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An Excruciating Dilemma Between Life and Law: Corporate Responsibility in a Zone of Conflict

In February 2003, senior management of Chiquita Brands International learned that protection payments the company had been making to paramilitary groups in Colombia to keep our workers safe from the violence committed by those groups were illegal under U.S. law.

The company had operated in Colombia for nearly a century, generating 4,400 direct and an additional 8,000 indirect jobs. We contributed almost \$70 million annually to the Colombian economy in the form of capital expenditures, payroll, taxes, social security, pensions and local purchases of goods and services.

But during the 1990s, it became increasingly difficult to protect our workforce. Among the hundreds of documented attacks by left- and right-wing paramilitaries were the 1995 massacre of 28 innocent Chiquita employees who were ambushed on a bus on their way to work, and the 1998 assassination of two more of our workers on a farm while their colleagues were forced to watch.

The problem was not unique to Chiquita. It was common practice for paramilitary groups to target businesses for extortion and to terrorize the Colombian people by kidnappings and murder. Freddy Rendon, former Colombian paramilitary boss, recently told reporters that it is "no secret to anyone that banana businessmen" were extorted by paramilitary groups.

As the security situation in the countryside continued to deteriorate – under a central government and military that, despite its best efforts, could not protect Colombia's citizens from these paramilitary groups – our company had been forced to make protection payments to safeguard our workforce.

Despite the harsh realities on the ground, the discovery that our payments were violating U.S. law created a dilemma of more than theoretical proportions for us: the company could stop making the payments, complying with the law but putting the lives of our workers in immediate jeopardy; or we could keep our workers out of harm's way while violating American law.



**By Fernando Aguirre,
Chairman and CEO,
Chiquita Brands
International, Inc.**

Chiquita Brands International, Inc. is a leading international marketer and distributor of high-quality fresh produce, which is sold under the Chiquita® premium brand and related trademarks.



Making it Right

Each alternative was unpalatable and unacceptable. So the company decided to do what we believe any responsible citizen should do under the circumstances: We went to the U.S. Department of Justice and voluntarily disclosed the facts and the predicament. The U.S. government had no knowledge of the payments and, had we not come forward ourselves, it is entirely possible that the payments would have remained unknown to American authorities to this day.

The meeting with the DOJ began a four-year dialogue that culminated last month with the company pleading guilty to one count of violating statutes in connection with all payments made by its former subsidiary to entities affiliated with the right-wing paramilitaries from 2001 to 2004.

In the documents filed with the court at the time of our settlement, the DOJ acknowledged that the situation we faced in Colombia was "complicated." Also acknowledged by the government was the fact that the leader of the right-wing paramilitary, Carlos Castaño, had "sent an unspoken, but clear message that failure to make the payments could result in physical harm" to our employees.

The business solution to our dilemma was ultimately found in the sale of our Colombian banana operation. In June 2004, Chiquita sold its Colombian farms at a loss of \$9 million, in order to extricate itself from this difficult situation. Even the terms of the sale reflected our continued interest in the well-being of our workers. The sales agreement we signed required the purchaser to continue the collective bargaining contract with the union that represented Chiquita's workers as well as maintain the strict environmental, social and food-safety certifications we had achieved on these farms.

Importance of Corporate Responsibility and Compliance

Chiquita is completely committed to corporate responsibility and compliance. The fact that we voluntarily came forward and disclosed the payments to the paramilitaries did not simply acknowledge an illegal act, it proved our willingness to take responsibility for our actions, even when such a step comes at considerable cost.

Legal scholars, business ethicists and governmental leaders can, and should, consider the implications of the situation we faced. There are a number of questions that deserve serious discussion and debate, among them: What should a company do when faced with the excruciating conflict between a possible violation of law and protecting the lives of its workers? What is the proper public policy toward, and punishment of, companies that voluntarily reveal potentially illegal behavior to the government?

For our part, we believe the settlement with the government was a reasoned solution to the difficult situation the company faced several years ago. We hope no other companies have to face such dilemmas in the future.

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