



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
re MEXMODE, S.A. de C.V. (MEXICO)  
FINDINGS AND RECOMMENDATIONS  
JULY 3, 2008**

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## **Introduction**

This report outlines the findings of the Worker Rights Consortium (WRC) concerning alleged violations of labor rights at the Mexmode, S.A. de C.V. factory (formerly known as “Kukdong International”). The plant is located in the city of Atlixco, State of Puebla, Mexico. The Mexmode factory is a producer of university logo goods for Nike; it also produces goods for Carhartt.

The WRC launched an inquiry in response to allegations, brought to the attention of the WRC by the office of the American Center for International Labor Solidarity in Mexico, that workers had been subjected to violence and intimidation inside the factory and that the Mexican government had illegally intervened in the internal affairs of a labor union. The allegations are of particular concern in light of Mexmode’s history as the site of labor rights breakthroughs that have been recognized around the world.

It is important to note at the outset that it has at no point been alleged that acts of violence and intimidation have been carried out by factory management or at the behest of factory management; rather, it was alleged that such actions were carried out by supporters of Antorcha Campesina (in English, “Peasants’ Torch”), a political organization with close ties to the Institutional Revolutionary Party (PRI), one of Mexico’s major political parties, which holds power in the State of Puebla. The violence and intimidation was allegedly targeted at the elected leaders of the trade union that represents workers at the factory and that is party to a collective bargaining agreement with Mexmode. The union is known as SITEMEX (Sindicato Independiente de los Trabajadores de la Empresa Mexmode).

In response to the allegations, the WRC launched an urgent inquiry. The inquiry included interviews with production workers, supervisors, managers, union representatives, and government officials, as well as direct observation of key events and a review of relevant documentation. The WRC’s inquiry was supplemented by a legal analysis of a central issue in the case by an expert on Mexican labor law. The issue concerns the legality of government involvement in the internal procedures of a union, including the selection of its leadership. This legal analysis is included in the body of this report. It is important to note that Mexmode management cooperated fully with the investigation.

The WRC’s inquiry found that serious labor rights violations have occurred at the facility, including violence and threats of violence against workers involved in trade union activities and the unlawful intervention of government authorities in an internal union dispute. These violations arose from legitimate grievances on the part of workers regarding the elected leadership of the union. However, what began as a peaceful effort by union members to raise concerns about their leadership was effectively hijacked by outside political actors – namely Peasants’ Torch and its allies in the government. Workers recruited by Peasants’ Torch committed a series of physical assaults of elected union representatives, all of which took place inside the factory. Most of the assaults were carried out by male workers against female workers.

The WRC determined that factory management does not bear responsibility for the labor rights violations documented at Mexmode. Indeed, Mexmode management has taken some important steps to address the issues, including discouraging government representatives from inappropriately intervening in the union election process. Nike has also taken positive steps.

Responsibility for the violations we have documented lies with the organization Peasants' Torch – a political organization with a history of violence and intimidation – and with government officials, who, rather than protecting the rights of workers, have actively sought to advance this organization's agenda.<sup>1</sup>

Thus, it is the Government of the State of Puebla that must act to remedy the violations by establishing respect for the rule of law. The government must effectively pursue complaints concerning violent assaults and prosecute individuals found to have committed such acts. It must ensure that government officials cease to interfere in the internal functioning of the labor union at the facility. The WRC is communicating with the U.S. government and is seeking its assistance in encouraging the Mexican government to uphold the rule of law, consistent with its obligations under international agreements.

Nike and Mexmode should also take additional steps, including further efforts to press the Mexican government to act appropriately. It is also critical that the brands doing business with Mexmode, in particular Nike, not abandon the facility. The WRC's specific recommendations are outlined at the end of this report.

### **Sources of Evidence**

The WRC's findings are based upon the following sources of evidence:

- Interviews with thirty-three production workers at the Mexmode facility. The interviews were conducted both off-site and inside of the factory. The workers interviewed represented a broad range of perspectives on the conflict and on the union leadership.
- Interviews with Mr. Odin Lee, Administrative Manager of the Mexmode facility.
- Interviews with Josefina Hernández Ponce, Secretary General of the SITEMEX union.

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<sup>1</sup> The Government of Puebla has been repeatedly criticized by international bodies, including the ILO Committee on Freedom of Association and the U.S. Department of Labor, for violations of workers' freedom of association. See U. S. Department of Labor, [Public Report of Review of NAO Submission No. 2003-01 \(PUEBLA\)](http://www.dol.gov/ilab/media/reports/nao/pubrep2003-1.htm), <http://www.dol.gov/ilab/media/reports/nao/pubrep2003-1.htm>; ILO Committee on Freedom of Association, Report No. 334, Case No. 2282 (Matamoros Garment); ILO Committee on Freedom of Association, Report No. 337, Case No. 2346 (Tarrant).

- Interviews with José Luís Rodríguez Salazar, labor advisor to the company during the period of the conflict.
- Interviews with David Alvarado and Benjamin Davis, representatives of the American Center for International Labor Solidarity.
- Interviews with Maria Antonia Espejel, Director of Culture of the Municipality of Atlixco, Mexico and Regional Representative of Peasants' Torch.
- An Interview with Enrique Martínez, the Secretary General of the regional office of the Local Board of Conciliation and Arbitration (JLCA) of the State of Puebla.
- An interview with Miguel Ángel Domínguez, Editorial Director of the magazine "Global Region" and reporter for the Journal of the East ("Jornada de Oriente").
- Physical inspections of the plant and observation of the facility during the period of the conflict.
- A visit to the Public Ministry of the Municipality of Atlixco, Puebla.
- A review of relevant documents, including confidential internal documents of the SITEMEX union and personnel files.
- An analysis of Mexican labor law, with specific reference to the proper role of the State in the resolution of conflicts concerning union representation.

## **Background**

The labor rights breakthroughs at the Mexmode facility are recognized as being among the most significant ever to be achieved in a Mexican garment factory. In 2002, Mexmode became the first factory in the history of Mexico's apparel export sector in which workers were able to exercise their right to organize an independent labor union and negotiate a collective bargaining agreement. To date, it remains the only such factory in operation in the sector. The associational rights of the factory's workers were protected through the intervention of a number of international labor rights organizations, including the WRC, and the company's clients, Nike and Reebok. These efforts have served as an important model for the effective use of codes of conduct in the context of violations of rights of association.

To understand the developments at the Mexmode facility in context, it is necessary to consider the historical and prevailing norms in Mexico's apparel sector with respect to freedom of association. The vast majority of Mexican apparel factories have contracts with one of Mexico's "official" unions – labor organizations with longstanding ties to the PRI, which ruled Mexico at the federal level for seventy years (until the year 2000) and which remains the dominant political force in many states and municipalities (including Puebla). The purpose of these official unions is not to advance the interests of workers, but to advance the interests of the PRI and of the unions' leadership. Their standard operating procedure is to sign what are generally referred to as "protection contracts" with employers.<sup>2</sup> The hallmark of these contracts, which are usually negotiated without

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<sup>2</sup> The largest of these organizations are the Confederation of Mexican Workers (CTM), the Regional Workers Confederation of Mexico (CROM), and the Revolutionary Confederation of Workers and Peasants (CROC).

workers' knowledge or consent, is that they provide no rights or benefits for workers not already mandated by Mexican law. They do, however, provide money for the official unions, in the form of union dues, and political support for the PRI, since workers are often pressed, once they have become members of an official union, to engage in political work. Signing a protection contract with the official union is also of use to the employer, since this "protects" the employer from the threat of genuine unionization. Once the protection contract is in place, workers seeking to organize a legitimate union face normally insurmountable bureaucratic and legal obstacles. The protection contracts also have the effect of ensuring that the legal floor for employee wages and benefits is also the ceiling.

In the case of Mexmode, a key obstacle to the exercise of associational rights by workers who sought to organize a legitimate union (beginning in 2000) was the existence of such a protection contract – in this case with the Puebla affiliate of an official union known as the Revolutionary Confederation of Workers and Peasants (Confederación Revolucionario de Obreros y Campesinos). The Puebla regional body of this official union is known by the acronym FROC-CROC. True to form, the agreement, which workers were not informed of at the time it was signed and learned of only after they sought to organize a legitimate union at the plant,<sup>3</sup> provided for no wages, benefits or rights beyond those already mandated by law. Through an investigation conducted in 2000 and 2001, the WRC documented a series of machinations by the Puebla government intended to defend the position of the FROC-CROC and thwart efforts by workers to exercise their right to unionize. As is common in Mexico, the Puebla government violated its own laws and procedures in order to protect the FROC-CROC and its illegitimate claim to represent the workers. These findings are detailed in the WRC's June 2001 report on Mexmode (then called Kukdong International), which can be accessed at the following link:

[http://www.workersrights.org/Freports/Report\\_Kukdong\\_2.pdf](http://www.workersrights.org/Freports/Report_Kukdong_2.pdf)

Mexmode's workers were ultimately able to oust the FROC-CROC from the factory and establish an independent labor union.<sup>4</sup> The new union, known as SITEMEX, has since negotiated a series of collective bargaining agreements that provide wages and benefits that are substantially higher than the industry norm and Mexmode has become a model of constructive industrial relations in the apparel sector. Also of note, the SITEMEX union's top leaders have been women, since the earliest days of the organizing effort. This is a rarity for an industrial union in Mexico.

In the recent past, however, a dispute has emerged among Mexmode workers regarding the leadership of the SITEMEX union. An organization which had not previously had any

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<sup>3</sup> Even after learning of the existence of the contract, workers at Mexmode could not obtain a copy of it. Neither the official union nor the government would provide them with a copy. This situation – workers unable to even see the contract that governs their working lives and that was supposedly negotiated on their behalf – is commonplace in Mexico's system of industrial relations.

<sup>4</sup> The SITEMEX union is affiliated to the National Union of Workers (UNT), a national federation of independent unions.

presence at the plant, Peasants' Torch, has become a central protagonist in this dispute. The labor rights abuses described in this report were committed by Peasants' Torch and/or workers with its support and guidance and have been exacerbated by the Puebla government's unlawful interference in the union's election process. The evidence shows that Puebla government officials, at minimum, closely coordinated their actions with Peasants' Torch and may have directed the organization's activities.

Peasants' Torch is an organization with historical roots among Mexico's landless peasants. It was once regarded as a legitimate organization dedicated to advancing the interests of its members. Through its efforts peasants obtained land and other gains, including the creation of a university focused on rural issues (the Autonomous University of Chapingo).

However, by the contemporary era, Peasants' Torch had ceased to function as a legitimate social movement and emerged instead as a violent bulwark of the PRI's political power – regularly employed by the PRI to violently disrupt the activities of rival political parties and movements, such as the Party of the Democratic Revolution (PRD).

A report by the World Policy Institute details the organization's history of violence and political intimidation:

In its more extreme form, the PRI strategy of using surrogates to combat the PRD has relied on shadowy, often violent, groups such as Antorcha Campesina (Peasant Torch). Peasant Torch would invade PRD rural strongholds by sending in organizers to orchestrate demands for government services—a new school, piped water, sewers, a paved street. Whereas similar requests from PRD municipal authorities would be ignored, state and federal governments would deliver the goods wherever Peasant Torch had established a foothold, allowing the latter to expand its base of support. In return, Peasant Torch attacked the government's enemies, murdering independent organizers, and often occupying PRD-led town halls. This strategy peaked under President Salinas, who seated Peasant Torch in the PRI's national convention in 1990.<sup>5</sup>

In recent years, Peasants' Torch has increased its activities among the unemployed and underemployed urban poor, in Puebla and other locales. Peasants' Torch was instrumental in helping the PRI party win back control of the key municipalities of Atlixco and Izúcar (in the State of Puebla) from the reform-minded PRD and National Action Party (PAN), respectively. The organization has also reinforced the PRI's hold on the City of Puebla, which is the fifth largest city in Mexico. Peasants' Torch members have since been appointed to key positions in the governments of these municipalities.

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<sup>5</sup> Andrew Redding, "Democracy and Human Rights in Mexico," World Policy Institute, May 1995.

With respect to the involvement of Peasants' Torch at Mexmode, it should be noted that SITEMEX is not allied with any political party; indeed, its leadership has declined repeated demands from the PRI to provide the party with political support.

## **Findings**

The WRC concluded that a number of workers at Mexmode were subjected to violence and threats of violence, in retaliation for their support for, or membership in, the leadership of the SITEMEX union, by workers associated with Peasants' Torch. The WRC also found that representatives of the government of the State of Puebla violated workers' associational rights. These findings are summarized below.

In a subsequent section, we provide a more detailed outline of the events that led up to this violence. As described in greater depth in that section, these incidents took place in the context of a dispute among workers concerning the leadership of the SITEMEX union. A faction of workers with ties to Peasants' Torch has sought to replace the current elected leadership of SITEMEX with a different group of individuals.

It is important to note that the violations reported below are not the responsibility of factory management.

### *Acts and Threats of Violence*

The WRC documented the following acts and threats of violence at the Mexmode facility. Apart from potentially representing criminal violations under Mexico's penal code, the assaults described here represent serious violations of workers' basic associational rights, as protected by Mexican law<sup>6</sup>, Convention 87 of the International Labor Organization, and applicable corporate and university codes of conduct. It is clear that the workers were targeted for attack specifically because of their union-related activities or views.

- The female Secretary General of the SITEMEX union was physically assaulted and dragged out of the factory by individuals from the Peasants' Torch faction. A leader of the Peasants' Torch faction openly acknowledged that he had participated in the assault on this worker, claiming that the assault was justified because of her refusal to vacate the union's office and the factory premises when he and others from his group demanded that she do so.
- A female union officer was physically assaulted inside the factory. A male member of the Peasants' Torch faction punched her, pushed her against a wall, and then grabbed and twisted her hand.

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<sup>6</sup> Article 123 of the Mexican Constitution; Articles 354-358 of the Federal Labor Law.



- A female union officer was physically assaulted inside the factory. She was struck in her back by a male member of the Peasants' Torch faction as she sought to enter the union's office while the union's Secretary General was being assaulted.
- A female union officer was physically assaulted inside the factory. A female member of the Peasants' Torch faction grabbed at her clothing and tried to pull off her blouse, while other workers sought to forcibly remove her from the factory premises.
- A female worker was physically assaulted inside the factory. The worker, who was not associated with either of the factions, was dragged out of the production building by a male member of the Peasants' Torch faction. The Peasants' Torch faction member told her that if she did not leave the factory immediately, her life would be in danger.
- A male union officer was physically assaulted inside the factory. He was hit several times in the head, kicked repeatedly in the back, and thrown against a wall by members of the Peasants' Torch faction.

All of the assaults described above took place during the morning of May 30, 2008. Later on the same day, at the end of factory's day shift, the following occurred.

- Seven workers, including both union officers and one worker who was not involved with either group in the union dispute, were menaced as they sought to leave the factory. The workers were physically prevented from leaving the factory premises for more than an hour by workers who were part of the Peasants' Torch faction and by Peasants' Torch agents from outside of the factory.
- After they were finally allowed to leave the plant, which they did on foot, they were followed by Peasants' Torch supporters in a car.

#### *Unlawful Actions by Government Officials*

- After some of the workers who had participated in the assaults described above were suspended by factory management (an action that was fully justified under the circumstances), a senior government official in the municipality of Atlixco, Maria Antonia Espejel, organized and participated in a protest at the factory demanding the reinstatement of these workers; the protest involved threats of violence. This individual identifies herself as a regional representative of Peasants' Torch. The government of Puebla had undertaken no official action with respect to these suspensions; in other words, this individual was not acting to carry out any governmental order, decision or policy. For obvious reasons, it is not appropriate for a government official to be leading civil protests designed to coerce businesses or individuals, much less protests involving threats of violence.

- This same senior government official convened and presided over an assembly of union members, with the primary agenda item being the removal of the existing union leaders from power, to be replaced by a slate of workers supported by Peasants' Torch. Mexican law does not allow this level of interference by government officials in the internal affairs of a union.<sup>7</sup> The intervention of government officials in a union election in this manner also represents a violation of Convention 87 of the International Labor Organization.<sup>8</sup>
- Both before and after the violent assaults described above, the municipal government of Atlixco provided material support to the Peasants' Torch faction at the factory, including trucks, food, transportation, and a sound system for public events, as well as legal assistance.
- The Chief of Police of the municipality of Atlixco threatened the factory's managing director that he would withdraw security personnel from the factory premises during the course of a protest when the manager complained that the Police Chief had brought the Peasants' Torch representative (who as noted is also a government official) with him into the factory.
- The Puebla JLCA unlawfully convened an "extraordinary assembly" of Mexmode workers with the primary agenda item being a vote to replace the existing SITEMEX leadership with the group supported by Peasants' Torch. In doing so, as described below, the JLCA violated Mexican laws prohibiting government interference in internal union functions. The assembly also violated the union's by-laws, which require votes of this kind to be conducted by secret ballot; the government officials required workers to raise their hands, in front of their coworkers, to register their vote.
- In convening the assembly, the government officials entered the Mexmode compound without authorization from factory management. They entered the facility after

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<sup>7</sup> For information concerning the legality of the actions of government officials under Mexican law with respect to the union assembly in question, see the analysis of Dr. Alejandra Ancheita on page 18 of this report.

<sup>8</sup> For details concerning ILO Committee on Freedom of Association decisions in this area, see "Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO" *Fifth (revised) edition (2006)*, paras. 391 ("The right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining the conditions of eligibility of leaders or in the conduct of the elections themselves."), 430 ("The right of workers to elect their representatives in full freedom should be exercised in accordance with the statutes of their occupational associations and should not be subject to the convening of elections by ministerial resolution."), 438 ("The presence during trade union elections of the authorities is liable to infringe freedom of association and, in particular, to be incompatible with the principle that workers' organizations shall have the right to elect their representatives in full freedom, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. ")

supporters of Peasants' Torch forcibly opened the factory gate. Under Mexican law, a representative of the JLCA cannot enter a factory without management consent, unless there is a court order.<sup>9</sup>

According to Mexmode, the reason the company exercised its right to refuse entry in the absence of a court order was that the government officials had sought this entry for an unlawful purpose. Notably, the government had proceeded with its unlawful plan to hold an election at the factory despite communications from Mexmode management, Nike, and a number of labor rights organizations imploring the government not to do so.

### **Chronology of Key Events**

This section provides a chronological review of key events at the Mexmode facility during the period January through June 2008. It is presented here in order to provide additional context and details related to the findings outlined above.

#### *Events during January through May 2008*

- During January 2008, a dispute emerged between individual workers – particularly those in the facility's dyeing department – and the leadership of the SITEMEX union. The disagreement related to several events during the month. The first incident occurred when a regular union membership meeting, scheduled for January 6, was cancelled by the union's general secretary, Josefina Hernández, who postponed the meeting until February 1. Then, on January 28, a dispute erupted concerning the company's decision to consider a day on which production was halted due to a malfunctioning electrical transformer (January 28, 2008) an unpaid rest day rather than a paid technical work stoppage, as some workers believed was appropriate. According to worker testimony, this dispute catalyzed discontent by some of the facility's workers with Ms. Hernández and her handling of several issues, including employee vacation and salary levels for new workers.
- The tension worsened following the cancellation of a union membership assembly scheduled for February 1. Ms. Hernández cancelled the meeting two hours before it was to begin, citing a personal emergency related to her condition of diabetes (a claim which was not contested by her opponents). On February 17, more than 300 workers (about half of the workforce) participated in a work stoppage, lasting approximately two and one half hours. Workers reported that the work stoppage was held to protest the union's leadership and the cancellation of the February 1 assembly.
- On March 3, Mexmode's human resources department posted notices throughout the factory, stating that the company would not permit further illegal acts within the

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<sup>9</sup> Article 16 of the Mexican Constitution.

facility that interfere with the facility's production. In response, some workers, led by a worker named Enrique Puente Sánchez, attempted to organize a work stoppage on the following day, March 4.

- On April 6, citing the cancellation of the previous meetings, the Peasants' Torch faction carried out a union assembly, with support from Peasants' Torch agents from outside the factory. The meeting was held off-site at Technical High School 3 in the municipality of Atlixco. Peasants' Torch provided free transportation by bus for workers.
- On May 21, 2008, the Peasants' Torch faction and Peasants' Torch agents from outside the factory organized what they described as an "extraordinary assembly" of the membership of the SITEMEX union. The principal stated purpose of the assembly was the removal, by membership vote, of the union's leadership committee and its replacement by another leadership slate, headed by Enrique Puente. At this time, Mr. Puente held the position of President of the Committee of Honor and Justice of the union. The meeting was held at a football field in front of the entrance of the Mexmode facility. It was presided over by Maria Antonia Espejel, who identifies herself as a regional representative of Peasants' Torch. She is also a senior government official in the municipality of Atlixco. The participants in attendance voted in favor of the motion to oust the union's leadership and replace it with Mr. Puente's slate.

The SITEMEX union's bylaws require the presence of a two-thirds majority of the membership for the legitimate convening of an extraordinary assembly.<sup>10</sup> At this point, the union represented roughly 640 workers, with a two-thirds majority therefore being approximately 430. A notary public present at the assembly certified that more than 550 workers were present. However, according to multiple witnesses, and several video recordings made of the assembly, there were in fact substantially fewer people present and a substantial number, and possibly the majority, of the individuals present were not Mexmode workers, but former workers or individuals who had never worked at the plant but were active in Peasants' Torch. Some of the Peasants' Torch supporters held sticks and clubs, which created an environment of tension and intimidation during the meeting. On June 17, the Mexican press reported that the Puebla JLCA found that the representation of workers at the May 21 assembly fell short of the quorum required by the union bylaws to be legally valid and therefore declined to issue the Peasants' Torch faction a legal document recognizing it as the official leadership of the union.<sup>11</sup> The JLCA communicated this decision informally to Mexmode management.<sup>12</sup> The practice of certifying election results (known as issuing a *toma de nota*) has no basis in the Mexican Federal Labor

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<sup>10</sup> This is consistent with Mexican Federal Labor Law, Article 371, which sets out the requirements of union bylaws.

<sup>11</sup> Aaron Martinez, "Disidentes de Mex Mode, sin toma de nota", Milenio, June 17, 2008.

<sup>12</sup> Note that the WRC has not reviewed any official finding of the JLCA on this matter and it appears that no such formal finding has been issued to date.

Law. However, it is a common practice for labor authorities to go beyond mere certification to inquire into the circumstances surrounding the elections, including whether they were carried out in a manner consistent with the bylaws. While none of the parties has objected in this case, such interference appears to be prohibited under ILO Convention 87. See ILO Committee on Freedom of Association decisions cited in footnote 8 above.

- On May 28, Peasants' Torch organized a protest outside of the JLCA office in the city of Puebla. The Peasants' Torch supporters, totaling roughly 300 individuals, demanded that the JLCA recognize the rival slate as the leadership of the union. The following day, May 29, a protest was carried out in front of the Mexmode factory, with the participation of a substantial number of workers. The participants issued the same demand concerning recognition of the rival leadership slate. Factory management declined to meet with the Peasants' Torch faction leaders.

*Events on May 30, 2008*

- At 7:30 a.m. on May 30, as workers arrived at the factory to begin their shift, some workers noticed fliers posted on factory walls denouncing what it described as a "fraudulent" union assembly held on May 21 by Peasants' Torch. At roughly 8:30 a.m., workers who were part of the Peasants' Torch faction began tearing the fliers down.
- At approximately 9:15 a.m., roughly 90 workers, headed by leaders of the Peasants' Torch faction – including the individuals Sebastián Tecuáztin, Carolina Flores Cerón, Viridiana Bravo, Enrique Puente, Jorge Arévalo, and Omar Hernández Flores – left their work areas and went to an area in the factory where the union office is located. The workers stated that they were going to the office to demand that the union's secretary general, Josefina Hernández, immediately leave the union office and the factory. One of the workers, Carolina Flores Cerón, entered the union office and told Ms. Hernández, who was sitting at a desk, that she had five minutes to leave the factory premises. Ms. Hernández responded that she would not leave unless the person showed her a document establishing that the Peasants' Torch faction was legally recognized as the leadership of the union. Ms. Flores then left the union office and returned shortly after with a group of roughly ten workers. When some of these individuals asked Ms. Hernández to leave the factory, she refused. At this point, the group began to physically drag Ms. Hernández out of the office, along with the desk at which she was sitting. In the melee that ensued, a computer and windows of the office were smashed and broken. After being dragged out of the office, Ms. Hernández, who suffers from both diabetes and cancer, was pushed to the ground by members of the Peasants' Torch faction, who stated that they intended to "run over her." Ultimately, the group was able to forcibly remove her from the factory complex.
- One of the individuals who led the effort to forcibly remove Ms. Hernández from the factory openly acknowledged to the WRC that he and other individuals in the group

had physically assaulted Ms. Hernández during the episode. Sebastián Tecuátzin, a leader of the group, testified that he and others became physically aggressive only after having asked Ms. Hernández “politely” to leave the factory. He stated that when Ms. Hernández responded with a haughty attitude, the group responded violently, although he stated that they had held back and limited their reaction to “normal blows.”

- As the assault on Ms. Hernández occurred, several individuals from the Peasants’ Torch faction left the union office and entered the factory’s main production area. They then publicly exhorted other workers to carry out a work stoppage and assist in the effort to remove the union’s leadership committee members from the union office and the factory. The Peasants’ Torch faction confronted several workers who serve as leadership committee members in the union. Verbal insults were exchanged between the two sides.
- During the course of the confrontation, at roughly 9:50 a.m., the factory’s human resources manager came to the production area and tried to calm the situation. This effort was not successful.
- While these events took place, a worker named Alicia Marquez Avila, who serves as Secretary of External Affairs and Social Welfare of the SITEMEX union, rushed to ask for the assistance of the factory’s Chief of Security, Antonio Jimenez. However, Mr. Jimenez declined to take any action, stating that he had no order to intervene in the situation. Mr. Jimenez also refused to call the police to intervene. Ms. Marquez then called the police herself, but was told by representatives of the police force that Mr. Jimenez had already called and informed them that there was no problem in the factory.
- When some workers refused to leave the production area and join the pro-Peasants’ Torch rally, some of the Peasants’ Torch supporters threatened that if they did not go willingly, they would be dragged out. At this point, the additional violent assaults described above in the Findings section took place. Below we provide additional detail about those assaults:
  - Rosa Palacios Cuevas served, at the time of the conflict, as Secretary of Honor and Justice for the SITEMEX union. While some Peasants’ Torch faction leaders were trying to drag Ms. Hernández out of the union office, Ms. Palacios had tried to calm the group and initiate dialogue. But the group responded by insulting her and the other delegates present, addressing the women leaders as “whores,” among other epithets. One of the Peasants’ Torch faction leaders, Juan Armenta, then hit her and pushed her against the wall, grabbing and twisting her hand. Ms. Palacios has filed a criminal complaint against Mr. Armenta.

- Cecilia Lopez Sanchez served, at the time of the conflict, as a union leadership committee member and worked in the embroidery department. She was outside of the union office when the group of Peasants' Torch faction leaders came looking for Josefina Hernández and entered the union office. When Ms. Lopez saw what was happening (the forcible removal of Ms. Hernández), she rushed to find other union representatives and then tried to enter the union office. Her entry through the office door was blocked by a worker named Arturo Perez. According to Ms. Lopez, Mr. Perez grabbed her arm, informing her that he had "orders" to not allow her to enter. When Mr. Perez became distracted, Ms. Lopez tried to duck below his arms. At that point, Mr. Lopez struck her with his elbow in her back. Ms. Lopez has filed a criminal complaint against Mr. Perez.
- Marta Patricia Aldana served, at the time of the conflict, as a union committee member in the sewing department. She was in the production area and observed the workers Viridiana Bravo, Sebastián Tecuátzin, and Carolina Flores Cerón enter the area and exhort workers to leave their stations to support the effort to oust the union leadership from the factory. She promptly responded by telling the Peasants' Torch faction to leave the workers alone. Ms. Bravo yelled at Ms. Aldana, demanding that she leave the production area, which she did. Once outside of the production building, Ms. Flores grabbed Ms. Aldana's clothing and tried to pull off her blouse, while other workers pushed her, forcing her outside of the factory premises.
- Maria de la Luz Fuentes is a supervisor who has been working at the Mexmode plant for three years. At the time of the conflict, Ms. Fuentes did not support and was not involved with either of the two sides in the dispute. When the group of dissidents headed by Sebastián Tecuátzin and Viridiana Bravo entered the production area, calling on workers to leave their stations and join the pro-Peasants' Torch movement, she refused to participate. At this point, a worker from the dyeing department, Victor Vazquez Calderon, grabbed Ms. Fuentes and began dragging her by her arms out of the production area. During this episode, the same individual, Mr. Calderon, threatened that if she refused to leave her life would be in danger. Ms. Fuentes has filed a criminal complaint against Mr. Calderon.
- Another specific incident of violence concerned a union leadership committee member named Jaime Ayala Sánchez. Mr. Sánchez was standing next to union leader Marta Patricia Aldana when the Peasants' Torch faction sought to force the committee members to leave the factory. In the melee that ensued, Mr. Sánchez was hit several times in the head, kicked repeatedly in the back, and thrown against a wall, by the Peasants' Torch faction leaders. According to the testimony gathered, the primary aggressor was a worker named Omar Hernández Flores.

- The WRC heard credible testimony that, on May 30, agents of Peasants' Torch, who were not employed by Mexmode, came into the factory and participated in some of the actions described above. It appears the factory's Security Chief, Antonio Jimenez, allowed these individuals to enter the factory.
- Following the unrest and ejection from the plant of many of the SITEMEX leaders, workers returned to the production areas. The plant continued producing during the afternoon period. At the conclusion of the day shift workers collected their paychecks.
- However, at the end of the work day, another serious incident occurred: a group of seven workers were forcibly detained inside of the factory by members of the Peasants' Torch faction (the WRC was able to interview three of them).
- At approximately 7:00 p.m., six workers who hold leadership positions in the SITEMEX union were leaving the factory, having returned at the end of the shift to collect their paychecks. When the workers approached the front gate of the factory, they noticed the feet of a group of people standing behind the gate (the rest of their bodies were obscured by the gate). Fearing that these individuals might be agents of Peasants' Torch intending to harm them, the workers decided to leave the factory through a different exit. Since the nearest alternative exit was located roughly one kilometer away, they decided to go in a car belonging to one of the SITEMEX members, which was parked inside the factory area. As they headed toward the car, a group of roughly 30 workers from the Peasants' Torch faction, who were already inside the factory, began to follow them. At roughly the same time, another worker, who was not a member of the SITEMEX leadership but who had been assaulted earlier in the day when she refused to take part in the coerced eviction of the union leaders, entered the factory. She had just returned from filing a criminal complaint at the municipal police station regarding the assault and had returned to pick up her paycheck from the plant. As she arrived, she found the group of six workers being followed by the other workers and decided, for her own safety as someone who they apparently identified with the SITEMEX leadership group, to jump into the union member's car with them.
- Once inside the car, a group of workers from the Peasants' Torch faction surrounded the car, looking inside and taking photographs of the workers. Peasants' Torch supporters, who were not employees of Mexmode, had parked several cars just outside the gate, blocking the car from leaving the factory. After roughly a half hour, at approximately 7:45 p.m., some of these Peasants' Torch supporters entered the factory and joined the group surrounding the car. At approximately 8:15 p.m., the husband of one of the workers, having been contacted by cell phone by his wife, came to the factory with an officer from the Atlixco municipal police. However, when they arrived at the front gate, Mr. Jimenez, the security director, refused to allow them entry and falsely told them that the workers had already left the factory premises. Finally, at roughly 8:30 p.m., the Peasants' Torch supporters let the seven



workers leave the factory. They were then followed by Peasants' Torch supporters driving a black car. They were able to evade their pursuit after approximately twenty minutes.

- On the following day, May 31, Mexmode management fired Mr. Jimenez.
- On the days following May 30, some of the union leaders who had been targets of the assault were followed by members of the Peasants' Torch faction and agents of Peasants' Torch after leaving work. On May 31, one of the SITEMEX leaders, Guadalupe Vicuña Gamboa, found two members of Peasants' Torch waiting for her outside of her house. In the ensuing days, a substantial number of workers, including most of the leadership committee members of SITEMEX, did not report to work. We estimate the number of workers who stayed home to be between 130 and 170. Workers reported that their reasons for staying home were fear of further violence and/or to show support for the SITEMEX leadership.

*Further Events during June 2008*

- On June 4, roughly 200 workers, led by the Peasants' Torch faction, participated in a protest at the factory. The workers reported that they wanted to speak with the owner of Mexmode. Present outside the factory and participating in the protest was Ms. Maria Antonia Espejel, who, as noted above, is a regional representative of Peasants' Torch and a senior official of the Atlixco municipal government. During the course of this incident, the factory's managing director, Mr. Odin Lee, telephoned the municipal police to request assistance for his personal security. Roughly twenty minutes later, the Chief of Security for the municipality of Atlixco, Alejandro Rodriguez Martinez, arrived at the plant and came to the office of management. He brought with him to the management office Ms. Espejel. The Mexmode manager was taken aback by the presence of Ms. Espejel, as she had organized Peasants' Torch activities at the plant, including the ongoing protest for which he had requested assistance with security. He stated to the Security Chief that he was surprised by her presence in the factory without authorization. The Security Chief took offense at the comment and said that, in response, he would withdraw all of the municipal police from their posts outside the factory.
- The leader of the Peasants' Torch group at the factory, Enrique Puente, told the WRC investigator that, later on the day of June 4, he and his colleagues had a personal meeting in the City of Puebla with the Governor of the State of Puebla, Mr. Mario Marin. According to Mr. Puente, the Governor told the group that he believed the group had gone overboard with the work stoppages and the events of May 30, but that he would nevertheless support their efforts and help them achieve victory. (The WRC could not independently verify Mr. Puente's claim.)
- On June 9, the company placed eleven workers on suspension in relation to their actions on May 30, all of them from the Peasants' Torch faction at the plant. The

workers were to be on suspension for five days, without pay, pending a review of their conduct for potential dismissal.

- On the same day, after news of the suspension was circulated, another work stoppage took place at the Mexmode facility, with the participation of roughly 250 to 300 workers. The majority of the workforce did not participate. The primary demand of the work stoppage was the reinstatement of the eleven workers who had been placed on suspension. The work stoppage was organized by supporters of the Peasants' Torch faction in the factory. During the same period, Peasants' Torch organized a protest outside of the factory. A primary organizer of the protest was Maria Antonia Espejel. Ms. Espejel told the WRC's investigator that she was participating in these activities as a regional representative of Peasants' Torch, rather than as a government official. However, the events took place during working government hours and she brought with her to the factory two official government cars, emblazoned with the seal of the municipality of Atlixco. She stated that the role of Peasants' Torch in the dispute was to advise the group of workers led by Mr. Puente. She stated that one of the organization's demands was that the Korean management of Mexmode meet with the top official of Peasants' Torch for the State of Puebla. In reaction to the protest, Mexmode management changed course and reinstated the workers from the suspension the next day. Mexmode management reported that Nike had counseled the company not to dismiss any workers.
- On June 20, the Puebla JLCA convened an internal "extraordinary assembly" of SITEMEX members concerning the leadership of the union. This action had been announced by the JLCA earlier in the week on June 18. (Note that the legality of this action is discussed separately below; this section describes only the events that occurred on June 20.) On June 18, SITEMEX filed a request for an injunction to block the assembly, but the court did not rule on the request.
- On the morning of June 20, several hundred people – most of them Peasants' Torch supporters – had gathered outside of the factory gates. Many of these people had been brought to the factory in two buses provided by Peasants' Torch. One of the buses was an official government bus, bearing the seal of the State of Puebla. Peasants' Torch agents harassed the WRC's investigator, who was there to observe the events of the day, repeatedly interfered with his efforts to speak with workers, and physically blocked his entry to the factory (management had provided the WRC with full access to the factory for the purpose of this inquiry).
- At 10:00 a.m., the Secretary General of the Puebla JLCA, Enrique Martinez Arellano, and two officials from the Puebla Ministry of Labor, Pablo Arturo Diaz and Roberto Alonso, arrived at the Mexmode factory. The JLCA and Ministry of Labor officials were not initially allowed to enter the factory premises. (Mexmode management had previously notified the officials that it did not believe that the convening of the assembly was lawful or appropriate given the environment of tension at the factory.) At roughly 11:00 a.m., the JLCA Secretary General informed reporters from the local

media that the JLCA would not be convening the assembly, given that entry had been denied. However, at 12:00 p.m., the doors to the factory were opened, against the orders of management, by Peasants' Torch supporters who were inside the factory, and the government officials entered the plant.

- Once inside, at roughly 1:00 p.m., the government officials convened an assembly of the plant's workers. The workers were instructed to indicate by raising their hands, in front of their coworkers, whether they supported the current General Secretary of the union, Ms. Hernández, or Mr. Puente. As discussed below, the union's bylaws require that votes on issues of this nature be conducted by secret ballot. The government officials later reported a tally of 469 votes in favor of Enrique Puente and 187 votes in favor of Josefina Hernández.
- The WRC's investigator was not able to observe the election directly, because the Peasants' Torch agents physically blocked his entry. However, the investigator was able to enter the factory after the assembly was held and take testimony from workers regarding the events of the day. Some of the workers interviewed stated that fear of retaliation had motivated them to vote for the Peasants' Torch slate.

One worker stated the following: "The Peasants' Torch members have threatened some of the workers and their families so that we will vote for them and if we don't they say they are going to beat up my family. There is one girl who is not doing well, she's really scared and she doesn't ever want to come back to the factory."

The factory's managing director stated one of the Korean supervisors was threatened by people in the dyeing department. He stated: "One of the Koreans told me that Peasants' Torch members said to him, 'Now you've seen the sun, but if you don't let us hold the election you won't see it again, we are going to burn your house and your cars.'"

### **Analysis of the Legality of the Government-Convened Extraordinary Assembly held on June 20, 2008**

The actions of the Puebla government officials with respect to the June 20 assembly raise legal questions concerning the lawful role of government in union affairs. The WRC commissioned an analysis concerning the legality of the officials' actions by a respected expert on Mexican labor law, Dr. Alejandra Ancheita. Dr. Ancheita is the Executive Director of the Mexican non-governmental organization Prodesc. She provided the following analysis (which has been translated by the WRC):

#### **Legal analysis of the Assembly held on June 20, 2008:**

According to what has been described by the WRC, on June 20, 2008 the Local Conciliation and Arbitration Board of the State of Puebla convened an

extraordinary assembly of the MEXMODE union in order to make changes in the SITEMEX Executive Committee. Given this, it is necessary to make note of the following:

Article 359 of Mexican federal labor law establishes that “unions have the right to draw up their Articles of Association and rules, to freely elect their representatives, to organize their administration and activities, and to formulate their plan of action.” This establishes that the internal life of the union should be established by the union itself, with no intervention from any government authority or instance. The fact that the JLCA arbitrarily and illegally adjudicated the union’s faculty to convene and carry out the meeting, and furthermore to be present, is clearly part of the internal life of the SITEMEX union. [The JLCA’s actions] jeopardize the union’s autonomy and democracy and also invalidate the extraordinary assembly that was held given that it did not comply with the requirements established by SITEMEX’s own Articles of Association, as is demonstrated below.

Given this, it is imperative to mention that SITEMEX’s own Articles of Association establish, in Article 18, that notification for an extraordinary assembly must be done in writing, two days in advance, and in the case that the reason for the extraordinary assembly is the expulsion of a member of the union, which could be the presumed motive of the assembly convened on June 20, the meeting would have to be noticed seven days in advance and failing that “the workers that represent at least 33% of the total union membership can request that the leadership committee call the assembly, and if this is not done within a period of ten days, the petitioners can convene the meeting. In this case, so that the assembly can hold its session and adopt resolutions, it is necessary that two-thirds of the total union membership is in concurrence. The resolutions should be adopted by at least 51% of the total union membership, in accordance with Article 371, Section VIII of the law.”

This once again makes evident that the JLCA intervened in a negligent manner in the internal life of the union, thereby invalidating the extraordinary assembly held on June 20, 2008. Since it was the JLCA as a labor authority that convened the extraordinary assembly of the union, the results of said assembly are invalid and go against that which has been established in the union’s Articles of Association. The Articles point out that the assembly itself is the ultimate collective decision-making body of the union that has the responsibility to convene and carry out an extraordinary assembly.

It is also necessary to point out that Convention 87 of the International Labor Organization, which has been signed and ratified by the Mexican government, clearly establishes in Article 3 that: “The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.” This once again corroborates the fact that the Board’s actions contravene that

which has been established by Mexican law, as well as international law, given that once the Mexican government has signed and ratified [the convention], the Local Conciliation and Arbitration Board of the State of Puebla has the obligation to observe and respect it.

### **Recommendations**

The WRC recommends that the following actions be taken in order to ensure respect for the associational rights of the employees of Mexmode:

- The Puebla government should cease its support for the Peasants' Torch movement at Mexmode and behave in an impartial manner. The government should arrest and prosecute any persons responsible for physical assaults on Mexmode workers and must guarantee the safety of all Mexmode employees both within and outside the factory. The government should invalidate the results of the June 20 assembly and allow SITEMEX to conduct its internal affairs in accordance with the union bylaws and free from government interference.
- Mexmode must ensure a safe and secure workplace for its workers. Workers who have committed assaults on other workers should be dismissed, pursuant to the factory's disciplinary procedures. Other disruptions and work stoppages within the factory should be handled according to the company's disciplinary procedures and in a manner consistent with the collective bargaining agreement between Mexmode and SITEMEX.
- The brands that source from Mexmode should continue to source from the factory and should use their influence to press the Government of the State of Puebla to act in a manner consistent with Mexican law.