six months after their terms expire without prior authorization of just cause from the respective Labor Court Judge or, if there is no Labor Court in that region, the respective Civil Court Judge.[700] This protection is called *fuero sindical*. When workers form a union, the union leadership applies for *fuero sindical* under the same process that the union follows for applying for its legal personality (*personería jurídica*).[701] The STSS must certify the union leadership.[702] This certification officially places the union leadership under *fuero sindical* and applies retroactively from the date of their election.[703] Subsequent leadership committees apply for *fuero sindical* separately, submitting the same documents that the founding union leaders are required to submit, including copies of their identity cards and literacy certifications.[704]

If the STSS receives a complaint alleging that a worker with *fuero sindical* has been dismissed without prior Labor Court approval, the Labor Code requires the STSS to conduct an investigation.[705] If the dismissal occurred while the worker was protected by *fuero sindical*, the

[695] Request for an STSS inspector to notify A.tion of SITRATION formation, July 11, 2009.
[696] STSS record of inspection at A.tion, July 29, 2009; STSS record of inspection at A.tion, July 28, 2009; STSS record of inspection at A.tion, July 22, 2009; STSS record of inspection at A.tion, July 21, 2009.
[697] STSS record of inspection at A.tion, July 28, 2009; STSS record of inspection at A.tion, July 22, 2009; STSS record of inspection at A.tion, July 21, 2009; WRC letter to A.tion owner, page 2, September 9, 2009.
[698] WRC letter to A.tion owner, page 2, September 9, 2009. In an interview with A.tion management, A.tion told the OTLA that there was a reduction in orders in the summer of 2009, resulting in massive layoffs.
[699] GOH answers to the OTLA's specific questions, page 8, August 22, 2012.
[700] Labor Code, Article 516.
[701] GOH answers to the OTLA's general questions, page 8, July 20, 2012; Labor Code, Articles 481(7) and 489.
[702] For example, STSS certification of SITRAPETRALEX leadership committee, October 24, 2007.
[703] For example, STSS certification of SITRAPETRALEX leadership committee, October 24, 2007 (granting *fuero sindical* retroactively to August 25, 2007).
[704] GOH answers to the OTLA's general questions, page 8, July 20, 2013; Labor Code, Articles 481(7) and 489.
[705] Labor Code, Article 618.

employer will be subject to a fine by the STSS.[706] In addition, the Labor Code states that an employer who violates *fuero sindical* will have to compensate the union an amount equivalent to six months of the dismissed leader's salary.[707] In cases where a union leader has not accepted severance payment and wants to be reinstated, the STSS must order reinstatement as a remedy.[708]

The OTLA's analysis found that in the cases of Petralex, Dickies, Kyungshin-Lear, and FHIA, the employers dismissed union leaders without first petitioning the Labor Court and demonstrating just cause as required under *fuero sindical.* Table 3 below summarizes the OTLA's findings in each of these cases.

Table 3: Union Leaders Dismissed

Company	Petralex	Dickies	Kyungshin-Lear	FHIA	**Total**
Number of Union Leaders Dismissed	18 (potentially 28)[709]	6	20 (potentially 39)[710]	2	**43 (potentially 72)**
Number of times prior permission sought from a Court	0	0	0	0	**0**
Reported to the STSS	Y	Y	Y	Y	
Number of Workers Reinstated by the STSS	0	0	0	0	**0**
Evidence of fines imposed for *fuero sindical* violation	1	0	0	0	**1**
Evidence of compensation paid to the union	0	0	0	0	**0**

In the cases examined by the OTLA, STSS intervention did not result in the reinstatement of a single illegally dismissed union leader, though some workers indicated to the STSS and the OTLA that they wanted to be reinstated.[711] In some cases, workers who would otherwise have

[706] Labor Code, Article 516.
[707] The Labor Code is ambiguous as to how this provision should be implemented in practice and does not indicate whether it is an administrative or judicial remedy or whether the STSS, the union, or the illegally-dismissed union leader has standing to invoke the provision. The STSS stated that the aggrieved union could invoke it in court and at least one union, SITRAKYUNGSHINLEAR, indicated in May 2013 that it was in the process of adding this claim to a reinstatement case filed with the Labor Court. OTLA meeting with Evangelina Argueta, CGT, May 20, 2013; Labor Code, Articles 516 and 625.
[708] Labor Code, Article 618 empowers Inspectors to order corrective measures. Labor Code, Article 113(a) creates the right to reinstatement in these cases.
[709] The OTLA counted the 18 SITRAPETRALEX leaders for whom it has evidence that the STSS was notified of their election, a required step to obtain *fuero sindical*. The other 10 may or may not have notified the STSS.
[710] The OTLA counted the 20 SITRAKYUNGSHINLEAR leaders for whom it has evidence that the STSS was notified of their election, a required step to obtain *fuero sindical*. The other 19 may or may not have notified the STSS.
[711] OTLA interviews with workers, July 2012. Given that *fuero sindical* protections begin upon notice to the STSS of a union leader's election, and not notice to the employer, an employer who pleads lack of knowledge would still be obligated to respect *fuero sindical* as the employer's knowledge is not a required element of the protection,

sought reinstatement accepted severance because of their sense of the futility of seeking STSS intervention on behalf of organized workers.[712]

In the one instance (Petralex) where the STSS imposed a fine, the 5,000 HNL (US $240) fine amounted to approximately US $40 per dismissed union leader, and the workers were not reinstated.[713] The OTLA found no case where the STSS ensured an employer had paid the legally-required six-month salary *fuero sindical* fine to the dismissed leader's union.

The Kyungshin-Lear case also raises issues with respect to the enforcement of *fuero sindical*. Kyungshin-Lear management dismissed each of SITRAKYUNGSHINLEAR's 36 elected leaders between January 2012 and October 2013 without obtaining prior judicial approval, as required by law.[714] The STSS was aware of these dismissals, as the union noted the issues and requested investigation, but it appears the STSS did not investigate the dismissals, fine the company, or order reinstatement of any of the dismissed union leaders, despite having granted *fuero sindical* protection to the leadership committee beginning in January 2012.[715] The STSS did note that some workers were pursuing reinstatement through STSS conciliation and the Labor Court.[716] However, Kyungshin-Lear continues to unlawfully dismiss union leaders, having dismissed three leaders as recently as May 8, 2014.[717]

c) Anti-union Reprisals, Discrimination, and Other Retaliation

The Submission alleges that the STSS does not effectively enforce the provisions of the Honduran Labor Code protecting unions and their members from anti-union discrimination and other retaliation. As evidence, the Submission provided examples from nine workplaces: Petralex, Dickies, Ceiba Textiles, A.tion, Pinehurst, Kyungshin-Lear, Hanesbrands, FHIA, and Las Tres Hermanas.

The Labor Code contains three main provisions that prohibit anti-union discrimination and retaliation. Article 96(3) prohibits dismissal or other adverse action against workers due to their membership in a union or participation in lawful union activities.[718] Article 469 establishes special fines of between 200 and 10,000 HNL (US $9.60 to $480) for any person who, through violence or threats, attempts in whatever form to impair the right of freedom of association.[719] Article 96(9) of the Labor Code prohibits employers from performing or authorizing any act that directly or indirectly infringes or restricts the rights granted by law to workers or offends their

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rendering any unilateral dismissal of a protected union leader *de facto* illegal and reinstatement of the worker available as a remedy.

[712] For example, OTLA interviews with Kyungshin-Lear workers, June 2014.

[713] STSS Inspector General decision imposing fine on Petralex, June 8, 2009; GOH answers to the OTLA's specific questions, page 1, August 22, 2012.

[714] OTLA meeting with Maria Elena Sabillon, Solidarity Center, and Evangelina Argueta, CGT, October 23, 2013.

[715] STSS certification of SITRAKYUNSHINLEAR legal registration, January 27, 2012.

[716] OTLA meeting with STSS officials, May 20, 2013.

[717] Email from the Solidarity Center to the US Embassy Official, May 21, 2014; US Government Official meetings with Maria Elena Sabillon, Solidarity Center; Evangelina Argueta, CGT; three SITRAKYUNGSHINLEAR members; and Kyungshin-Lear management, June 10, 2014.

[718] Labor Code, Article 96.

[719] Labor Code, Article 469.

dignity.[720] Additionally, Article 10 prohibits reprisals against workers for the sole purpose of impeding them from exercising their rights.[721] Under Article 113(a) of the Labor Code, a wrongfully dismissed worker can either seek reinstatement or accept severance, but not both.[722]

Despite being aware of alleged or previously identified violations of the protections afforded under Labor Code Articles 10, 96(3), or 96(9), the STSS did not conduct investigations in any instances reviewed by the OTLA, including at Petralex, Dickies, Ceiba Textiles, A.tion, Pinehurst, Kyungshin-Lear, FHIA, and Las Tres Hermanas.[723]

Similar issues arose at Kyungshin-Lear. SITRAKYUNGSHINLEAR members requested that the STSS investigate Kyungshin-Lear for anti-union dismissals and threats on February 21, 2012.[724] Union members alleged that Kyungshin-Lear management was threatening them with dismissal and blacklisting and threatened to close the factory due to the presence of the union. On March 6, 2012, the STSS summoned Kyungshin-Lear to a conciliation hearing with SITRAKYUNGSHINLEAR, but the available evidence suggests the conciliation hearing never took place.[725] The STSS did not investigate the alleged anti-union dismissals and threats, even during a general inspection that took place the following September.[726] To date, the STSS has not compelled Kyungshin-Lear to comply with these laws protecting workers' right to organize, and workers report intensified anti-union actions such as assigning union leaders to night shifts, not allowing workers to converse during breaks, and denying that the union exists.[727]

Similarly, the OTLA review found evidence supporting the allegation that employers retaliated against union members by forcing them to resign. Despite receiving complaints of such violations, it appears the STSS did not investigate any such cases. The OTLA review found that soon after Ceiba Textiles workers notified management of their intent to form the SITRAMCETEX union in 2010, 41 of the 46 founding union members resigned.[728] The OTLA interviewed former Ceiba Textiles workers who said they had been coerced into resigning, when their employer told them they would be fired for cause and receive no severance payment if they did not "voluntarily" resign.[729] Their employer instructed them to sign written resignation letters in order to receive some form of severance and warned that if they refused or continued to support the union, they could expect to be dismissed without severance.[730] In total, 41 of the 46 founding union members resigned and accepted severance. Although the FITH, the national level union, complained to STSS and the STSS was aware from the Submission that the

[720] Labor Code, Article 96.
[721] Labor Code, Article 10.
[722] Labor Code, Article 113(a).
[723] The OTLA did not receive any evidence to confirm that the STSS was aware of a nascent union at Hanesbrands and is unable to confirm the allegation of anti-union animus.
[724] SITRAKYUNGSHINLEAR request for labor inspection at Kyungshin-Lear, February 21, 2012.
[725] STSS summons for Kyungshin Lear to appear for conciliation, March 6, 2012.
[726] STSS record of inspection at Kyungshin-Lear, September 11, 2012.
[727] OTLA interviews with Kyungshin-Lear workers, July 2012, December 2012, May 2013, and June 2014.
[728] Resignation documents provided to OTLA by Ceiba Management.
[729] OTLA interview with SITRAMCETEX leader, July 2012.
[730] OTLA interview with SITRAMCETEX leader, July 2012.

company had allegedly forced founding union members to resign and accept severance, the STSS did not follow-up on the allegations during its general investigation in September 2012.[731]

Workers at several worksites indicated they accepted the severance largely because of a sense of the futility of pursuing reinstatement through the STSS.[732] They reported that the STSS merely facilitated the payment of severance, rather than informing wrongfully dismissed workers of their right to reinstatement and enforcing Labor Code Article 113(a) that expressly affords them this right.[733]

d) Union Dissolution by the Judiciary Relied on Illegal Dismissals

The Submission alleges that the Labor Court approved the dissolution of the SITRAFHIA union at FHIA by relying on the illegal dismissals of 14 founding union members to justify the finding that the union did not contain the minimum number of members required under the Labor Code. Article 527 of the Labor Code identifies the circumstances under which a union may be dissolved, including through judicial order or if membership falls below 30 workers.[734]

Between March 2008 and September 2008, FHIA dismissed 14 of SITRAFHIA's founding members, who were covered by *protección del estado*.[735] While the cases were under investigation by the STSS,[736] on September 22, 2008, an attorney petitioned the Labor Court for dissolution of SITRAFHIA allegedly on behalf of six workers, claiming that, because union members had resigned, fewer than 30 SITRAFHIA members remained employed at FHIA.[737] SITRAFHIA had no representation in the proceedings because the Court improperly summoned the president of SITRAFHIA at his former workplace, rather than using the legal address provided by the union for all official notifications. In addition, in an interview with the OTLA, former SITRAFHIA members indicated that at least one of the workers who was listed as a petitioner in the dissolution petition against SITRAFHIA was not even aware of the petition and was surprised to learn that that he was connected to the proceedings. However, one of the six workers stated unequivocally that he was not aware of such a filing and did not know the attorney of record.[738] Despite the ongoing STSS investigations and plaintiffs' lack of knowledge of the case, the Court relied on the contested dismissals to order the dissolution of SITRAFHIA on January 26, 2009, noting the union had fewer than 30 members at FHIA.[739] The Court did not consult STSS records of inspections that documented the *protección del estado* or wait until the investigations were completed to issue its judgment.[740] The Labor Court sent its decision to

[731] OTLA meeting with STSS officials, May 20, 2013; *see also*: General Report on Inspections of Companies in Relation to CAFTA-DR, undated, received May 20, 2013.
[732] OTLA interviews with workers, July 2012 and June 2014.
[733] OTLA interview with SITRAMCETEX leader, July 2012.
[734] Labor Code, Article 527.
[735] GOH answers to OTLA's specific questions, page 15, August 22, 2012.
[736] STSS record of inspection at FHIA, August 5, 2008; STSS record of inspection at FHIA, August 7, 2008; STSS report of inspection at FHIA, September 30, 2008.
[737] Petition to dissolve SITRAFHIA, filed September 22, 2008, page 2.
[738] OTLA interview with FHIA worker, July 2012.
[739] Supreme Court communication to STSS regarding SITRAFHIA, January 26, 2009.
[740] In civil law systems, like that of Honduras, judges generally guide and conduct the gathering of evidence and handle the questioning of witnesses. *See:* Geoffrey C. Hazard, Discovery and the Role of the Judge in Civil Law

dissolve SITRAFHIA to the STSS Division of Social Organizations, which holds the legal registration of all unions, so they would remove SITRAFHIA from the register.[741] The STSS did not object to the removal, despite its ongoing investigations of the dismissals. The STSS inspectorate later determined the dismissals that formed the basis for the Labor Court's holding were indeed illegal, but the union had already been dissolved by the court order and the workers who had lawfully organized and formed SITRAFHIA were left without their organization.[742] This case demonstrates a lack of coordination between the STSS and Labor Courts and its adverse impact on workers' efforts to exercise their rights.

e) Employer Interference

The Submission alleges that the STSS fails to effectively enforce the Labor Code's prohibition on employer interference, direct or indirect, with workers' exercise of their right to freedom of association and collective bargaining, specifically through the use of collective pacts, understood as contracts between management and a group of non-unionized workers, and employer-dominated unions. As evidence, the Submission provided examples from four workplaces: Ceiba Textiles, Pinehurst, Hanesbrands, and Las Tres Hermanas.

(1) Employer-Controlled Collective Pacts

Labor Code Article 72 establishes that collective pacts are governed by the Labor Code provisions for collective bargaining agreements,[743] including the requirement that there be only one collective agreement in effect per workplace.[744] The STSS does not appear, however, to have procedures to ensure that collective pacts do not arise from negotiations between management and employer-dominated worker committees. As a result, it appears that the STSS registers employer-controlled collective pacts that could undermine collective bargaining by independent unions, in apparent violation of Labor Code protections, including Article 96(9), of workers' right to freedom of association and collective bargaining.[745]

In the case of Ceiba Textiles, the STSS registered a collective pact on August 26, 2008,[746] but according to interviews conducted by the OTLA, the worker committee that negotiated the pact was selected by and took direction from Ceiba Textiles management, rather than acting as an independent entity.[747] Likewise, at Hanesbrands, the STSS registered collective pacts at multiple

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Jurisdictions, 73 Notre Dame L. Rev. 1017, 1025 (1998), *available from:* http://scholarship.law.nd.edu/ndlr/vol73/iss4/4 (stating that "The concept that the judiciary properly controls the quest for evidence in civil litigation is…fundamental in the civil law system"); Scott N. Carlson, *Intro to Civil Law Legal Systems*, page 13 *(*May 2009), *available from:* http://inprol.org/sites/default/files/publications/2011/cr09002.pdf (indicating that in civil law systems "judges guide and conduct the gathering of evidence as a rule").

[741] Supreme Court communication to STSS regarding SITRAFHIA, January 26, 2009.

[742] STSS notification report of inspection at FHIA, July 28, 2009.

[743] Labor Code, Article 72.

[744] Labor Code, Article 53.

[745] Labor Code, Art 96(9).

[746] Ceiba textiles collective pact, March 10, 2008; STSS registration of Ceiba Textiles collective pact, August 26, 2008.

[747] OTLA interview with Ceiba Textiles workers, July 2012.

Hanesbrands factories that were negotiated between management and workers' representatives, who Hanesbrands acknowledged were selected directly by Hanesbrands management.[748]

At Hanesbrands factories, the selection of worker committee representatives, the negotiation of collective pacts, the reading of the pacts to workers, and the signing of the pacts by workers were all completed in the course of one day.[749] The collective pacts differed in only a few provisions and largely codified existing non-contractual benefits that workers already received.[750] Although an STSS representative was, according to Hanesbrands management,[751] present at each of the factories when the pacts were concluded, and despite significant evidence that the pacts were employer-controlled, the STSS registered all pacts and did not investigate the process for potentially adverse impact on workers' rights to freedom of association and collective bargaining under the Labor Code, including under Article 96(9).

At Ceiba Textiles, on February 15, 2010, 46 workers founded the independent Ceiba Textiles Worker's Union (SITRAMCETEX). On March 17, 2010, management met with the workers who had been on the committee that negotiated the collective pact and drafted an extension of the pact that allowed workers to resign and still receive severance payments, normally due only upon dismissal.[752] In the five days following the extension of this pact, between March 17 and 21, 89 percent of the union's founding members allegedly resigned.[753] As discussed in the previous section on Forced Resignations, the OTLA interviewed former SITRAMCETEX members who said they felt pressured to resign from their jobs under the new provisions of the collective pact.

The law's limitation that only one collective bargaining agreement can be in place at any given establishment and its equal treatment of union-negotiated collective bargaining agreements and employer-dominated collective pacts, appear to have allowed Ceiba to use the collective pact to block the efforts of the newly forming union, in potential violation of Article 96(9).[754]

In September 2012, when the STSS conducted general inspections of the companies in the Submission, the STSS noted no violations at Ceiba. They also informed the OTLA that the STSS did not inspect for compliance with laws protecting the rights of freedom of association and collective bargaining,[755] though they were on notice of allegations of employer interference in violation of Article 96(9).

[748] Hanesbrands management stated that it selected the worker candidates for the committee of worker representatives at each of the factories that implemented collective pacts and that, although workers were free to nominate their own candidates, they never did. OTLA interview with Hanesbrands management, July 18, 2012.
[749] OTLA interview with Hanesbrands management, July 18, 2012.
[750] Jasper Factory collective pact; Confecciones del Valle collective pact; Hanes Choloma collective pact; OTLA interview with Hanesbrands management, July 18, 2012.
[751] OTLA interview with Hanesbrands management, July 18, 2012.
[752] Meeting minutes from Coalition of Ceiba Textiles Workers/management meeting, March 17, 2010; OTLA interview with Ceiba Textiles management, July 18, 2012.
[753] Resignation documents provided to the OTLA by Ceiba Management.
[754] Labor Code, Article 54.
[755] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012; OTLA meeting with STSS officials, May 20, 2013.

In its review, the OTLA found evidence of employers using collective pacts to undermine workers' right to associate and collectively bargain and the STSS failing to enforce Labor Code provisions protecting those rights, including at Ceiba Textiles and Hanesbrands.

(2) Employer-Dominated Unions

Additionally, the OTLA also found that the STSS failed to investigate allegations that Las Tres Hermanas and Pinehurst used employer-dominated unions to undermine independent organizing in apparent violation of Article 96(9). In the case of Pinehurst, evidence existed of employer retaliation against a previously founded union and the presence of a management representative on the executive board of the new, employer-dominated union.[756] At Las Tres Hermanas, workers founded the SITRAINBA union in September 2012. In October, a second union, SITRAFMARIA, formed. SITRAINBA members interviewed by the OTLA alleged that Las Tres Hermanas management was behind the creation of SITRAFMARIA,[757] though Las Tres Hermanas management vehemently denied this allegation.[758] Las Tres Hermanas filed an appeal with the STSS challenging SITRAINBA's legal personality, but the STSS denied the appeal. Despite the denial, Las Tres Hermanas refused to engage in collective bargaining with SITRAINBA, preferring to engage only with SITRAFMARIA.[759]

The STSS told the OTLA that it was aware of the allegations that SITRAFMARIA was an employer-dominated union being used to thwart the independent SITRAINBA. The STSS did not respond to these allegations or investigate the potential violation of the Article 96(9) ban on employer interference in the right to freedom of association and collective bargaining. Instead, the STSS asserted to the OTLA that its role in approving the legal personality (*personería jurídica*) of a union is limited to determining whether the union meets the standard criteria.[760]

CONCLUSIONS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING:

The OTLA review identified at least 200 workers from five workplaces (Kyungshin-Lear, Dickies, Petralex, FHIA, and the ENP) attempting to form or lead a union who were dismissed in violation of their protected status under *protección del estado* or *fuero sindical*.[761] The OTLA found that the STSS rarely intervened in these cases; and when it did, often failed to inform workers of their right to reinstatement and instead facilitated their acceptance of severance payments and forfeiture of their reinstatement rights during conciliation sessions. The STSS only fined one employer for violating *protección del estado* or *fuero sindical* and never required an employer to pay the union the damages required by Labor Code Article 516. In addition, the

[756] See page 17 for a full discussion of the OTLA's factual findings with respect to freedom of association at Pinehurst.
[757] OTLA interviews with Las Tres Hermanas workers, December 2012 and May 2013.
[758] OTLA interviews with SITRAINBA leadership, December 2012 and May 2013; OTLA interview with Las Tres Hermanas management, December 13, 2012.
[759] OTLA meeting with STSS officials, May 20, 2013.
[760] OTLA meeting with STSS officials, May 20, 2013.
[761] **Kyungshin-Lear:** 36 SITRAKYUNGSHINLEAR leaders; **Dickies:** 6 SITEDIKHOSA leaders; **Petralex**: 18 SITRAPETRALEX leaders and 134 founding SITRAPETRALEX members; **FHIA:** 2 SITRAFHIA leaders and 12 founding SITRAFHIA members (the STSS grouped them together as 14 founding SITRAFHIA members).

STSS failed to ensure that workers were paid back wages due, and where workers refused severance, the STSS failed to ensure compliance with remediation orders.

The OTLA did not receive any evidence of STSS efforts to enforce the protections under Labor Code Articles 96 and 10 of workers' right to organize free from employer discrimination or retaliation at the following workplaces: Kyungshin-Lear, Dickies, Ceiba Textiles, A.tion, Pinehurst, Petralex, Las Tres Hermanas, FHIA and the ENP.[762] In one case (FHIA), the OTLA found that the GOH dissolved a union for failure to meet the minimum number of affiliates based on the reduction in employees that resulted from the illegal dismissals of union members. Further, the OTLA did not find any evidence that the STSS investigated allegations that employers used employer-controlled collective pacts and employer-dominated unions to interfere with workers' rights to freedom of association and collective bargaining in violation of Labor Code Article 96 at Hanesbrands, La Ceiba, Las Tres Hermanas, and Pinehurst.

Based on its review of the evidence, the OTLA has serious concerns regarding the STSS's enforcement of Honduran laws with respect to the right of association and the right to organize and bargain collectively.

2. Minimum Age for the Employment of Children and the Prohibition and Elimination of the Worst Forms of Child Labor

The Submission alleges that the STSS failed to effectively enforce Honduran laws pertaining to child labor at two workplaces, specifically: Sur Agro and Agroexportadora Dome, and in the coffee and melon sectors, generally. This review first examines the legal framework for the minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor. It then examines the specific cases in the Submission, including an additional workplace, Okra Sur, where the OTLA review found evidence of child labor. Lastly, it looks at nation- and sector-wide evidence of child labor in Honduras.

a) Legal Framework

The definition of "labor laws" in Article 16.8 of the CAFTA-DR includes statutes and regulations, or provisions thereof, that are directly related to the minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor.[763] The Honduran Constitution, Labor Code, Code on Childhood and Adolescence, and government regulations address the minimum age for employment.[764] The Constitution states that children under the age of 16 may not work unless it is necessary to sustain their families and does not

[762] OTLA's specific questions to the GOH, June 11, 2012.

[763] This report refers to all work performed by children that is classified as unlawful under Honduran Law, either because of an age limitation or because it is a worst form of child labor, as "child labor."

[764] Additionally, Honduras ratified ILO Convention 138 on the Minimum Age for Admission to Employment on June 9, 1980. It ratified Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor on October 25, 2001; *more information available from:* http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102675. Under the Constitution of Honduras, Chapter III, Article 16, the STSS can directly enforce ratified ILO Conventions.

interfere with school.[765] Honduran statutes supplement the protections in the Constitution. Articles 32 of the Labor Code and 120 of the Code on Childhood and Adolescence (*Código de Niñez*) both state that no one under the age of 14 may work under any circumstances.[766] All children ages 14-17 must receive permission from the STSS in order to lawfully work.[767] Even when a minor receives permission from the STSS, the law limits the number of hours per day that a minor may work. Children who are 14 and 15 may work a maximum of four hours per day, while children who are 16 and 17 may work a maximum of six hours per day.[768] Fines for child labor are higher than for other Labor Code violations; up to 25,000 HNL (US $1,201) for the first violation and 50,000 HNL (US $2,402) for repeated violations.[769]

Honduran laws on child labor include a list of the hazardous activities prohibited for children and a list of services that the GOH must provide to child laborers.[770] In 2008, the STSS updated its list of hazardous child labor.[771] The hazardous activities prohibited for children include certain activities in agriculture, such as the application of chemicals and carrying heavy loads, among others.[772] Children ages 16 and 17 may legally perform hazardous work, but only if they receive both accredited technical training and STSS certification.[773]

The Procedure for Comprehensive Service to Children and Adolescent Workers by the STSS (Procedimiento para la Atención Integral a la Niñez y Adolescencia Trabajadora desde la STSS) establishes the protocol STSS inspectors must follow when they encounter children in the workplace, which includes notifying the Inspector General of Labor and notification to the General Directorate of Social Welfare (Dirección General de Previsión Social) of the violation within 24 hours.[774] The protocol also includes procedures for the STSS national office, the regional offices, and other agencies, including the General Directorate of Social Welfare and the Program for Eradication of Child Labor (Programa de Erradicación de Trabajo Infantil). This protocol (unlike protocols covering other issues) is incorporated into the current inspection manual that labor inspectors are to follow.[775]

The Roadmap to Eliminate Child Labor, developed by the GOH and the ILO, specifies the responsibility of each government agency in combating child labor. It states that the STSS is

[765] Constitution of Honduras, Article 128.7.
[766] Code on Childhood and Adolescence, Article 120.
[767] Code on Childhood and Adolescence, Article 119. Article 1 of the Code on Childhood and Adolescence defines "child" as any person under 18 years old, thus Article 119's authorizations are necessary for all children ages 14-17.
[768] Additionally, all children are prohibited from working at night. Code on Childhood and Adolescence, Article 125.
[769] Code on Childhood and Adolescence, Article 128.
[770] Executive Decree No. STSS-211-01, *Reglamento sobre el Trabajo Infantil en Honduras*, amended by Executive Decree No. STSS-097-2008; *Procedimiento para la atención integral a la niñez y adolescencia trabajadora desde la STSS*.
[771] Executive Decree No. STSS-211-01; *Reglamento sobre el Trabajo Infantil en Honduras*, Executive Decree No. STSS-097-2008.
[772] Executive Decree No. STSS-211-01; *Reglamento sobre el Trabajo Infantil en Honduras;* Executive Decree No. STSS-097-2008.
[773] Code on Childhood and Adolescence, Article 122; Executive Decree No. STSS-097-2008.
[774] *Procedimiento para la atención integral a la niñez y adolescencia trabajadora desde la STSS,* page 13.
[775] *Procedimiento para la atención integral a la niñez y adolescencia trabajadora desde la STSS.*

responsible for preventive actions, monitoring, and removal of child laborers from their work.[776] In 2011, the GOH developed the National Action Plan to Eradicate Child Labor (2008-2015), which delineates the STSS's specific enforcement responsibilities, including strengthening the labor inspection system and inter-institutional coordination on combatting child labor.[777]

b) Specific Cases

The Submission raised two specific cases of child labor in agriculture. At SurAgro, the STSS documented eight children, aged 17, working without STSS permission.[778] Although the law only permits 17 year olds to work up to six hours per day, the STSS found that six of the eight children were working over six hours, and further, that they were not getting paid for all hours worked.[779] The company was re-inspected and fined 25,000 HNL (US $1,201) for the illegal employment of children, but not for their illegally long shifts.[780] The company paid the fine and appears to have eliminated the employment of children.[781]

The STSS also found that Agroexportadora Dome employed 60 children for 11-hour shifts.[782] The STSS notified the company of various labor law violations, including the use of child labor, and conducted a re-inspection. The corresponding inspection report stated that the child labor violation had been partially corrected but referenced remediation of a different violation in coming to that conclusion.[783] It does not appear that the STSS attempted to pursue any sanctions against the company, but the company closed within a few months of receiving notice of the STSS's finding.[784]

Additionally, during its review, OTLA found that at Okra Sur, inspectors conducting an OSH inspection on April 9, 2010, also documented the use of child labor.[785] The STSS inspectors found 17 year olds working without permission from the STSS for longer than the six hours per day permitted by law.[786] The OTLA requested, but did not receive, any evidence of STSS follow-up, including re-inspection or sanctions, or any evidence that the STSS followed the elements of the protocol established by the Procedure for Comprehensive Service to Children

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[776] *Hoja de Ruta Honduras Libre de Trabajo Infantil*, *Programa Internacional para la Erradicación del Trabajo Infantil (IPEC) de la Organización Internacional del Trabajo (OIT), y Secretaría de Trabajo y Seguridad Social (STSS), available from:* http://www.trabajo.gob.hn/biblioteca-y-documentos/foro-latinoamericano-de-proteccion-social/Hoja%20de%20Ruta%20para%20hacer%20de%20Honduras%20un%20pais%20libre%20de%20trabajo%20infantil.pdf/view.

[777] National Plan of Action for the Prevention and Elimination of Child Labor (2008-2015).

[778] STSS report of inspection at SurAgro, July 9, 2007.

[779] STSS report of inspection at SurAgro, July 9, 2007.

[780] STSS notice of sanction to SurAgro, October 14, 2008.

[781] STSS report of re-inspection at SurAgro, December 13, 2007; GOH responses to OTLA's specific questions, August 22, 2012, page 22; OTLA interviews with SurAgro workers, July 2012.

[782] STSS record of inspection at Agroexportadora Dome March 11, 2010, *Datos suministrados por el trabajador.*

[783] STSS report of re-inspection at Agroexportadora Dome, April 21, 2010.

[784] STSS report to regional inspector general regarding Agroexportadora Dome, November 11, 2010; GOH answers to the OTLA's specific questions, page 27, August 22, 2012.

[785] STSS report of inspection at Okra Sur, April 9, 2010.

[786] STSS report of inspection at Okra Sur, April 9, 2010.

and Adolescent Workers by the STSS.[787] During OTLA's July 2012 fact-finding mission to Honduras, workers reported that Okra Sur continued to use child labor; however, the STSS did not find any children working in violation of the law during its September 2012 inspection.[788] A union leader noted that STSS' inspectors may not be finding the children who allegedly work at Okra Sur, as the children are temporarily removed from the worksite during an inspection.[789]

c) Nation- and Sector-wide Prevalence

Despite the numerous government policies to promote and coordinate the enforcement of laws related to child labor, child labor is common in Honduras.[790] Numerous reports, including reports from the GOH, indicate that child labor is a major problem, particularly in the agricultural sector.[791] Government officials such as the Special Prosecutor for Children's Issues claim that relevant government authorities have failed to even reflect on how to combat the issue.[792]

In 2013, the National Commission for Human Rights (*Comisión Nacional de los Derechos Humanos*, CONADEH) stated that approximately 412,000 children between the ages of five and 17 work;[793] although the National Statistics Institute (*Instituto Nacional de Estadistica*, INE) data from 2013 show a lower number, 372,578.[794] Data from the INE shows that 359,617 children between the ages of five and 17 were working in 2011.[795] The same year, 224,209 children, or 62.3 percent of working children between the ages of five and 17, worked in agriculture, hunting, and forestry.[796] The STSS stated that in 2013 it only authorized 550 children to work.[797]

The USDOL List of Goods Produced by Child Labor or Forced Labor includes child labor in the production of melon, coffee, and lobsters in Honduras.[798] The 2013 USDOL Report on Findings

[787] OTLA's specific questions to the GOH, June 11, 2012.
[788] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[789] Follow-up Commission meeting, statement by COSIBAH representative, May 20, 2013.
[790] For general information on child labor and government efforts to address it in Honduras, please see the Department of Labor's Findings on the Worst Forms of Child Labor, *available from:* http://www.dol.gov/ilab/programs/ocft/tda.htm.
[791] *Trabajo Infantil en Honduras – 2012, Secretaría de Estado en los Despachos de Justicia y Derechos Humanos*, February 14, 2012; *El Trabajo infantil en Honduras, Diagnóstico situacional de algunas de las peores formas de trabajo infantil en el país*, Casa Alianza, October 2011.
[792] La Tribuna, "*Honduras sigue en deuda con la niñez*" June 13, 2012, *available from:* http://www.latribuna.hn/2012/06/13/honduras-sigue-en-deuda-con-la-ninez/.
[793] CONADEH Press Release, June 14, 2013, "*Más de 412,000 niños trabajan en Honduras."*
[794] INE, May 2013 "*Encuesta Permanente de Hogares de Propósitos Múltiples," available from:* http://www.ine.gob.hn/index.php/censos-y-encuestas/encuestas-todos-las-encuestas-de-honduras/encuesta-permananente-de-hogares
[795] INE, *Serie Histórica de Trabajo Infantil* 1990-2011, *available from:* http://ine.gob.hn/index.php/datos-y-estadisticas/estadisticas-sociales-y-demograficas/mercado-laboral/82-trabajo-infantil.
[796] *Informe de Trabajo Infantil 2012 Honduras, Instituto Nacional de Estadística*, *available from:* http://www.ine.gob.hn/drupal/node/117.
[797] STSS response to USDOL questionnaire on child labor in Honduras, January 15, 2014.
[798] U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor, 2014.

on the Worst Forms of Child Labor also found child labor in the production of sugarcane.[799] Children working in agriculture may use dangerous tools, carry heavy loads, be exposed to extreme temperatures, and handle harmful pesticides.[800]

CONCLUSIONS ON THE MINIMUM AGE FOR THE EMPLOYMENT OF CHILDREN AND THE PROHIBITION AND ELIMINATION OF THE WORST FORMS OF CHILD LABOR:

Based on its review of individual cases and nation- and sector-wide reports of child labor, the OTLA has concerns regarding the enforcement of labor laws with respect to the minimum age for employment of children and the prohibition and elimination of the worst forms of child labor, especially in the agricultural sector.

3. Acceptable Conditions of Work

The definition of "labor laws" in Article 16.8 of the CAFTA-DR includes statutes or regulations, or provisions thereof, that are directly related to acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health (OSH). The Submission alleges that the STSS failed to effectively enforce Honduran laws with regard to acceptable conditions of work, particularly in the agriculture and port sectors.

a) Minimum Wages and Hours of Work

The Submission alleges that the STSS does not effectively enforce provisions of Honduran labor law that provide for acceptable conditions of work with regard to minimum wages and hours of work. As evidence, the Submission provided examples from 10 workplaces: Pinehurst, SurAgro, Las Tres Hermanas, Okra Sur, Agroexportadora Dome, Agripac, La Pradera, Plantas Ornamentales, Azucarera la Grecia, and the Port of Cortés (ENP).

Under the Honduran Labor Code, employers are obligated to pay workers as provided by contract (individual or collective) or the minimum stipulated by law, whichever is greater.[801] Article 381 defines the minimum wage, which is set by a tripartite commission.[802] The minimum wage varies depending on the industry, the size of the employer, and the location of the workplace.[803] Article 322 establishes that ordinary hours of daytime work are not to exceed eight hours per day and 44 hours per week and limits night hours to six per day and 36 per

[799] U.S. Department of Labor's 2013 Findings on the Worst Forms of Child Labor.
[800] While country-specific information on the dangers children face in agriculture is not available, research studies and other reports have documented the dangerous nature of tasks in agriculture and their accompanying occupational exposures, injuries and potential health consequences to children working in the sector. International Labour Office, "Children in hazardous work: What we know, What we need to do." Geneva, ILO, 2011, *available from:* http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_155428.pdf; International Labour Office. *Farming*, ILO, January 31, 2012.
[801] Labor Code, Article 95.
[802] Labor Code, Article 381; Minimum Wage Law, Article 15 provides the legal basis for the tripartite minimum wage committee.
[803] Acuerdo No. STSS 001-2012, La Gaceta 32,723, page A.4, *Acuerdos y Leyes*, January 17, 2012.

week.[804] Article 330 provides for a 25 percent premium for overtime worked during daytime hours.[805] Article 325 exempts agricultural workers from the eight-hour maximum per day and provides for a 12-hour maximum.[806]

In its response to the OTLA's general questions on Honduran labor law, the STSS indicated that overtime premiums do not apply to agricultural workers because their maximum regular work day is 12 hours, rather than eight.[807] STSS officials explained that the daily minimum wage is based on an eight hour day and that agricultural workers must be compensated at the regular hourly rate (daily minimum wage divided by eight hours) for all hours worked up to 12.[808] Minimum wage violations are often referred to as overtime violations in the agricultural sector; the OTLA considers them together as one issue, despite the differing terminology.

The OTLA received documentation of 15 inspections where inspectors evaluated companies' compliance with laws on minimum wages and hours of work. In the majority of those inspections, STSS inspectors found violations but failed to impose fines or take action to ensure remediation of the violations (see Table 4 below).

In the cases reviewed by the OTLA, as a result of its inspections, the STSS confirmed a failure to pay the minimum wage at least 12 times at eight different companies. In the course of those inspections, the STSS also confirmed failure to pay the correct overtime wages at least five times at five of the companies. However, the STSS imposed fines in only three of the 15 instances where it found such violations.

In all cases where the STSS imposed fines, the OTLA received no evidence that the STSS continued to pursue enforcement actions once the employers paid the fines, even though the employers failed to pay back wages owed to workers, as ordered by the STSS. For example, at SurAgro, STSS inspectors identified minimum wage violations during a March 8, 2007, inspection and ordered the company to pay the minimum wage and back wages owed to workers.[809] The STSS imposed a fine on October 14, 2008,[810] which the employer paid on October 22, 2008.[811] However, on November 14, 2008, the STSS closed the case without verifying whether the company had remediated the violations.[812] During inspections conducted on November 19, 2009, and March 1, 2010, STSS inspectors found ongoing minimum wage violations at SurAgro.[813] The STSS regional office in Choluteca forwarded the inspectors' findings to the STSS Inspector General in Tegucigalpa to request the application of fines,[814] but

[804] Labor Code, Article 322.
[805] Labor Code, Article 330.
[806] Labor Code, Article 325.
[807] GOH responses to the OTLA's general questions, page 17, July 20, 2012.
[808] OTLA interview with STSS Choluteca Director, July 12, 2012.
[809] STSS report of inspection at SurAgro, July 9, 2007; Request for inspection and STSS order to conduct inspection at SurAgro, March 8, 2007; STSS notification report of inspection at SurAgro, November 2, 2007.
[810] STSS notice of sanction to SurAgro, October 14, 2008.
[811] SurAgro receipt for payment of 90,000 HNL (US $4,323) fine, October 22, 2008.
[812] STSS document closing SurAgro case, November 14, 2008.
[813] STSS notification report of inspection at SurAgro, page 2, March 1, 2010; Report on Labor Inspections at Foreign-owned plantations in Choluteca, March 25, 2010, STSS Choluteca Director.
[814] Report on Labor Inspections at Foreign-owned plantations in Choluteca, March 25, 2010, STSS Choluteca Director.

the STSS did not take further steps on the matter.[815] A December 2012 report provided to the OTLA by the STSS noted that the minimum wage violations continue; this was again confirmed by STSS officials in May 2013.[816] In May 2014, workers reported that the company continues to pay less than the minimum wage.[817] Despite finding SurAgro to be violating minimum wage laws for over six years, the STSS has still not taken effective action to ensure remediation or stop the unlawful practices.

Table 4: STSS Investigations of Failure to Enforce Minimum Wage and Overtime Laws

Company	**Violation(s) Alleged**	**Confirmed by STSS**	**Evidence of Sanction**	**Evidence of Remediation**
Pinehurst	Yes	Yes – 10/5/10	Fine and ordered to pay back wages	Paid fine but never paid the 453,433 HNL (US $21,779) in back wages.
SurAgro	Yes	Yes – 3/8/07	Fine and ordered to pay back wages	Paid fine but evidence indicates that minimum wage violations continue, never paid the 2,702,821 HNL (US $129,818) in back wages.
SurAgro	Yes	Yes - 11/09	None	None
SurAgro	Yes	Yes – 09/12	None	None
Las Tres Hermanas	Yes	No – 9/12	N/A	N/A
Okra Sur	Yes	Yes – 2/26/10	None	No, evidence indicates that minimum wage violations continue.
Agroexportadora Dome	Yes	Yes – 3/10	None	None
Agripac	Yes	Yes – 3/5/10	None	None
La Pradera	Yes	No inspection	N/A	N/A
Plantas Ornamentales	Yes	Yes – 3/18/11	None	Back wages paid to workers still employed on 1/26/12[818] but violations have not been remediated.
Plantas Ornamentales	Yes	Yes – 9/11/12	None	None
Azucarera La Grecia	No	Yes – 1/30/13	None	None
Puerto Cortés – Stevedores	Yes	No (no inspection)	N/A	N/A
ENP - Security Guards	Yes	Yes – overtime violations confirmed: 10/22/10	Fine and ordered to pay back wages	Paid fine. ENP now pays workers correct overtime amount, but has never paid the back wages.
ENP – Fork Lift Operators	Yes	Yes – 5/5/12	None	None
Total	**-**	**12**	**3**	-

[815] The OTLA requested all relevant documents from the GOH, OTLA questions to the GOH, June 11, 2012.
[816] STSS Report on follow-up inspections at workplaces named in the CAFTA-DR complaint, Dec. 18, 2012; OTLA meeting with STSS officials, May 20, 2013.
[817] USG representatives meeting with SurAgro workers, May 2, 2014.
[818] STSS notification report of inspection at Plantas Ornamentales, November 21, 2011 (documenting which workers received back wages during a January 26, 2012 re-inspection).

At Pinehurst, STSS inspectors identified overtime violations during an October 5, 2010 inspection and ordered remediation on December 7, 2010.[819] On February 9, 2011, the STSS conducted a re-inspection and found that the employer had not corrected the original violations or terminated the practice of failing to pay overtime wages.[820] The STSS imposed a fine on October 26, 2011,[821] which the employer paid on May 2, 2012.[822] The GOH did not provide any information to indicate whether the company had paid the back wages in accordance with the STSS order or the STSS had closed the case without payment verification; however, in July 2012, CDM reported to the OTLA that Pinehurst had not yet paid the back wages required under the STSS 2010 order.[823]

Similarly, the STSS identified overtime violations with respect to the security guards at the ENP during an October 22, 2010 inspection.[824] The STSS imposed a fine on July 7, 2011, which the company paid on February 6, 2012.[825] However, in July 2012, ENP security guards reported to the OTLA that, while the ENP was now paying them the correct amount in overtime wages, they had not yet been paid any back wages.[826]

Based on its review of the evidence, the OTLA has serious concerns regarding the STSS's enforcement of Honduran laws with respect to minimum wages and hours of work.

b) Occupational Safety and Health

The Submission alleges the STSS does not effectively enforce provisions of Honduran labor law that provide for acceptable conditions of work with regard to OSH. As evidence, the Submission provided examples from the agricultural sector and at the Port of Cortés (ENP).

Article 128.6 of the Honduran Constitution establishes the obligation of employers, including agricultural employers, to comply with OSH legal provisions.[827] Labor Code Title V on the Protection of Workers during the Performance of Work and the General Regulation on Preventative Measures for Workplace Accidents and Work-Related Illnesses (*Reglamento General de Medidas Preventivas de Accidentes de Trabajo y Enfermedades Profesionales,* OSH Regulation) include the main provisions that define OSH requirements under Honduran law.[828]

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[819] STSS notification report of inspection at Pinehurst, December 7, 2010.
[820] STSS notification report of inspection at Pinehurst, December 7, 2010; STSS Legal Services decision regarding Pinehurst, March 23, 2011; STSS report of re-inspection at Pinehurst, February 9, 2011.
[821] Decision of the STSS inspector general imposing fine on Pinehurst, IL-100914050107210, October 26, 2011.
[822] Pinehurst receipt for payment of 10,000 HNL (US $480) issued by the Treasury of Honduras, May 2, 2012.
[823] OTLA interview with CDM, July 17, 2012.
[824] STSS record of inspection at ENP regarding hours of work, October 22, 2010; STSS record of inspection at ENP regarding wages, October 22, 2010.
[825] Resolution issued by the Labor Inspector General regarding the ENP, July 7, 2011; ENP receipt for payment of 10,000 HNL (US $480) fine, February 6, 2012.
[826] OTLA interviews with ENP workers, July 2012.
[827] Honduran Constitution Article 128.6.
[828] OSH Regulation, Article 1.

The OSH Regulation contains articles establishing employers' responsibility to provide a safe and healthy workplace. For example, OSH Regulation Article 436 lists the personal protective equipment that employers must provide to agricultural sector workers, including: a) a wide-brimmed hat, b) overalls or long-sleeved shirts, c) rubber boots, d) waterproof gloves, e) safety glasses or face shields, and f) masks.[829] OSH Regulation Article 68.1 states that all workplaces must have an adequate supply of potable water that is proportionate to the number of workers, easily accessible, and available close to work stations.[830] OSH Regulation Article 9(d) states that all employers must affiliate their employees to the IHSS to protect the rights conferred by law to workers affected by occupational risks.[831]

Labor Code Article 617(c) and Article 2 of the OSH Regulation explicitly empower STSS inspectors to inspect for OSH violations.[832] The STSS General Directorate of Social Welfare has a specialized corps of inspectors that exclusively conduct OSH inspections.[833] Labor Code Article 435 requires that employers report workplace accidents to the STSS Inspector General and the corresponding labor court within 24 hours and specific information about the accident within three days.[834] Article 4 of Legislative Decree Number 39 establishes fines from 50 to 500 HNL (US $2.40 to $24) for employer failure to comply with OSH laws and regulations.[835] Generally, the STSS appears to give employers 60 business days to correct OSH violations and does not impose a fine during this period.[836]

The OTLA received documentation of eight inspection reports regarding five workplaces where inspectors evaluated companies' compliance with OSH laws and regulations. In all eight cases, the STSS inspectors found OSH violations. Despite OTLA requests for all relevant documents, the OTLA received no documentation indicating that the STSS followed up to ensure remediation of the violations or impose fines for continuing violations (see Table 5).[837]

Table 5: STSS Investigations of Occupational Safety and Health Violations

Company	OSH Violation(s) Confirmed by the STSS	Evidence of a Sanction	Evidence of Remediation
SurAgro	Yes – 3/8/07	None	None
SurAgro	Yes – 3/6/08	None	None
Okra Sur	Yes – 4/9/10	None	None
Okra Sur	Yes – 9/12/12	None	None
Agroexportadora Dome	Yes – 3/11/10	None	None
Agripac	Yes – 3/5/10	None	None
Agripac	Yes – 9/12/12	None	None
Azucarera la Grecia	Yes – 1/6/11	None	None
Total	**8**	**0**	**0**

[829] OSH Regulation, Article 436.
[830] OSH Regulation, Article 68.1.
[831] OSH Regulation, Article 9.
[832] Labor Code, Article 617; OSH Regulation, Article 2:.
[833] STSS website, http://www.trabajo.gob.hn/organizacion/dgt-1/direccion-generla-de-prevision-social.
[834] Labor Code, Article 435.
[835] Decree No. 39, Article 4.
[836] *See:* STSS report of inspection at Agripac, March 5, 2010; STSS report of inspection at Okra Sur, April 9, 2010; STSS OSH notification receipt regarding SurAgro, July 2, 2007.
[837] OTLA's specific questions to the GOH, June 11, 2012.

In many instances, the STSS did not re-inspect or take any other follow-up measures to determine whether employers had corrected OSH violations identified, despite giving notice to employers that the STSS would impose fines if employers failed to correct the violations within specified timeframes. In inspections of Agripac in March 2010 and Okra Sur in April 2010, STSS inspectors identified 20 OSH violations at each company, including failure to provide personal protective equipment and access to potable water and failure to report OSH incidents to the proper authorities.[838] In each instance, the STSS informed the employer that it had 60 business days to correct the violations or face a penalty ranging from 50 to 500 HNL (US $2.40 to $24). The evidence provided by the GOH to the OTLA suggests the STSS did not take any actions including following routine procedures such as conducting re-inspections of these companies after the 60-day period to determine whether the employers had corrected the violations and did not assess fines.[839] In September 2012, the STSS again identified OSH violations at both Agripac and Okra Sur;[840] however, a December 18, 2012 STSS report on these inspections makes no mention of any STSS intentions to order sanctions or remediation.[841]

In the few instances when the STSS did conduct re-inspections and found that the violations continued, the STSS took no actions to follow up including imposing fines on the employers for failure to remedy the violations. During a March 8, 2007 inspection of SurAgro, the STSS identified 18 OSH violations, including SurAgro's failure to provide personal protective equipment and access to potable water and failure to report OSH incidents to the proper authorities.[842] On July 9, 2007, the STSS informed SurAgro that it had 60 business days to correct the violations and that it would impose a penalty ranging from 50 to 500 HNL (US $2.40 to $24) if the company failed to comply.[843] The STSS re-inspected a year later, at which time it found that SurAgro had not corrected 15 of the 18 identified OSH violations, including the violations related to personal protective equipment and potable water.[844] At that time, the STSS did not fine SurAgro. Rather, it gave the company another 60 business days to correct the violations and reiterated that the STSS would impose a fine if SurAgro failed to comply. The OTLA requested any evidence that the STSS ever levied a fine against SurAgro for the OSH violations, but the GOH did not provide any.[845] In July 2012, over five years after the initial violations of important OSH standards at SurAgro were first reported, workers told the OTLA

[838] STSS notification report of inspection at Agripac, March 25, 2010; Report on Labor Inspections at Foreign-owned plantations in Choluteca, March 25, 2010, STSS Choluteca Director; STSS report of inspection at Okra Sur, April 9, 2010.
[839] OTLA's specific questions to the GOH, June 11, 2012.
[840] STSS record of inspection at Okra Sur, September 12, 2012; STSS record of inspection at Agripac, September 12, 2012.
[841] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[842] STSS OSH notification receipt regarding SurAgro, July 2, 2007.
[843] STSS OSH notification receipt regarding SurAgro, July 2, 2007.
[844] STSS report of re-inspection at SurAgro, March 6, 2008. The report was silent as to the three other violations, including the violation pertaining to enrollment of workers in the IHSS.
[845] GOH answers to the OTLA's specific questions, August 20, 2012, page 23; documents received by the OTLA from the GOH, July 20, 2012 (these volumes of documents include the OSH inspection reports and other documentation related to the inspection and sanction process but no evidence of a fine being levied or collected).

that SurAgro continued to fail to provide personal protective equipment and access to potable water.[846]

The STSS failed to sanction any of these five companies for OSH violations found during inspections conducted over the period March 2007 – September 2012 (see Table 5). Despite prior findings of OSH violations, it also appears that the STSS did not investigate OSH conditions during the September 2012 inspections of SurAgro and Azucarera la Grecia.[847]

Based on its review of the evidence, the OTLA has serious concerns regarding the STSS's enforcement of Honduran laws with respect to occupational safety and health.

CONCLUSIONS ON ACCEPTABLE CONDITIONS OF WORK

The OTLA found repeated failures by the STSS: 1) to take legally required actions to ensure remediation of minimum wage and/or overtime violations at seven workplaces (Pinehurst, SurAgro, Okra Sur, Agroexportadora Dome, Agripac, Plantas Ornamentales, and the ENP); 2) to sanction for minimum wage and/or overtime violations in accordance with the law at seven workplaces (Agripac, Agroexportadora Dome, Azucarera La Grecia, Plantas Ornamentales, Okra Sur, SurAgro, and the ENP); 3) to take legally required actions to ensure remediation of OSH violations at five workplaces (SurAgro, Okra Sur, Agroexportadora Dome, Agripac, and Azucarera la Grecia); and, 4) to sanction for OSH violations in accordance with the law at five workplaces (SurAgro, Okra Sur, Agroexportadora Dome, Agripac, and Azucarera La Grecia).

Based on its review of the evidence, the OTLA has serious concerns regarding the STSS's enforcement of Honduran laws with respect to acceptable condition of work, including minimum wages, hours of work, and occupational safety and health.

IV. The Government of Honduras' Actions during the OTLA's Review

Throughout the review process, the GOH demonstrated a willingness to engage with the OTLA concerning the issues raised in the Submission. In response to the OTLA's questions related to the Submission, the STSS conducted an internal audit to collect information and provided the OTLA with a substantial amount of organized documentation.[848] High-level STSS officials facilitated private and confidential OTLA interviews with eight inspectors, as well as three regional STSS office supervisors. The OTLA further notes GOH officials' willingness to discuss the problems OTLA identified with the enforcement of Honduran labor laws.

During the course of the review, some of the submitters, including unions and NGOs, formed a commission (the Follow-Up Commission) to monitor the submission process. Senior GOH

[846] OTLA interviews with SurAgro workers, July 2012; OTLA interview with COSIBAH (Choluteca), July 11, 2012.
[847] STSS report on follow-up inspections at workplaces named in the CAFTA-DR complaint, December 18, 2012.
[848] However, the GOH provided no judicial documents to the OTLA. For example, the OTLA specifically requested court documents relevant to the case brought by SITRAPETRALEX union leaders, but because the STSS had no knowledge of the case, they could not provide the OTLA with the requested documents.

officials met with the Follow-Up Commission and agreed to develop a coordinated plan containing recommendations intended to address several of the concerns raised in the Submission.[849] Union and NGO representatives on the Follow-Up Commission produced a report, "Recommendations for a remediation plan for the State of Honduras to achieve labor law compliance related to the CAFTA-DR complaint," developed with the support of the Solidarity Center and AFL-CIO, which they presented to the GOH on January 6, 2013. The OTLA participated in a meeting with the Follow-Up Commission on May 20, 2013, in which the STSS presented its responses to specific recommendations made by the unions and NGOs. The OTLA has carefully reviewed the Follow-Up Commission's report's recommendations and the GOH response.

In addition, after the OTLA's mission and meetings in July 2012, the STSS conducted inspections of 14 workplaces noted in the Submission, from September 7 to 13, 2012.[850] This increased activity is welcome and essential to the resolution of the issues identified. Nonetheless, to date, the OTLA has not seen measurable systemic improvement in Honduras to address the concerns raised in the Submission, including the concerns with respect to the effective enforcement of labor laws.

V. Conclusions

The OTLA conducted a thorough and detailed review of all information obtained related to the allegations raised in the Submission to evaluate the GOH's efforts, including the enforcement of its labor laws in light of its commitments under the CAFTA-DR.

Based on that review, the OTLA has serious concerns regarding the effective enforcement of labor laws regarding the right of association and the right to organize and bargain collectively, specifically related to *protección del estado*, *fuero sindical*, anti-union retaliation, union dissolution, and employer interference with the right to associate and bargain collectively; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. Additionally, the OTLA review raises concerns regarding the effective enforcement of laws related to the minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor, especially in the agricultural sector.

The OTLA also finds evidence that raises serious concerns with respect to the GOH's capacity to prevent, identify, and remedy violations of law. Such concerns include the STSS's failures to: (1) respond to verbal inspection requests; (2) gain access to worksites; (3) inspect for all alleged, potential, or previously identified violations; (4) calculate, impose, and collect fines to deter future violations; and (5) ensure remediation of identified violations.

[849] Recommendations for a remediation plan for the State of Honduras to achieve labor law compliance related to the DR-CAFTA complaint, January 6, 2013, *available from:* http://www.aflcio.org/content/download/66811/1761401/Honduras+CAFTA+Recommendations+January+2013+English.pdf.

[850] The STSS did not conduct inspections at any of the Hanes factories, nor did it inspect at La Pradera or Agroexportadora Dome, which were no longer in business. Additionally, the FHIA inspection was conducted in July 2012.

VI. Recommendations

A. Recommendations to the Secretary of Labor

The OTLA recommends to the Secretary of Labor that the U.S. government engage with the Government of Honduras to address the concerns identified in this report and the recommendations to the Government of Honduras set forth above, and that the U.S. government continue its cooperative engagement with the Government of Honduras to develop a Monitoring and Action Plan, with the intention to develop time-bound steps and benchmarks to measure progress, taking into consideration the accompanying recommended actions to address the underlying systemic problems.

The OTLA recommends to the Secretary of Labor that the U.S. government initiate consultations through the contact points designated in the CAFTA-DR Labor Chapter under Article 16.4 to develop the Monitoring and Action Plan described above.

The OTLA recommends to the Secretary of Labor that the U.S. government convene a meeting of the representatives from Honduras and the United States of the CAFTA-DR Labor Affairs Council to discuss the findings and recommendations of the report and the outcome of the consultations, at the level of Trade and Labor Ministers or their designees.

The OTLA, in consultation with the U.S. Trade Representative and the U.S. Department of State, will review the progress of this engagement and any efforts by the Government of Honduras to address the concerns identified in this report, within 12 months after the report's publication, and will consider appropriate action under the CAFTA-DR, including a recommendation by OTLA to the Secretary of Labor that the United States request Cooperative Labor Consultations under Article 16.6 the Labor Chapter.

B. Recommendations to the Government of Honduras

The OTLA has undertaken a review of the Submission in light of the commitments the GOH made under the CAFTA-DR, including those under Article 16.2.1. As a result, the OTLA makes the following recommendations to facilitate compliance by the GOH with its Chapter 16 (Labor) commitments. The recommendations include seven core recommendations, accompanied by concrete actions to address the underlying systemic problems reviewed in the Submission Report.

1. **Ensure that STSS inspectors respond to written and verbal requests for inspections, in accordance with the applicable laws and internal protocols.**[851]

[851] The STSS has nonbinding protocols for inspectors to follow when investigating for possible labor law violations related to freedom of association, child labor, and OSH. The protocols provide a set of guidelines and recommendations on methodologies and techniques to facilitate STSS investigations of employers with regard to these three issue areas. However, these protocols are optional and, with the exception of the child labor protocol, the protocols are not explicitly linked to the inspection manual's recommended inspection procedures.

- Train STSS inspectors to respond to both verbal and written inspection requests as required under Labor Code Article 618;
- Allocate STSS resources and inspectors to the regional and central offices according to the incidence of worker complaints received (complaint-driven) and industries and regions with a high incidence of labor law violations (targeted, high-risk); and
- Develop and implement a system to document each inspection request and track and monitor the STSS response.

2. **Ensure that relevant institutions develop a procedure or mechanisms to assist STSS inspectors to take appropriate steps to compel access to worksites, and impose fines and notify Labor Courts when access is denied, in accordance with the applicable laws and internal protocols.**
   - Train STSS inspectors on the appropriate steps to take when denied access to worksites;
   - Clarify what is meant by "unjustified resistance" in Labor Code Article 617(b) so that inspectors understand the circumstances under which they should report denials of access to the Labor Courts;
   - Clarify what is meant by "immediate action" and "under their responsibility" in Labor Code Article 617(b) so that inspectors understand the circumstances under which they may call on the police for assistance to gain access to worksites upon denial of entry;
   - Develop and implement an outreach program to inform employers of their obligation to grant inspectors access to their worksites and the consequences of failure to do so, including clarifying that the absence of management from the premises at the time of an inspection is not a legitimate grounds for denial of access.

3. **Ensure that STSS inspectors investigate known violations of law and, upon receipt of notice, all alleged, potential, or previously identified violations, in accordance with the applicable laws and internal protocols.**
   - Develop and implement a process to ensure that inspectors are adequately prepared for inspections, in particular to investigate all alleged, potential, or previously identified violations;
   - Train STSS inspectors on general, on-site investigation techniques;
   - Develop and implement a process to ensure regular and systemic coordination among general inspectors and between general inspectors and OSH inspectors to facilitate sharing of information on all alleged, potential, or previously identified violations of labor law at specific worksites.

4. **Ensure that the STSS imposes sanctions for labor law violations, in accordance with applicable laws, calculates fines that create appropriate penalties to deter violations, and collects fines in a timely fashion.**
   - Clarify the application and calculation of fines "according to the particular circumstances of each case" under Labor Code Article 625 to ensure that the amount of fines calculated is more proportionate to the violations, including by:
     - Clarify that the calculation and imposition of sanctions regarding minimum wage, occupational safety and health, overtime, and illegal firing of protected union

leaders and founding union members must be based on the number of workers or union members affected by each violation; and
    - Clarify that fines must be increased for repeated or flagrant violations.

5. **Ensure that STSS inspectors enforce their remediation orders and compel employer compliance.**
    - Re-inspect workplaces until remediation of labor law violations identified is verified, even if fines have been paid; and
    - Develop and implement a mechanism to compel full payment of back wages and other compensation owed to workers.

6. **Improve the enforcement of laws related to freedom of association and collective bargaining.**
    - Train STSS inspectors on enforcing laws related to freedom of association and collective bargaining, specifically on conducting investigations of alleged unlawful dismissal of founding union members and union leaders, employer interference in associational activity, and anti-union reprisals, discrimination, and other retaliation;
    - Implement the Inspection Protocol for Freedom of Association, particularly in San Pedro Sula and at the new regional offices located near Export Processing Zones;[852]
    - Develop and implement alternative means for the STSS to notify employers of workers' intent to form a union and of the identities of the founding union members protected from dismissal to prevent employer refusal or denial of such notification (e.g., by electronic notification);
    - Develop and implement criteria and procedures for the STSS to register collective pacts to prevent their use to undermine worker's right to freedom of association and collective bargaining;
    - Develop and implement an outreach program, for employer associations and unions, to inform them of legal protections for founding union members and union leadership, including the process that employers must follow to legally dismiss workers under these protections and the consequences for illegal firings;
    - Inform all workers unlawfully dismissed while under legal protections for founding union members and union leadership of their right to reinstatement, the loss of this right upon acceptance of severance, and the steps the STSS will take if they choose to assert their right to reinstatement; this should occur, at a minimum, when the STSS provides information to such workers seeking calculation of their severance benefits;
    - Order reinstatement for eligible founding union members or union leaders unlawfully dismissed who choose to assert this right and conduct re-inspections to verify compliance; and
    - Fine employers six months' salary of a union leader for dismissing that leader without prior judicial approval, calculate and impose the fine for every union leader dismissed without such approval, and collect the fines in a timely fashion.

[852] *Colección de Protocolos de Inspección – Honduras, Protocolo Libertad de Asociación*. This protocol was produced by the USDOL-funded Comply and Win (*Cumple y Gana*) project with consensus from the government, workers, and employers.

7. **Improve enforcement of laws related to child labor**
    - Implement the Roadmap to Eliminate Child Labor and the National Plan of Action for the Prevention and Elimination of Child Labor (2008-2015);
    - Ensure that children who work have proper authorization from the STSS, as required by law;
    - Increase resources for inspections in areas where exploitative child labor occurs, such as in rural areas and indigenous communities, where hazardous activities in agriculture and other activities exist and implement targeted programs to address child labor in these areas; and
    - Make information publicly available on child labor inspections and sanctions, including information on fine collection and remediation of violations identified.

Annex 1 - Chronology of USG Engagement with the GOH on CAFTA Labor Issues

2012

- April 12 - Staff from OTLA, USTR, and the Department of State met with officials from the Embassy of Honduras to discuss the Submission process.
- June 11-
    - The OTLA sent questions (a set of general questions and a set of specific questions) pertaining to the Submission to the GOH via Vice Minister of Labor Carlos Montes.
    - OTLA staff met with Ambassador Alcerro and staff at the Embassy of Honduras reiterating that it had sent questions to the GOH and to discuss concerns about the decision to accept earlier in the 60 day period than for any other submission.
- June 20- Staff from USDOL (OTLA, OCFT, and Office of the Solicitor) and USTR met with Vice Minister Montes and Vice Minister of Commerce Melvin Redondo in Washington, DC to discuss the Submission process.
- July 10-
    - The USDOL (OTLA and Office of the Solicitor) delegation to Honduras met with Tomas Arita Valle, President of the Labor Chamber of the Supreme Court of Honduras to learn about the Honduran judicial system.
    - The USDOL delegation met with Vice Minister Montes and senior staff at the Ministry of Labor (STSS) in Tegucigalpa to learn about general enforcement efforts of the STSS.
- July 12- The USDOL delegation met with Regional Director of the Choluteca STSS Walter Pineda, Chief Inspector, Labor Inspectors, and Conciliators to discuss specific cases from the Submission in Choluteca.
- July 13- The USDOL delegation met with Honduran Minister of Labor Avila, STSS Legal Advisor Mario Villanueva, and U.S. Ambassador to Honduras Lisa Kubiske in Tegucigalpa to discuss the Submission generally.
- July 16 – The USDOL delegation met with Regional Director of the San Pedro Sula STSS Norman Portillo, Chief Inspector, Labor Inspectors, and Conciliators to discuss specific cases from the Submission in San Pedro Sula.
- July 19 – The USDOL delegation met with Regional Director of the Puerto Cortés STSS Alejandro Hilsaca Coto and Labor Inspectors to discuss specific cases from the Submission in the Port of Cortes.
- July 20- Vice Minister Montes, Legal Advisor Mario Villanueva, and Legal Advisor Suyapa Thumann met with the USDOL delegation in San Pedro Sula to discuss USDOL's review, provide USDOL with written responses to the general questions sent by OTLA on June 11, and deliver four volumes of documents relevant to the Submission.
- August 1 – Vice Minister Montes sent the OTLA a letter to follow up on the USDOL delegation to Honduras in July.
- August 14 – The OTLA sent a response to Vice Minister Montes' August 1 letter.
- August 22 – The Embassy of Honduras delivered the GOH's responses to the OTLA's June 11 set of specific questions.

- September 4 –Mario Villanueva sent the OTLA documents pertaining to a tripartite dialogue in Honduras to address the issues raised in the Submission, a chart reporting the status of the investigations of violence against unionists listed in the Submission, and a summary of a new draft inspection law.
- September 12 – Vice Minister Montes sent the OTLA a letter urging OTLA not to request consultations in its public report.
- September 17-19 – Mario Villanueva sent the OTLA records from inspections conducted during September 2012 of 15 of the 17 companies named in the Submission as well as a schedule for re-inspecting some of the companies.
- November 2 – The OTLA sent Vice Minister Montes a letter informing the STSS of the OTLA's decision to extend the period of review.
- November 6 – Vice Minister Montes sent the OTLA a letter regarding the extension of the 180 deadline and reiterating his belief that the public report should conclude that the GOH has fulfilled its obligations under CAFTA.
- November 15 –
    - The OTLA sent Vice Minister Montes a letter thanking him for the STSS's collaboration and encouraging further sharing of information, including the final September 2012 inspection reports.
    - Mario Villanueva sent the OTLA the GOH's plan for the tripartite dialogue referenced in his September 4 email.
- December 12 – OTLA delegation to Honduras (Monitoring and Enforcement of Trade Agreements Division Chief Paula Albertson and International Relations Officer Halima Woodhead) and the U.S. Embassy in Tegucigalpa's Labor Officer met with Minister Avila, Vice Minister Montes, and Mario Villanueva in Tegucigalpa to ask for status updates on the September inspections.
- December 18 – Mario Villanueva sent the OTLA a chart listing violations found in the September 2012 inspections of companies named in the Submission.

2013

- January 9 – U.S. Embassy Labor Officer attended a meeting between civil society and the GOH in Tegucigalpa in which civil society delivered its recommendations for a plan of action to address the issues raised in the Submission.
- May 20 –
    - Paula Albertson, Halima Woodhead, and U.S. Embassy Labor Officers met with Minister Avila, Vice Minister Montes, and other senior STSS officials in Tegucigalpa to discuss the outcomes of the September 2012 inspections and the January 9 civil society recommendations.
    - Paula Albertson, Halima Woodhead, and U.S. Embassy Labor Officers met with the follow-up commission of unions, NGOs, and STSS officials. Topics addressed included the September 2012 inspections, allegations of ongoing violations, civil society recommendations, and the STSS's response to those recommendations.
- May 21 – Paula Albertson, Halima Woodhead and U.S. Embassy Labor Officers met with Vice Minister Montes and Mario Villanueva to encourage continued dialogue with the follow-up commission.

- August 19 – Ambassador Kubiske met with Minister of Labor Jorge Bogran Perdomo to discuss the STSS' plans to address ongoing labor law violations at Kyungshin-Lear.
- September 18 – Paula Albertson and Halima Woodhead met with Mario Villanueva in Washington, DC.
- September – U.S. Embassy Labor Officer met with the STSS and Kyungshin-Lear representatives to discuss the ongoing freedom of association issues at Kyungshin-Lear.
- October 24 – Deputy Chief of Mission Julie Schechter-Torres spoke at a public forum "Promoting a Culture of Dialogue through New Relationships for the Respect of Rights and Obligations of Workers and Employers" in San Pedro Sula with the submitters, private sector, and GOH, also attended by the OTLA.

2014

- January 26 – Secretary of Labor Thomas Perez and Acting Associate Deputy Undersecretary for International Labor Affairs Eric Biel met with Ambassador Kubiske, Assistant Secretary of State for Western Hemisphere Affairs Roberta Jacobson, outgoing Minister of Labor Bogran, Mario Villanueva, and civil society representatives to discuss opportunities for tripartite solutions to labor issues in Honduras.
- March 21 – Halima Woodhead met with the STSS Regional Director in San Pedro Sula, Bessy Lara.
- April 7-8 – Halima Woodhead and U.S. Embassy Economic Officer met with ENP management, Port Police (UPP) management, and Puerto Cortes Regional STSS Director and an inspector to discuss workers' complaints about anti-union discrimination, dismissals of union members, threats to union leaders, and future restructuring; and encourage cooperative problem-solving.
- April 28 – Ambassador Kubiske and Halima Woodhead met with Minister of Labor Carlos Madero to inquire about the new Minister's priorities, discuss the CAFTA complaint, threats and violence against labor leaders, Kyungshin-Lear, privatization of the Port of Cortes, potential legal reforms related to labor laws, and DOL's announcement of a $7 million grant to reduce child labor and improve working conditions in Honduras.
- June 10 – Halima Woodhead met with STSS Regional Director in San Pedro Sula Bessy Lara to discuss the May 2014 dismissals of 3 union leaders from Kyungshin-Lear.
- September 29 – Halima Woodhead met with Mario Villanueva to discuss the report.
- October 16 – Deputy Undersecretary Carol Pier met with Minister Madero and Mario Villanueva in Lima, Peru to discuss the report.
- December 15 – Halima Woodhead met with the follow-up commission in Tegucigalpa, Honduras.

Annex 2 – National Plan for Employment by Hours

In November 2010, the Honduran Congress passed the National Plan for Employment by Hours (*Plan Nacional de Empleo por Hora*), establishing a hiring scheme for temporary workers.[853] Originally a temporary measure, the Honduran Congress made it permanent law in January 2014. It replaces many of the benefits guaranteed to permanent workers under the Labor Code with a 20 percent pay premium for temporary workers employed by companies enrolled in the program.[854] The Submission alleges that this program infringes on these temporary workers' right to freedom of association.

To date, there have been no formal complaints to the GOH regarding this program. The CUTH, CTH, and CGT filed a complaint with the ILO, arguing, *inter alia*, that the National Plan for Employment by Hours has a potential negative impact on freedom of association, specifically that temporary workers are more vulnerable and less likely to form unions. The ILO Committee on Freedom of Association (CFA), however, issued a decision in June 2012, stating that the National Plan for Employment by Hours is not "incompatible per se with the principles of freedom of association."[855]

The OTLA notes workers' concerns, including that temporary workers often face challenges exercising their right to freedom of association; however, the current oversight system contains provisions to promote job creation while also protecting labor rights. In particular, companies participating in this program, in contrast to other similar programs, must demonstrate to the STSS, through an inspection, their compliance with Honduran labor laws.

The STSS has committed resources to register employers that participate in the program and ensure compliance with the strict requirements of the law and its implementing regulation, including a prohibition on replacing permanent workers with workers hired under the National Plan for Employment by Hours. STSS oversight includes audits prior to registration, in which the STSS examines current payroll records and compares them to records from the time that the decree was passed, and again after implementing the program to ensure that employers are not firing permanent workers and substituting temporary workers. Additionally, the program requires that a minimum of 60 percent of employees must be permanent staff. Notably, the one instance in which OTLA's review found that the STSS successfully ordered the payment of back wages owed to some workers was the result of an inspection under the National Plan for Employment by Hours at Plantas Ornamentales.

[853] National Plan for Employment by Hours, Decree No. 230-2010, La Gaceta 32,358 (A.10), November 5, 2010; Regulation for the National Plan for Employment by Hours, Acuerdo No. STSS-002-2011, January 21, 2011.
[854] This premium is roughly equivalent to the amount of vacation and the 7th day, 13th month, 14th month bonuses due to permanent workers by law.
[855] Definitive report, ILO Committee on Freedom of Association. Case No. 2899, June 15, 2012. Paragraph 570.

Annex 3 – Honduran Labor Laws

A. Código del Trabajo (*Labor Code)*

Título I: Disposiciones Generales *(Title I: General Provisions)*
Capítulo Único: Disposiciones Generales (*Only Chapter: General Provisions*)

Representantes de los patronos (definición) (*Employer Representatives [definition])*
Art. 6. Se consideran representantes de los patronos y en tal concepto obligan a éstos en sus relaciones con los demás trabajadores: los Directores, Gerentes, Administradores, Capitanes de Barco y en general las personas que en nombre de otro, ejerzan funciones de dirección o de administración. ("*The following are considered employer representatives, and as such, are bound by the same obligations as employers in their interactions with other workers: Directors, Managers, Administrators, Ship Captains, and in general, people who, on behalf of another, perform management or administrative functions*.")

Indemnidad (*Indemnity)*
Art. 10. Se prohíbe tomar cualesquiera clase de represalias contra los trabajadores con el propósito de impedirles parcial o totalmente el ejercicio de los derechos que les otorguen la Constitución, el presente Código, sus reglamentos o las demás leyes de trabajo o de previsión social, o con motivo de haberlos ejercido o de haber intentado ejercerlos. ("*Any type of reprisal against a worker designed to impede, partially or completely, the exercise of the rights granted to them by the Constitution, this Labor Code and its regulations, or any other labor or social security laws, or as a result of the worker exercising or attempting to exercise those rights, is prohibited.")*

Título II: Contratos de Trabajo (*Title II: Labor Contracts)*
Capítulo I: Contrato individual de trabajo (*Chapter I: Individual Labor Contracts)*
Definición y normas generales (*Definitions and General Rules)*

Inexistencia de contrato: presunción (*Lack of labor contract: presumption)*
Art. 30. La inexistencia del contrato escrito exigido por este Código es imputable al patrono. El patrono que no celebre por escrito los contratos de trabajo, u omita alguno de sus requisitos, hará presumir, en caso de controversia, que son ciertas las estipulaciones de trabajo alegadas por el trabajador, sin perjuicio de prueba en contrario. (*The employer bears the burden for the lack of a written contract as required by this [Labor] Code. When an employer fails to sign written labor contracts or omits any of the contract's stipulations, in the case of a dispute, it will be presumed that the conditions of work alleged by the worker are true, notwithstanding evidence to the contrary*.")

Título II, Capítulo II: Capacidad para contratar (*Title II, Chapter II: Ability to Contract)*

Trabajadores menores de edad[856] (*Working Minors)*
Art. 32. Los menores de catorce (14) años[857] y los que habiendo cumplido esa edad, sigan sometidos a la enseñanza en virtud de la legislación nacional, no podrán ser ocupados en ninguna

[856] *See:* Code on Childhood and Adolescence, page 125 of this report.

clase de trabajo. Las autoridades encargadas de vigilar el trabajo de estos menores podrán autorizar su ocupación cuando lo consideren indispensable para la subsistencia de los mismos, o de sus padres o hermanos, y siempre que ello no impida cumplir con el mínimo de instrucción obligatoria. ("*Minors fourteen (14) years old and younger, continue to be subject to education requirements provided for in national legislation and may not engage in any type of work. The authorities in charge of monitoring child labor may permit minors to work if they consider it essential for the subsistence of the child or his/her parents or siblings, as long as the work does not interfere with fulfilling the law's minimum educational requirements*.")

Art. 34. Si se estableciere una relación de trabajo con un menor sin sujeción a lo preceptuado en el artículo anterior, el presunto patrono está sujeto al cumplimiento de todas las obligaciones inherentes al contrato, pero el respectivo funcionario del trabajo puede, de oficio o a petición de parte, ordenar le cesación de la relación y sancionar al patrono con multas. ("*If a work relationship is formed with a minor that is not in compliance with the previous article, the presumed employer must comply with all of the inherent obligations of the contract, but a Secretariat of Labor official may, of their own accord or by or request, order termination of the relationship and fine the employer*.")

Contrato por tiempo indefinido: presunción (*Indefinite Period Contracts: Presumption)*
Art. 47. Los contratos relativos a labores que por su naturaleza sean permanentes o continuas en la empresa, se considerarán como celebrados por tiempo indefinido aunque en ellos se exprese término de duración, si al vencimiento de dichos contratos subsisten la causa que le dio origen o la materia del trabajo para la prestación de servicios o la ejecución de obras iguales o análogas. ("*Contracts related to work that is permanent or continuous by nature in a company are considered valid for an indefinite period, even for cases in which the contract establishes a duration, if at the time that said contracts expire, the circumstances which gave rise to the need for the employment or the purpose for the services or the execution of the same or analogous work still exist*.")

El tiempo de servicio se contará desde la fecha de inicio de la relación de trabajo, aunque no coincida con la del otorgamiento del contrato por escrito. ("*Time of service shall count from the date of hire, even if it differs from when the written contract was signed*.")

En consecuencia, los contratos a plazo fijo o para obra determinada tienen carácter de excepción y sólo pueden celebrarse en los casos en que así lo exija la naturaleza accidental o temporal del servicio que se va a prestar o de la obra que se va a ejecutar. ("*As a consequence, contracts for a set period of time or for a specific job are an exception and can only be signed in cases in which the accidental or temporary nature of the service or job that is to be executed demand a temporary contract.*")

[857] El Artículo 120, párrafo dos, del Decreto No. 73-96, que contiene el Código de la Niñez y la Adolescencia (Gaceta 28,053 del 5 de septiembre de 1996), prohíbe la autorización para trabajar a los menores de 14 años. ("*Article 120, paragraph 2 of Decree No. 73-96, which contains the Children's Code (Gazette 28,053 September 5, 1996), prohibits the authorization to work for minors less than 14 years old.*")

Título II, Capítulo IV: Contrato colectivo de trabajo (*Title II, Chapter IV: Collective Bargaining Agreements)*

Definición (*Definition)*
Art. 53. Contrato Colectivo de Trabajo es todo convenio escrito relativo a las condiciones de trabajo y empleo celebrado entre un patrono, un grupo de patronos o una o varias organizaciones de patronos, por una parte, y, por otra, una o varias organizaciones de trabajadores, los representantes de los trabajadores de una o más empresas o grupos de trabajadores asociados transitoriamente. ("*A collective bargaining agreement is any written agreement related to the conditions of work entered into between an employer, a group of employers or one or more employers' organizations on the one hand, and, on the other, one or more workers' organizations or representatives of the employees of one or more companies or transiently associated groups of workers.*")

También se tendrán como convenciones colectivas de trabajo las resoluciones de las juntas de conciliación, cuando fueren aceptadas por las partes. ("*The decisions of conciliation bodies will also be considered collective bargaining agreements when they are accepted by the parties*")

No puede existir más de un contrato colectivo de trabajo en cada empresa. Si de hecho existieren varios vigentes, se entenderá que la fecha del primero es la de la convención única para todos los efectos legales. Los posteriores contratos que se hubieren firmado se considerarán incorporados en el primero, salvo estipulación en contrario. ("*No more than one collective bargaining agreement may exist in a company. If, in fact, various agreements exist, it will be understood that the date of the contract signed first is the effective date of the only agreement for all legal effects. All written contracts signed after that date will be considered incorporated into that first contract, except for contradictory stipulations.*")

Acuerdos con trabajadores no sindicalizados (*Agreements with Non-unionized Workers, Collective Pacts)*
Art. 72. Los pactos entre patronos y trabajadores no sindicalizados se rigen por las disposiciones establecidas para las convenciones colectivas, pero solamente son aplicables a quienes los hayan celebrado o adhieran posteriormente a ellos. ("*Collective Pacts between employers and non-unionized workers are governed by the legal provisions for collective bargaining agreements but are only applicable to workers who previously signed or joined them.*")

Registro y publicidad (*Registration and Publication)*
Art. 78. Todo contrato colectivo deberá ser registrado en la Dirección General del Trabajo, mediante depósito del ejemplar a que se refiere el Artículo 58, a más tardar dentro de los (15) días siguientes. Cualquiera de las partes puede ser encargada de efectuar el depósito. Si la parte encargada no efectuare el depósito, la otra tendrá derecho a hacerlo en cualquier tiempo, haciendo entrega de su ejemplar, a la Dirección General del Trabajo, que le expedirá copia auténtica del convenio y constancia del registro y notificará a la otra parte. ("*Any collective bargaining agreement shall be registered with the General Directorate of Labor within no more than 15 days by filing a copy as required in Article 58. Either party may assume responsibility for filing the agreement, but if the responsible party fails to file its copy, the other party may, at*

any time, file its copy with the General Directorate of Labor, who will then notify the other party and issue an authentic and certified copy.")

Por el hecho del depósito, el cumplimiento de todo contrato colectivo queda bajo la vigilancia de la Dirección General del Trabajo. La Dirección General del Trabajo podrá objetar cualquier disposición de un contrato colectivo de trabajo, cuando considere que es ilícita. ("*Once filed, all collective agreements are under the supervision of the General Directorate of Labor, which may object to any stipulation of an agreement when it considers the stipulation to be contrary to the law*.")

Publicidad del contrato colectivo: obligación empleador (*Publication of Collective Bargaining Agreements: Employer Obligation)*
Art. 79. Los patronos comprendidos en un contrato colectivo estarán obligados a colocar, en lugares visibles del establecimiento o de fácil acceso a los trabajadores, copias del contrato, impresas o escritas a máquina. ("*Employers bound by a collective bargaining agreement are required to post the contract in visible places within their establishment or to store printed or handwritten copies where workers have easy access.*")

Publicación del contrato: STSS (*Publication of Collective Bargaining Agreement: STSS)*
Art. 80. La Secretaría de Trabajo y Previsión Social, a pedido de la Dirección General del Trabajo, dispondrá la publicación de todo contrato colectivo, cuando ésta sea necesaria o conveniente, para el conocimiento de los interesados y para su cumplimiento. ("*The Secretariat of Labor and Social Security, at the direction of the General Directorate of Labor, shall make any collective bargaining agreement available, when it is necessary and convenient for the information of interested parties and for compliance with the agreement*.")

Formalidades variaciones del contrato (*Formalities for Changing Collective Bargaining Agreements)*
Art. 81. Los instrumentos por los que se prorroguen, modifiquen o extingan contratos colectivos de trabajo, quedarán sujetos a las mismas formalidades de registro y publicidad establecidas para éstos. ("*The means by which collective bargaining agreements are extended or modified and expire are subject to the same registration and publication formalities established for collective agreements.*")

Título II, Capítulo VI: Obligaciones y prohibiciones de las partes (*Title II, Chapter VI: Obligations and Prohibitions of the Parties)*

Obligaciones de los empleadores (*Employer Obligations)*
Art. 95. Además de las contenidas en otros artículos de este Código, en sus reglamentos y en las leyes de previsión social, son obligaciones de los patronos: ("*In addition to the obligations in the other articles in this [Labor] Code, its regulations and social security laws, employers are obligated to*:")

1) Pagar la remuneración pactada en las condiciones, períodos y lugares convenidos en el contrato, o en los establecidos por las leyes y reglamentos de trabajo, o por los reglamentos internos o convenios colectivos, o en su defecto por la costumbre; ("*Pay compensation in the*

manner, period and location agreed in the contract, or in those established by labor laws and regulations, or by the internal regulations or collective agreements, or otherwise by custom;")

8) Permitir y facilitar la inspección y vigilancia que las autoridades de trabajo, sanitarias y administrativas, deban practicar en su empresa, establecimiento o negocio, y darles los informes que a ese efecto sean indispensables, cuando lo soliciten en cumplimiento de las disposiciones legales correspondientes; ("*Permit and facilitate the inspections and monitoring that the labor, health and administrative authorities must perform within their company, establishment or business, and provide the necessary reports to carry out their work when requested in compliance with the corresponding legal provisions*;")

19) Llevar a cabo los reajustes de acuerdo con las estipulaciones del contrato colectivo. A falta de éstas, respetarán los derechos de antigüedad y, en igualdad de condiciones, preferirán a los elementos sindicalizados para que sigan trabajando; ("*Carry out modifications in accordance with the stipulations of the collective bargaining agreement. In the absence of such stipulations, seniority rights will be respected, and all else equal, preference will be given to unionized workers to continue working*;")

Prohibiciones para los empleadores (*Employer Prohibitions)*
Art. 96. Se prohíbe a los patronos: ("*It is prohibited for employers to*:")
3) Despedir o perjudicar en alguna otra forma a sus trabajadores a causa de su afiliación sindical o de su participación en actividades sindicales lícitas; ("*Dismiss or take any other adverse action against workers due to their membership in a union or their participation in legal union activities;*")

5) Deducir, retener o compensar suma alguna del monto de los salarios y prestaciones en dinero que corresponda a los trabajadores, sin autorización previa escrita de éstos para cada caso, sin mandamiento judicial, o sin que la ley, el contrato o el reglamento lo autoricen. ("*Deduct, retain or compensate any amount from workers' salaries or severance, without previous written authorization from the worker for each case, without a judicial order, or without authorization by law, contract or regulation.*")

9) Ejecutar o autorizar cualquier acto que directa o indirectamente vulnere o restrinja los derechos que otorgan las leyes a los trabajadores, o que ofendan la dignidad de éstos; ("*Execute or authorize any act that directly or indirectly infringes or restricts the rights granted by law to workers or that undermines their dignity*;")

10) Despedir a sus trabajadores o tomar cualquier otra represalia contra ellos, con el propósito de impedirles demandar el auxilio de las autoridades encargadas de velar por el cumplimiento y aplicación de las leyes obreras; ("*Terminate their workers or to take any reprisals against them with the purpose of impeding workers from seeking help from the authorities in charge of safeguarding compliance with and implementation of labor laws*.")

Título II: Contrato de Trabajo (*Title II: Labor Contract)*
Capítulo VIII: Terminación del Contrato de Trabajo (*Chapter VIII: Termination of the Labor Contract)*

Art 112. **Causas justas que facultan al patrono para dar por terminado el contrato (*Just Causes that empower an employer to terminate a labor contract:*)**

Son causas justas que facultan al patrono para dar por terminado el contrato de trabajo, sin responsabilidad de su parte:

a) El engaño del trabajador o del sindicato que lo hubiere propuesto mediante la presentación de recomendaciones o certificados falsos sobre su aptitud. Esta causa dejará de tener efecto después de treinta (30) días de prestar sus servicios el trabajador;

b) Todo acto de violencia, injurias, malos tratamientos o grave indisciplina, en que incurra el trabajador durante sus labores, contra el patrono, los miembros de su familia, el personal directivo o los compañeros de trabajo;

c) Todo acto grave de violencia, injurias o malos tratamientos, fuera del servicio, en contra del patrono, de los miembros de su familia o de sus representantes y socios, o personal directivo, cuando los cometiere sin que hubiere precedido provocación inmediata y suficiente de la otra parte o que como consecuencia de ellos se hiciere imposible la convivencia o armonía para la realización del trabajo;

d) Todo daño material causado dolosamente a los edificios, obras, maquinaria o materias primas, instrumentos y demás objetos relacionados con el trabajo, y toda grave negligencia que ponga en peligro la seguridad de las personas o de las cosas;

e) Todo acto inmoral o delictuoso que el trabajador cometa en el taller, establecimiento o lugar de trabajo, cuando sea debidamente comprobado ante autoridad competente;

f) Revelar los secretos técnicos o comerciales o dar a conocer asuntos de carácter reservado en perjuicio de la empresa;

g) Haber sido condenado el trabajador a sufrir pena por crimen o simple delito, en sentencia ejecutoriada;

h) Cuando el trabajador deje de asistir al trabajo sin permiso del patrono o sin causa justificada durante dos (2) días completos y consecutivos o durante tres (3) días hábiles en el término de un (1) mes;

i) La negativa manifiesta y reiterada del trabajador a adoptar las medidas preventivas o a seguir los procedimientos indicados para evitar accidentes o enfermedades; o el no acatar el trabajador, en igual forma y en perjuicio del patrono, las normas que éste o su representante en la dirección de los trabajos le indiquen con claridad, para obtener la mayor eficacia y rendimiento en las labores que se están ejecutando;

j) La inhabilidad o la ineficiencia manifiesta del trabajador que haga imposible el cumplimiento del contrato;

k) El descubrimiento de que el trabajador padece enfermedad infecciosa o mental incurable o la adquisición de enfermedad transmisible, de denuncia o aislamiento no obligatorio, cuando el trabajador se niegue al tratamiento y constituya peligro para terceros; y,

l) Cualquier violación grave de las obligaciones o prohibiciones especiales que incumben al trabajador, de acuerdo con los Artículos 97 y 98, o cualquier falta grave calificada como tal en pactos o convenciones colectivas, fallos arbitrales, contratos individuales o reglamentos, siempre que el hecho esté debidamente comprobado y que en la aplicación de la sanción se observe el respectivo procedimiento reglamentario o convencional.

(*The following are just cause reasons for an employer to terminate the labor contract without any responsibility on their part:*

a) Deceit by a worker or the union that recommended the worker using falsified certifications or recommendations about the worker's aptitude. This may only be used as a reason for just cause dismissal for the first thirty (30) days that the workers offers his or her service to the employer;
b) Any act of violence, insult, mistreatment or insubordination perpetrated by the worker during the execution of his or her work against the employer, members of the employer's family, management or coworkers;
c) Any grave act of violence, insult, or mistreatment perpetrated by the worker outside the workplace against the employer, members of the employer's family, representatives and associates of the employer or management, when the act is not preceded by sufficient, immediate provocation by other party or that, as a result, makes impossible a continued collegial working relationship or environment;
d) Any intentional material harm to the building, worksite, machinery, raw material, instruments or other work-related objects and any grave act of negligence that endangers people and objects;
e) Any immoral or criminal act that the worker commits in the workshop, establishment or workplace, when it is duly proven before a competent authority;
f) Revealing technical or trade secrets or making confidential information known to harm the company;
g) Condemnation of the worker to serve punishment for a crime or misdemeanor in an executed sentence;
h) Worker failure to attend work without employer permission or just cause for two (2) full, consecutive workdays or three (3) business days over the course of one (1) month;
i) Evident, repeated failure of the worker to adopt preventative measures or follow indicated protocols to avoid accidents or illness, or equally the worker's failure to adhere, in a manner that harms the employer, to workplace regulations that are clearly expressed by the employer, employer's representative or management to ensure the greatest efficiency and output in the job he or she is performing;
j) Evident worker inability or inefficiency that makes completion of the work contract impossible;
k) Discovery from a complaint or from involuntary commitment that the worker suffers from an uncurable mental or infectious disease or has been infected with a transmittable disease when the worker denies treatment and presents a risk to third parties; and,

l) *Any grave violation of special obligations or prohibitions to which the worker is bound in accordance with Articles 97 and 98 or any infraction found to be "grave," such as those in collective bargaining agreements or collective pacts, arbitration decisions, individual contracts or workplace regulations, so long as the act is duly proven and the sanction is applied in accordance with the appropriate conventional or regulatory proceeding.)*

Dies a quo. Inicio de efectos del despido (*Carrying Out Dismissals*)

Art. 113. La terminación del contrato conforme a una de las causas enumeradas en el Artículo anterior, surte efectos desde que el patrono la comunique al trabajador, pero éste goza del derecho de emplazarlo ante los Tribunales de Trabajo, antes de que transcurra el término de prescripción, con el objeto de que le pruebe la justa causa en que se fundó el despido. Si el patrono no prueba dicha causa debe pagar al trabajador las indemnizaciones que según este Código le puedan corresponder y, a título de daños y perjuicios, los salarios que éste habría percibido desde la terminación del contrato hasta la fecha en que con sujeción a las normas procesales del presente Código debe quedar firme la sentencia condenatoria respectiva.[858] ("*Termination of the [labor] contract in conformity with one of the enumerated causes in the previous article is effective from the time the employer notifies the worker, but the worker has the right to summon the employer before a Labor Court before the end of the statute of limitations to prove that the termination was based on just cause. Should the employer fail to prove just cause, the employer must pay the worker all severance due in accordance with this [Labor] Code and by way of damages the salary the worker would have received from the time of termination to the date a firm ruling that finds the employer responsible for unjust termination of a labor contract, subject to the procedural rules of the present Code.")*

El trabajador puede demandar a su patrono el cumplimiento del contrato, para que se le reponga en su trabajo, por lo menos en igualdad de condiciones. El derecho del trabajador a exigir el cumplimiento del contrato se regula de la siguiente manera: ("*The worker may sue his employer to comply with the contract, including reinstatement under the same working conditions at the very least. The worker's right to demand compliance with the work contract is regulated in the following manner* :")

a) El ejercicio del derecho es alternativo con el de reclamar las indemnizaciones a que hace referencia la primera parte de este artículo; y, ("*Exercise of the right to reinstatement is an alternative to the right to demand the severance referenced in the first part of this article; and*,")

[858] Interpretado por el Decreto No. 89 (Gaceta No. 19,956 del 23 de diciembre de 1969) en el siguiente sentido: "Articulo 1.- Interpretar el párrafo primero del Artículo 113 del Código de Trabajo, en el sentido de que la percepción de salarios por parte del trabajador, con motivo de la obligación que corresponde al patrono, por causa de despido injusto, de pagar a título de daños y perjuicios los salarios que el trabajador habría percibido, se contará desde la terminación del Contrato, hasta la fecha en que con sujeción a las normas procesales del Código, debe quedar firme la sentencia condenatoria respectiva, de consiguiente los Tribunales de Justicia, no deben hacer deducción alguna del tiempo que dure el juico, ni limitar el pago de los salarios dejados de percibir." (Interpreted by Decree No. 89 (Gazette No. 19,956 on December 23, 1969) to mean the following: "Article 1. – Interpret the first paragraph of Article 113 of the Labor Code to mean the payment of workers' salary, corresponding to the employer's obligation in a case of unjust dismissal, to pay penalty of damages and loss of pay that the worker would have received, shall be counted from the time of the contract's termination until the date, subject to the procedural norms of the Code, that the respective condemnatory sentence remains firm, and the courts should not deduct any time for the duration of proceedings nor limit the payment of salaries that the worker did not receive as a result of unjust termination.")

b) Si el juez declara en su fallo la reinstalación solicitada por el trabajador, éste no tiene derecho a las indemnizaciones correspondientes al despido, injustificado, pero sí a los salarios que hubiere dejado de percibir desde que ocurrió aquél, hasta que se cumpla con la reinstalación, y además en caso de negativa del patrono para cumplir con la sentencia, tiene derecho a exigir su cumplimiento por la vía de apremio. ("*If the judge rules in favor of the reinstatement requested by the worker, the worker waives his right to severance pay for the unjustified dismissal, but not to the salary that was lost from the date of dismissal until his reinstatement takes effect; additionally, in cases where the employer fails to comply with the judgment, the worker has the right to demand compliance via court ordered collection procedures until reinstatement is completed*")

Título IV: Jornadas, Descansos y Salarios (*Title IV: Shifts, Rest Periods and Salaries)*
Capítulo I: Jornadas de Trabajo (*Chapter I: Work Shifts*)

Trabajos diurno, nocturno y jornada mixta (*Daytime, Nightime and Mixed Work Shifts)*
Art. 321. Trabajo diurno es el que se ejecuta entre las cinco horas (5 a. m.) y las diecinueve (7 p. m.); y nocturno, el que se realiza entre las diecinueve horas (7 p. m.) y las cinco (5 a. m.). ("*A daytime shift is carried out between the hours of five in the morning (5 a.m.) and seven at night (7 p.m.); and a nighttime shift is work performed between seven at night (7 p.m.) and five in the morning (5 a.m.).*")

Es jornada mixta, la que comprende períodos de tiempo de las jornadas diurna y nocturna, siempre que el período nocturno abarque menos de tres (3) horas, pues en caso contrario, se reputará como jornada nocturna. La duración máxima de la jornada mixta será de siete (7) horas diarias y de cuarenta y dos (42) a la semana. ("*A mixed shift includes periods of daytime and nighttime work as long as the shift consists of no more than three (3) hours of nighttime work, otherwise the shift will be considered a nighttime shift. The maximum duration for a mixed work shift is seven (7) hours daily and forty-two (42) hours weekly*.")

Límites para las jornadas ordinarias (*Limitations on Overtime)*
Art. 322. La jornada ordinaria de trabajo diurno no podrá exceder de ocho (8) horas diarias y cuarenta y cuatro (44) a la semana, equivalentes a cuarenta y ocho (48) de salario. La jornada ordinaria de trabajo nocturno no podrá exceder de seis (6) horas diarias y treinta y seis (36) a la semana. ("*An ordinary work shift may not exceed eight (8) hours daily and forty-four (44) a week, equivalent to forty-eight (48) hours of pay. The ordinary nighttime work shift may not exceed six (6) hours daily and thirty-six (36) a week*.")

Estas disposiciones no se aplicarán en los casos de excepción, muy calificados, que determine este Código. ("*These regulations will not apply to exceptional, very qualified cases determined by this Code*.")

El trabajador que faltare en alguno de los días de la semana y no completare la jornada de cuarenta y cuatro (44) horas de trabajo, sólo tendrá derecho a recibir un salario proporcional al tiempo trabajado, con base en el salario de cuarenta y ocho (48) horas semanales. ("*The worker*

who does not work some days of the week and fails to complete a forty-four (44) hour work week will receive pay proportionate to time worked, based on a forty-eight (48) hour work week.")

Este principio regirá igualmente para la jornada ordinaria de trabajo efectivo nocturno y la mixta.[859] ("*This principle will also apply to the ordinary night and mixed work shifts*.")

Trabajadores excluidos: regulación de jornadas máximas legales (*Excluded Workers: Regulation of Maximum Shifts under Law)*
Art. 325. Quedan excluidos de la regulación sobre jornada máxima legal de trabajo los siguientes trabajadores: ("*The following workers are excluded from the legal maximum work shift regulation*:")

e) Los que realizan labores que por su propia naturaleza no están sometidas a jornadas de trabajo tales como las labores agrícolas, ganaderas y afines; y, ("*Those who carry out work that by its very nature is not subject to shifts like agriculture, farming or related work; and*,")

f) Los trabajadores remunerados a base de comisión y los empleados similares que no cumplan su cometido en el local del establecimiento o lugar de trabajo. ("*The workers paid by commission and similar employees that do not carry out their work in the establishment or workplace.*")

Sin embargo, tales personas no estarán obligadas a permanecer más de doce (12) horas diarias en su trabajo y tendrán derecho dentro de la jornada a un descanso mínimo de hora y media (1.30) que puede ser fraccionado en períodos no menores de treinta (30) minutos. ("*Nevertheless, said persons will not be obligated to remain at work more than twelve (12) hours daily and will have the right to a minimum one and half hour (1.30) break during the work day that may be divided into periods no less than thirty (30) minutes*.")

El Poder Ejecutivo, mediante acuerdos emitidos por conducto del Ministerio de Trabajo y Previsión Social, debe dictar los reglamentos que sean necesarios para precisar los alcances de este artículo.[860] ("*The Executive Power, through agreements issued by the Secretariat of Labor and Social Security, should impose all regulations necessary to enforce the scope of this article*.")

[859] Interpretado por el Decreto No. 96 (Gaceta No. 17,403 del 16 de junio de 1961), en el siguiente sentido: "e) Para los efectos del Artículo 322 del Código del Trabajo, el salario que corresponde a cuarenta y ocho horas semanales de las jornadas de trabajo diurno, será igual al salario de treinta y seis horas de la jornada nocturna y cuarenta y dos de la mixta." ("*Interpreted by Decree No. 96 (Gazette No. 17,403 of June 16, 1961), to mean the following: "e) The purpose of Article 322 of the Labor Code, the corresponding pay for a forty-eight hour daytime shift work week shall be equal to a thirty-six hour nighttime shift work week and a forty-two hour mixed shift work week.*")
[860] Interpretado por el Decreto No. 21 (Gaceta No. 17,895 del jueves 7 de febrero de1963), en el siguiente sentido: "Artículo 1º. — Interpretar el Artículo 325 del Código de Trabajo en el sentido de que los celadores, cuidadores, serenos y vigilantes o wachimanes no se consideran empleados de confianza y que en consecuencia están sujetos a las disposiciones legales sobre jornadas ordinarias y extraordinarias de trabajo." ("*Interpreted by Decree No. 21 (Gazette No. 17,895 on Thursday, February 7, 1963), in the following way: Article 1°. – Interpret Article 325 of the Labor Code to mean porters, caregivers, night watchmen, and security guards, are not considered trusted employees, and by consequence, are subject to the legal regulations of ordinary and exceptional work days.*")

Jornada reducida (*Reduced Shifts)*
Art. 328. Los trabajadores permanentes que por disposición legal o por acuerdo con los patronos laboren menos de cuarenta y cuatro (44) horas en la semana, tienen derecho de percibir íntegro el salario correspondiente a la semana ordinaria diurna. ("*Permanent workers, that by legal regulation or by agreement with their employers, work less than forty-four (44) hours a week, have the right to receive full pay corresponding to an ordinary daytime work week*.")

Recargo por trabajo nocturno (*Premium on Nighttime Work)*
Art. 329. El trabajo nocturno, por el solo hecho de ser nocturno, se remunera con un recargo del veinticinco por ciento (25%) sobre el valor del trabajo diurno. ("*Nighttime work, for the mere fact of being at nighttime, will be paid with a twenty-five percent (25%) premium over the value of daytime work.*")

Con el mismo recargo se pagarán las horas trabajadas durante el período nocturno en la jornada mixta. ("*Nighttime hours worked during the mixed work shift will be paid with the same nighttime work premium*.")

Jornada extraordinaria (*Overtime Shifts)*
Art. 330. El trabajo efectivo que se ejecute fuera de los límites que determinan los artículos anteriores para la jornada ordinaria, o que exceda de la jornada inferior, convenida por las partes, constituye jornada extraordinaria, y debe ser remunerado, así: ("*Work performed outside the limits established in the previous articles for an ordinary work shift or that exceeds a short work shift as agreed by the parties, constitutes overtime, and must be paid as follows*:")

1) Con un veinticinco por ciento (25%) de recargo sobre el salario de la jornada diurna cuando se efectúe en el período diurno; ("*With a twenty-five percent (25%) premium over the daytime shift salary when performed during the day*;")

2) Con un cincuenta por ciento (50%) de recargo sobre el salario de la jornada diurna cuando se efectúe en el período nocturno; y, ("*With a fifty percent (50%) premium over the daytime shift salary when performed at night; and*,")

3) Con un setenta y cinco por ciento (75%) de recargo sobre el salario de la jornada nocturna cuando la jornada extraordinaria sea prolongación de aquélla. ("*With a seventy-five percent (75%) premium over the nighttime shift salary when the overtime is a prolongation of a nighttime shift*.")

Art. 332. La jornada extraordinaria, sumada a la ordinaria, no podrá exceder de doce (12) horas, salvo que por siniestro ocurrido o riesgo inminente peligren las personas, establecimientos maquinas o instalaciones, plantíos, productos o cosechas y que sin evidente perjuicio, no pueden substituirse los trabajadores o suspenderse las labores de que estén trabajando. (" *A shift, including overtime and an ordinary work shift, may not exceed twelve (12) hours, except by accidental occurrence or in cases of imminent risk endangering people, the establishment's machines or facilities, crop planting, products or crops where workers cannot be substituted or have their work suspended without causing obvious damage*.")

Título IV, Capítulo II: Descansos Generales y Especiales

Remuneración feriado laborado
Art. 340. Si en virtud de convenio se trabajare durante los días de descanso o los días feriados o de fiesta nacional, se pagarán con el duplo del salario correspondiente a la jornada ordinaria en proporción al tiempo trabajado, sin perjuicio del derecho del trabajador a cualquier otro día de descanso en la semana conforme al Artículo 338. ("*If by virtue of an agreement work is performed on holidays or days of rest or national celebration, double the salary of an ordinary daytime work shift will be paid in proportion to time worked, notwithstanding the worker's right to any other day of rest in the week in accordance with Article 338*.")

Título IV, Capítulo IV: Salarios (*Title IV, Chapter IV: Salaries)*

Integrantes del salario (*Salary Composition)*
Art. 361. Constituye salario no sólo la remuneración fija u ordinaria, sino todo lo que recibe el trabajador en dinero o en especie y que implique retribución de servicios, sea cualquiera la forma o denominación que se adopte, como las primas, sobresueldos, bonificaciones habituales valor del trabajo suplementario o de las horas extras, valor del trabajo en días de descanso obligatorio, porcentaje sobre ventas, comisiones o participación de utilidades. ("*Salary constitutes not only a fixed or ordinary payment, but also, all everything received by the worker in money or in kind in payment for services rendered, in whatever form it may take, be it bonuses, extra pay, compensation packages valued for the supplemental work or for extra hours, value of work on obligatory days of rest, percentage of sales, commissions or profit-sharing*.")

Principio de igualdad y no discriminación salarial (*Principle of Equality and Non-Discrimination in Salary)*
Art. 367. Para fijar el importe del salario en cada clase de trabajo, se deben tomar en cuenta la intensidad y calidad del mismo, clima y condiciones de vida, y el tiempo de servicio del trabajador. A trabajo igual debe corresponder salario igual, sin discriminación alguna, siempre que el puesto, la jornada y las condiciones de eficiencia y tiempo de servicio, dentro de la misma empresa, sean también iguales, comprendiendo en este tanto los pagos hechos por cuota diaria como las gratificaciones, percepciones, habitación y cualquier otra cantidad que sea entregada a un trabajador a cambio de su labor ordinaria. ("*To determine the salary amount in each type of work, the intensity and quality of the work, climate and living conditions, and the worker's time in service must be taken into account. Equal work must have equal pay, without any discrimination, as long as the position, the work day and the conditions of efficiency and time of service within the same company are also equal, including payments made for the daily rate like rewards, salary, room and board, and any other amount given to a worker in exchange for his standard labor.*")

No pueden establecerse diferencias en el salario por razones de edad, sexo, nacionalidad, raza, religión, opinión política o actividades sindicales. ("*Salary differences may not be implemented for reasons of age, sex, nationality, race, religion, political opinion or union activities*.")

Obligación de llevar el libro de salarios (*Obligation to Maintain Pay Records)*
Art. 380. Todo patrono que ocupe permanentemente a diez (10) o más trabajadores deberá llevar un Libro de Salarios autorizado y sellado por la Dirección General del Trabajo, que se encargará de suministrar modelos y normas para su debida impresión. ("*Every employer with ten (10) or more permanent workers must maintain a Salary Book authorized and stamped by the General Directorate of Labor, who will be in charge of supplying printed guides and rules for recordkeeping*.")

Todo patrono que ocupe permanentemente a tres (3) o más trabajadores, sin llegar al límite de diez (10) está obligado a llevar planillas de conformidad con los modelos adoptados por el Instituto Hondureño de Seguridad Social. ("*Every employer with three (3) or more permanent workers, without reaching the limit of ten (10), is obligated to maintain a payroll sheet in accordance with the guidelines adopted by the Honduran Institute of Social Security*.")

Título IV, Capítulo V: Salario mínimo (*Title IV, Chapter V: Minimum Wage)*

Definición (*Definition)*
Art. 381. Salario mínimo es el que todo trabajador tiene derecho a percibir para subvenir a sus necesidades normales y a las de su familia, en el orden material, moral y cultural. ("*Minimum wage is that which every worker has the right to receive to cover his and his family's ordinary material, moral and cultural needs.*)

Título V: Protección a los Trabajadores Durante el Ejercicio del Trabajo (*Title V: Protection of Workers at Work)*
Capítulo I: Higiene y Seguridad en el Trabajo (*Chapter I: Occupational Safety and Health)*

Acondicionamiento de locales y equipo (*Maintenance of Workplace and Equipment)*
Art. 391. Todo patrono o empresa está obligado a suministrar y acondicionar locales y equipos de trabajo que garanticen la seguridad y la salud de los trabajadores. ("*Every employer or business is obligated to provide and prepare work premises and equipment that guarantee the safety and health of workers.*")

Para este efecto deberá proceder, dentro del plazo que determine la Inspección General del Trabajo y de acuerdo con el Reglamento o Reglamentos que dicte el Poder Ejecutivo, a introducir por su cuenta todas las medidas de higiene y de seguridad en los lugares de trabajo que sirvan para prevenir, reducir o eliminar los riesgos profesionales. ("*To this effect, employers should, within the time period determined by the Inspector General of Labor and in accordance with the Regulation or Regulations emitted by the Executive Branch, introduce on their own, workplace safety and health measures that serve to prevent, reduce or eliminate occupational risks*.")

Art. 392. Es también obligación de todo patrono acatar y hacer cumplir las medidas de prevención de riesgos profesionales que dicte la *Secretaría de Trabajo y Seguridad Social.* ("*It is also every employer's obligation to respect and comply with the prevention measures for occupational safety and health risks dictated by the Secretariat of Labor and Social Security*.")

Art. 400. Corresponde al Ministerio de Trabajo y Previsión Social, velar por el cumplimiento de las disposiciones de este Capítulo, atender las reclamaciones de patronos y obreros sobre la transgresión de sus reglas, prevenir a los remisos, y, en caso de reincidencia o negligencia, imponer sanciones, teniendo en cuenta la capacidad económica del transgresor y la naturaleza de la falta cometida. ("*The Secretariat of Labor and Social Security is responsible for safeguarding compliance with the provisions of this Chapter, to attend to worker and employer complaints of transgressions of the Chapter's rules, to prevent unwillingness, and in the case of reoccurence or negligence, impose sanctions, keeping in mind the economic capacity of the transgressor and the nature of the committed offense."*)

Capitulo II: Riesgos Profesionales (*Chapter II: Occupational Hazards)*

Art. 435. El patrono está obligado a dar aviso de los accidentes ocurridos, a la Inspección General del Trabajo o a sus representantes y al Juzgado de Letras del Trabajo que corresponda, dentro de las primeras veinticuatro (24) horas. Ya sea durante este término o dentro de los tres (3) días siguientes, proporcionará los datos y elementos de que disponga, para poder fijar la causa de cada accidente. ("*The employer is obligated to inform the General Inspector of Labor or its representatives and the appropriate Labor Court about accidents that have occurred within twenty-four (24) hours. Either during this time period or within three (3) days of the occurrence the employer shall provide all available information and elements to determine the cause of the accident*.")

Título VI: Organizaciones sociales (*Title VI: Social Organizations)*
Capítulo I: Disposiciones Generales (*Chapter I: General Provisions)*

Art. 467. Las asociaciones de trabajadores de toda clase están bajo la protección del Estado, siempre que persigan cualquiera de los siguientes fines: . . . 4) Los demás fines que entrañen el mejoramiento económico y social de los trabajadores y la defensa de los intereses de su clase. ("*Workers' associations are under the protection of the State, as long as they pursue one of the following ends:…4) Any other aims that involve the workers' economic and social advancement and the defense of their interests*.")

Título VI, Capítulo II: Sindicatos (*Title VI, Chapter II: Unions)*

Definición (*Definition)*
Art. 468. Sindicato es toda asociación permanente de trabajadores, de patronos o de personas de profesión u oficio independiente, constituida exclusivamente para el estudio, mejoramiento y protección de sus respectivos intereses económicos y sociales comunes. ("*A union is any permanent association of workers, employers or persons of a profession or independent trade, formed for the study, betterment and protection of their respective common economic and social interests*.")

Protección del derecho de asociación (*Protection of the Right of Association)*
Prácticas desleales: sanciones *(Illegal Practices: Sanctions)*
Art. 469. Toda persona que por medio de violencias o amenazas, atente en cualquier forma contra el derecho de libre asociación sindical, será castigada con multa de doscientos a diez mil

lempiras (L. 200.00 a L. 10,000.00), que le será impuesta por la Inspectoría General del Trabajo, previa comprobación completa de los hechos atentatorios respectivos.[861] ("*Any person, who, through violence or threats, attempts in whatever form to impair the right of freedom of association, will be punished with a fine of two hundred to ten thousand lempiras (L. 200 to L. 10,000), which will be imposed by the Inspector General of Labor, after complete verification of the respective facts of the incident*.")

Sindicato de Empresa o de Base (*Enterprise or Trade Unions)*
Art. 472. A los sindicatos de empresa o de base corresponde, de preferencia, la representación de los afiliados en todas las relaciones de trabajo; la presentación de pliegos de peticiones; la designación de comisiones disciplinarias o de reclamos y la de negociadores, de entre sus propios miembros; el nombramiento de conciliadores y de árbitros en su caso; y la celebración de contratos y de convenciones colectivas de trabajo; para cuya concierto deben ser consultados los intereses de las respectivas actividades de los asociados. Por lo mismo, dentro de una misma empresa, institución o establecimiento no pueden coexistir dos (2) o más sindicatos de empresa o de base de trabajadores; y si por cualquier motivo llegaren a coexistir, subsistirá el que tenga mayor número de afiliados, el cual debe admitir el personal de los demás sin hacerles más gravosas su condiciones de admisión. ("*Company or trade unions are granted preference in representing their members in all work matters; submitting lists of demands; designating participants in disciplinary or appeals commissions and negotiators from among their own members; appointingconciliators and arbitrators in such cases; and executing collective bargaining agreements, which should be based on consultations with members to reflect their interests and respective activities. To this effect, within the same business, institution or establishment, two (2) or more company or trade unions may not co-exist; and if for whatever reason more than one union were to co-exist, the union with the most members will remain and must accept members of the other union(s) without applying conditions of admission that are more arduous than those that apply to its original members*.")

Titulo VI, Capítulo III: Organización (*Title VI, Chapter III: Organization)*

Art. 475. Todo sindicato de trabajadores necesita para constituirse o subsistir un número no inferior a treinta (30) afiliados; y todo sindicato patronal no menos de cinco (5) patronos independientes entre sí. ("*All worker unions need at least thirty (30) members to form or continue functioning; and every employer association requires no less than five (5) independent employers between them.*")

Titulo VI, Capítulo IV: Personería Jurídica (*Title VI, Chapter IV: Legal Personality)*

Reconocimiento de personería jurídica (*Recognition of Legal Personality)*
Art. 480. Las organizaciones sindicales se considerarán legalmente constituidas y con personalidad jurídica desde el momento en que se registren en la Secretaría de Trabajo y Previsión Social. ("*Union organizations will be considered legally formed and have legal*

[861] Artículo reformado por el Decreto No. 978 (Gaceta No. 23,130 del 6 de septiembre de 1980). ("*Article modified by Decree No. 978 (Gazette No. 23,130 of September 6, 1980)*.")

personality from the moment in which they are registered with the Secretariat of Labor and Social Security.")

Solicitud reconocimiento de personalidad jurídica (*Petition to Recognize Legal Personality)*
Art. 481. Para la inscripción y reconocimiento de la personería jurídica de los sindicatos, la Directiva Provisional, por sí o mediante apoderado especial, deberá elevar al Ministerio de Trabajo y Previsión Social, por conducto de la Dirección General del Trabajo, la solicitud correspondiente, acompañándola de los siguientes documentos, todo en papel común: ("*For the registration and recognition of the union's legal personality, the provisional board of directors, may directly or through a special legal representative, present the corresponding request to the Ministry of Labor and Social Security via the General Directorate ofLabor, accompanied by the following documents in hard copy:*")

1) Certificación del acta de fundación, con las firmas autógrafas de los asistentes, o de quienes firmen por ellos, y la anotación de sus respectivas tarjetas de identidad; ("*Certification of the founding charter, with the signature of the founding participants (or those that signo n their behalf) and notation of their identity card numbers;*")

2) Certificación del acta de la elección de la Junta Directiva Provisional, con los mismos requisitos del ordinal anterior; ("*Certification of the election record of the Provisional Board of Directors, with the same requirements of the previous ordinal [Article 481(1)];*")

3) Certificación del acta de la reunión en que fueron aprobados los estatutos; ("*Certification of the minutes of the meeting during which the by-laws were approved;*")

4) Carta poder de quien solicite el reconocimiento de la personería jurídica, cuando la solicitud no sea presentada por la Junta Directiva Provisional. El poder debe ser autenticado, ante autoridad competente; ("*Proof of power of attorney of the person soliciting legal personality, when the request is not presented by the Provisional Board of Directors. The power must be authenticated before a competent authority*.")

5) Dos (2) certificaciones del acta de fundación, extendidas por el Secretario Provisional; ("*Two (2) certified copies of the founding charter, issued by the Provisional Secretary;*")

6) Dos (2) ejemplares de los estatutos del sindicato, extendidos por el Secretario Provisional; ("*Two (2) copies of the union by-laws, issued by the Provisional Secretary*;")

7) Nómina de la Junta Directiva Provisional, por triplicado, con indicación de la nacionalidad, la profesión u oficio, el número de la tarjeta de identidad y el domicilio de cada director; ("*Three copies of a list of the Provisional Leadership Committee, indicating the nationality, profession or occupation, identification card number and address of each leader;*")

8) Nómina completa del personal de afiliados, por triplicado, con especificación de la nacionalidad, sexo y profesión u oficio de cada uno de ellos; y, ("*Three copies of the complete list of members,indicating each members' nationality, sex and profession or occupation; and*,")

9) Certificación del correspondiente Inspector del Trabajo sobre la inexistencia de otro sindicato, si se tratare de un sindicato de empresa o de base que pueda considerarse paralelo; sobre la calidad de patronos o de trabajadores de los fundadores, en relación con la industria o actividad de que se trate o de su calidad de profesionales del ramo del sindicato; sobre la antigüedad, si fuere el caso, de los directores provisionales en el ejercicio de la correspondiente actividad, y sobre las demás circunstancias que estime conducentes. En los lugares en donde no haya Inspector de Trabajo, la certificación debe ser expedida por el respectivo Alcalde Municipal, y refrendada por el Inspector de Trabajo más cercano. Los documentos de que tratan los números 1º, 2° y 3º pueden estar reunidos en un solo texto o acta. ("*Certification from the corresponding Labor Inspector that no other union exists in the company, if it is a company union, or that no union that could be considered parallel exists if it is a trade union;; regarding the nature of the relationship of the founding employers or workers to the industry or activity of the union or of the nature of their relationship to the professional branch to which the trade union is related; regarding seniority, if it were the case, of the provisional directors in the exercise of the corresponding activity, and relating to the other circumstances considered relevant. In places where there is no Labor Inspector, the certification must be issued by the respective Municipal Mayor and endorsed by the nearest Labor Inspector. The documents required by numerals 1°, 2°, and 3° [of this Article] may be collected in one single text or report.*")

Plazo para remisión de solicitud: 15 días (*Timeframe for Response to Petition: 15 Days)*
Art. 482. Recibida la solicitud por la Dirección General del Trabajo, ésta dispondrá de un término máximo de quince (15) días para revisar la documentación acompañada, examinar los estatutos, formular a los interesados las observaciones pertinentes y elevar al Ministerio respectivo el informe del caso, para los efectos consiguientes. ("*Once the General Directorate of Labor receives the request, they will have up to fifteen (15) days to review the accompanying documentation, examine the by-laws, formulate pertinent observations for the interested parties and present the case report to the respective Ministry to carry out any follow-up actions.*")

Reconocimiento de personería jurídica (*Recognition of Legal Personality)*
Art. 483. El Ministerio del Trabajo y Previsión Social reconocerá la personería jurídica, salvo el caso de que los estatutos del sindicato sean contrarios a la Constitución de la República, a las leyes o a las buenas costumbres o contravengan disposiciones especiales de este Código. El Ministerio, dentro de los quince (15) días siguientes al recibo del expediente, dictará la resolución sobre reconocimiento o denegación de la personería jurídica, indicando en el segundo caso las razones de orden legal o las disposiciones de este Código que determinen la negativa. ("*The Secretariat of Labor and Social Security will recognize legal personality, except in cases where the union by-laws contradict the Constitution of the Republic, the law or good customs or contravene any special provisions of this Code. The Secretariat, within fifteen (15) days of receiving the file, will issue its decision to recognize or deny legal personality, indicating in the latter case the legal basis or the specific provisions of this Code upon which it based the denial*.")

Plazo para ajustar solicitud o solicitar reconsideración (*Timeframe to Modify Petition or Petition for Reconsideration)*
Art. 484. Si los documentos mencionados no se ajustan a lo prescrito en el Artículo 481, se dictará resolución que indique sus errores o deficiencias para que los interesados, dentro del

término de dos (2) meses, los subsanen o pidan reconsideración de lo resuelto. En este caso, el término de quince (15) días hábiles señalado en el artículo anterior, comenzará a correr desde el día en que se presente la solicitud corregida. La reconsideración será resuelta dentro de los diez (10) días hábiles siguientes al de la interposición del recurso. ("*If the documents mentioned do not conform to Article 481, the Secretariat will issue a notice to the interested parties indicating any errors or deficiencies so that they may, within a period of two (2) months, correct those errors or ask the Secretariat for reconsideration of its determination. In this case, the period of fifteen (15) business days stipulated in the previous article, will begin the day the corrected request is submitted. The reconsideration will be resolved within ten (10) business days of the filing of the appeal*.")

Publicación y certificación (*Publication and Certification)*
Art. 485. Hecha la inscripción respectiva, la Dirección General del Trabajo extenderá certificación de ella a solicitud de los interesados y ordenará que se publique gratuitamente un ex tracto de la misma, por tres (3) veces consecutivas, en el diario oficial "La Gaceta", y surtirá sus efectos después de la última publicación. ("*Once the registration is completed, the General Directorate of Labor will issue its certification at the request of interested parties, order for this [certification] to be published at no charge three (3) consecutive times in the official newspaper, "The Gazette," and facilitate its taking effect after the last publication*.")

Comunicación de cambios en la Junta Directiva (*Communicating Changes in the Board of Directors)*
Art. 489. Cualquier cambio total o parcial, en la Junta Directiva de un sindicato, debe ser comunicado al Ministerio del Trabajo y Previsión Social por conducto de la Dirección General del Trabajo, en los mismos términos indicados en el inciso 7 del Artículo 481. Mientras no se llene este requisito el cambio no surte ningún efecto. ("*Any full or partial change to a union's Board of Directors must be communicated to the Secretariat of Labor and Social Security through the General Directorate of Labor, via the same guidelines established in section 7 of Article 481. The changes will not take effect until these requirements are met*.")

Titulo VI, Capítulo VI: Libertad de Trabajo Prohibiciones y Sanciones (*Title VI, Chapter VI: Freedom to Work, Prohibitions and Sanctions)*

Sanciones por incumplimientos (*Sanctions for Failure to Comply)*
Art. 500. Cualquier violación de las normas del presente Título será sancionada así: ("*Any violations of the provisions of the present Title will be sanctioned as follows*:")
1) Si la violación es imputable al sindicato mismo, por constituir una actuación de sus directivas, y la infracción o hecho que la origina no se hubiere consumado, el Ministerio de Trabajo y Previsión Social prevendrá al sindicato para que revoque su determinación dentro del término prudencial que fije; ("*If the violation is attributable to the union itself, consisting of an act by the directors, and the infraction or incident it originated from has not been carried out, the Secretariat of Labor and Social Security will warn the union to revoke their decision within a set reasonable period*;")

2) Si la infracción ya se hubiere cumplido, o si hecha la prevención anterior no se atendiere, el Ministerio de Trabajo y Previsión Social procederá, previa la suficiente comprobación, a

imponer la sanción o las sanciones siguientes, en su orden así: ("*If the infraction has already been carried out, or if the above warning was not heeded, the Secretariat of Labor and Social Security will, upon sufficient verification, impose the following sanction or sanctions, in this order:*")

> a) Multa hasta de quinientos (500) Lempiras en primer término; ("*A fine of five hundred (500) Lempiras in the first instance;"*)
>
> b) Si a pesar de la multa el sindicato persistiere en la violación, impondrá otra multa equivalente al doble de la anterior; ("*If, despite the fine, the union continues the violation, another fine will be imposed equal to double the previous fine [1,000 HNL]*;")
>
> c) Según la gravedad del caso, podrá solicitar de la justicia del trabajo la suspensión, por el tiempo que la transgresión subsista, o la cancelación de la personalidad jurídica del sindicato y su consiguiente liquidación.[862] ("*Depending on the gravity of the case, suspension may be legally requested from the Labor Judge, as long as the transgression persists, or the cancellation of the union's legal personality and its consequent liquidation*.")

3) Las solicitudes de suspensión o de cancelación de personalidad jurídica y consiguiente liquidación se formularán ante el Juez de Letras del Trabajo del domicilio del Sindicato, o en su defecto, ante el Juez de Letras de lo Civil, de acuerdo con lo establecido en este Código. [863] ("*Requests for suspension or cancellation of the legal personality and consequent liquidation will be formulated before the Labor Court with jurisdiction over the union's address, or in its absence, before the Civil Court, in accordance with that established in this Code.*")

4) Las suspensiones de que trata la letra c) del inciso 2º de este artículo, se levantarán tan pronto como cesen las infracciones que les dieron origen; y, ("*The suspensions mentioned in letter c) of paragraph 2° of this article, will be lifted as soon as the original infractions prompting legal action have ceased; and*,")

5) Los miembros de la Directiva de un Sindicato que hayan originado la disolución de éste, no podrán ser miembros directivos de ninguna organización sindical hasta por el término de tres (3) años, según lo disponga el Juez en el fallo que decrete la disolución y en el cual serán declarados nominalmente tales responsables. ("*The members of a Union's Board of Directors responsible for its dissolution, cannot be board members of any union organization up to a period of three (3) years, according to the stipulations of the Court's decision that orders the dissolution and in which those responsible will be indicated by name*.")

[862] Incisos reformados por el Decreto No. 760 (Gaceta No. 22,811 del lunes 28de mayo de 1979). ("*Paragraphs modified by Decree No. 760 (Gazette No. 22,811 on Monday, May 28, 1979)*.")
[863] Incisos reformados por el Decreto No. 760 (Gaceta No. 22,811 del lunes 28de mayo de 1979). ("*Paragraphs modified by Decree No. 760 (Gazette No. 22,811 on Monday, May 28, 1979)*.)

Titulo VI, Capítulo VII: Régimen Interno (*Title VI, Chapter VII: Internal Rules)*

Prohibición: representantes del empleador para ser directivos (*Prohibition: Employer Representatives on Union Board of Directors)*
Art. 511. No pueden formar parte de la Junta Directiva de un sindicato de empresa o base, al ser designados funcionarios del sindicato, los afiliados que, por razón de sus cargos en la empresa, representen al patrono o tengan funciones de dirección o de confianza personal o puedan fácilmente ejercer una indebida coacción sobre sus compañeros. Dentro de este número se cuentan los gerentes, subgerentes, administradores, jefes de personal, secretarios privados de la junta directiva, la gerencia o la administración, directores de departamentos (ingeniero jefe, médico jefe, asesor jurídico, directores técnicos, etc.), y otros empleados semejantes. Es nula la elección que recaiga en uno de tales afiliados, y el que, debidamente electo, entre después a desempeñar alguno de los empleos referidos, dejará ipso facto vacante su cargo sindical. ("*Members that, because of their position in the company, represent the employer or who have management functions or personal trust or who may easily exercise unjust coercion over coworkers, cannot be part of a trade or company union's Board of Directors. Those prohibited include managers, assistant managers, administrators, supervisors, private secretaries of the board of directors, management or the administration, department directors (head of engineering, head of medical, legal advisor, technical directors, etc.), and other similar employees. The election of any such members to the Board is invalid, and, any duly elected member that assumes such a management function shall automatically vacate his union position.*")

Fuero sindical (*Protection of Elected Union Leaders)*
Art. 516. Los trabajadores miembros de la Junta Directiva de una organización sindical, desde su elección hasta seis (6) meses después de cesar en sus funciones, no podrán ser despedidos de su trabajo sin comprobar previamente ante el Juez de Letras del Trabajo respectivo o ante el Juez de lo Civil en su defecto, que existe justa causa para dar por terminado el contrato. El Juez actuando en juicio sumario, resolverá lo procedente. Esta disposición sólo es aplicable a la Junta Directiva Central, cuando los sindicatos estén organizados en secciones y subsecciones. ("*Members of a union's Board of Directors may not be dismissed from their jobs from their election until six (6) months after ceasing their role on the Board without previously proving just cause for terminating their contract before the respective Labor Court or, in its absence, before the Civil Court. The acting judge will issue a summary judgment as appropriate. This provision is only applicable to a union's Central Board of Directors when the union is organized into sections or subsections.*")

La violación de lo dispuesto en el párrafo anterior, sujetará al patrono a pagar a la organización sindical respectiva una indemnización equivalente a seis (6) meses de salario del trabajador, sin perjuicio de los derechos que a éste correspondan. ("*Violation of the provisions of the above paragraph will subject the employer to pay the respective union organization a compensation equivalent to six (6) months of the worker's pay, notwithstanding their other rights*.")

Fuero sindical promotores (*Special Protection of the State for Union Founders)*
Art. 517. La notificación formal de treinta (30) trabajadores hecha a su patrono por escrito, comunicada a la Dirección General del Trabajo o a la Procuraduría de Trabajo de la jurisdicción,

de su propósito de organizar un sindicato, coloca a los firmantes de dicha notificación, bajo la protección especial del Estado. En consecuencia, desde la fecha de la notificación, hasta la de recibir la constancia de Personería Jurídica, ninguno de aquellos trabajadores podrá ser despedido, trasladado o desmejorado en sus condiciones de trabajo, sin causa justa, calificada previamente por la autoridad respectiva. ("*Formal notification of thirty (30) workers of their intent to organize a union, made in writing to their employer and communicated to the General Directorate of Labor or the Attorney General of Labor of the jurisdiction, places the signers of said notification under a special State protection. Therefore, from the date of notification until the receipt of the certification of the union's legal personality, none of these workers can be fired, transferred, or demoted in their working condition without just cause, only after just cause is determined by the respective authority*.")

Obligaciones de sindicatos (*Union Obligations)*
Art. 518. Los sindicatos están obligados: ("*Unions are obligated to*:")

1) A suministrar los informes que les pidan las autoridades de trabajo, siempre que se refieran exclusivamente a su actuación como tales sindicatos; ("*Provide reports requested by labor authorities, whenever they are exclusively related to their union actions*;")

2) A comunicar a la Dirección General del Trabajo, dentro de los quince (15) días siguientes a su elección, los cambios ocurridos en su Junta Directiva; ("*Communicate any change in their Board of Directors to the General Directorate of Labor within the fifteen (15) days of an election*;")

3) A enviar cada año a dicha Dirección una nómina completa de inclusiones y exclusiones de sus miembros; ("*Send a complete roll of all members that have joined or left the union annually to said Directorate*;")

4) A iniciar dentro de los quince (15) días siguientes a la celebración de la Asamblea General que acordó reformar los estatutos, los trámites necesarios para su aprobación legal, de acuerdo con lo dispuesto por el Artículo 487. ("*Initiate the necessary processes for the legal approval of any changes to the by-laws by the union'sGeneral Assembly within the fifteen (15) days its meeting, in accordance with the provisions ofArticle 487*.")

Titulo VI, Capítulo VIII: Disolución y Liquidación (*Title VI, Chpater VIII: Dissolution and Liquidation)*

Formas de disolución: sindicato, federación o confederación (*Means of Dissolution: Union, Federation or Confederation*)
Art. 527. Un sindicato o una federación o confederación de sindicatos solamente se disuelve: ("*A union or federation or confederation of unions can only be dissolved*:")

a) Por cumplirse cualquiera de los eventos previstos en los estatutos para este efecto; ("*By completing any of the events stipulated in the by-laws to this effect*;")

b) Por acuerdo, cuando menos, de las dos terceras partes de los miembros de la organización, adoptado en Asamblea General y acreditado con las firmas de los asistentes; ("*By agreement of*

at least two thirds of the union's members, adopted in the General Assembly and verified with the meeting attendees' signatures;")

c) Por sentencia judicial; y, ("*By judicial order; and*,")

d) Por reducción de los afiliados a un número inferior a treinta (30), cuando se trate de sindicatos de trabajadores. ("*By a reduction in membership to less than thirty (30) workers in the case of worker unions.*")

Cancelación de inscripción por disolución (*Cancelling Union Registration after Dissolution)*
Art. 528. En todo caso de disolución, el Ministerio del Trabajo y Previsión Social cancelará mediante nota marginal la correspondiente inscripción y hará publicar por tres (3) veces consecutivas en el periódico oficial "La Gaceta" un extracto de las actuaciones o hechos que causaron la disolución.[864] ("*In every dissolution case, the Secretariat of Labor and Social Security, will cancel the corresponding registration through a separate notice and publish three (3) consecutive times in the official newspaper "The Gazette" a summary of the actions or events that caused the dissolution.*")

Título VI, Capítulo IX: Trabajadores Oficiales (*Title VI, Chapter IX: Public Sector Workers)*

Derecho de Asociación (*Right of Association)*
Art. 534. El derecho de asociación en sindicatos se extiende a los trabajadores de todo el servicio oficial, con excepción de los miembros del Ejército Nacional y de los cuerpos o fuerzas de policía de cualquier orden . . . ("*The right of association in unions extends to all public sector workers, with the exception of members of the National Military and any kind of police bodies or forces whatsoever ...*")

Título VIII: Organización administrativa de trabajo (*Title VIII: Administrative Organization of Labor Authorities)*
Capítulo III: De la Inspección General del Trabajo (*Chapter III: Of the Inspector General of Labor)*

Art. 610. La Inspección General del Trabajo, por medio de su cuerpo de inspectores y visitadores sociales, debe velar porque patronos y trabajadores cumplan y respeten todas las disposiciones legales relativas al trabajo y a previsión social. ("*The Inspector General of Labor, through its bodies of inspectors and social workers, must oversee that employers and workers fulfill and respect all legal provisions related to work and social welfare*.")

En lo referente a la Ley Orgánica del Instituto Hondureño de Seguridad Social y a sus reglamentos, debe prestar auxilio y la colaboración que le soliciten los Inspectores al servicio de este último. ("*In regard to the organic law of the Honduran Institute of Social Security and its regulations, the IHSS must provide assistance and collaboration requested by the inspectors to facilitate these duties.*")

[864] Reformado por el Decreto No. 760 (Gaceta No. 22,811 del lunes 28 de mayo de 1979). ("Modified by Decree No. 760 (Gazette No. 22,811 of Monday 28, 1979).")

Atribuciones de la IGT
Art. 614. Corresponde a la Inspección General del Trabajo:
I) Vigilar el cumplimiento del Código del Trabajo, sus reglamentos, contratos colectivos y demás disposiciones obligatorias, que comprende:
a) Inspección de centros de trabajo;
b) Inspección especial del trabajo familiar, del trabajo a domicilio y de las industrias;
c) Estudiar las actas de inspección para proponer las medidas procedentes;
d) Reinspección para averiguar si se han subsanado las deficiencias encontradas con anterioridad; y,
e) Formular informes con los resultados de las inspecciones, proponiendo las medidas que sean necesarias para la protección general de los trabajadores.
II) Auxiliar a las demás oficinas de la Secretaría, practicando, por medio de sus inspectores, las diligencias que se le encomienden;
III) Intervenir conciliatoriamente, por medio de sus inspectores, en los conflictos obrero-patronales;
IV) Vigilar la integración de las comisiones de seguridad;
V) Cooperar en la revisión de contratos colectivos, investigando para tal efecto, las condiciones de vida de los trabajadores y la situación económica de las empresas;
VI) Personal residente en el Distrito Central y en los Departamentos, que comprende:
a) Adscripción y movimiento de inspectores, visitadoras y demás personal;
b) Inspecciones y control de actividades; y,
c) Sanciones y menciones laudatorias.
VII) Celebrar cada seis (6) meses reuniones públicas a las que asistirá obligatoriamente todo su personal, las trabajadoras sociales, enfermeras visitadoras y demás cuerpos similares, con el objeto de estudiar los problemas comunes relacionados con el cumplimiento de la legislación social. Cada sindicato podrá enviar a estas reuniones un delegado con derecho a voz y voto; y, además, tendrá la facultad de exigir la convocatoria a tales reuniones en la oportunidad arriba señalada.

Powers of the IGT
Section 614. The General Inspectorate is responsible for:
I) Ensuring compliance with the Labor Code, its regulations, collective bargaining agreements and other mandatory provisions through:
a) Inspection of work places;
b) Special inspection of family work, household work and industry;
c) Studying inspection reports to propose appropriate remedial measures;
d) Re-inspection to verify if employers have corrected previously-identified deficiencies and,
e) Formulation of reports on the results of inspections that propose necessary measures for the general protection of workers.
II) Assisting other Secretariat offices, participating, through its inspectors, in other proceedings as required;
III) Intervening in a conciliatory manner, through its inspectors, in labor-management disputes;
IV) Monitoring the formation of safety committees;

V) Cooperating in the review of collective bargaining agreements, investigating for such purposes, the living conditions of workers and the economic situation of enterprises;
VI) Personnel residing in the Central District and Departments, comprising:
a) Assignment and movement of inspectors, social workers, and other staff;
b) Inspection and management of activities and,
c) Disciplinary actions and laudatory mentions.
VII) Hold compulsory public meetings every six (6) months attended by all staff, social workers, nursing social workers and other similar bodies, in order to study common problems related to the implementation of social legislation. Each union may send a delegate to these meetings with the right to speak and vote and also has the power to demand the convening of such meetings as provided above.

Facultades y obligaciones: inspectores y visitadores sociales (*Powers and Obligations: Inspectors and Social Workers)*
Art. 617. Los Inspectores de Trabajo y las Visitadoras Sociales son autoridades que tienen las obligaciones y facultades que se expresan a continuación: ("*Labor Inspectors and Social Workers are authorities that have the powers and obligations expressed below*:")

a) Pueden revisar libros de contabilidad, de salarios, planillas, constancias de pago y cualesquiera otros documentos que eficazmente les ayuden a desempeñar su cometido; ("*They may inspect accounting books, salary records, pay slips, proof of pay and whatever other documents that help them to effectively carry out their work*;")

b) Siempre que encuentren resistencia injustificada deben dar cuenta de lo sucedido al Tribunal de Trabajo que corresponda y, en casos especiales, en los que su acción deba ser inmediata, pueden requerir, bajo su responsabilidad, el auxilio de las autoridades o agentes de policía, con el único fin de que no se les impida o no se les creen dificultades en el cumplimiento de sus deberes; ("*Whenever they encounter unjustified resistance they must report the occurrence to the corresponding Labor Court, and in certain cases where immediate action is called for, they can, at their own discretion, request the help of the authorities or police*;")

c) Pueden examinar las condiciones higiénicas de los lugares de trabajo y las de seguridad personales que éstos ofrezcan a los trabajadores, y, muy particularmente, deben velar porque se acaten todas las disposiciones en vigor sobre prevención de accidentes de trabajo y enfermedades profesionales; ("*They may inspect workplace personal safety and health conditions offered to the workers, and, very particularly, they must safeguard compliance with all the legal provisions in effect regarding prevention of workplace accidents and occupational illnesses*;")

d) Deben intervenir en todas las dificultades y conflictos de trabajo de que tengan noticia, sea que se presenten entre trabajadores y patronos, sólo entre aquellos o sólo entre éstos, a fin de prevenir su desarrollo o lograr su conciliación extrajudicial, si ya se han suscitado; ("*They must intervene in all labor difficulties and conflicts about which they have notice, whether they arise between workers or employers, only among workers or only among employers, with the end of preventing further development of the conflict or to achieve the out-of-court conciliation for conflicts that have already arisen*;")

g) Las actas que levanten y los informes que rindan en materia de sus atribuciones, tienen plena validez en tanto no se demuestre en forma evidente su inexactitud, falsedad o parcialidad; y, ("*The records and the reports that they produce in carrying out their responsibilities have full validity so long as there is no evident form of inaccuracy, falsehood or bias; and,*")

h) Los Inspectores cuidarán especialmente de que se respeten todos aquellos preceptos cuyo cumplimiento garantice las buenas relaciones entre patronos y obreros. Asimismo vigilarán que se cumpla la prohibición sobre trabajo nocturno para menores, poniendo en conocimiento de quien corresponda, las faltas que anoten para que sean castigados. Por último, están obligados a acatar las instrucciones relacionadas con el desempeño de su cargo, que reciban de sus superiores jerárquicos. ("*The Inspectors shall especially ensure respect for compliance with all precepts that guarantee good worker-employer relations. Additionally, they will safeguard against night time work for minors, notifying the appropriate authority of the offenses they observe so that such violators are punished. Finally, they are obligated to obey the instructions related to the performance of their job that they receive from their superiors*.")

Visitas a empresas por inspectores (*Inspector Visits to Companies)*
Art. 618. Los Inspectores de Trabajo, para los efectos del artículo anterior podrán visitar, previa identificación, las empresas a toda hora del día y de la noche, siempre y cuando se haga necesario; podrán igualmente interrogar al personal de los establecimientos, sin la presencia del patrono ni de testigos y solicitar toda clase de documentos y registro a que obliga este Código. Harán constar los Inspectores en acta que al efecto levanten, si se encontraren irregularidades en la empresa visitada. Esas actas las enviarán a la autoridad de que dependan, y ésta impondrá, con vista de ellas, las sanciones correspondientes y ordenará la ejecución de las medidas que procedan conforme a la ley. Los Inspectores de Trabajo tendrán, la obligación de practicar las investigaciones a que se refiere este artículo, siempre que verbalmente o por escrito reciban queja de alguna de las partes, respecto de violaciones de este Código o de los reglamentos de trabajo, en el seno de la empresa de que se trate. ("*The Labor Inspectors, for the effects of the preceding article, may visit companies after showing identification at all times of the day and night, whenever it proves necessary; they may equally interview the personnel of the establishments without the presence of the employer nor any witness and request all types of documentation and records that this Code requires. The Inspectors will document any irregularities they identify in the visited company in an inspection report. Those reports will be sent to the legal entity with authority to act, and that authority, in light of the irregularities identified, will impose the corresponding sanctions and order the execution of measures as required by law. Whenever they receive a written or verbal complaint from any party with respect to violations of this Code or to labor regulations, Labor Inspectors are obligated to carry out the inspections referred to by this article at the company to which the complaint is related*.")

Lectura y presentación del acta (*Reading and Presentation of Inspection Reports)*
Art. 619. El acta deberá ser leída al patrono o su representante y al trabajador o trabajadores causantes de la infracción, debiendo firmarla conjuntamente con los infractores. Si alguno de ellos no pudiere o no quisiere firmar, el inspector dejará constancia de ello. Las actas que levanten los inspectores deberán ser presentadas al Jefe de la Sección, dentro del día hábil siguiente o en el plazo que la Inspección General establezca. ("*The report must be read to the employer or its representative and to the worker or workers responsible for the infraction to be*

signed jointly with the offender. If one of them is unable or unwilling to sign, the inspector will attest to that effect. The Inspector's report must be presented to the Section Manager within one working day or the timeframe set by the Inspector General.")

Acta de intimación o notificación de sanción
Art. 620. Si la Inspección General resuelve imponer sanción, ordenará que el Inspector levante una segunda acta que se denominará de intimación o notificación de sanción. El presunto infractor podrá formular sus descargos en la primera acta o exponer por escrito dentro de tercero día a la Inspección General del Trabajo, lo que considere conveniente a su derecho antes de que se dicte resolución. Los plazos para interponer los recursos legales contra la resolución del Inspector General imponiendo sanciones, se contarán desde el día siguiente al del acta de intimación o notificación.

Report of Notification of Sanction
Article 620. If the Inspector General decides to impose a penalty, it shall order the Inspector to file a second notifiction of sanction report. The alleged offender may make their defense in the first inspection report or provide written appeal within three days to the Inspector General of Labor, which will consider the appeal before making any ruling. The timeframes for seeking legal remedies against the decision of the Inspector General to impose a fine shall be counted from the day following the [second] inspection repor of notiice of sanction.

Recursos de reposición y apelación
Art. 621. Contra las decisiones imponiendo multas, los interesados podrán interponer el recurso de reposición ante la Inspección General del Trabajo, y el de apelación ante el Ministerio de Trabajo y Previsión Social. Los recursos de reposición y de apelación se interpondrán y sustanciarán entro de los plazos y en la forma establecida en el Código de Procedimientos Administrativos, otorgándose en su caso el término de la distancia.

Resources and appeal
Article 621. For decisions imposing fines, interested parties may request a rehearing from the Inspector General of Labor and lodge an appeal before the Secretariat of Labor and Social Security. The rehearing and appeals requests must be lodged and substantiated within the timeframes and in the manner delineated in the Code of Administrative Procedure, granting the distance term.

Requisitos actas
Art. 622. Las actas de constatación o de hechos y las de intimación o notificación, se ajustarán a las fórmulas que establezca la Dirección General del Trabajo, pero harán en todo caso mención expresa, la primera, del derecho de formular descargos en el acta o por escrito dentro de tercero día, y la segunda, de los recursos consagrados en este Código y el plazo para ejercitarlos.
("Reports of observation or facts and reports of summons or notification of penalty, shall conform to the formulas established by the General Directorate of Labor, but shall in all cases expressly state, first, the right to express dissent in the inspection report or in writing within three days, and second, the means of recourse codified in this Code and the deadline by which to exercise such recourse.")

Inspectores de trabajo: agentes de ley
Art. 623. Los Inspectores de Trabajo, como agentes de la ley, evitarán entrar en discusiones sobre los propósitos concretos o determinados de su presencia e invocarán solamente la representación que invisten. *("Labor inspectors, as agents of the law, shall avoid entering into discussions regarding concrete or specific purpose of their presence and shall invoke only the office they hold.")*

Continuidad de procedimiento (*Ongoing Procedings)*
Art. 624. Los Inspectores de Trabajo, una vez iniciado un procedimiento, no podrán dejarlo sin efecto, sin conocimiento y autorización de sus superiores. ("*Labor Inspectors may not leave any procedure that has been initiated unresolved without the knowledge or authorization of their superiors.*")

Sanciones y multas a infractores (*Sanctions and Fines for Violators)*
Art. 625. Se sancionarán con multas de L. 50.00 hasta L. 5,000.00, de acuerdo con las circunstancias particulares de cada caso, su reiteración y capacidad económica de la empresa infractora, las siguientes infracciones: ("*The following infractions will be sanctioned with fines of 50.00 to 5,000.00 Lempiras, according to the particular circumstances of each case, if the infraction is reoccuring and the economic capacity of the offending company*:")

a) La desobediencia a las disposiciones impartidas por los inspectores de trabajo, dentro del límite de sus atribuciones legales, ("*Disobedience with legal provision as instructed by labor inspectors within the limits of their legal power*,")

b) La obstrucción del cumplimiento de los deberes que legalmente corresponden a los inspectores de trabajo, ("*Obstruction of an inspector's ability to carry out their legal duties*,")

c) La agresión física, o moral hacia la persona de los inspectores de trabajo, ("*Physical or moral aggression towards a labor inspector*,")

d) La violación, por parte de los patronos, de cualquiera de las garantías mínimas que establece este Código, que no tengan sanción pecuniaria especial. ("*Employer violationof any of the minimum guarantees established by this Code that do not have a special pecuniary sanction.*")

Estas sanciones se entienden sin perjuicio de cualquier acción, penal, civil o laboral que corresponda conforme la justicia ordinaria. ("*These sanctions are understood to be applicable notwithstanding any labor, penal or civil action that may apply in accordance with ordinary legal proceedings*.")

Las multas las impondrá el Inspector General del Trabajo, tanto a la persona directamente responsable de la infracción como al patrono en cuya empresa, industria, negocio o establecimiento, se hubiere cometido la falta, a no ser que éste demostrare su desconocimiento o no participación en la misma. Si el culpable fuere una compañía, sociedad o institución pública o privada, las penas se aplicarán contra quien figure como patrono, director, gerente o jefe de la empresa, establecimiento, negocio o lugar donde el trabajo se preste pero la respectiva persona jurídica, quedará obligada solidariamente con estos a cubrir toda clase de responsabilidades de

orden pecuniario. ("*The fines will be imposed by the Inspector General of Labor, both on the person directly responsible for the infraction and on the employer in whose company, industry, business or establishment, the offense was committed, unless the employer demonstrates his lack of awareness or participation in the infraction. If the culprit is a company, association or private or public institution, the punishment will apply against whomever acts as the employer, director, manager or head of the company, establishment, business or place where the work is performed, but the respective legal entity will be jointly liable for all types of pecuniary responsibilities*.")

Denuncia de infracciones (*Complaints about Infractions)*
Art. 628 Toda persona puede dar cuenta a los Inspectores o a las Vistadoras Sociales de cualquier infracción que cometan patronos o trabajadores en contra de las leyes de Trabajo o de Seguridad Social. ("*Any person may inform Inspectors or Social Workers of any infraction that employers or workers commit in violation of Labor or Social Security Laws.*")

Supervisores: potestades (*Supervisors: Functions)*
Art. 630 Los supervisores son funcionarios que tienen por especial cometido supervisar el trabajo de los Inspectores en la forma que disponga la Inspección General. Los supervisores están investidos, para el cumplimiento de su cometido, de los mismos poderes y facultades que los Inspectores de Trabajo. Su tarea consiste esencialmente en verificar si las inspecciones dispuestas se han cumplido y, en caso afirmativo, si lo han sido en el tiempo y forma dispuestos, efectuar inspecciones de comprobación y cumplir cometidos especiales o particularmente importantes. ("*The supervisors are functionaries with the special task of supervising the work of Inspectors as stipulated by the Inspector General. To carry out this task, supervisors are endowed with the same powers and authorities as the Labor Inspectors. Their task consists essentially of verifying that inspections were executed—and if so that they were executed in the correct time and manner, carrying out oversight inspections, and fulfilling special or particularly important tasks*.")

Los supervisores informarán directamente a la Inspección General de Trabajo de los resultados de las misiones que se les encomienden o de las tareas normales de supervisión y darán cuenta en particular de toda anormalidad que comprometa el prestigio del cuerpo inspectivo. Los supervisores tratarán en todo caso de conocer las quejas de los trabajadores o patronos sobre la forma en que se cumplan o hayan cumplido las inspecciones. ("*Supervisors will report the results of the missions they are entrusted with or of their normal supervisory duties directly to the Inspector General of Labor and will note in particular all abnormalities that might compromise the good standing of the inspectorate. The supervisors will try in all cases to know the worker's or employer's complaints regarding the way in which the inspections are being or have been carried out.*")

Título IX: Jurisdicción Especial de Trabajo (*Title IX: Special Labor Jurisdiction*)
Capítulo I: Organización y Competencia de los Tribunales de Trabajo (*Chapter I: Organization and Functions of Labor Courts)*
Sección I: Disposiciones Generales (*Section I: General Provisions)*

Ámbito material (*Purview)*
Art. 665. La jurisdicción del trabajo está instituida para decidir los conflictos jurídicos que se originen directa o indirectamente del contrato de trabajo. ("*The Labor Jurisdiction was established to resolve legal conflicts that originate directly or indirectly from the labor contract*.")

Título X: Procedimiento en los Juicios del Trabajo (*Title X: Labor Court Procedings)*
Capítulo XIII: Procedimientos en laResolución de los Conflictos Colectivos de Carácter Económico Social (Chapter XIII: Procedings for Resolving Socio-Economic Collective Conflicts)
Sección I: Arreglo Directo (*Section I; Direct Arrangement)*

Iniciación de Conversaciones (*Initiating Conversations)*
Art. 791. El dueño del establecimiento o empresa o su representante están en la obligación de recibir la delegación de los trabajadores dentro de las veinticuatro (24) horas siguientes a la presentación oportuna del pliego de peticiones, para iniciar conversaciones. Si la persona a quien se presentare el pliego considerare que no esta autorizada para resolver sobre el, debe hacerse autorizar o dar traslado al patrono dentro de las veinticuatro (24) horas siguientes a la presentación del pliego, avisándolo así a los trabajadores. En todo caso, la iniciación de las conversaciones en la etapa de arreglo directo no puede diferirse por más de cinco (5) días hábiles a partir de la presentación del pliego. ("*The owner of the establishment or business or its representative, is obligated to receive the delegation of workers within twenty-four (24) hours following the timely presentation of the statement of demands to initiate conversations. If the person to whom the statement is presented considers that he or she is not authorized to resolve the matter, he or she must obtain authorization or the statement of demands must be transferred to the employer within twenty-four (24) hours following the presentation of the statement, and the workers must be advised. In any case the initiation of conversations in the direct settlement stage cannot be deferred for more than five (5) business days from the presentation of the statement.*")

Título XI: Disposiciones Varias (*Title XI: Various Provisions)*
Capítulo Único (*Only Chapter)*
Prescripción (*Statutes of Limitations)*

Art. 864. Los derechos y acciones de los trabajadores para reclamar contra los despidos injustificados que se les hagan o contra las correcciones disciplinarias que se les apliquen, prescriben en el término de dos (2) meses contados a partir de la terminación del contrato o desde que se les impusieron dichas correcciones, respectivamente. ("*Workers' rights and ability to make a legal claim against unjustified dismissals or against disciplinary corrections , expire within two (2) months of the event, starting from termination of the contract or from the application of the corrections, respectively.*")

Art. 868. El término de prescripción se interrumpe: (“*The statute of limitations is suspended*:”

(a) Por demanda o gestión ante la autoridad competente; (“*By lawsuit or the filing of paperwork before a competent authority;*”)
(b) Por el hecho de que la persona a cuyo favor corre la prescripción reconozca expresamente, de palabra o por escrito, o tácitamente por hechos indudables, el derecho de aquél contra quien transcurre el término de prescripción. Quedan comprendidos entre los medios expresados en este inciso el pago o cumplimiento de la obligación del deudor, sea parcial o en cualquier otra forma que se haga; y, (“*By express acknowledgment by the person in whose favor the limitation runs, orally or in writing, or implicitly by unquestionable events, the right of the one whose expiration time goes against. It remains to be understood between the expressed means in this paragraph the pay or compliance of the obligation of the debtor, be it partial or in any other way made; and*,”)
(c) Por fuerza mayor o caso fortuito debidamente comprobados. (“*By force majeure or by chance, when duly confirmed.*”)

B. Código de la Niñez y de la Adolescencia (*Code on Childhood and Adolescence)*

Capítulo V: De la Protección de los Niños Contra la Explotación Económica *(Chapter V: On the Protection of Children against Economic Exploitation)*

Sección II: De la Autorización para el Trabajo (*Section II: On Labor Authorization)*

Art. 119. El empleo de niños en cualquier actividad retribuida estará sujeto a lo prescrito por el artículo 128 numeral 7 de la Constitución de la República y requerirá de la autorización previa de la Secretaría de Estado en los Despachos de Trabajo y Previsión Social a solicitud de los padres, de los hermanos o del representante legal. Igual autorización requerirán los niños que se propongan realizar trabajos independientes, esto es, aquellos en que no medie una remuneración ni un contrato o relación de trabajo. ("*The employment of children in any type of compensable activity will be subject to in the conditions established in numeral 7 of Article 128 of the Constitution of the Republic and will require previous authorization from the Secretariat of Labor and Social Security at the request of a child's parent, sibling or legal representative. Authorization is also required for a child working independently, that is, working for no pay or without a contract or work relation*.")

Para extender tal autorización dicha Secretaría de Estado deberá realizar un estudio socio-económico y del estado físico y mental de los niños de que se trate. ("*To extend such authorization the Secretariat [of Labor and Social Security] must study the socio-economic and physical and mental state of said children.*")

La autorización se concederá cuando, a juicio de la mencionada Secretaría de Estado, el niño no sufrirá perjuicio aparente, físico, moral o educativo por el ejercicio de la actividad de que se trate. ("*The authorization will be granted when, in the judgment of said Secretariat [of Labor and Social Security], the child will suffer no apparent, physical, moral or emotional damage from the given work activity*.")

Concedida la autorización, el niño podrá recibir directamente el salario y, llegado el caso, ejercitar, con el auxilio de un apoderado legal, las acciones pertinentes. ("Once the *authorization is granted, the child will be able to directly receive a salary and, if need arises, take pertinent actions with help from a legal representative.*")

Art. 120. Las autorizaciones para trabajar se concederán a título individual y deberán limitar la duración de las horas de trabajo y establecer las condiciones en que se prestarán los servicios. ("*Work authorizations will be granted on an individual basis and must limit the duration of the work hours and establish the conditions under which services are offered.*")

En ningún caso se autorizará para trabajar a un niño menor de catorce (14) años. ("*In no case will a child younger than fourteen (14) years old be authorized to work.*")

Art. 122. Los niños no podrán desempeñar labores insalubres o peligrosas aun cuando sean realizadas como parte de un curso o programa educativo o formativo. La insalubridad o

peligrosidad se determinará tomando como base lo dispuesto en este Código, en el Código de Trabajo y en los reglamentos que existan sobre la materia. ("*Children may not carry out unhealthy or dangerous work even when it is part of an educational or training program or course. The unhealthiness or dangerousness will be determined based on the dispositions of this Code, the Labor Code and existing regulations on the subject*.")

Tomando en cuenta lo anterior, los niños no podrán realizar labores que: ("*Taking the preceding into account, children shall not do work that*;")

a) Impliquen permanecer en una posición estática prolongada o que deban prestarse en andamios cuya altura exceda de tres (3) metros; ("*Involves remaining in a prolonged static position or where they must being supported by scaffolding exceeding three (3) meters in height*;")

b) Tengan que ver con sustancias tóxicas o nocivas para la salud; ("*Has to do with substances that are toxic or harmful to health;*")

c) Expongan al tráfico vehicular; ("*Exposes them to vehicular traffic*;")

ch) Expongan a temperaturas anormales o deban realizarse en ambientes contaminados o con insuficiente ventilación; ("*Exposes them to abnormal temperatures or must be carried out in environments that are contaminated or lack sufficient ventilation*;")

d) Deban realizarse en túneles o subterráneos de minería o en sitios en los que confluyan agentes nocivos tales como contaminantes, desequilibrios térmicos, deficiencia de oxígeno a consecuencia de la oxidación o de la gasificación; ("*Is carried out in tunnels or underground mining or in places where harmful agents such as contaminants, thermal instability, and oxygen deficiency as a consequence of oxidation or gasification are found*;")

e) Los expongan a ruidos que excedan de ochenta (80) decibeles; ("*Exposes them to noise levels exceeding eighty (80) decibels;*")

f) Impliquen la manipulación de sustancias radioactivas, pinturas luminiscentes, rayos o impliquen la exposición a radiaciones ultravioletas o infrarrojas y a emisiones de radio frecuencia; ("*Involves handling radioactive substances, luminescent paint, rays or exposes them toultraviolet or infrared radiation and radioactive frequency emissions*;")

g) Impliquen exposición a corrientes eléctricas de alto voltaje; ("*Involves exposure to high-voltage electrical currents*;")

h) Exijan la inmersión en el mar; ("*Requires immersion in the sea or ocean*;")

i) Tengan que ver con basureros o con cualquier otro tipo de actividades en las que se generen agentes biológicos patógenos; ("*Has to do with trash collecting or any other type of activity that generates biological pathogens*;")

j) Impliquen el manejo de sustancias explosivas, inflamables o cáusticas; ("*Involves handling explosive, flammable or caustic substances;*")

k) Sean propios de fogoneros en los buques, ferrocarriles u otros bienes o vehículos semejantes; ("*Employs them as (fire) stokers on ships, trains or other similar machines or vehicles*;")

l) Sean propios de la pintura industrial y entrañen el empleo de albayalde o cerusa, de sulfato de plomo o de cualquier otro producto que contenga dichos elementos; ("*Involves handling industrial paint, white lead, lead sulfate or any other product containing said elements*;")

ll) Se relacionen con máquinas esmeriladoras, de afilado de herramientas, muelas abrasivas de alta velocidad o con ocupaciones similares; ("*Relates to grinding machines, tool sharpening and cutting, abrasive or high-speed grinding equipment or similar occupations*;")

m) Se relacionen con altos hornos, hornos de fundición de metales, fábricas de acero, talleres de laminación, trabajos de forja o en prensas pesadas; ("*Relates to blast furnaces, metal furnaces, steel factories, lamination workshop, forge work or heavy press*;")

n) Involucren manipular cargas pesadas; ("*Involves handling heavy loads*;")

ñ) Se relacionen con cambios de correas de transmisión, de aceite o engrase y otros trabajos próximos a transmisiones pesadas o de alta velocidad; ("*Relates to changing transmission belts, oil or grease and other jobs in proximity to heavy or high-speed transmissions*;")

o) Se relacionen con cortadoras, laminadoras, tornos, fresadoras, troqueladoras y otras máquinas particularmente peligrosas; ("*Relates to cutters, laminators, lathes, drills, milling machines, die cutters and other particularly dangerous machines;*")

p) Tengan relación con el vidrio o con el pulido y esmerilado en seco de vidrio o con operaciones de limpieza por chorro de arena o con locales de vidriado y grabado; ("*Relates to glass, glass grinding or polishing, sand blasting, glaze and engraving*;")

q) Impliquen soldadura de cualquier clase, cortes con oxígeno en tanques o lugares confinados o en andamios o molduras precalentadas; ("*Involves any kind of welding, oxygen tanks or confined places with scaffolding or preheated molding*;")

r) Deban realizarse en lugares en los que se presentan altas temperaturas o humedad constante; ("*Is carried out in places with high temperatures or constant humidity*;")

s) Se realizan en ambientes en los que se desprenden vapores o polvos tóxicos o que se relacionen con la producción de cemento; ("*Is carried out in environments containing toxic vapors or dust or related to the production of cement*;")

t) Se realicen en la agricultura o en la agroindustria que impliquen alto riesgo para la salud; ("*Is carried out in agriculture or agroindustry and involves a high health risk*;")

u) Expongan a un notorio riesgo de insolación; y ("*Exposes them to obvious risk of sunstroke or sun exposure; and*,")

v) Señalen en forma específica los reglamentos que sobre la materia emita la Secretaría de Estado en los Despachos de Trabajo y Previsión social. ("*Is specifically delineated in regulations emitted by the Secretariat of Labor and SocialSecurity*.")

La mencionada Secretaría de Estado podrá autorizar a niños mayores de dieciséis (16) años y menores de dieciocho (18) para que puedan desempeñar alguna de las labores señaladas en este artículo si se prueba a satisfacción de la misma que han concluido estudios técnicos en el Instituto Nacional de Formación Profesional o en un instituto técnico especializado dependiente de la Secretaría de Estado en el Despacho de Educación Pública. Aquella entidad, en todo caso, verificará que los cargos pueden ser desempeñados sin peligro para la salud o la seguridad del niño. ("*The Secretariat [of Labor and Social Security] may authorize children older than sixteen (16) and younger than eighteen (18) to perform some of the categories of work outlined in this article if proven to the satisfaction of the Secretariat that technical studies have been completed by the National Institute of Professional Training or by a specialized technical institute affiliated with the Secretariat Public Education. That entity [STSS], regardless, will verify that the category of work can be carried out without endangering the health or safety of the child*.")

Art. 125. La duración máxima de la jornada de trabajo de los niños estará sujeta a las siguientes reglas: ("*The maximum work day duration for children will be subject to the following rules*:")

a) El mayor de catorce (14) años y menor de dieciséis (16) sólo podrá realizar trabajos en jornadas que no excedan de cuatro (4) horas diarias; ("*Children older than fourteen (14) and younger than sixteen (16) may only work shifts that do not exceed four (4) hours daily;*")
b) El mayor de dieciséis (16) años y menor de dieciocho (18) sólo podrá trabajar en jornadas que no excedan de seis (6) horas diarias y, ("*Children older than sixteen (16) and younger than eighteen (18) may only work shifts that do not exceed six (6) hours daily; and*,")
c) Queda prohibido el trabajo nocturno para los niños trabajadores. No obstante, los mayores de dieciséis (16) años y menores de dieciocho (18) podrán ser autorizados para trabajar hasta las ocho (8) de la noche siempre que no se afecte su asistencia regular a un centro docente ni se cause con ello perjuicio para su salud física y moral. ("*It is prohibited for children to work in the nighttime. Nevertheless, children older than sixteen (16) and younger than eighteen (18) may be authorized to work until eight (8) o'clock at night as long as such work does not affect regular attendance at school or the child's physical or moral health*.")

Art. 128. La Secretaría de Estado en los Despachos de Trabajo y Previsión Social inspeccionará regular y periódicamente a las empresas para establecer si tienen a su servicio niños trabajadores y si están cumpliendo las normas que los protegen. ("*The Secretariat of Labor and Social Security will regularly and periodically inspect companies to determine if they employ children and if they are complying with the regulations that protect children.*")

Quienes violen dichas normas serán sancionados con multa de cinco mil (Los. 5,000.00) a veinticinco mil lempiras (Lps. 25,000.00). La reincidencia será sancionada con el doble de la multa anterior, aunque el máximo no podrá exceder de la última cifra señalada. ("*Whoever violates said regulations will be sanctioned with a fine of five thousand (5,000.00) to twenty-five thousand (25,000.00) lempiras. Reoccurrence will be sanctioned with double the previous fine, although the maximum may not exceed the latter amount [25,000 HNL]*.")

Cuando se trate de una empresa que haya puesto en peligro la vida de un niño o haya atentado contra la moral o las buenas costumbres con daño del mismo, además de la multa se le aplicarán las sanciones civiles y penales a que haya lugar. ("*When a company has endangered the life of a child or has violated moral or good custom causing harm to a child, in addition to the fine, civil and penal sanctions will be applied as required*.")

C. Reglamento sobre Trabajo Infantil (*Regulation on Child Labor)*

Acuerdo Ejecutivo N. STSS-211-01, October 10, 2001 (Executive Decree No. STSS-211-01)

Capítulo V: Medidas Correctivas y Sanciones Administrativas (Chapter V: Corrective Measures and Administrative Sanctions)

Sección I: De las Medidas Correctivas (Section I: On Corrective Measures)

Art. 27. La Secretaría de Estado en los Despachos de Trabajo y Seguridad Social, podrá previo o de manera simultánea a la imposición de sanciones administrativas, ordenar medidas correctivas a aquellos empleadores que no brinden las condiciones laborarles a adolescentes trabajadores(as) de conformidad con las normas legales que regulan la materia. ("*The Secretariat of Labor and Social Security may previously or simultaneously impose administrative sanctions and order corrective measures to those employers that do not afford adolescent workers working conditions in compliance with the legal rules that govern the subject*.")

Art. 28. La imposición de medidas correctivas debe realizarse por escrito mediante una acta preventiva, en la cual, se estipulará la o las infracciones que el empleador está cometiendo; concediéndole al infractor un plazo máximo de quince (15) días calendarios para su cumplimiento y corrección de la falta señalada; y, advirtiéndole las consecuencias de su incumplimiento. ("*Corrective measures must be imposed in writing via a preventive report, which will delineate the employer's infraction or infractions; allowing the offender a maximum term of fifteen (15) calendar days to come into compliance and correct the identified infractions; and, warning the employer of the consequences of non-compliance*.")

Sección II: De las Sanciones Administrativas

Art. 29. Todas las sanciones administrativas previstas en este Reglamento se aplicarán sin perjuicio de otras responsabilidades previstas por la Ley, especialmente lo prescrito en el Artículo 134 del Código de la Niñez y de la Adolescencia. ("*All of the administrative sanctions in this regulation will be applied notwithstanding the application of the other responsibilities contemplated by the Law, especially those prescribed in Article 134 of the Code on Childhood and Adolescence*.")

Art. 30. Las sanciones establecidas en el Libro II, Título I, Capítulo V del Código de la Niñez y de la adolescencia se aplicarán cada vez que fueren necesarias, aumentándose en el doble por cada vez se reincida, hasta alcanzar el máximo de 25,000 lempiras previsto en la Ley. ("*The sanctions established in Book II, Title I, Chapter V of the Code on Childhood and Adolescence shall apply each time it is necessary, doubling for each reoccurrence up to the maximum of 25,000 HNL fine established in the Law*.")

Art. 32. Todas las sanciones administrativas de las infracciones cometidas conforme lo dispuesto en el Libro II, Título I, Capítulo V del Código de Niñez y de la Adolescencia y de este Reglamento, serán aplicadas por la Secretaría de Estado en los Despachos de Trabajo y Seguridad Social. Tales sanciones no obstarán para que se deduzcan las responsabilidades civiles y penales que correspondan. ("*All of the administrative sanctions for infractions committed with respect to the stipulations in Book II, Title I, Chapter V of the Code on Childhood and Adolescence and of this regulation will be applied by the Secretariat of Labor and Social Security. Such sanctions will not prevent the deduction of applicable civil or penal responsibilities.*")

Art. 34. Una vez firme la resolución mediante la cual se sanciona a un empleador, el pago por concepto de multas deberá hacerlo efectivo dentro del plazo de tres (3) días hábiles contados a partir del día hábil siguiente al notificación y se enterará en las instituciones u oficinas autorizadas para recaudar el Impuesto Sobre la Renta. ("*Once the decision to sanction an employer is finalized, the fine must be paid within three (3) business days counting from the next working day after notification and the institutions or authorized offices will be notified to collect the Income Tax.*")

La falta de pago dentro del plazo antes estipulado se sancionará con un recargo del dos por ciento (2%) diario por cada día de retraso, dicho valor se calculará sobre el monto de la multa y no será acumulativo. ("*Failure to pay within the term previously stipulated will be sanctioned with an added two percent (2%) daily late fee, the value of which will be calculated over the amount of the fine and will not be cumulative*.")

D. Constitution of Honduras, 1982

CAPITULO III DE LOS TRATADOS (Chapter III on Treaties)

Artículo 16. Todos los tratados internacionales deben ser aprobados por el Congreso Nacional antes de su ratificación por el Poder Ejecutivo.
Los tratados internacionales celebrados por Honduras con otros Estados, una vez que entran en vigor, forman parte del derecho interno.

Article 16. *All international treaties must be approved by Congress before ratification by the Executive. International treaties concluded by Honduras with other countries, once they enter into force, are part of domestic law.*

CAPITULO V
DEL TRABAJO (Chapter V on Labor)

Artículo 128. Las leyes que rigen las relaciones entre patronos y trabajadores son de orden público. Son nulos los actos, estipulaciones o convenciones que impliquen renuncia, disminuyan, restrinjan o tergiversen las siguientes garantías:
[…]

7. Los menores de (16) diez y seis años y los que hayan cumplido esa edad y sigan sometidos a la enseñanza en virtud de la legislación nacional, no podrán ser ocupados en trabajo alguno:

No obstante, las autoridades de trabajo podrán autorizar su ocupación cuando lo consideren indispensable para la subsistencia de los mismos, de sus padres o de sus hermanos y siempre que ello no impida cumplir con la educación obligatoria;

Para los menores de diecisiete (17) años la jornada de trabajo que deberá ser diurna, no podrá exceder de seis (6) horas diarias ni de (30) treinta a la semana, en cualquier clase de trabajo;
[…]

14. Los trabajadores y los patronos tienen derecho, conforme a la ley, a asociarse libremente para los fines exclusivos, de su actividad económico-social, organizando sindicatos o asociaciones profesionales; y,

15. El Estado tutela los contratos individuales y colectivos, celebrados entre patronos y trabajadores.

Article 128. *The laws governing the relationship between employers and workers are in the public interest. All acts, stipulations or agreements that renounce, diminish, restrict or distort the following guarantees are invalid:*
[…]

7. Minors under age sixteen (16) and minors above sixteen that remain subject to education requirements under national legislation shall not be employed in any work. Nevertheless, Secretariat of Labor authorities may authorize employment of such minors when they consider it indispensable for the survival of the child or their parents or brothers and only when such work does not impede complying with compulsory education requirements. For minors age seventeen (17) and younger, work shifts must be daytime shifts and must not exceed six (6) hours per day nor thirty (30) hours per week, for any type of work.
[…]

14. Workers and employers have the right, under the law, to associate freely for the sole purpose, according to their socio-economic activity, of organizing unions or professional associations; and

15. The State shall maintain guardianship of individual and collective agreements concluded between employers and workers.