I. Labor in El Salvador

The behavior of the Salvadoran economy has established the development patterns of the Salvadoran labor market to a great extent. This evolution has been linked to changes in international economy, especially in the nineties and at the beginning of this century. The causal link between the evolution of the Salvadoran labor market and the behavior of international economy is due to the “high degree of newly found flexibility of the labor system (...) in this sense, job creation has been subject to the dynamics of exports and foreign investment, which have become the main sources generating a new employment in the country.”

The dynamic of reduction in unemployment in recent years has been much slower than in the beginning of the nineties. However, the unemployment rate reveals a downward trend with a certain plateau between 1999 and 2004, which coincides with the economic deceleration process experienced by the country. In 2004, the unemployment rate was 6.8%, down 0.1% versus the previous year.

The low unemployment rates of recent years coincide with the deterioration in the quality of the jobs generated. Since the end of the nineties higher precariousness in the jobs has been observed. As can be seen in Table 1, starting in 2000, the employment levels in the informal sector have been growing, in 2004 almost half (49.8%) of the jobs are informal. Equally, the sub-employment rate, which had a downward trend in the mid-nineties, has been reversed since 2001. However, a slight reduction was observed in 2004, but the rate continues being higher than in 1994.

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10 Source: Multiple Purpose Home Survey of the General Department of Surveys and Census (DIGESTYC), at www.digestyc.gob.sv
Table 1
El Salvador: Employment precariousness indicators
(Urban area, percentage of persons employed)

<table>
<thead>
<tr>
<th>Year</th>
<th>Workers in the informal sectors</th>
<th>Sub-employment rate</th>
<th>Workers without Social Security</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>48.8</td>
<td>32.7</td>
<td>59.1</td>
</tr>
<tr>
<td>1995</td>
<td>47.1</td>
<td>31.9</td>
<td>61.6</td>
</tr>
<tr>
<td>1996</td>
<td>47.4</td>
<td>30.6</td>
<td>62.1</td>
</tr>
<tr>
<td>1997</td>
<td>49.5</td>
<td>29.9</td>
<td>61.3</td>
</tr>
<tr>
<td>1998</td>
<td>46.6</td>
<td>31.7</td>
<td>56.2</td>
</tr>
<tr>
<td>1999</td>
<td>46.5</td>
<td>29.1</td>
<td>51.5</td>
</tr>
<tr>
<td>2000</td>
<td>47.7</td>
<td>26.3</td>
<td>54.2</td>
</tr>
<tr>
<td>2001</td>
<td>49.4</td>
<td>27.8</td>
<td>53.6</td>
</tr>
<tr>
<td>2002</td>
<td>49.7</td>
<td>29.8</td>
<td>54.5</td>
</tr>
<tr>
<td>2003</td>
<td>47.9</td>
<td>37.1</td>
<td>54.3</td>
</tr>
<tr>
<td>2004</td>
<td>49.8</td>
<td>35.4</td>
<td>56.0</td>
</tr>
</tbody>
</table>

Source: Multiple Purpose Home Survey

A variable which cannot be ignored when analyzing the Salvadoran labor market is the bipartite classification of the employment generating sector: Public Sector and Private Sector. In this respect, Table 2 shows an obvious predominance of private jobs.

Table 2
Jobs Generated in the Public and Private Sector
(Source: Multiple Purpose Home Survey)

<table>
<thead>
<tr>
<th>YEAR</th>
<th>PUBLIC</th>
<th>PRIVATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>216,858</td>
<td>2,105,839</td>
</tr>
<tr>
<td>2001</td>
<td>208,650</td>
<td>2,242,667</td>
</tr>
<tr>
<td>2002</td>
<td>204,214</td>
<td>2,208,571</td>
</tr>
<tr>
<td>2003</td>
<td>206,274</td>
<td>2,213,786</td>
</tr>
<tr>
<td>2004</td>
<td>255,716</td>
<td>2,270,647</td>
</tr>
</tbody>
</table>

II. La Maquila in El Salvador

A higher percentage of these formal jobs generated by the private sector in recent years come from the manufacturing industry.

In the framework of structural adjustment programs, privatizations and cutting public expenditure fostered by the Salvadoran governments in the nineties, the development of maquilas, with the support of the U.S. Agency for International Development (USAID)\(^\text{11}\) is promoted as an economic strategy. The great majority of maquila companies in El Salvador have production contracts with transnational companies in the clothing industry

of the United States, most maquilas being promoted under the modality of free zones. This implies “an extra-territorial geographic space or area (established as such) for specifically defined tax purposes, in which domestic or foreign companies establish themselves, mainly engaging in export and in providing certain services related to the international trade and related or complimentary activities. The products these companies make are free of taxes, but have restrictions in entering the internal economy of the country where the free zone is found.”

There is no doubt that the manufacturing industry has a huge influence on the dynamics of the national economy, as well as in the performance of the labor market in the country. According to official figures, the maquilas contribution to the Gross Domestic Product (GDP) for 2004 was $1,914.8 million dollars; and, out of the total exports recorded in 2005, 51.5% corresponds to maquilas.

Furthermore, the maquila industry has had a positive contribution in the generation of new formal jobs, affecting in a certain way the reduction of unemployment figures. According to the census of the population employed in 2004, the number of persons working in maquilas was 423,418. From this total labor force in the maquila industry, it is estimated that 80% are women.

In fact, women have presented lower unemployment levels than men. The unemployment rate of the women is 3.8%, while for men it is 8.7%. This divide in favor of women is due “to the fact that the economic activities that have generated the highest levels of employment in the country during the nineties, and to date, has allowed more employment for women. Among these activities are commerce, hotels, restaurants and manufacturing (especially maquilas).”

In other words, the phenomenon of incorporation of the women in the Salvadoran labor market has generalized “the positive impact of the model of promoting maquila in the country that has absorbed the growing participation of the women in the urban labor market. The model based on basically textile and clothes making maquila, prevailing during the nineties, has determined, among other factors, a higher entry of women to the formal labor market.”

In spite of the benefits that arose from the manufacturing industry, as indicated above, it is necessary to stress its negative impact for the economy and for the respect of the rights

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15 Source: Multiple Purpose Home Survey of the General Department of Surveys and Census (DIGESTYC), at www.digestyc.gob.sv
16 Source: Multiple Purpose Home Survey of the General Department of Surveys and Census (DIGESTYC), at www.digestyc.gob.sv
of the workers in El Salvador. On the one hand, there has been reported a reduction in jobs in the manufacturing industry, induced by the deterioration of the industry following the competition that generated higher access of China to the U.S. market and the competition that exists among the countries of the Central American and Caribbean region, also exporters of maquilas, especially textile maquilas.\textsuperscript{18}

Along with the above, the fact that the maquilas represent a little over 50\% of the total exports, and that most of this exportable production goes to the United States of America,\textsuperscript{19} places El Salvador in a vulnerable situation, because the performance of the export sector was greatly dependent on the evolution of the U.S. economy. This problem also raises a contradiction with the idea of exports diversification, both in production and in their destination.

Concerning labor rights, the performance of maquilas in El Salvador has generated various conflicts concerning the violation and non-observance of labor legislation and, unfortunately, repeated violations to said rules are continuously recorded, to the detriment of workers. On many occasions, maquilas do not provide the best employment conditions.

Being a woman is a factor that increases vulnerability concerning the violation of the workers’ rights. Among the most frequent forms of such violations there are overworking, violations of social security and housing rights, sexual harassment, retention of salaries and other benefits, non-observance of the rules that protect maternity, humiliating and debasing treatment, and unjustified dismissals.

\textbf{III. Hermosa Manufacturing}

\textit{Hermosa Manufacturing} was incorporated as a Variable Capital Corporation, and was recorded as such in the Register of Commerce in 1998, even though it is known that it started its operations in El Salvador in 1992.

The installations of this manufacturing industry used to be in C.A. La Estación, next to the Pericentro Apopa Commercial Center. Among the products manufactured and made at \textit{Hermosa Manufacturing} we can mainly mention label and cardboard labels, cotton sewing thread, synthetic sewing thread and basically clothing for major U.S. companies such as ADIDAS, NIKE and RUSSELL. It is calculated that approximately 600 workers worked for this company under subcontracting.

\textbf{IV. Description of the Problem}

At the end of 2003, reports started to appear on delays in payment of salaries of the female workers\textsuperscript{20} of the company who had worked there for several years. This situation was apparently due to the fact that the owner companies of the most important international brands decided to stop buying clothing made in that maquila, due to an alleged drop in their quality.

During 2004, there was a series of meetings and negotiations between the workers affected and the delegates of \textit{Hermosa Manufacturing}, whose legal representative during the conflict was Mr. Joaquín Salvador Montalvo Machado. It was not possible to reach a fair resolution of the problem in benefit for the parties involved, mainly the workers.

In May 2005, the company decided to close its doors forever, stopping its work, without paying for all the work done by the employees for more than a year. It is appropriate to mention that withholdings were made from the salary of the workers for social security, retirement pension, credits to Social Housing Fund and personal loans.\textsuperscript{21}

\textit{Hermosa Manufacturing} had still to pay its workers the respective salaries for their work, plus what they were owed in benefits.

Together with the absence of payment for their work, the workers also denounced other types of improper treatments: “\textit{We have suffered abuses from the company such as: Discrimination against organized personnel and pregnant women, exhausting work days of up to 15 hours, and even without eating, and sexual harassment.}.”\textsuperscript{22}

The workers were also constantly threatened and frightened with being dismissed if they would complain for the lack of payment of their salaries. Faced with this type of blackmail, 63 female workers decided to organize themselves through forming a union.

The competent courts declared a strike organized by the workers, both unionized and non-unionized, illegal.

Given the powerlessness of the Ministry of Labor authorities to claim the violated rights of the workers, the respective complaints were filed with the labor courts. But when considering the severity of the legal rights injured, 60 of the 265 women affected decided to also file a criminal suit, advised by the Attorney General’s Office; the suit was filed in October 2005 and, during the proceedings, the legal representative of \textit{Hermosa Manufacturing}, Salvador Montalvo Machado, was arrested.\textsuperscript{23}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{20} Of the total employees of “\textit{Hermosa Manufacturing}” affected, only four are men; those organized in the union are all women; consequently, for the purposes of this investigation we will use indistinctly the expression “female workers.”
\item \textsuperscript{21} It is estimated that \textit{Hermosa Manufacturing} owes $350,595.00 US dollars for pension and social security contributions. (Letter sent on April 26, 2006 by workers of \textit{Hermosa Manufacturing} to Representatives of Adidas, Nike and Russell).
\item \textsuperscript{22} Letter sent on April 26, 2006 by workers of \textit{Hermosa Manufacturing} to Representatives of Adidas, Nike and Russell.
\item \textsuperscript{23} Interview with Gustavo Pineda, member of the Independent Monitoring Group of El Salvador (GMIES) on May 29, 2006.
\end{itemize}
\end{footnotesize}
Due to all these problems, ADIDAS, NIKE and RUSSELL had meetings with government authorities to seek a solution. At the same time, it is known that the United States Embassy in El Salvador also intervened, trying to take steps to resolve this labor crisis.

However, these efforts were not successful. Another aspect that needs to be stressed is the commitment assumed by the Salvadoran government in the sense of rendering health services for one year to the female workers, as well as to promote a Job Fair, as a form of minimizing the severe impact on the economy of the homes of these persons. However, to date, the workers do not report any benefits from these programs.

The families of the workers experienced a severe economic crisis. At times, they do not have enough money to cover basic necessities: food, children’s education, medical expenses, some of them has lost their homes because they could not pay the corresponding monthly payment. To date, there is no sign of any favorable solution for the women affected and their vulnerability and abandonment by the Salvadoran State persists. The efforts of the transnationals have not been successful, even though they are in a position from which it is possible to find the best solution for the workers.

A) The Ministry of Labor and Social Security

The Ministry of Labor and Social Security (hereinafter MITRAB), is the Secretariat of State in charge of formulating, implementing and supervising the social-labor policy of the country. At the same time, it is in charge of the labor inspectorate occupational safety and hygiene and the supervision of the environment, among other specific functions.\(^\text{24}\)

In the case of “Hermosa Manufacturing” the labor authorities exercised their respective legal functions through two of their agencies: The Department of Labor Inspection and the General Labor Department. To find out first hand about the actions taken by both of them,\(^\text{25}\) we interviewed their managers, and we indicate below the opinions expressed and the information obtained.

General Director of the Labor Inspection.

We interviewed Atty. Javier Rivas Rodríguez, an official who expressed his concern for the workers affected. According to his declaration a year ago, specifically on May 11, 2005, an inspection was conducted at the “Hermosa Manufacturing” plant and he found out personally that until that date the machinery was still in the premises. He also verified the initial confirmation from the owner of the company that he did not have the raw material to continue production.

The official interviewed stressed that, during the course of this conflict, the employer used the “Suspension of the Employment Contract,” a legal action by which the labor relations between employees and employer stop producing effects concerning the

\(^{24}\) Arts. 5 and 7 of the “Law of the Organization and Functions of the Labor and Social Security Sector,” Legislative Decree No. 682, of April 11, 1996.

\(^{25}\) Interview conducted by the author on May 31, 2006.
rendering of services and the payment of the salary. This action is permitted to the employers by the current labor legislation, and they can take it without judicial supervision and for a term of up to nine months, when it is allegedly due to the lack of raw material, as it happened in this case.26

“Hermosa Manufacturing” worked with a Leasing System (“leasing”),27 that paid for the machinery and work tools and, since they could not continue their usual production, the Bank, as creditor, had off-set the debts in its favor, seizing the machinery. This made it more difficult for the company to cover its labor obligations, even though they are considered “preferred credits” by the Salvadoran labor legislation, that is to say, the payment of the salaries and social benefits has prevalence over any other civil or commercial contractual obligation.28

The person interviewed added that MITRAB had taken care of at least 254 workers, of whom 64 are organized as a section of the STITAS Union (“Union of the Workers of the Textile, Cotton, Synthetic Textile Finishing, Similar and Related Industries). Ten more workers refrained from any complaint because they filled merely administrative or trusted positions with the employer, with whom they had settled out of court. Other workers affected by the closing of this company consider that they were poorly advised, since when they negotiated, they only reached a “generic agreement,” in other words their claims were not precisely quantified from an economic viewpoint, which made the negotiations conducted under the supervision of that State Office ineffective.

Atty. Rivas Rodriguez considers that the inspections conducted in the company confirm that it was in a situation of violation concerning the payment of the salaries, since they were paid even in three monthly installments, even though the Labor Code establishes that the salary must be paid in a timely fashion, in full and in person29.

**General Labor Director.**

The holder of this office, Atty. Carolina Morán, added to some of the points made by her colleague from MITRAB, specifying that the Department in her charge has at least five active conciliation files for “Hermosa Manufacturing.” When questioned about the possible existence of a “black list” that would prevent the former workers of “Hermosa Manufacturing” from finding a new job in the textile maquila, Atty. Morán consulted her database and declared that, of the 254 workers affected, 175 are working, without specifying whether they work in labor, industry, commerce or service companies.

As to the question about the measures to be taken by labor authorities after the various intents for conciliation mentioned failed, the person interviewed declared that there was a “job fair” especially designed to bring new opportunities to the workers of “Hermosa Manufacturing,” to which 64 organized workers came, plus another 20 who do not belong to the union. According to Atty. Morán, this activity was boycotted by the union.

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26 Art. 36 section 1 and 44 of the Labor Code, Legislative Decree No. 15, of June 30, 1972.
27 Art. 2 of the “Leasing Law,” Legislative Decree No. 647, of March 17, 2005.
of those workers, who urged them not to fill out the job application forms previously prepared by MITRAB, and not to deliver their resume to the companies participating in the job offer.

The General Labor Director added that this labor conflict would have been resolved if there were no conflict among the disagreeing opinions of so many sectors involved, mentioning the Grupo de Monitoreo Independiente de El Salvador (GMIES), the Union to which some of the affected workers belong and a “German union which is preparing a trip for some of these workers to take actions abroad”; the official concluded that these women are no longer interested in finding work but they wish to continue with their cause.

When asked about the reasons that prevent reaching conciliation agreement between the employer and the workers, the official was of the opinion that it was due to the fact that the employer – Montalvo Machado – was not in a condition to conciliate if the workers kept organizing actions such as standing in front of the factory, insulting him every time he arrived to the factory accompanied by possible partners or damaging his vehicle. Because of this, he preferred to go to the courts, where supposedly he was already sentenced to pay labor benefits in most cases.

B) **Legal Advisor of the Workers**

The 63 workers of “Hermosa Manufacturing” who organized in the STITAS union received the support of the feminist organization “Las Mélidas,” which contracted the services of lawyer Zoraida Rodríguez; this lawyer intervened with the Attorney General’s Office of the Republic in the labor suits filed with the competent Courts in the City of Apopa. In an interview with the lawyer, she said that the conciliating hearings – first phase in the course of any labor suit – failed because the legal representative of “Hermosa Manufacturing,” Salvador Montalvo Machado did not come.

In general, in the lawyer’s opinion, the performance of the judicial authorities was deficient, given that most of the decisions rendered were against the interests of the workers. Equally, when appealing these decisions, the Higher Chambers upheld the unfavorable rulings rendered by the lower court, or reversed those that gave benefits to the workers. The trend of these courts when ruling was to qualify as “Suspension of the Individual Labor Contract” – a concept allowed by Salvadoran labor legislation in favor of the employer – which in practice would correspond to “Dismissal Without Cause.”

In turn, Atty. Rodríguez followed up closely the criminal suit filed against Salvador Montalvo as legal representative of the company, in which he was accused of deducting from the salary of the workers the social security contributions without reporting them to the competent state institution.

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30 Interview conducted on June 5, 2006 with Atty. Zoraida Rodríguez, legal advisor to the workers.
31 Art. 245 of the Criminal Code corresponds to the “Criminal Violation” withholding of labor contributions, which punishes the employer who retains funds, contributions, dues or accounts of the workers legally earmarked for the State or for assistance or social security or union institutions.
In the opinion of the lawyer, state authorities knew about the withholding of the social security and retirement pension contributions by “Hermosa Manufacturing,” but it was not until the criminal suit that the State gave its opinion, and even proclaimed themselves a “victim” of fraud, the same as the workers.

Currently, the criminal suit is advancing rather slowly, the Investigation Hearing initially scheduled for last May was postponed to September 1, 2006. The reason for the postponement is that the defense requested an audit and in turn the District Attorney’s office requested the comparison of the payrolls. Due to the technical difficulties of such expert investigations, an extension of an additional four months was granted.

During the course of the criminal case, the court ordered Montalvo Machado to post bond, which consists of the pledge of the machinery owned by “Hermosa Manufacturing” considered “scrap” with an estimated value of $100,000.00 (one hundred thousand US dollars). It is unfortunate that this appraisal was done by the defendant himself; the District Attorney’s office requested expert investigation to determine the true value of this guarantee, the petition was dismissed by the court that hears the case.

However, in the opinion of the lawyer interviewed, this amount does not cover the amount owed to the workers, because, in social security contributions alone, the company owes $133,326.43 (one hundred thirty-three thousand three hundred and twenty-six US dollars and forty-three cents); and to the prejudice of the Pension Fund Manager (AFP) the debt is calculated at $220,648.40 (Two hundred twenty thousand six hundred forty-eight US dollars and forty cents)\(^{32}\). These amounts do not include the total salaries outstanding to the workers or the other labor benefits corresponding to them, which payments constitute the priority claim of the women affected.

C) **Workers Affected by “Hermosa Manufacturing”**

During the interview with Atty. Zoraida Rodríguez, there were five affected workers present who are part of the Managing Board of STITAS and who confirmed all the declarations of their lawyer.

From the additional information given by the workers, we can stress the following data: They affirm that, as of December 2003, the salary withholding started, a time when Salvador Montalvo was already partner of the company MB which currently employees various ex-employees of “Hermosa Manufacturing.” Of the 63 organized workers, none were hired at MB, since they indicate that MB requires, as a requisite for hiring, a recommendation from the former employer, so that the certain number of the women affected at “Hermosa Manufacturing” could not obtain this recommendation, obviously because of their conflict with the management of that company.

Concerning the Leasing System with which the company allegedly worked, the workers claimed that “Hermosa Manufacturing” continues exporting (even though they don’t

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\(^{32}\) Interview conducted on June 5, 2006 with Atty. Zoraida Rodriguez, legal advisor to the workers.
know where) and affirmed that the useful machinery of *Hermosa* was moved to MB and that spare parts are continuously being taken from the “scrap” machinery that serve as guarantee in the criminal suit, so that the guarantee keeps losing value.

They complained that they were victim of persecution and intimidations on the part of Oscar Mena, lawyer hired by Montalvo Machado in the lawsuits filed. The name of “Virginia Hernández” was also mentioned as one of the main persons responsible for harassment, and who allegedly is an ally of Mena’s. The workers considered that in the case of any attempt against their life or personal integrity they would hold responsible Montalvo Machado, Mena and the Government for complicity, given the severity of the threats made against them whenever they met with these persons.

During 2004, the workers started experiencing severe consequences due to the lack of salary. Some of them indicated that they did not have enough money to pay for transport to the installations of the maquila, so that they had to walk for hours and face salary deductions for being late. In a stage of this crisis they were forced to work more, under the excuse that the salaries could be paid due to the overproduction.

The workers stressed that at all times Mena and Montalvo tried to convince them to give up the lawsuits filed and that only under that condition was it possible to negotiate an agreement. They say that on a certain occasion Víctor Bermúdez, cousin of Montalvo Machado, proposed to try to reach an agreement with the help of the Procuraduría para la Defensa de los Derechos Humanos (PDDH) provided they accepted to share the losses suffered by “*Hermosa Manufacturing*.”

The workers angrily refused the position of the authorities of the Labor Ministry in front of a representatives of ADIDAS, to whom they claimed that there was an alleged agreement in which the workers were guaranteed “access to health services, a Job Fair offering new jobs as well as a promise of increasing the number of Inspectors and of training the existing ones.”

The workers sustained that the quality of the jobs offered in the Job Exchange required lower qualification levels and consequently did not meet their salary needs. As to the alleged agreement to assure them medical and hospital services, it is important to note that state authorities offered the network of hospitals and public health units that provide services destined to those who do not pay contributions to the Salvadoran Social Security Institute, which is not the case of the workers at “*Hermosa Manufacturing*.”

Finally, the workers expressed their discontent with FENASTRAS, the union Federation to which they aligned themselves when organizing; in their opinion, this institution did not give them sufficient and adequate advice in legal matters, nor did it offer the protection promised by the leaders of the Federation.

**D) Mesa de la Maquila**

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33 Testimony of Estela Marina Ramírez, Secretary of Social Security and Welfare of STITAS.
We interviewed Nayda Medrano, representative of Mesa de la Maquila, a social organization that has followed up closely the problems of the workers affected by “Hermosa Manufacturing.”

Medrano stressed the fact that the workers had exhausted the administrative channels with the Ministry of Labor and Social Security and mentioned the lack of seriousness of the agreement promised by said State Ministry to offer free health care for one year to the workers. She stressed the unity of the movement of the workers at all times, who were not willing to accept any agreement that would not include all the women affected without exception, regardless of whether or not they belonged to the union.

When giving her opinion on the behavior of the judicial authorities, she said that the Procuraduría General de la República (PGR) acted rather negligently in the labor suits, due to a lack of direct attention to the women affected and the witnesses, who were notified late to appeal before the courts. She also judged the lack of consistency in the opinions of the Labor Appeals Chambers, a majority of which “resolved in favor of Mr. Montalvo.”

It was mentioned that during the first negotiations, with the participation of the Group de Monitoreo Independiente para El Salvador (GMIES) the representative for Latin America of the brands involved showed their willingness to resolve the conflict but that as the conflict became more complex, they started to withdraw from the meetings scheduled to reach an agreement and lost interest in being a party to the negotiations. In the opinion of Nayda Medrano, GMIES does not have full autonomy, since its financing depends on the brands; this idea is shared by the workers.

On the other hand, it was learned that in some of the negotiations conducted at the Ministry of Labor and Social Security, Philip Thomson was present on behalf of the US Embassy in El Salvador.

As to the possibility of appealing to the International Labor Organization (ILO), Nayda Medrano explained that it would be very difficult because the ILO admits only cases of Union Discrimination, the majority of the workers who were not organized in STITAS would be excluded from the possible protection granted by that International Agency, when the idea is to cover most if not all the affected women. It was also mentioned as a possibility to resort to the Interamerican System, through the Interamerican Commission of Human Rights, in order to present the problem of “Hermosa Manufacturing” along with other labor conflicts to this agency.

An aspect which, in Medrano’s opinion, constitutes a measure with an effect equivalent to that of the “black lists” is the fact of requiring recommendations from the former employers in order to hired in a new manufacturing industry. He mentioned the case of two workers identifying one of them only as Delmi Elena and the other as Ana María Hernández who worked for INCAP, and who were fired presumably when the management of INCAP discovered that they had worked at “Hermosa Manufacturing.”

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34 Interview conducted on June 5, 2006.
During this interview, there was also present a group of affected workers; one of them recounted her experience in Germany, where she had traveled with the support of Iniciativa Cristiana Romeriana (ICR). In the European country, worker Estela Marina Ramírez presented her case and that of her affected workmates. She received the support of various social sectors, such as the student body, which promoted the boycott campaign against the establishments of the stores that distribute the sports brands involved in the “Hermosa Manufacturing” case.

V. The Role of the Mass Media

It is indispensable to dedicate a short section to the examination of the behavior of the mass media, considering their impact in connection with the labor problem at hand.

In the interview with the workers, they declared their disagreement with the manner in which the media had tackled the conflict. Mainly they denounced the lack of objectiveness and impartiality of television and newspaper news.

Furthermore, the media did not provide sufficient and necessary spaces for the workers to present their problem. In this regard, we can blame the lack of seriousness with which one of the main morning papers, El Diario de Hoy discussed the events. Far from focusing on the lack of protection of the workers, they made efforts to dismiss the legitimacy of the movement started by them in enforcing their labor rights. In the newspaper note of March 25, 200635, there is a trend to link the protests of the workers to vandalism and criminal acts, generating an obvious denigration of these workers versus the rest of the social group.

In an article published days earlier in the “National” section of the same newspaper, the biased position of this newspaper went so far as to accuse the workers’ union leaders of extortion and deprivation of freedom, while also attributing the responsibility for the bankruptcy of “Hermosa Manufacturing”36 to them.

As published in the aforementioned note, the workers – manipulated by the Federación Nacional de Trabajadores Salvadoreños, FENASTRAS – committed those illegal acts with the approval of the Civil National Police and of the Procuraduría para la Defensa de los Derechos Humanos and with the support of a student organization (Brigadas Revolucionarias de Estudiantes de El Salvador, BRES) with which the workers declared that they never had contact.

As a consequence of the negative impact of the publication of this type of information, the workers decided to file a series of actions in order to enforce the Right to Rectification or Answer from the managers of El Diario de Hoy. In this sense, el Instituto

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de Derechos Humanos de la Universidad Centroamericana “José Simeón Cañas” (IDHUCA) offered the necessary advice.

VI. Conclusion

The situation presented in this report is a proof of the lack of solid institutions to protect labor rights in El Salvador, a situation that fosters the impunity of those employers who evade their obligations to their workers. In addition, this unfortunate reality allows questioning the degree of social responsibility of the brands, which tend to select countries like El Salvador as beneficial destinations for their production, ignoring the unfavorable history of the country in matters of human rights and concretely concerning labor rights.

In this framework, there are obligations required from the parties involved which are in a position of guarantor towards workers. Thus, for the Salvadoran State, the need to adapt its legal framework and procedures to the minimum standard of respect for labor rights, assessing the quality of their efforts not only by the existence of legal proceedings but by the real results obtained in the resolution of conflict similar to the “Hermosa Manufacturing” case.

As to the brands, they must assume their monetary responsibility as a first step to resolve the precarious economic condition of the workers affected by the actions and omissions of the Salvadoran employers, given that they contributed to the enrichment of those brands, by offering cheap labor.

VII. Recommendations

As a form to avoid the defrauding of workers, as in the case of “Hermosa Manufacturing,” we propose that the brands require the manufacturing companies contracted by them in El Salvador to create a Monetary Compensation Fund paid by them, so that in the case of bankruptcy or a closing of the company, it would be possible to pay the labor liabilities and other legal benefits to the workers; and, to the extent possible, try to cover with that Fund the contributions owed to the Pension Fund Managers and to the Salvadoran Social Security Institute.

The excessive slowness of the labor inspection mechanisms in El Salvador places workers in the manufacturing industry in a vulnerable situation, so that it is necessary to consider the need to support the modernization of the Ministry of Labor and Social Security to make it capable to periodically certify compliance and observance of good labor practice by the companies that work for the brands involved.

Assuring that all workers of “Hermosa Manufacturing” affected receive the payments owed to them, by the direct influence of the brands, would set an important precedent that would force the Salvadoran authorities to take a more significant role concerning the possible similar conflicts that would present themselves in the future.
Finally, we suggest to the brands that, in the case of conflicts like that described in this report, they improve their communication channels with the organizations of civil society engaging in the defense and promotion of labor rights, since this type of coming together may contribute to reaching solutions that are in favor of all those involved in the problem.

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