

**PUBLIC COMMUNICATION TO THE U.S. NATIONAL
ADMINISTRATIVE OFFICE
(Currently the Office of Trade Agreement Implementation)
U.S. Department of Labor
200 Constitution Avenue, NW
Room S – 5205
Washington, D.C. 20210**

Public Communication to the U.S. National Administrative Office (NAO) under the North American Agreement on Labor Cooperation (NAALC) concerning labor rights violations at RUBIE'S DE MÉXICO, S. de R.L. de C.V., including the Right to Freedom of Association and the Right to Organize and the Right to Bargain Collectively, in violation of the Mexican Constitution and ILO Conventions adopted by Mexico, and the NAALC.

Submitted by:

**The Progressive Union of Workers of the Textile Industry, the Manufacturing, Cutting and Confection of Fabric and Garments in General and Related and Similar Industries in the Mexican Republic
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With the support of solidarity organizations:

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SUBJECT: Presentation of Public Communication to the U.S. National Administrative Office concerning violations of the Mexican Constitution, Federal Labor Law, ILO conventions adopted by Mexico, the NAALC and international human rights treaties.

We, the “Vanguardia Obrera” Workers Federation of the Revolutionary Confederation of Workers and Peasants (FTVO-CROC), present this submission to the U.S. National Administrative Office in light of non-compliance with and violation of the Mexican Constitution, Mexican labor law, ILO conventions adopted by Mexico, the NAALC, and international human rights treaties. We file this submission in accordance with the requirements established for its admission, revision, processing and resolution within the established timelines.

In accordance with the criteria established in the North American Agreement on Labor Cooperation (NAALC), we denounce the non-compliance with and violation of the current Mexican labor legislation that occurred in this case of the workers at Rubie’s de México S. de R.L. de C.V. to the U.S. National Administrative Office (NAO). This violation involves the denial of a number of principles established in and recognized by the NAALC and by the Mexican government.

Violated principles: Principle 1 **Freedom of Association and the Right to Organize**; Principle 2 **The Right to Bargain Collectively**; Principle 3 **The Right to Strike**; Principle 4 **Prohibition of Forced Labor**; Principle 5 **Labor Protections for Children and Young Persons**; Principle 6 **Minimum Employment Standards**; Principle 7 **Elimination of Employment Discrimination**; Principle 9 **Prevention of Occupational Injuries and Illnesses**; and Principle 10 **Compensation in Cases of Occupational Injuries and Illnesses**.

I. STATEMENT OF JURISDICTION

NAO jurisdiction to review this submission is authorized by Article 16(3) of the NAALC that grants authority to each NAO to review public communications on labor matters that arise in the other parties’ territories.

Ministerial Review Jurisdiction

Article 22 of the NAALC empowers the Secretary of Labor of the United States to request consultations with the Secretary of Labor and Social Welfare of Mexico regarding matters within the scope of the NAALC. The issues raised in this submission are within the scope of the NAALC.

II. BACKGROUND

Rubie's Costume Company, Inc. is headquartered in New York City, USA. The company had two plants in Mexico: Rubie's de México, S. de R.L. de C.V., located in the municipality of Tepeji del Río, State of Hidalgo; and Disfraces Rumex, S. de R.L. de C.V., located in Tijuana, Baja California Norte. However, since the closure of the Tijuana plant, only the Hidalgo plant remains. The company also has other plants, distribution centers and/or corporate offices in the United States, Canada, the United Kingdom, France, Spain, Portugal, Germany and Asia.

Products manufactured by Rubie's include costumes, accessories, pet outfits and masks. It is authorized to produce costumes under more than sixty different labels, such as Barbie, Star Wars, Harry Potter and Shrek. In addition, Rubie's has an exclusive licensing agreement with Mattel, Inc. (based in El Segundo, California) that allows it to produce Barbie costumes as a Mattel licensee. The plant located in the State of Hidalgo has primarily manufactured "Barbie Princess", "Barbie of Swan Lake", and "Princess Anneliese Barbie" brands. Rubie's markets these products in the international market and among its clients, the largest being Target, Wal-Mart y Toys 'R Us.

Mattel adheres to its so-called "Global Manufacturing Principles (GMP)"¹, which must be applied by all companies manufacturing, assembling and distributing any product or package containing the Mattel logo. The GMPs provide guidelines and minimum standards for plants manufacturing or distributing Mattel products. The GMPs require that employees be treated with fairness and equity, and that facilities protect the environment and respect the cultural, ethnic and philosophical particularities of the countries where Mattel and its licensees operates.

Mattel has committed itself to abide by the GMPs in all areas of business and only does business with partners that share its commitment to the GMPs. The goal of these principles is to ensure permanent protection for workers and the environment.²

Since Rubie's initiated operations, a number of violations of its workers' labor rights have occurred. Workers have tried to improve their working conditions through organizing and peacefully calling for respect for their legal rights.³

One of the major violations committed was the hiring of minors, boys and girls, who were offered fake birth certificates by the company, altering their dates of birth. These forged documents were never given to the workers, so as to prevent them from exposing this practice.⁴

¹ Principles can be found at www.mattel.com/about_us/Corp_Responsability/cr_global.asp

² We are aware that, from May 10 – 11, 2005, Mattel representatives showed up at the company's facilities to supposedly conduct an on-site inspection, but did not meet with any of workers who had been locked out at that time. Later, on June 7, Mattel stated that, in this inspection, only minor violations were detected, and just one underage employee was found working at the plant.

³ See attachments 1 and 2.

⁴ See attachment 4.

Until the conflict with the company began, one in every six workers was between the ages of 13 and 15 years old.⁵ Children were employed for tasks such as carrying big bags of clothes and rolls of fabric. This situation was recorded through testimonies provided by a number of workers. Minors are the most vulnerable to inequitable and exploitative conditions imposed by the employer.

When a boy or girl is forced to drop out of school in order to work to help his/her family, he/she is more willing to accept any employment terms. Additionally, at that young age, many are unaware of their rights and are easily abused by the authority and power that the employer exercises over the workers. The experiences of the boys and girls who worked – or still work – for Rubie's exemplify this situation.

For example, minors accepted alteration of their birth certificates without knowing that this action was illegal. According to the testimony of worker Guadalupe Grisel Ávila, a 13-year-old boy injured his spine because he was forced to carry heavy fabric rolls. His parents were threatened not to come forward about the situation. Similarly, 16-year-old Teresita de Jesús Hernández has had menstrual problems as a result of carrying heavy bags without proper protection⁶. She began working for the company when she was 14.

Health and safety conditions are precarious; the plant is infested with cockroaches. Bathrooms are cleaned just once a week despite that fact that approximately 80 employees use them. Food sold in the company cafeteria is expensive, poor quality and makes many workers ill. Additionally, workers have to buy water and toilet paper from the company, as the company does not provide these items cost-free.⁷

Similarly, workers are forced to buy their own work tools, such as masks, gloves and belts, from the company. According to the testimony of 16-year-old Teresita de Jesús Hernández, who had worked for the company since she was 14 carrying heavy bags, workers were supposed to buy a 450-peso (US\$ 42) belt from the company, though she never earned even this amount in a week,⁸ so she never bought the belt.

The company does not provide proper safety guarantees to its workers, as it does not even have a first aid kit, much less trained personnel to treat workers in case of illness or accident.

Facing a precarious economic situation, workers are forced to accept labor conditions that violate their rights. For example, they have to work overtime and are not paid overtime in accordance with the applicable labor law. Also, some

⁵ We have the original, unaltered documentation (see attachment 5) of five minors between 13 and 15 years old who were at the plant. In addition, up to five other minors were at the plant, though, out of fear of exposure and intimidation, they preferred to remain anonymous. There were up to ten minors among the 64 workers who affiliated with the FTVO-CROC union.

⁶ An article by reporter Elizabeth Flores Rodríguez, published in a national weekly magazine; attachment 3.

⁷ This violation, as well as others listed in this report, is listed in present tense and current as far as we are aware. We have received no confirmation from the company, the government or workers currently employed at the factory to suggest differently.

⁸ See attachment 5 for copies of weekly paychecks and birth certificates.

times the plant doors are locked, thus forcing workers to stay late to meet the so-called "production quotas"⁹.

Women and girls are forced to take pregnancy tests in order to work for the company. They will not be hired if they refuse to do so. If they get pregnant after being hired, they are assigned the same heavy workloads as other employees without being permitted to take breaks or to go to the bathroom.

Finally, it must be stated that company supervisors and managers often insult and mistreat workers of both genders. Each situation described above constitutes a serious violation of the labor and human rights of Rubie's workers.

Rubie's workers have turned to the relevant authorities to denounce their situation and to improve their employment conditions. So far, however, they have not been met with a just and lawful response to their demands.

III. FACTS

1) After several years of abuses committed by Rubie's, earlier this year workers organized and asked the Progressive Union of Workers of the Textile Industry, the Manufacturing, Cutting and Confection of Fabric and Garment in General, and Related and Similar Industries in the Mexican Republic (hereafter "the Union") for its support and representation in their struggle to defend their labor rights.

2) On February 27, 2005 an Extraordinary General Assembly was held where 58 workers at Rubie's ratified, among other things, their decision to affiliate with the Union. In addition, they agreed to enter into a collective bargaining agreement to govern labor relations with the company¹⁰.

3) On March 4, the workers and the Union together turned to the Federal Conciliation and Arbitration Board No. 6 (hereafter "the Board") to submit a strike notification petition, whose main objective was to have the company sign a collective bargaining agreement.

4) On April 12, at approximately 7:00 a.m., the company's legal representative, Perla María Teresa Medrano Valle, showed up at the plant's main gate and told workers: **"WE DON'T HAVE ANY MONEY TO PAY YOU, SO, IF YOU WANT TO WORK, GO AHEAD; IF NOT, GO AWAY,"** without any further explanation. The following day, 64 workers out of a total number of 80 employees (including confidential, management and security personnel) appeared at the Board to claim a number of benefits the company owed them, such as vacation pay, annual bonus (*aguinaldo*) pay, savings fund

⁹ In lawsuits filed before the Federal Conciliation and Arbitration Board, workers denounced this situation. Copies of these lawsuits are annexed as attachment 6.

¹⁰ A copy of the Assembly Act is annexed as attachment 7 containing a list of workers organized in an attempt to improve their working conditions.

contributions, and overtime pay. These 64 workers continued to show up at the factory as long as it was possible.¹¹

5) On this same date, April 12, around 10 a.m., two cranes arrived in the plant, dismantled a part of the facility and took out some machinery, including stamping, cutting, ironing and painting machines, and six boxes. Perla María Teresa Medrano Valle stated in front of several witnesses that **“rather than paying workers (what they were owed) they preferred to keep everything (for themselves),”** and she added **“let them suffer, let’s see how they like us now.”** In light of this situation, workers asked the Board to execute a preemptive embargo of the company, in order to ensure due payment to workers. On April 13, four people who had witnessed these events showed up at the Board to give their testimonies¹².

6) After several days of negotiations between the Union and company representatives, on April 13 a collective bargaining agreement was signed. Perla María Teresa Medrano Valle, acting as the company’s legal representative, signed it. The following day, the company manager, Delia Mendoza Martínez, refused to recognize the agreement.

7) On April 13 the collective bargaining agreement was filed with the Board in order to formalize it and obtain its official validity and recognition, as established in the labor law.

8) On April 18, 2005, the Board issued a resolution setting a conciliation hearing for April 22. The meeting was held on this date and both the Union and company representatives attended and asked the Board to defer the hearing as they were negotiating to resolve the conflict.

9) On April 25, around 7:00 a.m. at the beginning of the morning shift, company representatives Salim Aziz (from the New York office), Perla María Teresa Medrano Valle and Delia Mendoza Martínez told the 64 workers who had demanded payment of the benefits they were owed that: **“BECAUSE OF YOUR REVOLT AND COMPLAINTS TO THE LABOR BOARD (FILE EXP. III-1083/2005 OF STRIKES) THERE IS NO MORE WORK FOR YOU,”** and Delia Mendoza added **“NOW YOU HEARD; GET OUT OF HERE AND LET’S SEE WHO PAYS YOU NOW!”**¹³

10) That same day, workers began picketing at the plant entrance. The following day, April 26, the Hidalgo state government sent some 50 state policemen, at the request of the company, to intimidate and discourage workers from standing up for their rights. The same day, 55 workers appeared at the *Síndico Procurador* (District Attorney) office in Tepeji del Río to inform him about their situation, emphasizing their concern regarding the police presence at the plant (it is common knowledge that workers’ movements are violently repressed by State security officials working for private firms).¹⁴ From April 26

¹¹ A copy of the lawsuit filed in the Federal Conciliation and Arbitration Board is attached.

¹² A copy of testimonies rendered at the Board on April 13, 2005 is annexed as attachment 9.

¹³ A copy of the filed lawsuit concerning the firing of 64 workers is attached.

¹⁴ Copies of three appearances by workers before the *Síndico Procurador* in the Municipality of Tepeji del Río are annexed as attachment 10.

through May 11, union officials held negotiations with the company, eventually reaching a conciliation agreement.

11) On May 11, the workers and the company appeared at the Board to hold a scheduled conciliation hearing. At this hearing, the Board was presented with a resolution agreement agreed to by both parties for the Board's assessment and eventual approval. The Board approved it and the resulting agreement became a formal resolution.

12) In the above mentioned resolution, the following agreements were reached: a) the company agreed to again sign the collective bargaining agreement with the workers' union, recognizing the previously enacted agreement; b) the company committed to fully reinstate the workers who had been fired on April 25; and c) the workers' union withdrew its petition paper submitted along with the notification of strike. The Board agreed to approve the resolution under the following terms:¹⁵

*“Through this legal act, all and each of its clauses ratifies the AGREEMENT entered into by and between the parties, as well as the attached Collective Bargaining Agreement, which will be applicable to the company that was notified of strike. **With respect to this agreement by and between the parties, it should be approved and is approved**, as it does not contain any clause that is contrary to the law, morals and decency, as established by Articles 33, 3, 4, 939, and other related and applicable articles of the Federal Labor Law. **The parties obligate themselves to consider, in all circumstances, this to be a binding resolution...**“*

13) On May 17, inexplicably and contrary to the law governing resolutions and actions of the Board, **the Federal Board No. 6 declared itself incompetent regarding the strike procedure on which it had already issued a resolution which had concluded with the agreement signed by the Union and the company.** Arguing that the nature of the company's operations fell to the corresponding local jurisdiction, the Board disqualified itself, giving the Union a 24-hour deadline to designate a Local Board or the case would be dismissed¹⁶.

14) On May 19, the Department of Strike Notifications at the Board also disqualified itself, and the Board claimed a lack of jurisdiction to register the Collective Bargaining Agreement signed by the workers' union and the company.

15) In light of this situation and facing the company's refusal to comply with the agreements reached at the May 11 hearing at the Board, on May 20 the fired workers, exercising their individual rights, filed a lawsuit at the Federal Conciliation and Arbitration Board demanding payment of a number of benefits as well as reinstatement at the plant.

¹⁵ A copy of the resolution issued by the Board on May 11, 2005 is annexed as attachment 11.

¹⁶ A copy of the self-disqualification resolution issued by the Board on May 17 is annexed as attachment 12.

16) In keeping with the pattern of human rights violations by both the company and the Board, on May 26 the Secretary-General of the Union of Workers in the Textile and Garment Industries, and Related and Similar Industries in the Mexican Republic (herein known as “the CTM”), appeared at the Board claiming that the union he represents has had a collective bargaining agreement with the company since 2003, and arguing that the Federal Board had no jurisdiction to take on the procedure, but rather the Local Board. Adolfo Gott, representative of this union, submitted a copy of the collective bargaining agreement, but he did not attach a copy of the membership list, which is an indispensable requirement for the recognition and validity of any collective bargaining agreement. Days before, the Department of Agreements of Board No. 6 had already told some workers that it “**would help out its friend Adolfo Gott Trujillo**”; just a few days later, the Board disqualified itself. Workers have claimed that they are not familiar with the representative of the above-mentioned union, and thus do not recognize him as their legitimate representative.

17) On June 7, the Union (FTVO-CROC) filed an appeal (*Amparo*) petition in the First Tribunal of the District (*Juzgado primero de Distrito*) on Labor Matters, challenging the self-disqualification resolution issued by the Board. In this *Amparo*, the principal argument was that there had been a lack of a proper legal foundation in the Board’s resolution because, as established by Article 848 of the Federal Labor Law, “The resolutions of the Board do not allow any recourse, and the Boards cannot revoke their resolutions”. This *Amparo* challenged the self-disqualification resolution concerning the strike procedure that ended with the signing of a conciliation agreement.

18) On June 24, the Union filed a new *Amparo* petition challenging the Board’s refusal to process the collective bargaining agreement registration procedure.

19) Neither petition has been processed due to an unjustified delay by the Local Conciliation and Arbitration Board No. 51 in Tepeji del Río that, upon request, is obligated to notify the company about both *Amparo* petitions. This has resulted in a delay in the delivery of impartial justice for the workers.

20) Despite the fact that the Federal Board No. 6 disqualified itself on May 17 to process the strike and the collective agreement registration procedures, it has continued to work on the case after that date by attending to those workers who, exercising their individual rights, have accepted the severance payments offered by the company. The Board has also convened hearings where workers have been given their severance payments¹⁷.

IV. VIOLATED RIGHTS

¹⁷ This allegation is proven through copies of several hearings where workers, for a variety of reasons, took severance pay, with no intention of giving up their collective rights concerning registration of their collective bargaining agreement. See attachment 13.

The situation of workers at Rubie's reveals systematic violations of the Mexican Constitution, Federal Labor Law, and a number of international treaties and conventions protecting labor and human rights, as well as principles established in the NAALC that the Mexican State has obligated itself to promote, observe and respect.¹⁸

The following is a description of labor rights violated by both the company and the Mexican government, which is supposed to be responsible for protecting and promoting these rights. The Mexican government has failed to provide workers at Rubie's: 1) Impartial and independent agencies to enforce the labor law, 2) efficient resources to repair damages caused to workers, and 3) on-site inspections at plants to verify compliance with the labor law.¹⁹

A. Violation of the right to impartial and independent labor tribunals.

In accordance with Article 5 section 1 of the NAALC, "*Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent...*"

According to the description of the facts, it is clear that the Federal Conciliation and Arbitration Board has not acted based on the basic principles of equity, justice and law. In the case of strike notification and collective bargaining agreement registration procedures, requested by the Union, the Board acted as a competent authority, helping settle the dispute through the approval of a conciliation agreement between the company and the Union. Later, coinciding with the statement of the Board Office of Accords,²⁰ the Board disqualified itself, which resulted in the revocation of the conciliation agreement under which the dispute had been settled.

In a surprising manner – though fully consistent with the anti-judicial practices of the Labor Boards – workers were left defenseless to ensure respect for their rights, after having won an agreement that recognized their right to be represented by a union and to sign a collective bargaining agreement with the company. In the end, the company was given legal reasons and facilities to evade compliance with its obligations. The labor law was applied against workers, which violates principles contained in Articles 17, 18 and 685 of the Federal Labor Law that establish that the law must be interpreted and applied in the manner most favorable to the workers.

Article 17. In the absence of an express provision in the Constitution, in this Law, in its regulations, or in the treaties referred to in Article 6, the provisions that regulate similar cases, the general principles that derive from said ordinances, the general principles of law, the general principles of social justice

¹⁸ We point out that, in this case, the Mexican government has committed violations of international treaties on human rights. As established in Article 123 of the Mexican Constitution, international treaties ratified by Mexico are incorporated into the category of Supreme Law of the Nation. The Supreme Court of Justice of Mexico upheld this criterion in its Jurisprudence titled: "**INTERNATIONAL TREATIES. THESE ARE HIERARCHICALLY PLACED ABOVE THE FEDERAL LAWS AND BELOW THE FEDERAL CONSTITUTION**"; available in: "Novena Época, Instancia: Pleno, Fuente: Semanario Judicial de la Federación y su Gaceta, Tomo: X, Noviembre de 1999, Página: 46."

¹⁹ As established in Articles 540-543, the main goal of workplace inspections conducted by authorities is to oversee compliance with the labor standards, and to inform relevant authorities about violations of these standards. In this case – in spite of the fact that the plant has been in operation for years – there is no evidence showing that those on-site inspections – if conducted – resulted in any reporting of the violations that clearly existed.

²⁰ See declaration transcribed in Facts section, No. 15.

that derive from Article 123 of the Constitution, jurisprudence, custom, and fairness, will be taken under the consideration.

Article 18. In the interpretation of labor standards the conclusions stipulated in the second and third Articles will be taken under consideration. **In case of doubt, the interpretation most favorable to the worker will prevail.**

Article 685. The labor legal process will be public, free, immediate, predominantly oral, and will be initiated at the request of a party. The Boards will have the obligation of taking the measures necessary for achieving greater economy, concentration, and simplicity of the process.

In this sense, it is worth noting what is established in the American Convention on Human Rights, ratified by Mexico on March 24, 1981.

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a **competent, independent, and impartial** tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or **for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.**

a.1. In this case, although the legal resources provided by the internal jurisdiction were applied, they were useless as the Federal Conciliation and Arbitration Board lacked impartiality and independence to rectify the violations committed by Rubie's against its workers, and because of the unjustified delay in the Amparo procedures challenging the Board's resolutions.

The facts that have been described constitute a number of violations of labor rights. The resources offered by the Mexican labor system to rectify these violations have proven to be inefficient. First, because the Board acted in support of the company by decertifying the agreements reached before the date when the strike had been scheduled to begin. Second, because of the unjustified delay in processing the Appeals lodged against the Board's resolution, in spite of the Union's constant activity on this case.

It is worth highlighting that the self-disqualification resolution violates all procedural guaranties, and shows partiality and a probable interest of the Board to rule in favor of the company, leaving workers defenseless. The self-disqualification resolution is based on the argument that the nature of the company's commercial operations falls within the local jurisdiction. The Board could have noticed this fact the moment the company appeared in the Trial. The Board, however, waited until the case was closed and then illegally disqualified itself.

In this manner, the legal resources employed by the workers and their Union turned out to be useless in resolving their situation, due to what might be called a self-boycott of the Board of its own May 11 resolution.

a.2. Lack of resources to rectify violations

This case again demonstrates that the legal actions undertaken at the Labor Boards lack the capacity to rectify the acts described by the workers. Despite the fact that the procedure has concluded within the time frame and in favor of the workers' demands, in the end workers were left with no way to exercise their rights, in light of the self-disqualification resolution issued by the Board – once the entire procedure had concluded – revoking its original resolution.

On this point, the Mexican government has violated, among other international mechanisms, those established in Article 25 of the American Convention on Human Rights, which guarantees the right to effective judicial protection, establishing that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;*
- b. to develop the possibilities of judicial remedy; and*
- c. to ensure that the competent authorities shall enforce such remedies when granted.*

a.3. Violations of Due Process

As demonstrated in the Facts section, the self-disqualification resolution was issued outside of the legal proceeding and beyond the time frame, thus violating the Federal Labor Law that clearly states:

Article 701. The Board of Conciliation and those of Conciliation and Arbitration must disqualify themselves in any state of the process, until before the evidentiary hearing, when in the file there exists data that justifies it. If the Board disqualifies itself, notifying the parties, it will deliver immediately the file to the Board or Court that it deems to be in authority; if the former or latter, upon receiving the file also disqualifies itself, it will deliver the file immediately to the authority that must decide the jurisdiction...

Chapter XX STRIKE PROCEDURES

(...)

Article 928. In the procedures referred to in this Chapter, the following standards will be observed:

(...)

V. No question of jurisdiction can be put forward. If the Board, once the strike call is made to the employer, observes that the matter is not under their jurisdiction, will make the appropriate declaration.

The impartiality of the Labor Boards has been questioned in several reports from the U.S. NAO, most explicitly as in the *Han Young I* report, which found that Mexico had violated Article 3 of the NAALC.²¹ There, the U.S. NAO found enough evidence to “raise serious questions about the impartiality of the CAB”, and concluded that, “The placement, by the Tijuana CAB, of obstacles to the ability of the workers to exercise their rights to freedom of association, through the application of inconsistent criteria and standards for union registration and for determining union representation, is not consistent with Mexico’s obligation to effectively enforce its labor laws on freedom of association in accordance with Article 3 of the NAALC.”²²

B. Labor Protection for Children

In accordance with Principle 5 of the NAALC which reads:

5. Labor protections for children and young persons

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

Rubie’s, together with the Mexican government, has not observed this principle, thus violating a number of national laws and international mechanisms ratified by Mexico.

As established in Article 123, Section A, Paragraph III of the Mexican Constitution, **The work of minors under fourteen years of age is prohibited.**

²¹ There, the independent union, STIMACHS, filed for collective bargaining representation with the local CAB, arguing for exclusive bargaining rights. A representation election was held in October 1997, which STIMACHS won despite threats by the employer and the protection contract union and dismissals of union activists by the employer. Afterwards, the CAB nullified the election results, alleging that the union failed to demonstrate majority status and had also lacked proper registration to represent the workers. This reversed a previous finding by the same CAB that STIMACHS could properly represent the workers. Another election was held in December, which STIMACHS also won. However, the CAB delayed informing the parties of the results of the election until March of the following year.

²² See also, NAALC Submission 940001/940002 (GE/Honeywell; discussing bias in Ciudad Juarez CAB); Submission 940003 (SONY; expert testimony discussing influence of CTM over Ciudad Victoria CAB and NAO conclusion that there are “serious questions” concerning ability of independent union to obtain recognition through registration process through the CAB); Submission 9703 (ITAPSA; NAO finding “several aspects of representation election raise questions as to impartiality of the presiding CAB representatives”); Submission 9801 (ITAPSA; Canadian NAO finding that “it is uncertain that the current provisions of the LFT can ensure that the JFCA is impartial and independent and does not have any substantial interest in the outcome of its proceedings as required by Article 5(4) of the NAALC.”); Submission 9901 (TAESA; questioning impartiality of CAB where CTM is represented on board); Submission 2003-1 (Puebla; “It is not difficult to foresee a potential for conflict of interest if the union representative on the JLCA considering the petition is a representative of a union affiliated with the union the workers intend to challenge.”)

And persons between 14-16 years old shall have maximum workday of six hours.

Article 123 - Every person has the right to dignified and socially useful work. To achieve this, the creation of jobs and the social organization will be promoted conforming to law ...

III.- The use of labor of minors under fourteen years of age is prohibited. Persons above that age and less than sixteen shall have a maximum work day of six hours;

Similarly, the Federal Labor Law establishes that:

Article 173. The employment of those over 14 years of age and less than 16 years of age is subject to the special oversight and protection of the Office of Labor Inspection.

Article 174. Those older than 14 and less than 16 years of age must obtain a medical certificate that attests to their fitness for work and submit themselves to the medical examinations that the Labor Inspection periodically order. Without the required certificate, no employer may employ them.

None of the minors hired by the company possessed a medical certificate as referred to in the article above. As already stated, their birth certificates were altered, so the special protections that the Mexican Constitution, the Federal Labor Law and other legislation grant them were not enforced. Minors were treated just like the rest of the adult workers, whose rights were not respected either.

Article 175. It is prohibited to employ minors:

I. Of 16 years, in:

(...)

e) dangerous or unhealthy work

f) work beyond their physical ability and that which can impede their normal physical development.

g) establishments that are not industrial after 10 o'clock at night.

h) all others determined in the laws.

As previously mentioned, boys and girls were forced to carry heavy loads that evidently exceeded their strength and physical capacity.

Article 176. The dangerous and unhealthy jobs referred to in the latter article are those that by the nature of the job, and by the physical, chemical, or biological conditions in the environment where they are performed or by the

composition of the raw materials that are used are capable of affecting the life and the physical and mental health of the minors.

Article 177. The work shift for those less than 16 years of age cannot exceed 6 hours daily and must be divided into periods not greater than 3 hours. Between the distinct periods in the work shift, they will have a break of not less than 1 hour.

Article 178. The utilization of work is prohibited of those under 16 years of age for overtime work and on Sundays and obligatory days off. If this prohibition is broken, the overtime hours will be paid with an additional 200% payment over that which normally corresponds to that shift and to the wages that correspond to Sundays and the obligatory days off in conformity to the provision in Articles 73 and 75.

Article 179. Those younger than 16 years of age will enjoy an annual paid vacation period of 18 working days, at least.

Article 180. The employers who have in their employ those younger than sixteen years of age are obligated to:

I. Require that they show the medical certificates that demonstrate that they are fit for employment;

II. Maintain a registry for special inspection, that indicates their date of birth, type of work, hours of work, wages and other general conditions of the job;

III. Distribute the work schedule in order to allow the necessary time to complete their school programs;

IV. Provide them qualification and training according to this Law; and

V. Provide to the Labor authorities the reports that they request.

Minors had to work like adult workers, including overtime and holidays. However, minors were never paid for this extra work.

The international agreements on labor matters that were violated include the Convention on the Rights of the Child²³, which establishes in its Article 32: *“States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”*

Therefore, the Mexican government has the obligation to adopt necessary measures to ensure compliance with said Article, which, regarding Rubie's actions was not the case.

²³ This convention was ratified by Mexico on September 1, 1990 and entered into effect the following day. It was published in the Official Diary of the Federation on January 25, 1991.

Likewise, a number of articles of ILO Conventions 15, 58, 87 and 123 were violated.

C. Satisfactory Working Conditions

In this case, the Mexican government has not fulfilled its obligation to ensure satisfactory working conditions for Rubie's workers. By disqualifying the collective bargaining agreement signed by the Union, workers are left in a situation where they must deliver services without proper remuneration.

Rubie's employees worked overtime and were not paid in accordance with their individual employment agreements, much less with the labor law. This situation is demonstrated in the paychecks of workers²⁴ who were hired to work from 7:00 a.m. to 2:30 p.m., Monday to Saturday. Instead, they always worked from 7:00 a.m. to 6:00 p.m., including some Sundays. Workers always checked in and out, but were never paid overtime. Workers demanded overtime pay, among other benefits, at the Federal Conciliation and Arbitration Board.²⁵

This situation constitutes noncompliance with Principle No. 6 of the NAALC concerning Minimum Employment Conditions.

6. Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

Minimum employment standards are understood as those conditions covering not only a work schedule and enough rest to recover lost energy, but also a work environment free of harassment, safe and healthy working conditions, as well as workers' compensation for work-related risks. The following are articles of the Mexican Constitution concerning minimum employment standards.

Mexican Constitution

Article 123 - Every person has the right to dignified and socially useful work. To achieve this, the creation of jobs and the social organization will be promoted conforming to law.

I.- The maximum duration of the workday shall be eight hours;

IV.- For every six days of work a worker must have at least one day of rest;

²⁴ Copies of the paychecks referred to are annexed; see attachment 5. They show the sum paid to workers in contrast with the actual hours they worked in a week.

²⁵ Copies of lawsuits filed by Rubie's workers in the Federal Conciliation and Arbitration Board on April 14 and May 20 are annexed; see attachment 6.

XV.- An employer shall be required to observe, in the installation of his establishments, the legal regulations on hygiene and health, and to adopt adequate measures for the prevention of accidents in the use of machines, instruments, and materials of labor, as well as to organize the same in such a way as to ensure the greatest possible guarantee for the health and safety of workers as is compatible with the nature of the work, **under the penalties established by law in this respect;**

XXVII.- The following conditions shall be considered null and void and not binding on the contracting parties, even if expressed in the contract

- a. Those that stipulate a day's work that is inhuman because it is obviously excessive, considering the kind of work;
- b. Those that fix wages that are not remunerative, in the judgment of Boards of Conciliation and Arbitration;
- c. Those stipulating a period of more than one week before payment of a day's wages;
- d. Those indicating as the place of payment of wages a place of recreation, an inn, café, tavern, bar, or store, except for the payment of employees of such establishments;
- e. Those that include the direct or indirect obligation of acquiring consumer goods in specified stores or places;
- f. Those that permit the retention of wages as a fine

Regarding a work environment free of harassment and bad treatment, we quote 17-year-old Luis Monroy's interview that was published in the *Día Siete* magazine, a copy of which is attached. He said **"The only thing I'd like to forget is the bad treatment"**.

With respect to this point, the Federal Labor Law establishes:

Article 3. Work is a right and a social obligation. It is not a commodity; respect is required for the liberties and dignity of the worker and an environment must be established that assures the life, health, and a dignified economic level for the worker and his family.

Distinctions cannot be established among the workers for reasons of race, sex, age, religious creed, political doctrine, or social condition.

Furthermore, it is in the interests of society to promote and oversee the preparation and training of workers.

Article 5. The provisions in this Law are for the public order, for which reason no stipulation will be legal, nor will impede the enjoyment, and the exercise of rights, whether written or verbal, that establishes:

I. Work for children under 14 years of age;

II. A work shift longer than that permitted by this Law;

III. An inhuman notoriously excessive shift, given the nature of the work, in the judgment of the Board of Conciliation and Arbitration

IV. Overtime for young people under 16 years of age;

(...)

IX. The obligation either direct or indirect to purchase goods from a particular store or location;

Article 24. Labor conditions must be documented in writing when no applicable collective contracts exist. At least two copies will be made, at least, with one to remain in the possession of each party.

Article 58. The labor shift is the time during which the worker is at the disposition of the employer in order to render service.

Article 59. The worker and the employer will set the duration of the labor shift, without exceeding the legal maximum length.

The workers and the employer will be able to divide the work hours, so that Saturday afternoon can be free or whatever equivalent method can be worked out.

Article 61. The maximum duration of the shift will be: eight hours for the day shift, seven the night shift, and seven and a half hours the mixed shift.

Article 63. During the continual work shift, the employee will be allowed a rest period of half an hour, at least.

Article 64. When the employee cannot leave the place where he renders services during the rest or lunch period that time will be calculated as part of the work shift.

Article 66. The work shift also can be prolonged for extraordinary circumstances, without ever exceeding three hours a day or three times in one week.

Article 68. The workers are not obligated to render services for time period greater than that permitted in this Chapter.

Extending overtime in excess of nine hours for the week obligates the employer to pay to the employee the hours in excess of nine hours with 200% more than the wage that corresponds to the shift without freeing him from the sanctions established in this law.

Article 69. For every six days of work the worker will enjoy one day of rest, at least, and still be entitled to his full salary.

Article 70. In those jobs that require continuous labor, the employees and the employer will set by mutual agreement the days in which the employees will be able to enjoy their regular day off.

Article 71. In the regulations in this Law it is mandated that the weekly day of rest be Sunday.

The workers who work on Sunday will have the right to an additional bonus of 25 per cent, at least, in addition to the normal salary.

Article 73. Workers are not obligated to render services on their days off. If this provision is broken, the employer will pay to the employee, aside from the wages for his regular days off, double his wages for the time worked.

Article 74. The following are mandatory days off:

I. The 1st of January; II. The 5th February; (Constitution day); III. The 21st of March; (Benito Juarez's birthday); IV. The 1st of May; (Labor Day); V. The 16th of September; (Independence Day); VI. The 20th of November; (Revolution day); VII. The 1st of December every six years, when it corresponds to the transition of the Federal Executive Power; VIII. The 25th of December and; IX. The day determined by the Federal Laws and Local Election Boards, in the case of ordinary elections, in order to set the date for elections.

Article 75. In the cases related to the latter article, the workers and the employers will determine the number of workers that must render services. If they don't arrive at an agreement, it will be resolved by the Board of Permanent Conciliation or in its absence by the Board of Conciliation and Arbitration. The employees will remain obligated to render services and will have the right to be paid, aside from wages that correspond to them for the holiday, a wage doubled for the extra time worked.

It is important to note the basis of Articles 23.1 and 24 of the Universal Declaration of Human Rights; Articles 6.2, 7, 9, 12.2 b) and c) of the International Pact of Economic, Social and Cultural Rights; Articles 11 and 24 of the American Convention of Human Rights; Articles 7.7 c), 7 g), 7 h), 17 b), 18 a), 10,11 and 12 of the Additional Protocol to the American Convention on Human Rights "Protocol of San Salvador"; Articles 4.2 a), 11.1 a), f), g), j), k), annexed Articles. 6, 9 and 10; in the Conventions 12, 13, 14, 17, 19, 30, 42, 43, 45, 46, 49, 52, 62, 90, 95, 99, 102, 106, 110, 115, 118, 120, 124, 140, 142, 153, 155, 161, 167, 170, and 172 of the International Labor Organization.

D. Elimination of employment discrimination

In this case, Principle No. 7 of the NAALC was violated; it states:

7. Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

If women wanted to be hired by Rubie's, they had to submit to a pregnancy test by the company to demonstrate that they were not pregnant. The test had to be taken periodically or women workers could lose their jobs. This constitutes flagrant discrimination against women who, given their gender, are the only workers subjected to this treatment.

Requesting pregnancy tests from women workers constitutes a discriminatory act, contemplated in and punishable under a number of national and international legal resources, including the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Mexico on December 18, 1979, and published in the Official Diary of the Federation on May 12, 1981. Article 11 of this Convention establishes:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*
- f) **The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.***

All the women and girls who work or worked for Rubie's were forced to spend the equivalent of one week of salary to take a pregnancy test. It was one of the many costs women workers incurred when working for the company. During the negotiations between the company and their union, workers obtained a commitment from the company to retain social security coverage for two pregnant workers who had been fired, which allowed those workers not to lose their right to maternity coverage.

E. Freedom of Association is the right of workers to associate freely and to affiliate with a union to defend their rights, without intervention from authorities or employers in union activities. It is also the freedom to democratically elect representatives, protection against harassment because of union membership or leadership; and the power to regulate and organize a union's internal affairs through by-laws.

Violated Principles of the NAALC

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests

Articles of the Mexican Constitution violated by the Mexican government:

Article 9.- The right to assemble or associate peaceably for any lawful purpose cannot be restricted; but only citizens of the Republic may do so to take part in the political affairs of the country. No armed deliberative meeting is authorized.

No meeting or assembly shall be deemed unlawful which has for its object the petitioning of any authority or the presentation of a protest against any act; nor may it be dissolved, unless insults are proffered against said authority or violence is resorted to, or threats are used to intimidate or compel such authority to render a favorable decision

Article 123 - Every person has the right to dignified and socially useful work. To achieve this, the creation of jobs and the social organization will be promoted conforming to law

XVI.- Both workers and employers shall have the right to organize for the defense of their respective interests, by forming unions, professional associations, etc .

Articles 132, 133, and 354 to 385 of the Federal Labor Law are equally important and state:

Article 354. The Law recognizes the freedom of workers and employers to join coalitions.

Article 355. A coalition is the temporary agreement of a group of workers or of employers for the defense of their common interests.

Article 358. No one may be obligated to join a union or not join a union.

Article 362. Workers older than 14 can be part of unions .

Article 364. The unions must be constituted with 20 workers in active service or with three employers, at least For the determination of the minimum number of workers, those whose labor contract has been rescinded or terminated within a period of thirty days before the presentation of the application for registration of the union, and the date in which it was granted, will be taken into consideration.

Article 365. The unions must register themselves with the Secretary of Labor and Social Welfare, in the cases of Federal jurisdiction and in the Boards of Conciliation and Arbitration in those of local jurisdiction, the following documentation must be presented in duplicate for that purpose:

Article 368. The registration of the union and of its management, drawn up by the Secretary of Labor and Social Welfare or by the Local Boards of Conciliation and Arbitration produce effects before all Authorities.

Article 374. The unions legally constituted are legal entities and have capacity to:

*I. Acquire furnishings; II. Acquire buildings for direct and immediate use for union business; and III. **To defend before the authorities their rights and exercise the corresponding actions.***

Article 375. The unions represent their members in the defense of the individual rights that correspond to them, without prejudice to the right of workers to work or be involved directly, ceasing then, at the request of the employee, the involvement of the union.

Again, to summarize, given the arbitrary violations committed by the company against its employees, workers have organized to defend their rights. Earlier this year, 62 out of almost 80 workers requested representation by and affiliation with the Progressive Union of Workers of the Textile Industry, the Manufacturing, Cutting and Confection of Fabrics and Garments in General and Related and Similar Industries in the Mexican Republic (FTVO-CROC).

However, despite the fact that the company's legal representative had signed the collective bargaining agreement,²⁶ the Federal Conciliation and Arbitration Board, at which the CBA was registered, disqualified itself and withdrew from the case, with the clearly stated intention of transferring the case to a Local Board where a collective bargaining agreement between the company and the Union of Workers in the Textile and Garment Industries, and Related and Similar Industries in the Mexican Republic (CTM) was supposedly registered.

The CTM has never established an authentic presence with the workers; otherwise it would be aware of the ongoing conflict between the company and the workers it supposedly represents. Indeed, the CTM appeared out of the woodwork after 64 workers – affiliated with the FTVO-CROC – were fired. The FTVO-CROC has been present in all the legal actions initiated with the relevant authorities on behalf of the workers' interests and rights.²⁷ The appearance of the CTM is in keeping with the illegal practices of companies with the complicity of authorities. If it is true that there was another contract, the company should have notified either the FTVO-CROC or the authorities.

The self-disqualification resolution issued by the Board No. 6 – besides being illegal – constitutes a violation of the workers' right to join the union of their preference, and constrains the Union's right to represent Rubie's workers.

²⁶ A copy of the Collective Bargaining Agreement between Rubie's and the FTVO-CROC is annexed as attachment 14.

²⁷ In fact, the company has given severance pay to the majority of the workers locked out because of their union activity, in such a way that it cannot disqualify the FTVO-CROC, in spite of the fact that some new hires have affiliated with the CTM.

It is worth noting that the workers and their Union were the object of acts of intimidation in an attempt to force them to give up fighting for their right to union representation.

These actions violated a number of international agreements, including ILO Conventions 11, 87, 135 and 145, Article 23. 4 of the Universal Declaration of Human Rights; Article 23.4 of the International Pact of Economic, Social and Cultural Rights; Articles 19.1, 19.2, 21, 22, and 25 b) of the International Pact of Civil and Political Rights; and Articles 13.1, 13.3 and 15 of the American Convention on Human Rights.

F. Collective Bargaining. In exercising this right, workers open the possibility to make their own interests heard and to be taken into consideration, as well as hear the interests of the company, and then bilaterally determine working conditions. It implies that workers, organized as a union, can better negotiate with the employer regarding wages and benefits, starting with the minimum conditions established in the labor law. In this case, several articles of the current labor law have been violated, as a union was imposed on the workers and there have been attempts to disqualify the union chosen by the workers. This represents a violation of the Principle No. 2 of the NAALC, which establishes:

2. The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

By denying recognition of the collective bargaining agreement signed by the FTVO-CROC and the company, workers were left with no collective bargaining possibilities. Therefore, improvements in their working conditions (work schedules, wages, overtime, etc.) are limited to what each worker can individually bargain. This happened when the Board disqualified itself (as described above) and workers were forced to take the severance pay offered by the company.

The disqualification of the workers' organization occurred when the company decided to fire 64 workers with no justification, even after signing the collective bargaining agreement with the Union.

Each Rubie's worker was hired individually. This situation made them vulnerable as they were not grouped to defend their rights collectively. The moment workers organized and obtained union representation from the FTVO-CROC, they were targeted for more violations.

Finally, the company has blatantly disregarded the agreement reached at the Board. We are waiting for this resolution to be declared a violation of the workers' collective rights as recognized by the Mexican Constitution.

Article 390. The collective labor contract must be made in writing, under penalty of cancellation. It will be made in triplicate, and a copy will be delivered to each

one of the parties and it will be deposited with the Board of Conciliation and Arbitration or in the Federal Board or Local Board of Conciliation, the Board after noting the date and time of the presentation of the document will deliver it to the Federal or Local Board of Conciliation and Arbitration.

The contract will take effect from the date and hour of the presentation of the document, except the parts that were agreed to on a distinct date.

As in the case of the previously mentioned rights, the right to bargain collectively is also protected in other legal agreements, such as Articles 8.1 a) and 11.1 l) of the Protocol of San Salvador.

IV. REFERENCE TO OTHER CASES SUBMITTED TO THIS OFFICE

Since the NAO has had the opportunity to be informed about a number of cases where a systematic pattern of violation of Mexican labor law has been demonstrated, it is necessary to refer to these cases to demonstrate that the Mexican government has still not created measures to ensure full enforcement of the law and full ability to exercise labor rights.²⁸

V. PETITIONS

Public Hearings

The petitioners request the NAO to carry out as many hearings as necessary to receive testimony on the issues exposed in this submission.

Ministerial Consultations

We request that the NAO carry out ministerial consultations based on Article 22 of the NAALC, in order to create a space to discuss and ensure compliance with the Mexican labor law that was violated in this case.

Cooperative Consultations by the NAO

The petitioners request the NAO to convene cooperative consultations in accordance with Article 21 of the NAALC. The objective of this petition is to rectify, in a satisfactory manner to the workers, the described violations, particularly those of:

- The prohibition of child labor in the case of workers under 14, and the working conditions of workers between 14 and 16 years old, who enjoy special protections under labor law.
- The enforcement of the applicable labor law with impartial and independent Conciliation and Arbitration Boards.

²⁸ See U.S. NAO Public Submission US2005-01 on Mexican Labor Law Reform.

- The enforcement of the labor laws concerning occupational health and safety, non-compulsory employment requirements, overtime, and fair wages.

Evaluation Committee of Experts

On the basis of Ministerial Consultations, we request that an Evaluation Committee of Experts be convened to examine the matters raised in this Public Communication.

Once we have submitted our petitions, the petitioners request that the NAO review this Submission and process it within the established timeframe.

In my role as Secretary-General of the “Vanguardia Obrera” Workers Federation, a member of the Revolutionary Confederation of Workers and Peasants, I testify that the described facts are true and confirm this with my signature.

Salim Kalkach Navarro, Secretary-General

List of Attachments

1. Article by reporter Elisabeth Malkin, published in the *New York Times*.
2. Article by reporter Sara Silver, published in the *Financial Times*.
3. Article by reporter Elizabeth Flores Rodríguez, published in a national weekly magazine *Día Siete No. 268, p. 48-54*.
4. Article by reporter Jesús Ramírez Cuevas, published in the Mexican national newspaper *La Jornada*.
5. Copies of four birth certificates and weekly paychecks given to workers.
6. Copies of lawsuits filed by Rubie's workers in the Federal Conciliation and Arbitration Board on April 14 and May 20.
7. Copy of an Assembly Act containing a list of workers organized in an attempt to improve their working conditions.
8. Copy of the strike notification filed in the Federal Conciliation and Arbitration Board.
9. Copies of testimonies given at the Board on April 13, 2005.
10. Copies of three appearances of workers before the *Síndico Procurador* (District Attorney) in the Municipality of Tepeji del Río, demanding police protection.
11. Copy of the resolution issued by the Board on May 11, 2005, under which the collective bargaining agreement with the FTVO-CROC was signed.
12. Copy of the self-disqualification resolution issued by the Board No. 6 dated May 17.
13. Copy of a severance pay hearing at the Board No. 6. This shows that some of the workers, those who have accepted severance pay, have no intention of renouncing their collective rights concerning registration of their collective bargaining agreement.
14. A copy of the Collective Bargaining Agreement signed by Rubie's and the FTVO-CROC.
15. Copies of the indirect appeals (*amparos*) lodged against the May 17 resolution.

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