

**FROM THE HOUSEHOLD TO  
THE FACTORY:**

**Sex Discrimination in the Guatemalan  
Labor Force**

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Printed in the United States of America

ISBN: 1-56432-269-6  
Library of Congress Control Number: 2001099333

Cover design by Rafael Jiménez

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## ACKNOWLEDGEMENTS

Judith Sunderland, researcher with the Women's Rights Division, wrote this report, based on research she conducted with LaShawn R. Jefferson, executive director of the Women's Rights Division. LaShawn R. Jefferson and Regan Ralph, former executive director of the Women's Rights Division; Joanne Mariner, deputy director of the Americas Division; Carol Pier, labor rights researcher for the Americas Division; Arvind Ganesan, director of the Business and Human Rights Program; and Malcolm Smart, program director of Human Rights Watch, edited the report. Wilder Taylor, legal and policy director for Human Rights Watch, and Karen Kramer, of Baker & Hosteler law firm, provided legal review. Smita Varia, associate with the Women's Rights Division, provided production assistance. Olha Harasymiv, Network of East West Women legal fellow, and Llezlie Green and Loren Jacobson, Columbia University law school students, conducted legal research on disparate impact discrimination.

This report would not have been possible without the assistance of numerous individuals and organizations in Guatemala who provided us with invaluable information and support. In particular, we would like to thank the staff of the Association of Women in Solidarity (*Asociación de Mujeres en Solidaridad* – AMES), Center for Human Rights Legal Action (*Centro de Acción Legal de Derechos Humanos* – CALDH), Women for the Betterment of the Family (*Grupo Feminino Pro-Mejoramiento de la Familia* – GRUFEPROMEFAM), Support Center for Household Workers (*Centro de Apoyo para Trabajadoras de Casa Particular* – CENTRACAP), San Benito House (*Casa San Benito*), Project Conrado de la Cruz (*Proyecto Conrado de la Cruz*), and CEADEL. The author extends a special thank-you to Amanda Pop Bol and Ricardo Changala for their input, as well as Emanuele Tassinari for accompanying the author through the process.

We would like to express our deep gratitude to the many working women in Guatemala who shared their experiences with us.

The Women's Rights Division gratefully acknowledges the generous support of the Moriah Fund, the Ford Foundation, the John D. and Catherine T. MacArthur Foundation, the Kathleen Peratis Foundation, and the Sandler Family Supporting Fund .

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## I. SUMMARY

*Since she migrated to Guatemala City from the department of Totonicapán in 1995 when she was fifteen years old, Elisabeth González, K'iche', has worked as a domestic worker in several different households, encountering long work hours, low pay, restrictions on her movements, verbal abuse, no job security, and no health insurance. In a household where González was employed in 1996, she rose at 3 or 4 a.m. to start cleaning and prepare breakfast. Her day ended at 10 or 11 p.m. For this nineteen-hour day, González earned Q400 (U.S. \$53) a month. González's 6 a.m. to 8 p.m. schedule in her current place of employment—a fourteen-hour day—is a virtual luxury by comparison. She explained, however, "I hardly ever rest, not even for a minute. There's no fixed time for meals. They interrupt me while I'm eating." González earns Q700 (U.S. \$93) a month, a relatively high salary compared to that of many other domestic workers.*

-- Elisabeth González, domestic worker

*The señor wanted to take advantage of me, he followed me around...he grabbed my breasts twice from behind while I was washing clothes...I yelled, and the boy came out, and the señor left. I didn't tell the señora, because I was afraid. I just quit.*

-- María Ajtún, domestic worker

*Sara Fernández had to go to a private laboratory and pay for a pregnancy exam in order to provide proof that she was not pregnant before she was hired at the Textiles Tikal, S.A. factory in October 1999.*

-- Sara Fernández, maquila worker

*Miriam de Rosario, twenty-seven years old, was fired from her job at Modas One Korea maquiladora at the end of May 2000. The director of personnel told De Rosario that she could not continue working because she was pregnant, because this meant she would not work extra hours, could not be made to stand for long periods of time, and would not work as hard as others.*

-- Miriam de Rosario, maquiladora worker

These women's experiences are stark examples of the obstacles working women in Guatemala encounter to their full and equal participation in the labor force. Poor women, with little or no education, suffer gender-specific abuses when they work as domestic workers or *maquiladora* line operators. Live-in domestic workers, situated in private homes and performing "unskilled" tasks considered to be "women's work," are denied key labor rights protections in the

Guatemalan labor code and are acutely vulnerable to sexual harassment. Maquiladora line operators, sewing in the global assembly line, are discriminated against on the basis of their reproductive status (pregnancy and maternity status and access to reproductive health care). Working women in both sectors face sex discrimination at the hands of government officials and private citizens, while indigenous women working in these sectors suffer the devastating impact of discrimination based both on sex and ethnicity.

Domestic workers, the vast majority of whom are women, do not enjoy equal protection under the law. The labor code effectively excludes domestic employees from basic labor rights. Unlike most other workers, domestic workers are denied the nationally-recognized right to the eight-hour workday and the forty-eight hour workweek, have only limited rights to national holidays and weekly rest, and by and large are denied the right to employee health care under the national social security system. Furthermore, domestic workers are denied the right to be paid the minimum wage. The exclusion of all domestic workers from these rights, although facially gender neutral, has a disproportionate impact on women. This exclusion is not based on legitimate reasons related to the tasks of domestic work, but rather is based on reasons related to gender. Most Guatemalans consider domestic work to be the natural extension of women's role in the family and society, and paid domestic workers essentially perform for wages the tasks the woman of the house is socially expected to perform for free. Both the author of the Guatemalan labor code and the nation's first labor minister acknowledged that gender stereotypes and perceptions about the role of domestic servants in the family influenced the low priority attached to their rights when drafting Guatemala's labor legislation.

The labor code provisions on domestic work have a discriminatory disparate impact on women. Mayan women, who constitute a significant portion of domestic workers in Guatemala, experience heightened discrimination in practice due to pervasive racist sentiment among non-indigenous, or ladino, Guatemalans.

The result of this discrimination is state denial of domestic workers' rights and increased exposure to a series of abuses. These workers toil for upwards of fourteen hours per day; rarely enjoy a full day's rest on Sunday, the common day off; experience tremendous difficulty accessing health care, including reproductive health care; in practice do not enjoy maternity protections under Guatemalan law; and suffer significant levels of sexual harassment and, in the worst cases, sexual assault in the workplace. One third of the twenty-nine domestic employees Human Rights Watch interviewed talked about experiences of sexual harassment at work.

In the maquiladora sector, there is widespread sex discrimination on the basis of reproductive status. *Maquilas*—as these factories are commonly referred to in Guatemala—often obligate women to reveal whether they are pregnant as a condition of employment, either through questions on job applications, in interviews, or through physical examinations. Maquilas often deny workers who become pregnant on the job their full maternity benefits under Guatemalan law. Finally, maquilas routinely obstruct workers’ access to the employee health care system to which they have the right to belong, either by not enrolling them or, if the worker is enrolled, denying her the necessary certificate and time-off to visit a health facility. As with domestic workers, this obstructed access to health care has a direct impact on working women’s reproductive health.

The maquila industry, especially apparel manufacturing, has expanded rapidly since the 1980s. There are at least 250 apparel maquilas in Guatemala, employing some 80,000 workers, approximately 80 percent of whom are women. U.S. apparel companies subcontract with maquilas located in Guatemala—many foreign-owned, some Guatemalan—to assemble and package pre-cut fabrics and ship them to the United States for retail sale. The majority of apparel maquilas in Guatemala are directly owned by South Korean companies. Although the influx of global capital and the growth of the maquila sector have meant more economic opportunities for women, these much-needed jobs have come at the price of workers’ rights to equality, privacy, and dignity.

The abuses in both the maquila and the paid domestic work sectors reveal a situation in which women’s participation and equal rights in the Guatemalan workforce are circumscribed by the expectations and choices surrounding the exercise of their reproductive rights and sexual autonomy. Maquila line operators and domestic workers suffer labor rights violations that have at their core the regulation of their bodies, most notably in the form of pregnancy testing, or the presumption of access to their bodies, in the form of sexual harassment.

On paper, Guatemala has embraced its international human rights obligations to protect women from discrimination in the labor force. As a party to international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Guatemala has committed itself to eliminate legal discrimination, prevent discriminatory practices in both the public and private sectors, and provide effective remedies to those who have suffered abuses. Under CEDAW and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Guatemala is obliged to take steps to eliminate gender-based violence, including sexual harassment.

And under the International Covenant of Civil and Political Rights (ICCPR), Guatemala has the duty to protect the right to privacy. Many of these commitments are reiterated in the package of peace accords, signed in December 1996, which ended the thirty-six-year civil war in Guatemala.

In practice, however, Guatemalan women cannot count on their government to ensure the full exercise of their rights. While the Guatemalan Constitution states that women and men shall have equality of rights and opportunities, and discrimination on the basis of reproductive status is recognized as illegal, the government has taken few meaningful steps to combat these widespread practices. Discriminatory provisions that negatively affect domestic workers have been left on the statute for decades. There is no sexual harassment legislation. The Ministry of Labor is ineffectual, the labor courts are inefficient, and sanctions for violations of labor laws have been so minimal that they failed to provide any disincentive. There is little coordination among the state institutions charged with enforcing the rights of workers and compliance with national law in the maquila sector. The result is that Guatemala is failing to live up to its international obligations to eliminate all forms of sex discrimination and ensure the right to privacy.

This report is based on research conducted by the Women's Rights Division of Human Rights Watch from May 26-June 26, 2000, in Guatemala City and its surrounding area, and Chimaltenango, a city some fifty kilometers from the capital where maquilas have been established. In the course of the investigation, Human Rights Watch took the testimonies of thirty-seven maquila workers (who between them had worked in thirty different maquilas) and twenty-nine domestic workers. We also interviewed organizations providing direct services to both populations, women's rights activists, human rights activists, indigenous rights organizations, labor unions, labor law experts, the independent maquila monitoring group COVERCO, the AFL-CIO Solidarity Center and the United States/Labor Education in the Americas Project, and government officials (including the labor minister; the director of the Working Women's Unit of the Labor Ministry; the head of the National Office on Women; the Women's Rights Defender in the Human Rights Ombudsman's Office; the Defender of Indigenous Women's Rights; officials in the Labor Ministry's Inspectorate, Guatemalan Institute for Social Security (IGSS) Inspectorate, and the Ministry of Economy; and a labor magistrate). We also met with representatives of the United Nations Mission in Guatemala, the International Labor Organization's Project for Women Workers in the Maquilas in Guatemala, the labor attaché and human rights officer at the U.S. embassy, and representatives of the United States Agency for International Development.

Human Rights Watch documented widespread egregious violations of the Guatemalan labor code and Guatemala's obligations under international law. To remedy these violations, we make the following recommendations to the Guatemalan government, maquila owners and management, the Guatemalan apparel business umbrella organization, multinational corporations that subcontract to maquilas in Guatemala, the International Labor Organization, and the United States government:

## II. RECOMMENDATIONS

### To the Government of Guatemala:

#### To the Executive Branch:

- Uphold in practice and in law international human rights obligations to guarantee the right to nondiscrimination and the right to privacy.
- Publicly condemn pregnancy discrimination as discrimination based on sex.
- Prioritize compliance with the peace accords, specifically the commitment in the Agreement on Social and Economic Aspects and Agrarian Reform to revise labor legislation to guarantee equality of rights and opportunities between men and women, enact laws to protect the rights of women who work as household employees, and create mechanisms to ensure these are implemented in practice.
- Take steps to ensure effective coordination among state entities charged with overseeing state gender policies and response to violations of women's rights, with the input and oversight of the Presidential Secretariat for Women, and ensure that the protection of women's rights in the workforce is given high priority.
- Ensure that both the Ministry of Labor and the Guatemalan Institute for Social Security (IGSS) conduct proactive investigations of alleged violations. For example, where there is reasonable cause to believe that an individual complaint represents a widespread problem in a maquila, the inspectorate offices in these institutions should launch full and prompt investigations.
- Review Ministry of Labor Inspectorate and IGSS Inspectorate procedures to strengthen their enforcement powers, improve efficiency and ensure the protection of worker job security and confidentiality. Both inspectorates should routinely launch investigations that respond to and uncover gender-specific violations.

**To Congress:**

- Reform the labor code to bring regulations concerning domestic workers in line with international standards and ensure that they are accorded the same rights as other Guatemalan workers with respect to the eight-hour workday, the minimum wage and overtime, rest periods, national holidays, vacation, written contracts, and social security.
- Enact legislation that explicitly prohibits any company, public or private, from requiring that women give proof of pregnancy status, contraceptive use (or any other information related to reproductive choice and health) in order to be considered for, gain, or retain employment.
- Enact legislation prohibiting sexual harassment that takes into account different kinds of sexual harassment, as well as varying levels of employer accountability (and financial liability). Sexual harassment legislation should also take into account the spectrum of work environments, including domestic work and agricultural work.
- Enact legislation to establish penalties, including fines, to punish companies, foreign or domestic-owned, that engage in pregnancy-based sex discrimination.

**To the Ministry of Labor:**

- Investigate vigorously all allegations of sex-based discriminatory employment practices and punish those responsible for such practices.
- Conduct timely and periodic unannounced visits to maquilas to investigate hiring practices and inspect working conditions.
- Ensure that all inspectors and other officials in the Ministry of Labor receive timely and periodic training in gender-specific labor rights issues and investigative techniques.
- Strengthen the role and oversight capacity of the Working Women's Unit within the Ministry of Labor and launch a public campaign to inform women workers about the unit and its services.

- Consolidate mechanisms for coordination and information sharing among the Ministry of Labor, the Ministry of Economy and IGSS for review of maquilas.
- Establish clear and consistent guidelines for exercising the enforcement powers of the Ministry of Economy with respect to gender-specific violations in maquilas.
- Establish, in conjunction with the Ministry of Economy, a transparent process for the review of maquila labor rights performance, the conditions for revocation and reinstitution of benefits under Decree 29-89, and guidelines for how nongovernmental organizations and labor unions can help initiate and participate in these processes.
- Launch a national public education campaign about sex discrimination in the labor force and remedies available to injured parties. The campaign should address sexual harassment, with a special emphasis on the situation of domestic workers. A separate education campaign should focus on domestic worker rights more generally. Both campaigns should be conducted in several different Mayan languages and in a format accessible to all Guatemalans.
- Obligate employers of domestic workers to register the employment relationship with the Ministry of Labor and equip the ministry with the resources necessary to enable proper data collection, tracking of the sector, and monitoring of work conditions.
- Establish a special task force on domestic workers, composed of representatives from the Ministry of Labor (including the Inspectorate and the Working Women's Unit), IGSS, the Office of the Defender of Women's Rights in the Human Rights Ombudsman's Office, the Office of the Defender of the Indigenous Women's Rights, and nongovernmental associations working directly with domestic employees. The task force should consider the utility of establishing a permanent special section within the labor inspectorate to monitor the rights of domestic workers.

**To Maquila Owners and Management:**

- Ensure that women applicants are not questioned about their reproductive status: remove all questions about pregnancy status from application forms and ensure that human resources and medical personnel do not ask any questions about pregnancy status, birth control, menstruation cycles, number of children or marital status. Put information on all applications notifying job applicants that pregnancy testing and any behavior to determine pregnancy status with discriminatory purposes is forbidden. This notice should guarantee the applicant's confidentiality and urge the applicant to report any violations of this policy and identify the means to do so.
- Establish a confidential, internal procedure for receiving and addressing complaints concerning pre- and post-hire violations of Guatemalan law.
- Affiliate all workers to IGSS and establish a reasonable and efficient process for workers to acquire the necessary work certificate in order to access IGSS health care services. All workers should be given their IGSS membership card, and workers should be given reasonable time off to visit IGSS.
- Institute regular training sessions for management and other personnel, including supervisors and human resources personnel, in Guatemalan law and, in particular, women's right to equality in the workforce.
- Disseminate in writing to all new and continuing workers information about their labor rights—including the right to equality and the right to maternity protections and benefits—and how to access state institutions charged with enforcing those rights. Where appropriate, ensure that these written materials are available in indigenous languages.
- Prominently display posters informing women about their maternity protections and benefits, including pre- and post-natal health care rights, and indicating the appropriate internal mechanism for ensuring enjoyment of those rights.

**To Multinational Corporations that Use Maquilas as Contractors:**

- Communicate clearly to all suppliers, vendors, and contractor factories that pregnancy testing and any behavior to determine pregnancy status with discriminatory purposes is unacceptable.
- Ensure that contractor factories abide by Guatemalan law with respect to maternity protections and benefits for female employees.
- Monitor contractor plants on an ongoing basis, by, at a minimum: requiring periodic, timely independent certification that plants are being operated without discrimination; hiring an independent, impartial group wholly unconnected to the factory to monitor compliance through unannounced visits; and periodically visiting the subcontractor plants unannounced to review the hiring process and solicit information in a confidential manner from workers on the issue of discrimination. The monitoring process should require timely and periodic proof that contractor factories have effective and confidential channels to receive and remedy complaints, including complaints about pregnancy-based discrimination and about sexual harassment.
- Ensure that contractor factories adopt appropriate mechanisms for informing new and continuing workers of their rights with respect to nondiscrimination, pre- and post-natal care, and maternity benefits.
- Where applicable, ensure that contractor factories prominently display the corporation's code of conduct in Spanish and the appropriate indigenous language(s), and inform new workers about the code during orientation or training.

**To the Guatemalan Apparel Business Umbrella Organization, VESTEX:**

- Explicitly prohibit sexual harassment in the association's voluntary Code of Conduct, and promote alternative methods for checking workers upon entry and exit from the maquilas. If pat searches must be conducted, they should always be same-sex and be done in private and with the utmost respect to minimize opportunities for humiliation or intimidation.
- Clarify in the Code of Conduct that pregnancy testing constitutes prohibited sex discrimination. Explicitly prohibit pregnancy exams for

applicants or any other such method that would invade a woman's privacy regarding her pregnancy status and right to nondiscrimination, including questions about her civil status and number of children.

- Ensure that all private companies or individuals that own maquilas abide by international standards and Guatemalan law with respect to accommodating the reasonable needs of pregnant workers, allowing them to access prenatal medical care, and abiding by maternity protections.
- Ensure that all private companies or individuals that own maquilas abide by Guatemalan law and register all employees with IGSS, as well as provide workers with the necessary certificates to take advantage of IGSS medical care and treatment.

**To the International Labor Organization:**

- Request that Guatemala report specifically on all forms of pregnancy-related discrimination in connection with employment in its follow-up country reports submitted under the 1998 Declaration of Fundamental Principles and Rights at Work. These reports should address such issues as pregnancy testing as a condition of employment, pregnancy testing of already-employed workers, post-hire penalization of pregnant workers, and failure to abide by maternity protections, among other related issues.
- Create a special program to examine the situation of adult women working as domestic workers, similar to the project on child domestic workers within the International Programme on the Elimination of Child Labour (IPEC).
- Ensure that the Project for Women Workers in the Maquilas in Guatemala document gender-specific labor rights violations, including discrimination on the basis of reproductive status, and take the appropriate steps to raise awareness about these issues and promote greater enforcement by the Guatemalan government of national and international law.

**To the United States Government:**

- Strengthen labor rights conditionality in U.S. trade laws by including freedom from discrimination based on sex, as well as other grounds, as one of the “internationally recognized worker rights.”
- Include domestic worker rights as an issue in the section on labor rights in the yearly Department of State country human rights report.
- Raise the issue of sex discrimination against women in the labor force in bilateral meetings with the Guatemalan government, and press for such discrimination to be outlawed and punished.

### III. INTERNATIONAL STANDARDS AND GUATEMALAN LAW

Under the Guatemalan Constitution, international law takes precedence over national law with respect to human rights. International labor agreements establish the minimum rights workers shall enjoy in Guatemala.<sup>1</sup> The Guatemalan government has obligations under international human rights law to protect those living under its jurisdiction from human rights abuses, to promote respect for human rights, and to ensure that those living under its jurisdiction can enjoy and exercise their human rights. As a party to international human rights treaties, Guatemala has committed itself to eliminate *de jure* discrimination, prevent discriminatory practices in both the public and the private sectors, and provide effective remedies to those who have suffered abuses. To achieve these commitments, among other things, Guatemala has the duty to ensure that its national laws are in conformity with international human rights law. Our research found that, in law and in practice, the rights of women who work in the domestic and maquila sectors to equality and privacy are routinely violated.

#### **Right to Nondiscrimination**

All international human rights instruments prominently include a nondiscrimination provision that states that the enjoyment of all the rights enumerated in the document belong to all people without any distinction. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—collectively referred to as the international bill of rights—share the general prohibition of distinctions based on “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>2</sup> The ICCPR also establishes the

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<sup>1</sup> Article 46 of the Guatemalan Constitution states, “There is established the general principle that in matters of human rights, treaties and conventions that have been accepted and ratified by Guatemala take precedence over domestic law.” Article 102(u) reads: “The State will be a party to international or regional conventions and treaties that concern labor matters and will provide workers better protection and conditions. In such cases, what is established in such conventions and treaties will be considered as part of the minimum rights enjoyed by the workers of the Republic of Guatemala.” Unless otherwise noted, all translations from Spanish to English are those of Human Rights Watch.

<sup>2</sup> Universal Declaration of Human Rights (UDHR), G.A. Res.217A(III), U.N. GAOR, 3d. Sess., pt. 1, at 71, U.N. Doc. A/810 (1948), Article 2; International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171, Article 2(1), ratified by Guatemala on May 6, 1992; and the International Covenant on Economic, Social and

right to equality: Article 26 asserts that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination...” According to ICCPR expert Manfred Nowak, this article imposes the obligation on States Parties to ensure *substantive equality* by way of *legislation*.<sup>3</sup>

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), respectively, develop the specific prohibitions of distinctions on the basis of sex and on the basis of race, color or ethnic origin. Both treaties proscribe “any distinction, exclusion...restriction” based on sex or race, respectively, that has the effect or purpose of nullifying or impairing “the recognition, enjoyment or exercise...of human rights and fundamental freedoms.”<sup>4</sup> The CERD Committee, created to oversee implementation of the convention, has clarified that its provisions apply to indigenous peoples, such as the Maya of Guatemala.<sup>5</sup> Having ratified both treaties in the early 1980s, Guatemala must not only refrain from sex-based and race-based discrimination, but also must prevent and punish this conduct by private individuals within its jurisdiction. In particular, Guatemala must “take all appropriate measures...to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,”<sup>6</sup> and repeal laws and regulations that “have the effect of creating or perpetuating racial discrimination wherever it exists.”<sup>7</sup>

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<sup>3</sup> Cultural Rights, December 16, 1966, 993 U.N.T.S. 3, Article 2(2), ratified by Guatemala on May 19, 1988.

<sup>4</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Strasbourg: N.P. Engel, 1993), p. 469. Emphasis in the original.

<sup>5</sup> CERD, Article 1; CEDAW, Article 1. Guatemala ratified CEDAW on August 12, 1982, and CERD on January 18, 1983. Guatemala has not made the declaration under Article 14, para.1, granting CERD Committee the competence to receive and consider individual or group communications/petitions.

<sup>6</sup> CERD General Recommendation XXIII on the rights of indigenous peoples (Fifty-first session, 1997), Date, U.N. Doc. A/52/18, Annex V.

<sup>7</sup> CEDAW, Article 2(f).

<sup>7</sup> CERD, Article 2, Para I, (c ).

Although CERD does not directly address gender discrimination, and CEDAW only addresses racial discrimination in its preamble,<sup>8</sup> there is a growing consensus that these two conventions complement each other. Thus, in 1999 the CERD Committee amended states parties' reporting guidelines, asking that in the future reports "describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free of discrimination, of rights under the Convention."<sup>9</sup> In 2000, the CERD Committee issued a General Recommendation, or authoritative interpretation, on the gender-related dimensions of racial discrimination in which it recognized that "certain forms of racial discrimination may be directed towards women specifically because of their gender...[and] some forms of racial discrimination have unique and specific impact on women."<sup>10</sup> The committee pledged itself to examine the relationship between gender and racial discrimination by giving particular consideration to: a) "the form and manifestation of racial discrimination; b) the circumstances in which racial discrimination occurs; c) the consequences of racial discrimination; and d) the availability and accessibility of remedies and complaint mechanisms for racial discrimination."<sup>11</sup>

The international women's human rights movement has long advanced the need to examine the intersection of gender and race. The concluding documents of both the U.N. Fourth World Conference on Women in Beijing, China, in 1995, and the special session of the U.N. General Assembly on "Women 2000: Gender Equality, Development and Peace in the 21<sup>st</sup> Century," known as Beijing +5, in New York City, United States, in 2000, acknowledged the barriers built on race, language, ethnicity, culture, among others, that impede women's empowerment and full equality.<sup>12</sup> The Inter-American Convention on the

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<sup>8</sup> In its preamble, CEDAW states that "the eradication of all forms of racism [and] racial discrimination...is essential to the full enjoyment of the rights of men and women." CEDAW, Preamble, cl.10

<sup>9</sup> CERD/C/55/Misc.3/Rev.3 (August 26, 1999).

<sup>10</sup> CERD Committee, General Recommendation XXV on gender-related dimensions of racial discrimination (Fifty-sixth session, 2000), March 20, 2000, U.N. Doc A/55/18, Annex V, paras. 2-3.

<sup>11</sup> Ibid, para.5.

<sup>12</sup> United Nations, *Report of the Fourth World Conference on Women, Beijing 4-15 September 1995*, (New York: United Nations Publications, 1996), E.96.IV.13, Beijing Declaration, resolution I, annex I, para. 32; United Nations, "Further actions and initiatives to implement the Beijing Declaration and Platform of Action," para. 5, in. *Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the*

Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), the only regional human rights treaty devoted to violence against women, notes “the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons.”<sup>13</sup> In a background paper published in preparation for the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in South Africa in 2001, the United Nations Development Fund for Women (UNIFEM) wrote that “women often experience compounded or intersectional discrimination, in which their experience of gender discrimination intersects with racism and related intolerance.”<sup>14</sup>

The awareness that gender and race or ethnicity are grounds for discrimination that often compound and mutually reinforce each other is particularly relevant in the case of domestic workers in Guatemala. Ethnicity was a factor in the drafting of the labor code provisions: the fact that paid domestic work has traditionally been performed by indigenous women in Guatemala directly influenced the rights domestic workers were afforded in the labor code.

### **Disparate Impact Discrimination**

#### ***International Standards***

International human rights law recognizes that discrimination is not always intentional. Facially neutral laws, regulations, policies, and practices can have a discriminatory impact. As discussed above, CEDAW proscribes explicitly discrimination on the basis of sex. The CEDAW Committee has clearly stated that the definition of discrimination in Article 1 of the convention covers both direct and indirect discrimination by public and private actors.<sup>15</sup>

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*General Assembly, GA Official Records, Twenty-third special session* (New York: United Nations, 2000),, Supplement No.3 (A/S-23/10/Rev.1).

<sup>13</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Article 9.

<sup>14</sup> United Nations Development Fund for Women (UNIFEM), “Integrating Gender into the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (South Africa 31 August – September 7, 2001,” <http://www.unifem.undp.org/hrights.htm> (September 26, 2000), para.1

<sup>15</sup> See for example CEDAW Committee Concluding Comments to the Belize initial report, cited in United Nations/Division for the Advancement of Women, *Assessing the Status of Women: A Guide to the Reporting Under the Convention on the Elimination of All Forms of Discrimination Against Women* (New York: United Nations, 2000), p.102.

However, to date it has not articulated its understanding of discriminatory impact. The CERD Committee, however, has argued that distinctions that have an “unjustifiable disparate impact” on a group distinguished by race, color, descent, or national or ethnic origin, and which have the effect of impairing enjoyment of human rights and fundamental freedoms, are discriminatory within the meaning of the CERD.<sup>16</sup> By analogy, one could argue that a law or policy that has an unjustifiable disparate impact on a group distinguished by sex, having further the effect of limiting their enjoyment of human rights, could be read as discrimination within the meaning of CEDAW. This reading would be consistent with the CEDAW Committee’s interpretation of gender-based violence as a form of discrimination. In its General Recommendation No. 19, the CEDAW Committee held that gender-based violence is “violence that is directed against a woman because she is a woman *or that affects women disproportionately.*”<sup>17</sup>

The CERD Committee has not elaborated on the precise meaning of “unjustifiable disparate impact.” However, the European Court of Justice (ECJ), whose rulings are not binding on Guatemala, has expressed an instructive opinion. In its application of a Council of the European Union directive that “the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly,”<sup>18</sup> the ECJ found that indirect discrimination “arises where a national measure, albeit formulated in neutral terms, works to the disadvantage of far more women than men” and that measure is not “attributable to factors which are objectively justified.”<sup>19</sup> To be

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<sup>16</sup> CERD Committee, General Recommendation XIV on Definition of discrimination (Art.1, par.1). (Forty-second session, 1993), U.N. Doc. A/48/18. In General Recommendation XX, the CERD Committee noted that states must take special caution to ensure that any restriction on the rights listed in Article 5 of the Convention is “neither in purpose nor effect...incompatible with Article 1 of the Convention.” Article 5 enumerates a long list of civil, political, economic, social, and cultural rights, including the right to just and favorable conditions of work and the right to just and favorable remuneration. CERD Committee, General Recommendation XX (Forty-eighth session, 1996), U.N. Doc. A/51/18.

<sup>17</sup> CEDAW Committee, General Recommendation No. 19, para 6. Emphasis added.

<sup>18</sup> Council of the European Union Directive 76/207/EEC, 9 February 1976, Article 2(1). The equal treatment directive was issued by the council in 1976 to direct Member States on the implementation of the principle of equal treatment for men and women in regard to access to employment, vocational training and promotion, and working conditions.

<sup>19</sup> *R v. Secretary of State for Employment, ex parte Seymour-Smith and another*, All ER (EC) 97, Case C-167/97 (1999), para. 107; *J.P. Jenkins v. Kings gate, Ltd.*, ECR 911, Case 96/80 (1981); see also *Secretary of State for Employment*, All ER (EC) 97, Case C-

considered objectively justifiable, these factors cannot be related to any discrimination based on sex.

For its part, the International Labor Organization (ILO), in Convention No. 111 concerning Discrimination in Respect to Employment and Occupation (Discrimination Convention), proscribes conduct, practices, or laws that have the “effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”<sup>20</sup> The ILO Committee of Experts (COE), a panel created to provide authoritative readings of ILO conventions and recommendations, has stated that indirect discrimination within the meaning of Convention No. 111 includes that which is based on “archaic and stereotyped concepts with regard to the respective roles of men and women...which differ according to country, culture and customs, [and] are at the origin of types of discrimination based on sex.”<sup>21</sup> Guatemala ratified Convention No. 111 on October 11, 1960.

Convention No. 111 allows only a “distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof”<sup>22</sup> The COE has further urged that exceptions be interpreted strictly to avoid “...undue limitation of the protection which the Convention [111] is intended to provide.”<sup>23</sup> Among the protections the convention provides is freedom from discrimination in the enjoyment of hours of work, rest periods, annual holidays with pay, and social security measures in connection with employment.<sup>24</sup>

Using the general criteria discussed above, facially neutral labor legislation or policies that have a disproportionate impact on women and which are not justified by the inherent requirements of the job could be considered impermissible disparate impact discrimination. The exclusions in the

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<sup>20</sup> 167/97, paras. 117, 120; *Ender by v. Frenchman Health Authority and Another*, 1 CMLR 8, Case 127/92 (1993), para. 37.

<sup>21</sup> ILO Convention No.111 concerning Discrimination in Respect to Employment and Occupation (the Discrimination Convention), June 25, 1958, 362 U.N.T.S 31, Article 1(1). This Convention predates both CERD and CEDAW.

<sup>22</sup> International Labor Conference, *Equality in Employment and Occupation, General Survey of the Committee of Experts on the Application of Conventions and Recommendations*, 75<sup>th</sup> Session, 1988, Report III (Part 4B) (Geneva: International Labor Office, 1996), para.38.

<sup>23</sup> ILO Convention No.111, Article 1(2).

<sup>24</sup> International Labor Conference, *Equality in Employment and Occupation*, p.138.

<sup>25</sup> ILO Recommendation No. 111 concerning Discrimination in Respect of Employment and Occupation. Article 2 (b) (vi), in ILO, *International Labour Conventions and Recommendations 1919-1981* (Geneva: ILO, 1982), pp.49-51.

Guatemalan labor code with respect to domestic workers have a disproportionate impact on women, who constitute 98 percent of paid household workers. There are no legitimate reasons for the different rules that regulate domestic work. Rather, the different treatment of domestic workers appears to be based on stereotypical notions of women's roles and functions in Guatemalan society.

#### ***Guatemalan Law***

Labor relations in Guatemala are regulated by the constitution, the labor code, ministerial accords, and separate regulations.<sup>25</sup> The Guatemalan labor code has a separate section to regulate domestic work.<sup>26</sup> Domestic workers are those who "dedicate themselves habitually and continuously to the work of cleaning, assistance and other tasks proper to a home or other type of residence or private house, that does not involve profit or business for the employer."<sup>27</sup> These workers are effectively excluded from key labor rights protections enjoyed by most Guatemalan workers. Domestic workers do not have:

- the right to an eight-hour workday. They can legally be obligated to work for fourteen hours per day;
- the same right as other workers to a full day's rest on Sundays and national holidays;
- the right to the minimum wage; or
- the right to a written employment contract, nor are employers required to register them with the labor ministry;

In addition, the labor code establishes unequal rules governing their rights and treatment in case of illness.<sup>28</sup> (See the Abuses section for a more detailed discussion of these exclusions.)

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<sup>25</sup> Labor Code, Decree 1441 (*Código de Trabajo, Decreto Número 1441*), published in the Diario Oficial (No.14, Tome CLXII) on June 16, 1961, and came into force August 16, 1961.

<sup>26</sup> Labor Code, Articles 161-166.

<sup>27</sup> Labor Code, Article 161.

<sup>28</sup> Guatemalan Labor Code, Articles 161-166.

The chapter regulating domestic work has remained unchanged since the labor code was first adopted in 1947. The entire code was written and adopted in two weeks with a great sense of urgency. According to the code's author, Costa Rican Oscar Barahona Streber, the Guatemalan Congress "trusted me, and approved [the code] with very little debate" and the specific chapter on domestic work was approved "without further ado."<sup>29</sup> To Human Rights Watch's knowledge, no legislative history of the code exists.<sup>30</sup>

Guatemala is not alone in offering domestic workers inferior protections under the labor code, and while justifications may vary from country to country, an ILO survey of legislation on domestic work in sixty-eight countries revealed the frequency of three core justifications for the separate treatment of domestic workers in labor legislation.<sup>31</sup> First, domestic work occurs in private households. Second, domestic work entails an intimate relationship between employer and employee that is not comparable to other occupations. And last, household obligations know no time limits.

While some different regulations for this kind of paid work may be appropriate, these should not adversely affect the rights of domestic workers. In Guatemala, domestic workers are excluded from core, nationally-recognized labor rights. The reason for this appears to be that domestic work is considered the natural extension of women's role in the family and society. Paid domestic workers essentially perform for wages the tasks the woman of the house is socially expected to perform for free.

Paid domestic work is located within private households, beyond the reach of public scrutiny and control. In most respects, occupants of private residences enjoy strong privacy rights. Amanda Pop Bol, a social psychologist who has researched domestic work in Guatemala, argues that the labor code was written to exclude domestic workers because "to give rights to domestic workers was to assault the family."<sup>32</sup> The fact that workers perform their duties within this protected realm has militated against standard forms of regulation. One practical problem that arises from the tension between the privacy rights of employers and worker rights is the limitation on the ability of labor officials to

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<sup>29</sup> Human Rights Watch telephone interview, Oscar Barahona Streber, San José, Costa Rica, November 7, 2000.

<sup>30</sup> Ibid.; Human Rights Watch telephone interview, Ricardo Changala, MINUGUA verification officer, Guatemala City, November 3, 2000.

<sup>31</sup> ILO, *The Employment and Conditions of Domestic Workers in Private Households*, (Geneva: ILO, March 1970).

<sup>32</sup> Human Rights Watch telephone interview, Amanda Pop Bol, social psychologist, Guatemala City, November 17, 2000.

enter households to monitor working conditions of domestic employees.<sup>33</sup> It is important to note that the nature of the household changes fundamentally with the hiring of a domestic worker. The household is now someone's place of employment. There may be a need to adopt inspection procedures that acknowledge family privacy but also allow for verification that the worker's rights are being respected.

Taking place as it does in private households, domestic work is perceived to give rise to a special, intimate relationship between employer and employee. Live-in workers, in particular, occupy a singular role within the household: they are outside wage laborers who are nonetheless privy to the households' most intimate details. In families with children, especially young children, or elderly members, domestic workers engage in intense care-taking that can produce strong emotions on all sides. Because the work itself is so bound up with the maintenance of the household, and because the work is perceived to be a natural function of female members of the family, the rhetoric surrounding paid domestic work is that the worker becomes "part of the family." This is especially true for younger workers. Family-like relationships do sometimes develop, and in these cases the workers themselves sometimes find solace in them. Several of the workers Human Rights Watch interviewed, when describing good treatment, said things like "they treated me like a daughter."<sup>34</sup>

The personal nature of the relationship between employer and domestic worker is cited to justify, for example, the right in many countries, for employers to fire their domestic employees without just cause.<sup>35</sup> This discretion reflects the assumption that the relationship is one of trust and affection, which, once broken, means the relationship can and should be concluded immediately. In Guatemala, domestic workers are ostensibly protected by the just cause provisions for dismissal established in the labor code,<sup>36</sup> however, the specific

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<sup>33</sup> Ibid, p.49. A number of countries that responded to the survey mentioned this issue.

<sup>34</sup> Human Rights Watch interviews, María Pelico Calel, Guatemala City, June 18, 2000; Elisabeth González, Guatemala City, Guatemala, June 24, 2000; Marta Julia López, Guatemala City, Guatemala, June 18, 2000.

<sup>35</sup> ILO, *Employment and Conditions*, pp.43-45. The survey does not specify which countries allow this.

<sup>36</sup> Labor code, Article 77. This article allows employers to fire workers, without incurring any legal responsibility, among other reasons, if the worker behaves in an openly immoral manner or engages in libel or slander against the employer or the employer's representatives; if the worker commits any of these acts against a colleague while on the job and as a result, discipline and work are interrupted; and if the worker, outside of the workplace and working hours, engages in libel or slander against the

chapter on domestic work has a catchall provision allowing employers to fire domestic workers for “disrespectful behavior.”<sup>37</sup> The authors of the ILO survey considered this provision in the Guatemalan labor code to have “feudal overtones.”<sup>38</sup> This approach to the labor relationship also explains the paternalistic provisions in the Guatemalan labor code relating to health care for the worker. Domestic workers are *not* members of the family. A contractual employment relationship exists between employer and employee. Emotional attachment or animosity should in no way adversely affect the rights and obligations of either party to the contract.

Finally, domestic work is considered outside the limited workday paradigm because it takes place within the family unit. Members of households are held to perform certain obligations according to the habits, needs, and desires of the family. The female members of households in most societies, including Guatemala, are charged with tasks relating to cleanliness, childcare, and food preparation, among other responsibilities. These obligations do not normally conform to a specified time frame, nor can they be interrupted for a period of time without special arrangements being made. This logic has been transferred to paid domestic work. Countries responding to the ILO survey of legislation on domestic work often cited the “difficulty of laying down mandatory hours for persons who live and work within the family unit.”<sup>39</sup> Once a paid employee is engaged to perform household and childrearing tasks, arrangements must be made to both accommodate the family’s schedule and needs and the worker’s right to reasonable hours of work. Having a live-in domestic worker cannot mean that the worker is permanently available to the family. When domestic workers are asked to work beyond the eight-hour workday, they should be duly compensated at an overtime rate in accordance with national law.

The exclusion of domestic workers from key labor rights protections in Guatemala is based fundamentally on the fact that domestic work is considered women’s work and not “real” work. Alfonso Bauer Paiz, the nation’s first labor minister from 1948-1950, maintains that “The fact that the vast majority of domestic workers were women *decisively influenced* the perception of domestic

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employer or the employer’s representatives in such a manner that working together in harmony is no longer possible.

<sup>37</sup> Ibid., Article 166.

<sup>38</sup> ILO, *Employment and Conditions*, p.45.

<sup>39</sup> Ibid., p.28.

work and its regulation in the Labor Code.<sup>40</sup> In a communication with Human Rights Watch, Barahona, the labor code's author, elaborated:

It was necessary to include domestic service in the labor code because not to do so would have been unjustified, but to give them the same treatment as industrial or commercial workers would have constituted a bigger mistake, which would have created a general animosity toward the labor code among thousands of housewives. Remember that the domestic servant becomes a part of the family, which does not happen with any other type of workers.<sup>41</sup>

The fact that paid domestic work in Guatemala is associated specifically with indigenous women appears to have also played an important role. Barahona implied that ethnic discrimination limited the rights he was able to draft for domestic workers. He described the Guatemala he found in 1947:

A country with a very large indigenous mix, and domestic work and indigenous women were very looked down upon...Indians sold themselves by the truckload for ten cents a piece, they were treated like animals. That was the atmosphere at that time...with such a cultural ancestry, a very complicated political situation, and an economic polarization like there was in Guatemala, one had to be realistic.<sup>42</sup>

Bauer Paiz, his contemporary, said the ethnic divide was so great at the time that the "majority of indigenous people living in the capital were women who came from the *pueblos* to work in homes, under a cultural pattern of servitude."<sup>43</sup> Pop believes that domestic workers were excluded from key rights in the labor code in large part "because that work is eminently linked to ethnicity."<sup>44</sup>

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<sup>40</sup> Communication (email) from Alfonso Bauer Paiz, congressman, November 24, 2000. Emphasis added.

<sup>41</sup> Communication (fax) from Oscar Barahona Streber, November 29, 2000.

<sup>42</sup> Human Rights Watch telephone interview, Oscar Barahona Streber, San José, Costa Rica, November 7, 2000.

<sup>43</sup> Human Rights Watch telephone interview, Alfonso Bauer Paiz, congressman, Guatemala City, November 20, 2000.

<sup>44</sup> Human Rights Watch telephone interview, Amanda Pop Bol, social psychologist, Guatemala City, November 17, 2000.

### Proposals for Change

The Guatemalan government has made a commitment to bring national legislation into conformity with all international labor standards. The current administration has prioritized freedom of association. Thus, Minister of Labor Juan Francisco Alfaro Mijangos submitted a package of reforms to Congress in June 2000 designed to bring the labor code into line with international standards on freedom of association (ILO Convention 87). These reforms are critically important for all workers in Guatemala. However, the government has a duty to comply with the full range of its commitments acquired through ratification of ILO conventions, such as the Discrimination Convention, as well as the 1996 peace accords.<sup>45</sup>

The peace accords, brokered by the United Nations and grounded in international law, include specific commitments to revisit the country's labor legislation, in particular those provisions concerning women's employment. The Agreement on Social and Economic Aspects and Agrarian Reform (Social and Economic Agreement) commits the government to "revising labour legislation to guarantee equality of rights and opportunities between men and women,"<sup>46</sup> and enacting "laws to protect the rights of women who work as household employees, especially in relation to fair wages, working hours, social security, and respect for their dignity."<sup>47</sup> The reference to social security is further strengthened by another commitment in the same accord to facilitate universal coverage of all workers.<sup>48</sup> According to the United Nations Mission in Guatemala (MINUGUA), reform of the labor code to give domestic workers the right to the minimum wage would mean compliance with "an important commitment of the peace accords" and would correct "a flagrantly discriminatory practice."<sup>49</sup> Guatemala has recognized the right of all individuals to "an adequate standard of living"<sup>50</sup> as well as "remuneration which guarantees, as a minimum...dignified and decent living conditions for them and their

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<sup>45</sup> See the Background section for a discussion of the peace accords.

<sup>46</sup> Social and Economic Agreement, Article 13(e) and (e) (ii).

<sup>47</sup> Ibid., Article 13(e)(iv).

<sup>48</sup> Ibid., Article 24(g).

<sup>49</sup> MINUGUA, *Informe de Verificación. Situación de los compromisos laborales de las acuerdos de paz (Verification Report. The Situation of Labor Commitments in the Peace Accords)* (MINUGUA: Guatemala City, June 2000), para. 24.

<sup>50</sup> ICESCR, Article 11.

families and fair and equal wages for equal work, without distinction.”<sup>51</sup> The U.N. mission has singled out the lack of progress in the review of labor legislation relating to women and urged that reforms, and in particular those with regard to domestic workers, be enacted as quickly as possible.<sup>52</sup>

In the past two years, a few proposals have been introduced in Congress to rectify the unequal protection of domestic workers in the labor code. The Support Center for Household Workers (*Centro de Apoyo para las Trabajadoras de Casa Particular* - CENTRACAP), a domestic workers’ association, has long lobbied for a separate law to regulate paid household labor. A draft bill written by CENTRACAP was first introduced into Congress on April 13, 1999, and promptly got mired in commission due to “lack of political will,” according to Imelda Hernández, the director of CENTRACAP.<sup>53</sup> “They are all employers [of domestic workers] in Congress, and they are the most stingy.” Their mentality is, “if it’s going to affect us [negatively], we won’t do anything,” complained Hernández.<sup>54</sup>

The free-standing law would establish the right of domestic workers to standard rights contained in the labor code: the eight-hour workday, the forty-eight hour workweek, overtime pay for all additional hours,<sup>55</sup> and social security.<sup>56</sup> The bill clarifies the right of domestic workers to all maternity protections in the labor code,<sup>57</sup> the right to national holidays<sup>58</sup> and the right to

<sup>51</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), OAS Treaty Series, No. 69, November 17, 1988, Article 7(a). Guatemala ratified the Protocol of San Salvador on October 5, 2000.

<sup>52</sup> MINUGUA, *Quinto Informe del Secretario General de las Naciones Unidas sobre la Verificación de los Acuerdos de Paz en Guatemala (Fifth Report of the Secretary General of the United Nations on the Verification of the Peace Accords in Guatemala)* (MINUGUA: Guatemala City, August 2000), para. 47.

<sup>53</sup> Once introduced, bills are immediately sent to the relevant congressional commission for review. Only once a bill has been approved in commission is it reintroduced to the plenary for debate.

<sup>54</sup> Human Rights Watch interview, Imelda Hernández, director, CENTRACAP, Guatemala City, May 30, 2000.

<sup>55</sup> CENTRACAP, *Anteproyecto de Ley: Ley Reguladora del Trabajo de Casa particular. Exposición de Motivos (Bill: Law to Regulate Domestic Work. Exposition of Motives)*. Mimeograph, Article 13.

<sup>56</sup> Ibid., Articles 17 and 18. The bill clarifies that the only health-related justification for termination of employment is if the domestic worker has a contagious disease and refuses treatment.

<sup>57</sup> Ibid., Article 19.

freedom of association.<sup>59</sup> Employers are expressly forbidden from using discriminatory or racist language, and from committing “any act that implies physical, psychological, moral or sexual violence against the person of the household worker or her family.”<sup>60</sup>

Importantly, the bill requires employers to permit inspection by officials from the labor ministry inspectorate<sup>61</sup> and envisions the creation of a special division within the ministry to oversee the implementation of the law, investigate violations, and intervene in disputes: the Special Department for Attention to Household Workers (*Departamento Especial de Atención a la Persona Trabajadora de Casa Particular*).<sup>62</sup> Finally, the bill calls for a state-sponsored and financed campaign to sensitize the general population about violence against domestic workers.<sup>63</sup>

In an alternative effort to address the problems that plague the domestic work sector, congresswoman Nineth Montenegro, the former president of the congressional Commission on Women, introduced legislation in May 2000 to reform the labor code in a variety of ways. Her bill, which was deposited with the Commission on Labor Issues but never taken up for review, would amend the labor code to clarify that domestic work “enjoys all of the labor rights and benefits recognized in the Code, its regulations and all other laws and provisions of work and social security.”<sup>64</sup> The bill establishes the obligation of employers to register their workers with IGSS.<sup>65</sup>

In July 2000, Minister of Labor Alfaro convened a meeting of representatives from the congressional Commission on Women, the Center for Human Rights Legal Action (*Centro de Acción Legal de Derechos Humanos* – CALDH), CENTRACAP, and several other interested NGOs to negotiate a joint proposal for reforms to the labor code. The goal of the process is to arrive at a

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<sup>58</sup> Ibid., Article 16. The list of national holidays is similar to that contained in Article 127 of the labor code, with some modification. The bill provides for half-day on Ash Wednesday and Mother’s Day off, and omits December 31.

<sup>59</sup> Ibid., Article 23(g).

<sup>60</sup> Ibid., Article 24(c).

<sup>61</sup> Ibid., Article 23(i).

<sup>62</sup> Ibid., Article 28.

<sup>63</sup> Ibid., Article 30.

<sup>64</sup> Reforms to the Labor Code, Decree 1441 of the Congress of the Republic. Introduced by Representative Nineth Montenegro on May 11, 2000, Article 11.

<sup>65</sup> Ibid., Article 13

consensus legislative proposal that the executive branch, at the behest of the minister of labor, could send to Congress. CENTRACAP has actively participated in an effort to ensure that whatever proposal is eventually submitted reflects the goals identified in their own proposal for a special law. The process of negotiations has continued in fits and starts. As of March 2001, the participating NGOs had arrived at a consensus proposal and were seeking the minister's support.<sup>66</sup> None of the parties involved with whom Human Rights Watch spoke were optimistic about the likelihood of getting a bill through Congress. Representative Montenegro explained that due to the make-up of Congress and the current political crisis, the legislature is "semi-paralyzed, so no commission is working at the moment, especially those led by the opposition...everything is blocked, there is no chance for social change."<sup>67</sup> Asked to explain the reluctance to address the plight of domestic workers in particular, Montenegro said, "I imagine it's due to a lack of awareness, lack of knowledge about the situation of these workers, and the fear of the middle class because we need that help in our homes. They don't want to give up their privileges."<sup>68</sup>

### **Employment Discrimination**

#### ***Reproductive Status***

Discrimination on the basis of reproductive status, whatever form it takes, is discrimination on the basis of sex. Pregnancy testing as a condition for employment is a clear example. Failure to abide by maternity protections also constitutes sex discrimination. Pregnancy as a condition is inextricably linked and specific to being female. Consequently, when women are treated adversely by their employers or potential employers because they are pregnant or because they may become pregnant, they are being discriminated against on the grounds of sex. Pregnancy-based discrimination extends beyond the hiring process to affect women's lives on the job: demotion, disadvantageous transfer, and, in the worst cases, dismissal of pregnant workers, as well as denied or limited maternity leave and/or breastfeeding arrangements. Discrimination on the basis

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<sup>66</sup> Human Rights Watch telephone interviews, Imelda Hernández, CENTRACAP, Guatemala City, March 7, 2001; Floridalma Contreras, CALDH, Guatemala City, March 15, 2001.

<sup>67</sup> Human Rights Watch telephone interview, Nineth Montenegro, representative in Congress, former president of Women's Commission, Guatemala City, November 14, 2000.

<sup>68</sup> Ibid.

of reproductive status constitutes a form of sex discrimination by targeting a condition only women experience. Such treatment penalizes women exclusively.

International law has codified minimum protections for maternity in order to ensure that women's reproductive abilities do not infringe on their full equality in the workplace.<sup>69</sup> Guatemalan law reflects this view, yet there is in practice widespread discrimination on the basis of reproductive status in both the maquila and domestic work sectors. Guatemala has the duty under both international human rights law and its own national laws to take active steps to redress this barrier to women's equal participation in the labor force.

#### **Pregnancy Testing**

CEDAW directly addresses employment discrimination, requiring governments to take "appropriate measures to eliminate discrimination against women in the field of employment" by ensuring the rights to work, to equal employment opportunities "including the application of the same criteria for selection for matters of employment," and to equal remuneration and equal treatment for work of equal value.<sup>70</sup> CEDAW specifically addresses the issue of reproductive rights in the workforce: states parties must ensure an effective right to work by preventing discrimination against women on the grounds of maternity. Article 11(2) of CEDAW specifically bars dismissal on the grounds of pregnancy.<sup>71</sup>

Similarly, ILO Convention No. 111 prohibits discrimination on the basis of sex with respect to access to employment and conditions of employment. The ILO Committee of Experts has interpreted the convention to prohibit pregnancy discrimination as a form of sex discrimination.<sup>72</sup> The new Maternity Protection Convention No. 183, adopted in May 2000 to revise the 1952 maternity convention, calls explicitly on ratifying member states to

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<sup>69</sup> ILO standards relating to women and work can generally be divided into those based on an equality paradigm and those that seek to protect women from certain kinds of work or working conditions. Maternity protection can be understood as both a nondiscrimination and a protective measure. See Valerie L. Oosterveld, "Women and Employment," in Kelly D. Askin and Doreen M. Koenig, eds., *Women and International Human Rights Law, Vol. 1*, (New York: Transnational Publishers, Inc., 1999), pp. 367-402; See also Lance Compa, "International Labor Standards and Instruments of Recourse for Working Women," *Yale Journal of International Law* 17, pp.151-172.

<sup>70</sup> CEDAW, Article 11, Para. 1 (a), (b), and (d).

<sup>71</sup> CEDAW, Article 11, Para. 2.

<sup>72</sup> International Labor Office, *Conditions of Work Digest*, Volume 13, 1994 (Geneva: International Labor Office, 1994), p.24.

eradicate pregnancy testing as a form of employment discrimination based on sex.<sup>73</sup> Guatemala ratified Convention No. 103, but voted against the newly adopted Convention No. 183.<sup>74</sup> The new convention is therefore not directly binding on Guatemala, though it illustrates that pregnancy testing related to employment is considered impermissible by large sectors of the international community.<sup>75</sup>

The Guatemalan labor code does not prohibit excluding job applicants on the basis of their reproductive status *per se*. However, Article 151 of the code prohibits employers from specifying sex, race, ethnicity or civil status in job announcements in most cases, and from making any differentiation between single and married women and/or women with family responsibilities. The labor ministry interprets this article to prohibit pregnancy questioning and pregnancy testing as a condition for employment:

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<sup>73</sup> Convention No. 183 concerning the Revision of the Maternity Protection Convention (Revised), 1952 (Maternity Protection Convention 2000). International Labour Conference. Provisional Record, 88<sup>th</sup> Session, Geneva, 2000, ILC88-PR20A-293-En.Doc. The Convention will enter into force twelve months after two ILO member states have ratified it. Article 9(1) reads: “Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including – notwithstanding Article 2, paragraph 1 – access to employment.

Article 9(2) goes on to say: “Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment...”

<sup>74</sup> Convention No. 183 was adopted with broad support: 304 member states voted in favor; 22 against; and 116 abstained.

<sup>75</sup> Jurisprudence from the ECJ leaves no doubt that pregnancy testing constitutes sex discrimination. In a 1991 case, the ECJ ruled against a Dutch company that sought to avoid hiring a woman because she was pregnant. The court ruled that “only women can be refused employment on the grounds of pregnancy and such refusal therefore constitutes direct discrimination on the grounds of sex.” *Case C-177/88, Dekker v. stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus 1990 E.C.R.3941*. The court went on to establish that a refusal of employment on account of the financial consequences of absence due to pregnancy must be regarded as based, essentially, on the fact of pregnancy. Such discrimination cannot be justified on grounds relating to financial loss that an employer who appointed a pregnant woman would suffer for the duration of her maternity leave. The court found the company to be in breach of Directive 76/207/EEC of the European Council on equal treatment. The ILO supported the ECJ decision as consistent with international standards prohibiting sex discrimination and “...consistent with the position of its Committee of Experts on the Application of Conventions and Recommendations concerning the scope of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which notes the discriminatory nature of distinctions based on pregnancy, confinement and related medical conditions.” ILO, *Conditions of Work Digest*, p. 24.

[G]iven that rights and obligations inherent to the working woman derive from pregnancy and maternity, which the State protects and whose strict enforcement [the state] ensures in a special manner, every act or document through which an applicant for a job is required whether she is pregnant [sic] or that intends to give her an exam related to that status, are nulos ipso jure and do not obligate those applicants [to comply].<sup>76</sup>

### Maternity Protections

ILO standards exist to protect pregnant women and new mothers on the job; these standards attempt to acknowledge and accommodate women's reproductive abilities, and in no way justify disadvantageous treatment of women workers as a result of pregnancy or motherhood. A variety of ILO conventions prohibit termination of employment due to pregnancy.<sup>77</sup> Convention No. 183, the revised maternity protection convention adopted in 2000, which is applicable to domestic workers,<sup>78</sup> requires that measures be taken to ensure the health of the pregnant worker and the child.<sup>79</sup> Guatemala is bound by the previous Convention No.103, as it has not ratified No. 183.

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<sup>76</sup> Communication (letter) from José Girón Cano and Jacqueline Ortiz Morales, Consejo Técnico y Asesoría Jurídica (Technical and Legal Counsel Department), Ministry of Labor, dated August 10, 2000, Dictamen 250/2000. See Appendix A, first paragraph.

<sup>77</sup> Article 5 of Convention No. 158 Concerning Termination of Employment at the Initiative of the Employer reads, in part: "The following, *inter alia*, shall not constitute valid reasons for termination:...d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin..." Guatemala has not yet ratified this convention. Article 8 of Convention No.156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities states that "Family responsibilities shall not, as such, constitute a valid reason for termination of employment." Guatemala ratified Convention No. 156 on January 6, 1994.

<sup>78</sup> The previous convention, No.103, also included explicitly domestic workers in the category of non-industrial occupations to which the convention was applicable (Convention No. 103, Article 1(3)(h)). However, that convention allowed a ratifying state to exclude this category of work through an accompanying declaration (Convention No. 103, Article 7(1)(c)). Guatemala ratified Convention No. 103 on June 13, 1989 without any accompanying declaration. Convention No. 183 does not allow this exclusion, but it does allow ratifying countries to "exclude wholly or partly" from the convention "limited categories of workers when its application to them would raise special problems of a substantial nature" (Convention No. 183, Article 2).

<sup>79</sup> Convention No. 183, Article 3. The old convention, No. 103, did not have an article devoted to health measures; the accompanying Recommendation No.95 did, however, specify prohibited types of work for pregnant and nursing workers (Article 5).

Measures required under No. 183 include alternatives to eliminate risk and adapt conditions of work for pregnant and nursing workers. If this is not possible, transfer to another post, without loss of pay, or paid leave should be made available.<sup>80</sup> Certain kinds of work, including work that involves heavy lifting, physical strain due to prolonged sitting, standing or extreme temperatures, or exposure to hazardous biological, chemical or physical agents, would give rise to the measures listed above.<sup>81</sup>

The convention stipulates that new mothers should enjoy maternity leave of no less than fourteen weeks, during which time the worker cannot be fired.<sup>82</sup> Once a new mother has returned to work, she should have one or more daily breaks to breastfeed her child. Alternatively, she should have a daily reduction in work hours. The length of the daily breaks, or the number of hours of reduction of work time per day, can be determined by national law, but these hours must be fully remunerated.<sup>83</sup>

The ILO Committee of Experts has consistently supported the right of domestic workers to maternity protection. In comments on reports from Bolivia, Ecuador, and Italy, among others, in the late 1980s and early 1990s, the COE urged states that ratified the preceding convention on maternity protection to ensure that domestic workers could not be fired for pregnancy and received maternity leave.<sup>84</sup>

Guatemalan law seeks to protect women from maternity-based discrimination. Article 151 of the labor code prohibits the firing of pregnant and breastfeeding women, except with just cause and special authorization from a

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<sup>80</sup> Recommendation concerning the Revision of the Maternity Protection Recommendation, 1952 (Maternity Protection Recommendation, 2000), Article 6(2).

<sup>81</sup> Ibid., Article 6 (3). Maternity Protection Recommendation, 2000 states that pregnant or nursing women should not be forced to perform night work (Article 6(2)); the previous Recommendation No. 95 prohibited nighttime work and overtime for pregnant and nursing women (Article 5(1)).

<sup>82</sup> Convention No. 183, Articles 4 and 8. The previous convention, No. 103, mandated at least 12 weeks

<sup>83</sup> Ibid., 2000, Article 10. The previous convention, No. 103, dictated daily breaks but did not envision a reduction in working hours (Article 5). The accompanying Recommendation No. 95 said, however, that the break(s) should amount to a total of one-and-a-half hours per day (Article 3(1)). Maternity Protection Recommendation, 2000, simply states that the “frequency and length of nursing breaks should be adapted to particular needs” (Article 7).

<sup>84</sup> Adelle Blackett, “Making domestic work visible: the case for specific regulation,” [http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/1\\_htm](http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/1_htm) (May 18, 2000).

labor judge.<sup>85</sup> To enjoy the right of “immobility,” pregnant women must first advise their employers verbally and then within two months provide a medical certificate confirming their status.<sup>86</sup> By law, a woman fired while enjoying her right to immobility only has thirty days to file charges against her employer.<sup>87</sup> Human Rights Watch believes that pregnant women should not be fired because they are pregnant, which is always an impermissible reason, regardless of whether or not they have informed their employer of their status.<sup>88</sup>

The labor code prohibits physically strenuous work during the last three months of pregnancy.<sup>89</sup> Working women have the right to 100 percent of their salaries during the mandated 84-day maternity leave. Where the worker is affiliated with IGSS, this institution pays for the salary during the maternity leave; otherwise, the employer is solely responsible. The worker is guaranteed the same job or one of equal pay and grade upon her return to work.<sup>90</sup>

New mothers have the right to either take two half-hour breaks during the workday to breastfeed their babies in an appropriate place, or work one hour less than usual to compensate. This hour shall be paid. This right takes effect the day the worker returns to her job after maternity leave and continues for ten months, except in cases of medical dispensation to prolong the period.<sup>91</sup> Furthermore, the labor code requires all employers with more than thirty female employees to provide a daycare center for children up to three years of age.<sup>92</sup>

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<sup>85</sup> Labor Code, Article 151(c).

<sup>86</sup> Labor Code, Article 151(d).

<sup>87</sup> Labor Code, Article 260. A packet of proposed reforms to the labor code introduced into Congress in June 2000 by the executive branch would lengthen this statute of limitations to two years. Article 19 of reform packet.

<sup>88</sup> The Chilean labor code was recently modified to stipulate that workers who are fired while pregnant have the right to get their jobs back, regardless of whether the employer knew of her pregnancy. In addition, the worker has the right to remuneration for the time she was out of work. Chilean Labor Code, Article 201. The code states clearly that this is not applicable to domestic workers.

<sup>89</sup> Labor Code, Article 151(e).

<sup>90</sup> Labor Code, Article 152, (b). Pregnant women are entitled to take up to thirty days before the due date, and fifty-four days after the birth. Workers can choose to take their entire maternity leave after the birth. The right to paid maternity leave is also guaranteed in the Guatemalan Constitution (Article 102 (k)).

<sup>91</sup> Labor Code, Article 153.

<sup>92</sup> Labor Code, Article 155. Legal experts and women’s rights activists alike pointed out the need to amend this article to require all businesses with thirty employees, whether male or female, to provide daycare facilities.

In response to a query from Human Rights Watch, the Ministry of Labor clarified that all maternity protections are applicable to domestic workers: “Even though the legal dispositions relating to work subject to special regimens, within which domestic workers are included, do not establish it expressly, these workers enjoy the rights and obligations that derive from maternity, because these are contained in norms of general applicability” in the Guatemalan Constitution and the labor code.<sup>93</sup>

The discrimination on the basis of reproductive status Human Rights Watch documented against maquila line operators and domestic workers is thus in clear violation of both national and international law.

#### ***Sexual Harassment***

The Guatemalan government has obligations under international law to combat sexual harassment in the workplace as both sex discrimination and gender-based violence. Although CEDAW does not explicitly address sexual harassment, the CEDAW Committee considers this kind of behavior to be gender-based violence prohibited under the convention. In its General Recommendation No. 19, the committee stated that gender-based violence is “a form of discrimination which seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”<sup>94</sup> According to the committee, sexual harassment, defined in the following manner, directly affects equality in employment:<sup>95</sup>

Sexual harassment includes unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her

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<sup>93</sup> Communication (letter) from José Girón Cano and Jacqueline Ortiz Morales, Consejo Técnico y Asesoría Jurídica (Technical and Legal Counsel Department), Ministry of Labor, dated August 10, 2000, Dictamen 250/2000. Articles 151-155 in the labor code covering maternity rights and protections do not exclude any category of workers in the text. See Appendix A, second paragraph.

<sup>94</sup> CEDAW Committee, “Violence Against Women,” General Recommendation No. 19 (Eleventh session, 1992), U.N. Doc. CEDAW/C 1992/L.1/Add.15, para. 1.

<sup>95</sup> CEDAW Committee, General Recommendation No. 19, para.17.

employment, including recruitment and promotion, or when it creates a hostile working environment.<sup>96</sup>

The committee urges all states parties to institute measures, legal and otherwise, including “penal sanctions, civil remedies and compensatory provisions, to protect women from sexual harassment, among other kinds of violence, as well as to pursue preventive measures.”<sup>97</sup>

The Convention of Belém do Pará, a regional instrument ratified by Guatemala in 1995, explicitly includes sexual harassment in the workplace as a form of violence against women, although it does not precisely define the term.<sup>98</sup> The Convention of Belém do Pará requires ratifying nations to “include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary,” and to “ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.”<sup>99</sup>

The ILO has addressed sexual harassment as a form of sex discrimination prohibited in the Convention No.111. According to ILO experts, sexual harassment occurs when an employee justly perceives certain acts to be a condition of continued or secured employment, and the incident(s) must influence decisions affecting the employee, undermine the employee’s professional performance, or humiliate, insult, or intimidate the employee.<sup>100</sup>

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<sup>96</sup> Ibid., para. 18.

<sup>97</sup> Ibid., para.24(t).

<sup>98</sup> Convention of Belém do Pará, OAS/ser.L/II.2.27, CIM/doc.33/94, June 9, 1994, Article 2(b).

<sup>99</sup> Ibid., Article 7 (c) and (g).

<sup>100</sup> International Labor Conference/Committee of Experts, *Equality in Employment and Occupation: General Survey of Reports on the Discrimination (Employment and Occupation) Convention (No.111) and Recommendation (No.111) 1958*, 75<sup>th</sup> Sess., rep.III, pt.4B, para.45 (1988), cited in Jane Aberhard-Hodges, “Sexual harassment in employment: Recent judicial and arbitral trends,” *International Labour Review*, Vol. 135 (1996), No. 5, p.507. The ILO lists the following as potentially constitutive of sexual harassment: insults, remarks, jokes, insinuations and inappropriate comments on a person’s dress, physique, age, family situation, and a condescending or paternalistic attitude undermining dignity, unwelcome invitations or requests that are implicit or explicit whether or not accompanied by threats, lascivious looks or other gestures associated with sexuality, unnecessary physical contact such as touching, caresses, pinching or assault.

The ILO is also the only international body to acknowledge explicitly in a binding treaty the convergence of gender and race bias against indigenous women, with specific reference to sexual harassment. ILO Convention No. 169 on Indigenous and Tribal Peoples, adopted in 1989 and ratified by Guatemala June 5, 1996, mandates governments to adopt measures to prevent discrimination between indigenous and non-indigenous workers, and specifically to ensure that indigenous workers “enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.”<sup>101</sup>

Guatemala has yet to fulfill the promise of the peace accords and adopt legislation prohibiting and punishing sexual harassment. The 1995 Agreement on the Rights and Identity of Indigenous People, one of the accords signed during the peace process that went into full effect on December 29, 1996, committed the government to “promote legislation to classify sexual harassment as a criminal offence, considering as an aggravating factor in determining the penalty for sexual offences the fact that the offence was committed against an indigenous woman.”<sup>102</sup>

There have been several attempts to enact specific legislation to prohibit sexual harassment. The Women and Legal Reform Project, a now-concluded initiative funded by the U.N. to review discriminatory legislation and propose legislative reform; the congressional Women’s Commission; and two congresswomen, Olga Camey de Noack and Flora Escobar de Ramos, all developed bills on sexual harassment. The proposals differed in the definition of sexual harassment (whether, for example, there are two types: where there exists a situation of hierarchy, and where the behavior takes place among colleagues), the area of application (whether restricted to the workplace, or extended to educational facilities and public spaces such as public transportation), the proposed administrative procedures and sanctions, and the jurisdiction and sanctions.<sup>103</sup> None of the bills was ever debated in Congress.

Binding international law is admittedly vague on the precise elements of sexual harassment, and is completely silent on whether the offense would be

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<sup>101</sup> Convention concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, ILO, 76<sup>th</sup> Sess. III, Article 20(3)(d)). ILO, International Labour Conventions and Recommendations: 1977-1995, p. 324.

<sup>102</sup> Agreement on Identity and Rights of Indigenous Peoples, Article II, B, 1(a).

<sup>103</sup> It should be noted that the Convention of Belém do Pará addresses gender-based violence, including sexual harassment, in the workplace, educational institutions, health facilities, “or any other place,” and clearly states that this kind of violence can be perpetrated by any person, not just superiors in an hierarchy (Article 2(b)).

dealt with as a criminal, civil, or labor matter. This has led to a variety of definitions as well as a variety of methods for dealing with sexual harassment. The Guatemalan drafters of the ill-fated bills looked to neighboring Costa Rica, which in 1995 adopted the pioneering Law against Sexual Harassment in Employment and Education.<sup>104</sup> The law defines sexual harassment as “all sexual conduct that is unwanted by the person to whom it is directed, that is recurring and that provokes harmful effects in: a) the material conditions of the workplace or educational establishment; b) the victim’s working or educational performance, or; c) the general state of personal well-being.”<sup>105</sup> The law clarifies that any single act, without recurrence, can constitute sexual harassment if it harms the victim in the described ways.<sup>106</sup> The law obligates employers to establish internal complaint mechanisms that guarantee confidentiality and envision administrative sanctions for perpetrators of sexual harassment.<sup>107</sup> Once workplace remedies have been exhausted, victims can seek recourse to labor courts,<sup>108</sup> as well as criminal courts when the behavior rises to the level of a criminal offense.<sup>109</sup>

The United States and Europe have developed their own approaches. In the United States, sexual harassment is considered a form of sex discrimination prohibited under Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission (EEOC), which was created to enforce the Civil Rights Act, established guidelines in 1980 that defined sexual harassment as “ “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.”<sup>110</sup> According to the EEOC and subsequent federal court decisions, there are two types of sexual harassment. First, *quid pro quo* harassment: sexual demand in return for keeping or obtaining a job or benefits. Second, harassment in the form of unwelcome sexual advances that creates a hostile working environment that

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<sup>104</sup> Law Number 7476, of February 3, 1995 against sexual harassment in employment and education. Published in La Gaceta on March 3, 1995, No.45, pp.1-2.

<sup>105</sup> Ibid., Article 3.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid., Article 5.

<sup>108</sup> Ibid., Article 18.

<sup>109</sup> Ibid., Article 25.

<sup>110</sup> 29 C.F.R. § 1604.11(a) (1990); see also *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 66 (1986).

interferes with job performance.<sup>111</sup> U.S. law provides for civil remedies for victims of sexual harassment. It should be noted, however, that Title VII is only applicable to employers with fifteen or more employees, thus limiting its reach, and does not provide for criminal remedies. If the act rises to the level of assault, the state can prosecute the act as a crime.

The European Council of Ministers, the primary decision-making body of the European Union, adopted a Resolution on the Protection of the Dignity of Women and Men at Work in 1990, stating that conduct of a sexual nature "affecting the dignity of women and men at work" is unacceptable if:

- a) such conduct is unwelcome, unreasonable and offensive to the recipient;
- b) a person's rejection of, or submission to, such conduct on the part of the employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training, access to employment, continued employment, promotion, salary or any other employment decisions; and/or
- c) such conduct creates an intimidating, hostile or humiliating working environment for the recipient.<sup>112</sup>

On the basis of this definition, the European Commission, the institutional arm of the European Union, developed a Code of Practice on Measures to Combat Sexual Harassment. The code is not binding on the fifteen member states of the European Union, but rather serves as a guide for national legislation.

Until the Guatemalan government adopts legislation to implement its commitments under international law and the peace accords, Guatemalan workers who are exposed to sexual harassment will have no legal recourse for redress. This serves as a serious deterrent to women who might otherwise step forward to demand justice. Legislation aimed at preventing and punishing sexual harassment should include, at a minimum, employer obligations to establish workplace complaint mechanisms and administrative sanctions, and

<sup>111</sup> For a discussion, see Jane Aberhard-Hodges, "Sexual harassment in employment: Recent judicial and arbitral trend," *International Labour Review*, Vol. 135 (1996), No. 5; see also Robin Phillips, "Violence in the Workplace: Sexual Harassment," in Kelly D. Askin and Dorean M. Koenig, eds., *Women and International Human Rights Law*, Vol. 1. (New York: Transnational Publishers, Inc., 1999).

<sup>112</sup> *Official Journal of the European Communities* (Brussels), Vol.33, No. C.157, 27 June 1990, at 3-4. Cited in Robin Phillips, "Violence in the Workplace."

the ability of victims to pursue both civil and criminal remedies where warranted. It is especially important that such legislation take into account the situation of women in nontraditional work settings, such as domestic workers and agricultural workers.<sup>113</sup>

### **Right to Health**

Upon acceding to the ICESCR, Guatemala recognized the right of all individuals to “the enjoyment of the highest attainable standard of physical and mental health” and undertook to take the necessary steps to create “conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>114</sup> The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), ratified by Guatemala, as well as CERD and CEDAW, among other international instruments, also recognize the right to health. The Committee on Economic, Social and Cultural Rights (ICESCR Committee) considers the right to health to contain both freedoms, such as “the right to control one’s health and body, including sexual and reproductive freedom,” and entitlements, such as “the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”<sup>115</sup>

Reproductive health is a component of the right to health. The 1994 International Conference on Population and Development in Cairo, Egypt, defined reproductive health as “a state of complete physical, mental and social well-being...in all matters relating to the reproductive system and to its functions and processes.” According to the final consensus document, women and men have the right to “appropriate health-care services that will enable women to go safely through pregnancy and childbirth and to provide couples with the best chances of having a healthy infant.”<sup>116</sup> In its General Comment No. 14 on the right to health, the ICESCR Committee stated that the obligation on states parties to the covenant to provide for the reduction of the stillbirth rate and of infant mortality, and for the healthy development of the child, can be

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<sup>113</sup> Human Rights Watch interview, Fidelia Vásquez, Angélica Pérez, and Marisol Chávez, Comisión Nacional Permanente para los Derechos Humanos de la Mujer Indígena de COPMAGUA, Guatemala City, May 29, 2000.

<sup>114</sup> ICESCR, Article 12.

<sup>115</sup> Committee of Economic, Social and Cultural Rights (ICESCR Committee), “The right to the highest attainable standard of health,” General Comment No. 14, (twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000), para.8.

<sup>116</sup> Cairo Programme of Action of the International Conference on Population and Development, U.N. Doc A/Conf.171/13, September 1994, para.7.2.

understood broadly to require measures to “improve...sexual and reproductive health services, including access to family planning [and] pre- and post-natal care.”<sup>117</sup>

Realization of the right to health, including the right to reproductive health, is to a large extent dependent on enjoyment of the right to nondiscrimination. CEDAW explicitly calls on states parties to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”<sup>118</sup> The ICESCR contains a general nondiscrimination article; the ICESCR Committee, in General Comment No.14, stated that the covenant also proscribes discrimination in access to “the means and entitlements for [the] procurement” of health care.<sup>119</sup> As discussed above, the concept of prohibited discrimination encompasses impact discrimination: disadvantageous consequences for women, in this case, of purportedly gender-neutral acts. For this reason, the CEDAW Committee has asked states parties to CEDAW to report on the impact that health policies, procedures, laws and protocols have on women when compared to men.<sup>120</sup>

In Guatemala, domestic workers and maquila line operators encounter serious obstacles to the enjoyment of the right to health, specifically the right to reproductive health. In both cases, facially gender-neutral regulations or practices have gender-specific consequences for these women workers. Domestic workers are denied the right to the employee health care system because of a policy that only employers with three or more employees are required to enroll them in the system. Although some workers in other sectors are also excluded from IGSS, domestic work *as a sector* is effectively excluded because very few domestic workers are employed as part of a team of three or more. The current labor code recognizes that employers have a duty to provide for domestic workers’ health care, but does so in an unenforceable way that renders domestic workers wholly dependent on their employers. The code requires employers to assume all medical costs for minor health problems and contagious diseases contracted within the household, as well as to pay for transportation to the nearest hospital and for emergency care, when necessary.

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<sup>117</sup> ICESCR Committee, General Comment No.14, para. 14.

<sup>118</sup> CEDAW, Article 12.1.

<sup>119</sup> ICESCR Committee, General Comment No. 14, para.18.

<sup>120</sup> CEDAW Committee, “Women and Health,” General Recommendation No.24, (twentieth session, 1999), U.N. Doc. A/54/38/Rev.1, para.19.

Maquila workers do have the right to the employee health care system, but find their access is routinely blocked. Factories often fail to enroll workers in the system and, when workers are enrolled, routinely refuse to provide the necessary certificates and time-off to facilitate access to health care. As a consequence of these policies and practices, both sets of women workers are substantively denied access to critical reproductive health care, such as pre- and post-natal care.

The government of Guatemala has a positive duty to rectify this situation in order to respect the right to health by ensuring access to health services, and to protect the right to health by taking the necessary steps to prevent and sanction actions of third parties that violate the right to health of these workers.

### **Family Responsibilities**

Just as working women should not be punished for becoming pregnant, they should not be penalized for having family responsibilities. ILO Convention No. 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Workers with Family Responsibilities Convention), adopted in 1981 and ratified by Guatemala in 1994, establishes the goal that each member state will adopt a national policy oriented toward ensuring that workers with family responsibilities are not subject to discrimination, and that they may pursue work “without conflict between their employment and family responsibilities.”<sup>121</sup> The convention, which applies to all categories of workers, unequivocally states that “[f]amily responsibilities shall not, as such, constitute a valid reason for termination of employment.”<sup>122</sup> The accompanying recommendation elaborates that ratifying states should take steps to ensure that the terms and conditions of employment allow workers to reconcile family responsibilities with their employment.<sup>123</sup> The recommendation also clarifies that workers should be able to take a leave of absence in case of illness of a dependent child.<sup>124</sup>

These provisions have special relevance for working women around the world and in Guatemala in particular because women bear the primary

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<sup>121</sup> Workers with Family Responsibilities Convention, Article 3.

<sup>122</sup> Ibid., Article 8.

<sup>123</sup> Recommendation No.165 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, Section IV, para.17.

<sup>124</sup> Ibid., Section IV, para.23(1): “It should be possible for a worker, man or woman, with family responsibilities in relation to a dependent child to obtain leave of absence in the case of its illness.”

responsibility for the care and rearing of children. The ILO Committee of Experts considers Convention No. 156 and Recommendation No. 165 to form “an intrinsic part of any measures to promote equality of opportunity and treatment between men and women,” and as such should be read in tandem with the Equal Remuneration Convention (No. 100) and the Discrimination Convention (No. 111).<sup>125</sup> CEDAW calls on states to encourage “the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities...in particular through promoting the establishment and development of a network of child-care facilities.”<sup>126</sup> The Protocol of San Salvador also calls on states to “implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.”<sup>127</sup>

Legislation and public policy that accommodate workers’ family responsibilities is in keeping with international protection of the family and the child. Both the ICCPR and the ICESCR recognize the family as the “fundamental group unit of society” entitled to state protection.<sup>128</sup> The ICESCR further states that the family should be accorded the widest possible assistance “particularly...while it is responsible for the care and education of dependent children.”<sup>129</sup> The Convention on the Rights of the Child (CRC), ratified by Guatemala on June 6, 1990, asserts that “the best interests of the child shall be a primary consideration” in all actions concerning children undertaken by, among others, legislative and administrative bodies, and obligates states parties to “respect the responsibilities, rights and duties of parents...to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”<sup>130</sup> Under the treaty, states parties should render “appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.”<sup>131</sup>

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<sup>125</sup> International Labour Conference, Workers with Family Responsibilities, General Survey of the Committee of Experts on the Application of Conventions and Recommendations, 80<sup>th</sup> Session, 1993, Report III (Part 4B) (Geneva: International Labour Office, 1993), para. 254.

<sup>126</sup> CEDAW, Article 11(2)(c).

<sup>127</sup> Protocol of San Salvador, Article 6(2).

<sup>128</sup> ICCPR, Article 23(1); ICESCR, Article 10(1).

<sup>129</sup> ICESCR, *ibid.*

<sup>130</sup> CRC, Articles 3(1) and 5.

<sup>131</sup> CRC, Article 18(2).

Live-in domestic workers have an extremely difficult time attending to their family responsibilities. There are no guidelines in the law or labor policy on how to accommodate live-in domestic workers who have children. In practice, domestic workers who have children leave them with their parents or other family members, often in areas far removed from the capital where they work, because they cannot bring them to live in the household where they work. They then often have difficulty securing time off to visit their children, even when they are sick.

#### **Right to Privacy**

Obliging disclosure of information related to prospective workers' pregnancy status, as a condition of employment, invades women's privacy. The UDHR,<sup>132</sup> the American Convention on Human Rights,<sup>133</sup> and the ICCPR<sup>134</sup>

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<sup>132</sup> Article 12 of the UDHR states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation..."

<sup>133</sup> Article 11 of the American Convention on Human Rights, "Pact of San Jose, Costa Rica" states: "(1) Everyone has the right to have his honor respected and his dignity recognized. (2) No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. (3) Everyone has the right to the protection of the law against such interference or attacks."

<sup>134</sup> Article 17 of the ICCPR states: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation."

guarantee a right to privacy, which has been interpreted by the U.N. Human Rights Committee (HRC) as “guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to give effect to the prohibition against such interferences and attacks as well as to the protection of the rights.”<sup>135</sup> The HRC has interpreted the right to privacy to mean that states have an obligation to “provide the legislative framework prohibiting such acts by natural or legal persons.”<sup>136</sup> The Guatemalan government has a duty to protect its citizens from invasions of their privacy by such private actors as maquila personnel.

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<sup>135</sup> United Nations, “Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,” General Comment 16 to Article 17, U.N. Document HRI/GEN/I/Rev.1, July 29, 1994, p.21.

<sup>136</sup> Ibid., p. 23.

#### IV. BACKGROUND

*There was a clearly discriminatory situation in Guatemala in which extremely stereotyped social, economic, political and cultural roles were assigned to men and women; that situation resulted in subordination of Guatemalan women in virtually all of the areas and at all the levels covered by the articles of the Convention.*

-- CEDAW Committee<sup>137</sup>

##### Gender and Race in Guatemala

At least half of Guatemala's 11 million inhabitants are Mayan.<sup>138</sup> There are twenty-one Mayan ethno-linguistic communities, and two small minority groups: the Xinca and the Garífuna (Afrocaribbeans on the Atlantic coast).<sup>139</sup> The Maya have been subjected to violent discrimination, repression, and dispossession since colonization. Although the 1985 Guatemalan Constitution recognizes ethnic diversity and commits the state to respect and promote this diversity, racism is an insidious fact of life for most indigenous Guatemalans.<sup>140</sup>

Social indices illustrate the disparities in well being between the indigenous and non-indigenous of Guatemala. Although Guatemala has the largest economy in Central America, Guatemalans are among the poorest in Latin America. According to the World Bank, Guatemala has the third highest degree of income inequality among low- to middle-income countries (Brazil and Pakistan are first and second in this category): the poorest one-fifth of the

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<sup>137</sup> Report of the Committee on the Elimination of Discrimination against Women, 13<sup>th</sup> Session. Concluding Comments of CEDAW after consideration of the initial and second combined periodic reports. United Nations Doc. A/49/38, 12 April 1994, para.78.

<sup>138</sup> The number of indigenous people in Guatemala is subject to considerable debate. Much depends on how surveys or studies define indigenous identity: use of traditional dress and/or language, geographic origin, self-identification, etc. The Guatemalan state has changed its own criteria. The 1981 census found that only 41.8 percent of the population was indigenous. In 1998-1999, that figure was 48.6 percent. Many observers argue the real figure is probably somewhere between 50 to 60 percent. Even then-president Jorge Elías Serrano stated in 1991 that 60 percent of Guatemala's population descended from the Maya civilization.

<sup>139</sup> The Mayan communities, in alphabetical order, are: Achí, Akateko, Awatateko, Ch'orti', Chuj, Itza, Ixil, Keqchikel, K'iche', Mam, Mopán, Pocomchi', Poqomam, Popti', Q'anjob'al, Q'eqchi', Sakapulteko, Sipakapense, Tektiteko, Tz'utujil, and Uspanteko.

<sup>140</sup> Constitution of the Republic of Guatemala of May 31, 1985, Article 66. The Constitution entered into force on January 14, 1986. Garífuna, the Afrocaribbean population of Guatemala, are also subject to considerable racism.

population has only 1.9 percent of the total income.<sup>141</sup> Fifty-seven percent of Guatemalans live in poverty, while 27 percent live in extreme poverty.<sup>142</sup> Indigenous Guatemalans are the poorest of the poor. Just over 74 percent of indigenous people in Guatemala are poor, compared to 41 percent non-indigenous. An alarming 39 percent of indigenous people are living in extreme poverty, while that figure is 15 percent for non-indigenous.<sup>143</sup>

Mayan women are particularly disadvantaged. Only 48 percent of indigenous women are literate in Spanish, while 76 percent of ladina women can read and write.<sup>144</sup> In contrast, 67 percent of indigenous men and 81 percent of ladino men are literate.<sup>145</sup> Guatemala has the second lowest total female literacy rate in Latin America, after Haiti, and the worst female to male literacy ratio in the region.<sup>146</sup> Health indicators are similarly dismal. While overall fertility is five children per woman—the highest rate in Latin America—Mayan women have an average of 6.2 children.<sup>147</sup> Maternal mortality in Guatemala is 190 per

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<sup>141</sup> World Bank, “Country Brief: Guatemala,” May 1999, <http://www.wb.org/html/extdr/regions.htm> (April 13, 2000).

<sup>142</sup> United Nations Development Programme (UNDP). *Guatemala: La fuerza incluyente del desarrollo humano. Informe de Desarrollo Humano 2000 (Guatemala: The inclusive force of human development. Human Development Report 2000)* (Guatemala City: UNDP, 2000), p. 43. Other reports place this figure much higher. The Economic Commission for Latin America and the Caribbean (ECLAC/CEPAL) estimates that 69 percent of the population in Guatemala lives below the poverty line. ECLAC/CEPAL, Notas de CEPAL. Número especial: Panorama Social de América Latina 1999-2000 (Special edition: Social Panorama of Latin America 1999-2000), September 2000, No.12, p.4.

<sup>143</sup> Ibid, p. 43. A 1994 study found, rather, that almost 87 percent of indigenous people in Guatemala live in poverty, compared to 54 percent of non-indigenous people. G. Psacharopoulos and H.A. Patrinos, *Los pueblos indígenas y la pobreza en América Latina: un análisis empírico* (Indigenous peoples and poverty in Latin America: an empirical analysis), *Estudios sociodemográficos en pueblos indígenas*, Serie E, No. 40 (LC/DEM/G.146), Santiago de Chile, División de Población, Centro Latinoamericano y Caribeño de Demografía (CELADE), 1994.

<sup>144</sup> UNDP, *La fuerza incluyente (The inclusive force)*, p. 125.

<sup>145</sup> Ibid.

<sup>146</sup> UNDP, *Human Development Report 2000* (New York: Oxford University Press, 2000), pp.257-258.

<sup>147</sup> Instituto Nacional de Estadística (INE) (National Statistics Institute). *Encuesta Nacional de Salud Materno Infantil 1998-1999 (National Maternal-Infant Health Survey 1998-1999)* (Guatemala City: INE, July 1999). Ladina, or non-indigenous, women have an average of 4.3 children.

100,000 live births, among the highest in the region.<sup>148</sup> The overall under-five mortality rate is sixty-five per 1,000 live births, but there is significant ethnic disparity. Among indigenous children, the under-five mortality rate is seventy-nine per 1,000 live births, while for non-indigenous children, that figure is fifty-six per 1,000 live births.<sup>149</sup>

### Women in the Labor Force

Women's inequality in the workforce mirrors their inequality in the home and society more broadly. The Guatemalan labor code unambiguously prohibits employers from specifying sex, race, ethnicity or civil status in job announcements in most cases, and any differentiation between single and married women and/or women with family responsibilities.<sup>150</sup> However, until 1998, the Guatemalan Civil Code gave the male spouse the authority to deny his wife the right to engage in activities outside the home; until 1999, the code stated that women could only work outside the home "when this does not prejudice the interests and care of the children or other attentions in the home."<sup>151</sup> These provisions were repealed after the Inter-American Commission on Human Rights determined that they, as well as other provisions, violated articles 1.1, 2, 17 and 24 of the American Convention on Human Rights.

Women's participation in the economically active population (EAP) has increased significantly over the past decade. In 1989-1990, women

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<sup>148</sup> United Nations Fund for Children (UNICEF), "Country Statistics," <http://www.unicef.org/statistics> (August 28, 2000).

<sup>149</sup> UNDP, *Human Development Report 2000*, p. 111.

<sup>150</sup> Guatemalan Labor Code, Article 151 (a) and (b). The article allows for exceptions based on the "nature" of the job. Employers in these cases must receive prior authorization from the Labor Inspectorate and the National Office on Women. The Guatemalan Constitution also proscribes discrimination based on marital status (Article 102(k)). Notwithstanding these prohibitions, Human Rights Watch researchers consistently found job announcements that were sex specific in their requirements in the three major national daily newspapers.

<sup>151</sup> Guatemalan Civil Code, Articles 114 and 113, respectively. The Constitutional Court of Guatemala upheld these and other articles in a 1993 decision, arguing that they were not discriminatory against women: "In marriage there is a role for each of the spouses, those that are determined by the State within the traditional Guatemalan values and the diversity of conceptions, customs and national beliefs in relation to marriage. The State has regulated the institution [of marriage] with precise norms to give certainty and legal security to each of the spouses." Constitutional Court, Case No. 84-92 (June 24, 1993), *Gaceta de la Corte de Constitucionalidad*.

constituted only 25.5 percent of the EAP<sup>152</sup> while their participation in 1998-1999 was estimated at 35.2 percent.<sup>153</sup> A decade ago, Mayan women represented only 19 percent, while ladina women constituted 27 percent of the EAP.<sup>154</sup> No recent figures are available for comparison. Women are concentrated primarily in the services sector, where they constitute 74 percent. Women are only 17 percent of the industrial workforce, and just 8 percent of the agricultural workforce, according to the latest available statistics.<sup>155</sup>

The increase in women's participation has occurred primarily in the least guaranteed, least protected sectors of the economy. Indeed, the only sectors in which women predominate are the informal sector, where women constitute 55 percent of the workforce, and paid domestic work, where women constitute almost 98 percent of the workforce.<sup>156</sup> As is occurring with women's participation in the workforce all over Latin America, Guatemalan women's participation in the formal sector has increased in manufacturing/industry due to the expansion of the nontraditional export sector, particularly the offshore apparel assembly.<sup>157</sup>

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<sup>152</sup> Facultad Latinoamericano de Ciencias Sociales (FLACSO) (Latin American Faculty of Social Sciences), "Mujeres Latinoamericanas en Cifras" (Latin American Women in Statistics), <http://www.eurosur.org/FLACSO/mujeres/guatemala/trab.htm> (January 27, 2000).

<sup>153</sup> INE. *Encuesta Nacional de Ingresos y Gastos Familiares 1998-1999 (National Survey of Family Income and Expenditures)*, p.38. This figure includes workers age seven and above. Another source claims that there has been an eight percent annual growth in women's participation in the workforce between 1990 and 1998. UNDP, *La fuerza incluyente*, (The inclusive force), Graph 3.10, p.55.

<sup>154</sup> FLACSO, "Mujeres Latinoamericanas en Cifras" (Latin American Women in Statistics).

<sup>155</sup> Women in Development Network (WIDNET), "Statistics – Latin America and the Caribbean: Labour," <http://www.focusintl.com/statr4a4.htm> (January 27, 2000).

<sup>156</sup> UNDP, *La fuerza incluyente* (The inclusive force), p.55. The Guatemalan governmental statistical institute's yearly National Survey of Family Income and Expenditures, on which these figures are based, considers all employees of businesses with fewer than five workers to be part of the informal sector. This definition mirrors that adopted by the ILO: the formal sector is composed of those employed in businesses with over five workers, as well as independent and technical professionals.

<sup>157</sup> The Economic Commission for Latin America and the Caribbean (ECLAC) found that women's participation in the labor force throughout the region has increased significantly in the past decade, but that this growth has been primarily in insecure jobs rather than high-quality employment. ECLAC/Women and Development Unit, *The challenge of gender equity and human rights on the threshold of the twenty-first century* (Santiago, Chile: ECLAC, May 2000), p. 25.

Guatemalan women with little or no education or vocational training have few options for salaried work. A traditional option has been paid domestic work in private households; a more recent option has been work in the maquilas. In the former case, young women and girls have long traveled from rural villages to work in homes in the capital and other urban areas. Historically, Mayan women have swelled the ranks of the domestic workforce and, even though the government claims they now constitute only half of all domestic workers, continue to be identified with paid domestic help. In the latter case, the advent of the maquila sector in the 1980s meant a boom in factory jobs for women, particularly in the capital and the surrounding area. Women are the majority of maquila workers, due to a combination of employer preference for a female workforce and the appeal for young women of a job that would provide an alternative to domestic and agricultural work.

Maquilas and domestic work are essentially competing for the same class of workers. This fact has been trumpeted by industry promoters to illustrate the benefits of the maquila revolution. A U.S. Agency for International Development (USAID) official in 1991 told an academic researcher that “a common progression from field hand or domestic workers to maquila worker exists where young women may begin as maids but be drawn to maquila factories because of the better pay, conditions, and enhanced freedom.”<sup>158</sup> Nearly ten years later, a Guatemalan business leader explained to Human Rights Watch that the maquila sector provides women the chance “to go from making *tortillas* in their homes to domestic work to the maquila to other opportunities...to have a [better] future.”<sup>159</sup>

### **Domestic Workers**

Domestic work is an old profession in Guatemala. Here, as in the rest of Latin America, domestic service has been an important category of work since the colonial period. The current demand for domestic workers is fairly high and widespread, though subject to fluctuations according to the general state of the economy. At least 2 percent of the economically active population in Guatemala is engaged in paid domestic work.<sup>160</sup> In 1967, there were

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<sup>158</sup> Petersen, *Maquiladora Revolution*, p.45.

<sup>159</sup> Human Rights Watch interview, Marco Antonio Rosales, director, Guatemalan Nontraditional Products Exporters Association (Asociación Gremial de Exportadores de Productos No Tradicionales) (AGEEXPORT), Guatemala City, June 21, 2000.

<sup>160</sup> UNDP, *La fuerza incluyente (The inclusive force)*, p.54. The UNDP calculated this figure using data from the governmental *Encuesta Nacional de Ingresos y Gastos Familiares 1998-1999 (National Survey of Family Income and Expenditures 1998-1999)*.

reportedly 61,548 domestic workers; the ILO estimates that now there could be as many as 300,000 in the whole country.<sup>161</sup> Not just upper class, but also middle class and even working class families employ some kind of paid domestic help.

Paid domestic work in Guatemala shares characteristics common to the occupation around the world.<sup>162</sup> First, this work is almost invariably performed by women. Second, the work is strongly associated with a particular ethnic group. Third, domestic workers are often migrants, and therefore isolated in their new environment. Fourth, the work is situated within the private sphere, largely unregulated and shielded from public scrutiny. Finally, domestic servants, as a category of workers, enjoy fewer legal protections than other workers. Taken together, these characteristics give rise to increased vulnerability to abuses.

Domestic work is considered to be a natural extension of women's role in society: the maintenance of the home and family. Indeed, nearly 98 percent of all domestic workers in Guatemala are women (the remaining 2 percent of male domestic employees are engaged in tasks identified with masculinity, such as driving cars). Paid domestic workers essentially perform for wages the tasks the woman of the house is socially expected to perform for free. Because it takes place in the home, is performed by women, and is normally non-remunerated, domestic work is considered to be unskilled and menial labor. This devalued status translates into lower pay and fewer guarantees for women who perform such tasks for remuneration.

In Guatemala, domestic work is also identified with a particular ethnic group. Mayan women have always constituted a significant portion of the domestic worker labor force. According to 1999 government statistics, the most recent data available at the time of writing, currently half of all domestic

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The total economically active population in Guatemala for that time period was 4, 207, 946. Two percent of this figure is 84,159.

<sup>161</sup> International Labor Organization (ILO). The Employment and Conditions of Domestic Workers in Private Households, (Geneva: ILO, March 1970), D.11 1970, mimeograph; Sean Loughna and Gema Vicente, *Population issues and the situation of women in post-conflict Guatemala* (Geneva: ILO, 1997), p. 34. The much higher estimate for the number of domestic workers may reflect the fact that the government does not have a system in place for registering these workers and therefore the actual number of people performing these jobs may be much higher than estimated in the governmental survey and by the UNDP.

<sup>162</sup> For a more in-depth discussion, see Tanya Lovell Banks, "Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate," *3.J. Gender Race & Just.* 1, (Fall 1999), p. 4.

workers in Guatemala are indigenous.<sup>163</sup> Organizations working with domestic workers insist that the actual figure is much higher, perhaps as high as 70 percent.<sup>164</sup> In the collective imagination, Mayan women are so identified with domestic service that one Guatemalan intellectual explained that, “every Mayan woman is frequently considered to be or to have been a ‘servant’ or is treated or seen as one.”<sup>165</sup>

Most domestic workers migrate from rural villages to work in urban households. Their status as migrants adds another dimension to their dependency on the employer, and their vulnerability to abuses. Uprooted from their communities, often young and with no support network, domestic workers know little about how to navigate urban life or negotiate their employment conditions. Mayan women are at a particular disadvantage. Father Julián Oyeles, the director of Conrado de la Cruz Project (*Proyecto Conrado de la Cruz*), an organization that provides direct services and education to domestic workers, explained:

When a girl of fourteen arrives to ask for a job, with all her ingenuity, her own world view and language, she encounters great obstacles to communication, a situation which is taken advantage of to lay the foundation and principles of servitude...This young woman’s boss will define the salary she earns, the work she does, her working hours, the days she can go out, where she can go and even what language she should speak in the home and how she should dress.<sup>166</sup>

Domestic workers do not have their own union in Guatemala, nor is any existing trade union doing any kind of organizing among domestic

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<sup>163</sup> UNDP, *La fuerza incluyente (The inclusive force)*, p.55. UNDP calculation based on government statistics.

<sup>164</sup> Human Rights Watch telephone interview, Imelda Hernández, director, CENTRACAP, Guatemala City, November 3, 2000.

<sup>165</sup> Amanda Pop Bol, “Racismo y Machismo: Deshilando la opresión,” (“Racism and Machismo: Unraveling Oppression”) in Morna Macleod and M. Luisa Cabrera Pérez-Armiñan, eds., *Identidad: Rostros sin Máscara. Reflexiones sobre Cosmovisión, Género y Etnicidad (Identity: Faces without Masks. Reflections on Cosmovision, Gender and Ethnicity)* (Guatemala City: Editorial Maya Nojib’sa, 2000), p.129.

<sup>166</sup> “Domestic Workers Build Self-respect in Sunday Workshops,” CERIGUA Weekly Briefs #28, July 20, 1998.

workers.<sup>167</sup> Instead, these workers gather together through a handful of nongovernmental and faith-based associations. The Support Center for Household Workers (*Centro de Apoyo para las Trabajadoras de Casa Particular* - CENTRACAP) was founded in 1991 to improve the plight of domestic workers. In recent years, CENTRACAP has focused its energies on lobbying Congress to pass a special law in favor of domestic workers' rights. San Benito House (*Casa San Benito*) and Conrado de la Cruz Project are two organizations run by the Catholic Church that provide a variety of direct services to domestic workers. While San Benito House is focused exclusively on domestic workers, of all ages, Conrado de la Cruz specializes in the needs of younger workers, and includes in their programs maquila workers as well as street vendors. All three organizations offer free classes, ranging from literacy to guitar and sewing lessons. These organizations have formed a loose coalition to promote legislative reform on behalf of domestic workers' labor rights.<sup>168</sup>

Every year, despite the well-known abuses, hundreds, if not thousands, of young Guatemalan women seek employment as domestic workers for the first time. Some who might otherwise have sought jobs in private households, however, are now entering factories instead. The motives for choosing maquilas over domestic service or vice versa are as varied as the women workers themselves. Unfortunately, no matter which they choose, these workers face sex discrimination.

### **Maquila Workers**

The emergence of the maquila sector in Guatemala presented an alternative to domestic work to thousands of women. While in the first years, primarily ladina and urban women joined the maquila workforce, indigenous women (and men) from rural areas are now increasingly present in the factories. The maquila boom has thus been applauded as an important source of employment for women, bringing not only economic improvements, but also

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<sup>167</sup> A survey of fifty-seven national centers and 160 trade unions conducted by the ILO found that few prioritize organizing atypical workers. The main problems these unions cited were: legal barriers, threat of reprisals by hostile employers, lack of awareness of atypical workers of the benefits of unionization, resistance from 'core' union members, and the cost of member drives. ILO/Gender Promotion, "The Role of Trade Unions in Promoting Gender Equality and Protecting Vulnerable Women Workers. First Report of the ILO-ICFTU Survey," <http://www.ilo.org/public/english/employment/gems/workers/index.htm> (September 26, 2000).

<sup>168</sup> Two other organizations, Casa San José and Casa María, also belonged to the coalition when it was first established in 1998.

enhanced freedom and greater opportunities for advancement to their lives. In reality, conditions of employment, while clearly quite different from those in domestic work, continue to be disadvantageous in the maquilas. Human Rights Watch found widespread sex discrimination in the maquila sector, in the form of questions or testing to determine reproductive status, post-hire penalization of pregnant workers, and failure to enforce maternity protections. Some generalized abuses have gender-specific consequences. Although maquilas have the legal obligation to register workers with the national social security system—a public health care system for employees—many maquilas fail to do so, while still discounting the worker contribution. Although factories can be fined and even closed down for this blatantly illegal practice, ineffective monitoring by the social security system itself means that most factories never suffer any consequences. Even when they are affiliated with the system, many workers are unable to get permission from their employers to seek health care. This means that pregnant workers may not receive the prenatal care they need.

While the first piece of legislation to promote export-oriented business was passed in the mid-1960s, the export-assembly industry known as the maquiladora sector did not become firmly established in Guatemala until the mid-1980s.<sup>169</sup> Maquilas, as they are referred to in Guatemala, are responsible for the least skilled and most labor-intensive stage of production on the global assembly line. In the apparel industry, the most prevalent in Guatemala, predesigned and precut fabric is assembled in the maquilas, then folded and packaged for shipment, generally for sale in the U.S. market.

In 1989, Congress adopted Decree 29-89 that established the current legal regime for the operation of freestanding maquilas in Guatemala. National and foreign investors enjoy a ten-year tax holiday, and exemption from export and import tariffs on machinery, equipment, raw materials, and semifinished products. In contrast to prior regulations, this decree allows maquilas to subcontract among themselves.<sup>170</sup> A separate law passed the same year, Decree 65-89, allows for privately-owned and operated free trade zones where investors enjoy the same incentives and exemptions.<sup>171</sup> The vast majority of maquilas in

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<sup>169</sup> Four pieces of legislation governed the operation of maquilas in Guatemala before the current regime was established in 1989: Decree 443 (1966), Decree 30-79 (1979), Decree 80-82 (1982), and Decree 24-84 (1984).

<sup>170</sup> For a detailed discussion, see Petersen, *Maquiladora Revolution*. This arrangement makes monitoring extremely difficult.

<sup>171</sup> According to the Ministry of Economy, in 2000 there were eleven free trade zones registered under Decree 65-89, with a total of fifty-five maquilas. Human Rights Watch interview, Nora González M., director, Department of Industrial Policy, Ministry of Economy, Guatemala City, June 21, 2000. The vast majority of maquilas, therefore,

Guatemala are freestanding factories, not located inside any of the nation's free trade zones.

The maquila industry in Guatemala has grown impressively. Apparel exports skyrocketed from U.S. \$5.5 million in 1986 to U.S. \$407 million in 1999.<sup>172</sup> Over seven hundred maquilas were registered under Decree 29-89 with the Ministry of Economy in June 2000.<sup>173</sup> The number of maquilas operating in Guatemala can change almost daily. Guatemalan law allows maquila owners to close shop and easily reopen under a new name. Ninety percent of maquilas in Guatemala produce apparel, primarily for the U.S. market.<sup>174</sup> The apparel export business group, VESTEX, boasts 255 apparel maquilas as members. The majority, 145, are owned by South Koreans; seventy-seven are Guatemalan-owned; eighteen are U.S.-owned; and eleven are owned by investors of other nationalities.<sup>175</sup>

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operate outside these zones. Human Rights Watch researchers met with workers in maquilas registered under Decree 29-89.

<sup>172</sup> AGEXPORT/VESTEX mimeograph, given to Human Rights Watch on June 21, 2000.

<sup>173</sup> Directorio de Empresas Calificadas bajo el Decreto 29-89 (Directory of Qualifying Businesses under Decree 29-89), Department of Industrial Policy, Ministry of Economy mimeograph, June 21, 2000.

<sup>174</sup> Human Rights Watch interview, Nora González M., director, Department of Industrial Policy, Ministry of Economy, Guatemala City, June 21, 2000. One of the factories mentioned in this report, Ventas Unidas, S.A., produces Pierre Cardin for the local market only; it does not export Pierre Cardin clothing to the United States or anywhere else.

<sup>175</sup> AGEXPORT/VESTEX mimeograph, given to Human Rights Watch on June 21, 2000. The influx of South Korean capital in the early to mid-1980s was decisive in the development of the sector. According to Petersen, a combination of domestic labor unrest, increased foreign competition, and U.S. import quotas on Korean-manufactured apparel in mid-1980s spurred South Korean capital to seek investment opportunities abroad. Guatemala was a good choice because the two countries had good diplomatic relations and the apparel industry was underdeveloped (Petersen, *Maquiladora Revolution*, pp. 143-145). Although labor rights violations have been documented throughout the industry, many Guatemalans believe that South Koreans commit the worst abuses. A researcher into the early years of the maquila boom noted that the presence of Korean factories had already "set off a wave of racist sentiment among both Guatemalan workers and business leaders." (Petersen, *Maquiladora Revolution*, p.8). In the year 2000, when Human Rights Watch conducted its research, this sentiment remained widespread not only among workers, but also government officials, labor rights activists, and women's rights activists. South Koreans are stereotyped as ignorant and disrespectful of Guatemalan culture, cruel and verbally abusive, and the conditions in South Korean maquilas are perceived to be more dehumanizing than in factories operated by other nationalities.

At the time of this writing, only one labor union, FESTRAS, is organizing in the maquilas. Previous efforts to form labor unions in the maquila sector have met with devastating resistance from the industry as a whole and, at best, government negligence. Unionization efforts have been countered with mass dismissals, intimidation, indiscriminate retaliation against all workers, and plant closings. Although some unions have been formed in some maquilas, in none of these factories have union members emerged unpunished by management. The only experience of a collective bargaining agreement, at a plant owned by the U.S. apparel company Phillips-Van Heusen (PVH), was terminated when PVH closed the plant, citing economic constraints.<sup>176</sup>

Three women's rights organizations based in Guatemala City have programs with maquila line operators. The Association of Women in Solidarity (*Asociación de Mujeres en Solidaridad* – AMES), Women for the Betterment of the Family (*Grupo Feminino Pro-Mejoramiento de la Familia* – GRUFEPROMEFAM), and the Center for Human Rights Legal Action (*Centro de Acción Legal de Derechos Humanos* – CALDH) all conduct labor rights education workshops. AMES and GRUFEPROMEFAM have programs devoted to reproductive rights and family planning, and AMES runs a medical clinic providing obstetric and gynecological care. CALDH runs a legal clinic, with one full-time lawyer charged with offering legal advice to women maquila workers and taking cases through the Ministry of Labor system. A special ILO program, the Project for Women Working in the Maquila Sector, also conducts training workshops with maquila employees, on subjects such as labor rights and reproductive health. In keeping with the ILO tripartite structure, the project was designed to target not only workers, but also government officials and employers.

### **Maquilas and the United States**

The United States has played a key role in the development and expansion of the maquila sector in Guatemala. Throughout Mexico, Central America, and the Caribbean, the United States government, through the Agency for International Development (USAID), has promoted nontraditional exports as an engine for growth and industrial development since the 1970s.<sup>177</sup> USAID began implementing its export-oriented development assistance in Guatemalan in the mid-1980s, when U.S. aid to Guatemala was reinstated following the election of a civilian president. Since that time, USAID has provided critical

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<sup>176</sup> See Human Rights Watch, *Corporations and Human Rights: Freedom of Association in a Maquila in Guatemala*, (New York: Human Rights Watch, 1997).

<sup>177</sup> Petersen, *Maquiladora Revolution*, pp.20-36.

financial and technical assistance to the Guatemalan Nontraditional Products Exporters Association (*Asociación Gremial de Exportadores de Productos No Tradicionales* – AGEXPORT). In 1990, USAID funded over four-fifths of the organization's budget.<sup>178</sup> Throughout the 1990s, USAID continued to provide general, unearmarked funding to AGEXPORT. In 1999, the agency signed a cooperative agreement with the business group for a total of U.S. \$2,252,010 to fund a variety of AGEXPORT activities, with a primary focus on nontraditional agricultural exports. Current funding does not support any programs with the apparel manufacturing sector.<sup>179</sup>

Today, the United States is Guatemala's most important trading partner. Total U.S. imports from Guatemala in 1999 were U.S. \$2.2 billion, with apparel imports accounting for U.S. \$1.2 billion of that total. In 2000, total U.S. imports amounted to U.S. \$2.6 billion while apparel imports registered at U.S. \$1.5 billion.<sup>180</sup>

Numerous U.S. companies subcontract apparel production to maquilas in Guatemala, including large, well-known corporations such as The Gap, Liz Claiborne, Inc., Target Corporation, and The Limited. It is extremely difficult to ascertain what labels are being produced at any given time. U.S. companies are under no legal obligation to disclose their outsourcing partners and few maquila workers have the ability to track which labels they are producing. Only a handful of maquilas in Guatemala are owned by U.S. citizens. The last U.S. company to directly manage an assembly plant in Guatemala, the shirt company PVH, closed the plant in December 1999.

#### ***Trade Incentives and U.S. Trade Law***

The apparel maquila sector is expected to grow significantly in the coming years, due in large part to a new trade arrangement with the United States. In October 2000, President Clinton officially designated Guatemala as a beneficiary country under the Caribbean Basin Trade Partnership Act (CBTPA). The CBTPA, passed by Congress under the Trade and Development Act of 2000 in May 2000, extends duty-free and quota-free treatment on imports of certain apparel items from Guatemala (among other countries) that were previously

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<sup>178</sup> Ibid., p.26

<sup>179</sup> Communication (email) from Thomas Kellermann, Guatemala desk officer, USAID, received as attachment March 12, 2001.

<sup>180</sup> United States Census Bureau/Foreign Trade Division, "FT900 – U.S. International Trade in Goods and Services," <http://www.census.gov/foreign-trade/www> (March 5, 2001).

excluded under another trade act, the Caribbean Basin Initiative (CBI).<sup>181</sup> To be eligible, the apparel must be assembled from fabric made and cut in the United States, or fabric made in the United States from U.S.-made yarn.<sup>182</sup> Luis Oscar Estrada, the head of VESTEX, estimates that the trade deal will spur the creation of 15,000 new jobs.<sup>183</sup>

The CBTPA, like all U.S. trade programs, is conditioned on respect for what the United States has identified as internationally recognized worker rights. The United States understands the following rights to fall into that category: freedom of association; the right to organize and bargain collectively; the prohibition on the use of forced or compulsory labor; a minimum age for employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. These were first included in the 1984 Renewal Act of the General System of Preferences (GSP), and have been part of CBI since 1990.<sup>184</sup> The elimination of the worst forms of child labor, the subject of a recent ILO Convention, is also included in the conditionality in CBTPA.

The U.S. list of worker rights is similar to those designated by the ILO as fundamental human rights, except in one crucial aspect: the U.S. does not include "equality of opportunity and treatment."<sup>185</sup> This right is embodied most clearly in ILO Convention No. 111 concerning Discrimination in Employment and Occupation (Discrimination Convention). The ILO recently declared nondiscrimination in employment and occupation one of the four core labor rights.<sup>186</sup> According to a labor rights activist involved in the debate over worker

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<sup>181</sup> Office of the United States Trade Representative (USTR), Press Release: "USTR Announces AGOA/CBI Country Designations," October 2, 2000. There are twenty-three other Latin American and Caribbean countries designated under the CBTPA.

<sup>182</sup> Trade and Development Act of 2000 (H.R. 434), Title II, Subtitle B, Sec.211.

<sup>183</sup> Luis Enrique González Pérez, "Incluyen a Guatemala en beneficios de la ICC" (Guatemala is included in CBI benefits"), *Siglo Veintiuno*, October 3, 2000.

<sup>184</sup> General System of Preferences Renewal Act, Pub. L. No. 98-573, Section 502(a)(4), Stat.3018 (1984). The GSP is a worldwide trade act; Caribbean Basin Economic Recovery Act, amended by Customs and Trade Act of 1990, 19 U.S.C, Sections 2701-2706 (West. Supp.1991).

<sup>185</sup> For an in-depth discussion, see Karen F. Travis, "Women in Global Production and Worker Rights Provisions in U.S. Trade Laws," *Yale Journal of International Law* 17 (Winter, 1992): 173-194.

<sup>186</sup> 1998 Declaration on Fundamental Principles and Rights at Work. The other core principles are freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, and the effective abolition of child labor.

rights language in the GSP Renewal Act, the labor coalition faced at the time a “classic dilemma of legislative compromise.”<sup>187</sup> Although the Democratic Party controlled the U.S. Congress at the time, the presidency was in the hands of Republican Ronald Reagan. The original draft of the worker rights language in the GSP Renewal Act included nondiscrimination, but Republican members of Congress threatened to have Reagan veto the act if the nondiscrimination language remained.

Strong worker rights language in trade programs can prove an effective tool in leading states to take measures to protect labor rights or face revocation of preferential treatment. The GSP has a formal review mechanism, up until recently only triggered by petitions from concerned groups, by which the Office of the U.S. Trade Representative (USTR) must determine whether a given government is taking appropriate steps to ensure respect for the five internationally recognized worker rights. The CBI has no such formal mechanism, nor does the newer CBTPA.

Guatemala was recently singled out for special scrutiny for labor rights problems. The USTR announced in early October 2000 the unprecedented step of a self-initiated review of Guatemala’s standing under the GSP.<sup>188</sup> The focus of the review was on anti-union violence “and other aspects of internationally recognized worker rights.”<sup>189</sup> The USTR also placed Guatemala under close monitoring with respect to worker rights as part of its designation under the new CBTPA. This undesirable distinction was placed on Guatemala to pressure it further to take steps toward resolving crimes against labor leaders, reforming the labor code, and ensuring respect for intellectual property.<sup>190</sup> On May 31, 2001, the USTR lifted the review without imposing sanctions, citing the adoption of labor code reforms in late April and early May as well as steps taken to address violence against workers.<sup>191</sup>

Because freedom from discrimination is not included in these U.S. trade programs as an “internationally recognized worker right,” there is little

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<sup>187</sup> Human Rights Watch telephone interview, Lance Compa, Ithaca, New York, October 11, 2000.

<sup>188</sup> “Caribbean Basin Trade Partnership Act: Customs Procedure Designation,” Office of the United States Trade Representative (USTR) Press Release, October 5, 2000.

<sup>189</sup> Ibid.

<sup>190</sup> USTR press release, “USTR Announces,” October 2, 2000.

<sup>191</sup> “USTR Concludes Review of Guatemala’s Labor Practices and Trade Preferences Under U.S. Law,” Office of the United States Trade Representative (USTR) press release, May 31, 2001.

opportunity to incorporate concerns about discrimination on the basis of sex in the maquilas into these reviews. H.J. Rosenbaum, then assistant U.S. trade representative, explained, “We must stick to the statute, and the statute is fairly expansive, and we can be somewhat flexible, but now it doesn’t have language on discrimination...[Guatemala] is dysfunctional in many respects, [and] we have to be somewhat selective. We recognize the importance of the issue, [but] taking it on as our number one or two priority, that’s not going to happen.”<sup>192</sup> Until U.S. trade acts include meaningful conditionality related to nondiscrimination, they will effectively protect and subsidize practices around the world that blatantly discriminate women in the labor force.<sup>193</sup>

### **Peace Accords**

In January 2001, Guatemalans began the fifth year of peace following a devastating thirty-six-year armed conflict in which over 200,000 people were killed or “disappeared,” at least 250,000 children were orphaned, and well over one million people were displaced. The peace accords that ended the armed conflict cover a wide range of issues, including human rights, the rights and identity of indigenous peoples, economic reform, the role of the military in a democratic society, the return and reintegration of the displaced, and demobilization of guerrilla combatants and soldiers. The accords continue to constitute an important framework for action for the government, and a frame of reference for civil society. Due to the energetic advocacy of organized women’s and indigenous rights groups, the accords contain both general and specific promises to improve the status of both indigenous and non-indigenous women in Guatemala.

The government and the Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca* - URNG, its Spanish acronym), the umbrella guerrilla group, signed the Agreement on Social and Economic Aspects and Agrarian Reform (Social and Economic Agreement) in 1996, recognizing that the elimination of discrimination against women is essential for Guatemala’s economic and social development and obliging the government to revise national laws and regulations to eliminate discrimination against women

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<sup>192</sup> Human Rights Watch interview, H.J. Rosenbaum, assistant U.S. trade representative, Washington, D.C., November 28, 2000.

<sup>193</sup> The absence of a nondiscrimination condition also means that there is no leverage to examine discrimination based on race, religion, language, political or other opinion, national or social origin, property, birth or other status.

in all spheres: economic, social, cultural, and political.<sup>194</sup> The government committed itself in particular to “guaranteeing the right of women to work” and “revising labour legislation to guarantee equality of rights and opportunities between men and women.”<sup>195</sup> The Agreement specifically calls for enacting laws to protect the rights of domestic workers.<sup>196</sup>

The Agreement on the Identity and Rights of Indigenous Peoples (Indigenous Rights Agreement) recognizes “de facto levels of discrimination, exploitation and injustice” against indigenous people in Guatemala and lays out concrete steps toward eliminating this discrimination.<sup>197</sup> In a section devoted to the rights of indigenous women, the parties committed to “promote the dissemination and faithful implementation of the Convention on the Elimination of All Forms of Discrimination against Women,” among other steps.<sup>198</sup> The Indigenous Rights Agreement specifically commits the government to adopt legislation on sexual harassment.<sup>199</sup>

The peace process marked a pivotal moment in the growth of both the women’s movement and the indigenous rights movement in Guatemala. Older and more recently established organizations in both movements now face the challenges of a post-conflict period. As these groups struggle to find their voices, communication among them is often problematic. Civil society has several governmental interlocutors on women’s rights. The National Office on Women (*Oficina Nacional de la Mujer* – ONAM), created in 1981, is the oldest governmental entity charged with overseeing state policies on women’s rights. For years, women’s rights advocates have lobbied for the creation of a ministerial-level National Institute for Women, which would effectively replace ONAM as the central oversight body. Instead of this proposed institute, President Portillo created the Presidential Secretariat for Women (*Secretaría Presidencial de la Mujer*) in May 2000, as an advisory body located bureaucratically within the presidency.<sup>200</sup> The Office for the Defense of

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<sup>194</sup> Agreement on Social and Economic Aspects and Agrarian Reform (Social and Economic Agreement), signed May 6, 1996, Article 13(h).

<sup>195</sup> Ibid., Article 13(e) and (e)(ii).

<sup>196</sup> Ibid., Article 13(e)(iv).

<sup>197</sup> Agreement on Identity and Rights of Indigenous Peoples (Indigenous Rights Agreement), signed March 31, 1995, preamble.

<sup>198</sup> Ibid., Section II, B, 1(c).

<sup>199</sup> Ibid., Section II, B, 1(a).

<sup>200</sup> Governmental Accord No. 200-2000, Guatemala, May 17, 2000.

Women's Rights (*Defensoría de los Derechos de la Mujer*) has been part of the Human Rights Ombudsman's Office since 1991. It has a general mandate to promote and monitor the implementation of gender equality in all spheres: social, political, economic, and cultural. One of its objectives is to bring national law into full compliance with international human rights norms, as well as implementation of peace accord commitments with respect to women's rights. The Office for the Defense of Indigenous Women's Rights (*Defensoría de la Mujer Indígena*) was called for in the Indigenous Rights Agreement<sup>201</sup> and officially installed as part of the Presidential Commission on Human Rights (*Comisión Presidencial de Derechos Humanos*) on July 21, 1999. Finally, with respect specifically to working women, the Ministry of Labor has a Working Women's Unit (*Sección de Promoción y Capacitación de la Mujer Trabajadora*) charged with promoting women's equal participation in the workforce, educating working women about their rights, and fostering understanding within the labor ministry of gender-specific labor rights.

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<sup>201</sup> Indigenous Rights Agreement, Section II, B, 1 (b).

## **V. GENDER-SPECIFIC LABOR RIGHTS VIOLATIONS IN THE DOMESTIC WORK AND MAQUILA SECTORS**

### **Domestic Workers: Legal Discrimination and Daily Exploitation**

*They [employers] don't notice that you're about to die from working so hard. Working sixteen hours a day isn't normal.*  
-- Elisabeth González, domestic worker<sup>202</sup>

*It's become more sophisticated, but the structure of slavery persists.*  
-- Father Julián Oyeles, advocate for domestic workers<sup>203</sup>

*What is being asked for is not a privilege, but rather a just labor demand.*  
-- Agerita Gil, advocate for domestic workers.<sup>204</sup>

Human Rights Watch interviewed twenty-nine domestic workers in the course of this research. The women we spoke with share characteristics common to domestic workers in Guatemala. Nineteen of the workers we interviewed were indigenous, nine ladina (including one Salvadoran woman), and one of unknown ethnicity. Twenty-six workers had migrated to the capital, most at an early age, and almost all of them were live-in workers.<sup>205</sup> The average age in our sample was twenty-eight, with twenty-four out of the total between the ages of fifteen to thirty-five. The vast majority came from large, poor families involved in agricultural work. Only ten had completed elementary school; four had never attended school and were completely illiterate. For these women, "domestic work is at once a job and a shelter; it is a family and an activity that adapts readily to the female 'personality,'" according to one analyst.<sup>206</sup> Twelve of the workers had at least one child; the vast majority were

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<sup>202</sup> Human Rights Watch interview, Elisabeth González, Guatemala City, June 24, 2000. Unless otherwise noted, all names of women workers throughout this report have been changed to protect their privacy and to prevent retaliation. All ages in this report are the ages of the women at the time of the interview.

<sup>203</sup> Human Rights Watch interview, Father Julián Oyeles, Project Conrado de la Cruz, Guatemala City, May 30, 2000.

<sup>204</sup> "Una ley doméstica" (A Domestic Law), *Prensa Libre*, August 1, 1999.

<sup>205</sup> One of our sample was Salvadoran, while two were interviewed in a town in the department of Chimaltenango where they live and work.

<sup>206</sup> Mary García Castro, "What is Bought and Sold in Domestic Service? The Case of Bogotá: A Critical Review," in *Muchachas No More*, p.121.

single mothers. Once in the big city, these young women find their jobs through informal networks. Many of the workers Human Rights Watch spoke with had secured employment through friends or relatives who had already made the transition to the city. Others, lacking these contacts, simply went knocking on doors or approached women in markets to offer their services. A few had found positions through newspaper advertisements. At least two associations, San Benito House and CENTRACAP, help place workers in households and negotiate the terms of employment.

The domestic work sector is extremely fluid. Because of the informal nature of the labor contracts, employers can, and do, fire domestic workers without notice. In the case of live-ins, firing automatically means losing one's place of residence. Domestic workers themselves will also leave jobs without serving notice, generally because the pay is too low, the treatment is bad, a particular task in that household is considered too onerous (e.g. caring for the children), they have found employment with better conditions elsewhere, or they have been the victim of sexual harassment or assault. Almost all of the workers Human Rights Watch spoke with had worked in more than one household, while many had worked in quite a few.

Significant levels of verbal and emotional abuse constitute one of the main reasons domestic workers seek employment in a different household. Almost all of the domestic workers we spoke with complained of mistreatment on the job. The abuse often has strong racial overtones. Elisabeth González, a K'iche' woman who had been working as a domestic for five years, stated that "[i]ndigenous women have a bad time of it, they are humiliated a lot because of the *traje* [traditional dress], they call us 'Indian.' They take us all for idiots and illiterates...The illiterate women working as a domestic is more fried than [a piece of] chicken."<sup>207</sup> Jesica Gutierrez García, also K'iche', said her worst job was in a household with an elderly woman who repeatedly called her "Indian, mule, stupid." According to Gutierrez, this woman treated her like a dog and always yelled at her. She refused to call Gutierrez by her name, instead referring to her as "*muchacha*".<sup>208</sup> This word, which literally means girl, is commonly used to refer to domestic workers. Julia Domingo, also K'iche', was thrown out late at night after a strong disagreement with her boss, who told her "you're an Indian, you're useless." Domingo said that her employer had regularly told her she was "a dirty Indian, an illiterate."<sup>209</sup>

<sup>207</sup> Human Rights Watch interview, Elisabeth González, Guatemala City, June 24, 2000.

<sup>208</sup> Human Rights Watch interview, Jesica Gutierrez García, Guatemala City, June 18, 2000.

<sup>209</sup> Human Rights Watch interview, Julia Domingo, Guatemala City, June 4, 2000.

Several domestic workers reported that the children in the household were particularly abusive, and their parents unlikely to correct the behavior. “It’s there, in the family, when the racist training and education begins, with the maid,” according to social psychologist Amanda Pop Bol.<sup>210</sup> Victoria López, a Mam, had worked in the same household for five years. The family’s sons, aged sixteen, twenty-one, and twenty-six, were rude and abusive. “The boys are very aggressive when they ask for things, they use vulgar words, [like] ‘god damn it, you’re a shit’ or ‘I don’t like that shit.’”<sup>211</sup> Elisabeth González worked in a household with two girls, aged nine and seven. “The girls would say, don’t touch me because you are what you are, a maid and nothing more.” When she complained about this to the woman of the house, the woman got very angry with González and acted as if to strike her, but refrained.<sup>212</sup>

Many domestic workers complained of being given less food or food of lower quality than the family, and of not being allowed time to eat. Andrea Rodriguez Dorado, a thirty-three-year-old ladina from San Marcos, explained that the problem in her job was the lack of food. She had to prepare food for the couple she worked for, and was only given what was left over. “When I told the *señora* I was not getting enough food, she told me not to be a pig.”<sup>213</sup> Sandra Chicop, a seventeen-year-old Keqchikel woman from Chimaltenango, said, “To them [ladinos], it seems like we’re different people. You can tell at lunchtime, they don’t give us the same food. There’s so much indifference.”<sup>214</sup> Silvia Leticia Pérez, a seventeen-year-old Keqchikel woman, worked in one job when she was fourteen where she had only ten minutes to eat lunch and dinner during her seventeen-hour workday. Her employers gave her “a different class of food” than that they ate themselves, she recalled. “They said to me, go eat there, not here nearby. They treated me poorly because I wear *traje* [traditional dress].”<sup>215</sup> None of this surprised Pop, who conducts workshops on racism. “I ask [the

<sup>210</sup> Human Rights Watch telephone interview, Amanda Pop Bol, social psychologist, Guatemala City, November 17, 2000.

<sup>211</sup> Human Rights Watch interview, Victoria López, Guatemala City, June 18, 2000.

<sup>212</sup> Human Rights Watch interview, Elisabeth González, Guatemala City, June 24, 2000.

<sup>213</sup> Human Rights Watch interview, Andrea Rodriguez Dorado, Guatemala City, June 18, 2000. Many domestic workers refer to their employers as *señora* and *señor*; we have adopted this usage for the purposes of the report.

<sup>214</sup> Human Rights Watch interview, Sandra Chicop, Santiago Sacatepequez, June 18, 2000.

<sup>215</sup> Human Rights Watch interview, Silvia Leticia Pérez, Santiago Sacatepequez, June 18, 2000.

participants], let's see, in our house, where does the maid eat, and what does she eat, and when, and people get very uncomfortable.”<sup>216</sup>

As they move from household to household in search of better working conditions, pay, and treatment, domestic workers cannot escape the legalized discrimination written into the labor code.

#### **Wage and Hour Concerns**

Domestic servants work long, often unpredictable hours performing back-breaking tasks: fetching water, washing clothes (usually by hand), ironing, washing dishes, scrubbing and mopping floors, dusting, shopping, cooking, making beds, washing windows, walking dogs, and caring for children, among other tasks. The Guatemalan labor code states that domestic work is not “subject to...the limits of the workday.”<sup>217</sup> In effect, this means that domestic workers do not have the right to an eight-hour workday, as do most other Guatemalan workers.<sup>218</sup> The code stipulates that these workers must, however, be permitted ten hours rest every day (every twenty-four hours), eight of which must be at night and continuous, and two of which must be designated as mealtimes.<sup>219</sup> In other words, employers can legally obligate domestic workers to work for fourteen hours a day. Human Rights Watch found that, in reality, domestic workers averaged over fifteen hours per day, or over ninety hours per week.<sup>220</sup> The domestic workers we interviewed typically rose at 5:30 or 6 a.m., and worked with little or no break until 8 or 9 p.m.

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<sup>216</sup> Human Rights Watch telephone interview, Amanda Pop Bol, social psychologist, Guatemala City, November 17, 2000.

<sup>217</sup> Labor Code, Article 164; see also Governmental Accord No. 346, *Reglamento que determina los trabajos no sujetos a las limitaciones de la jornada ordinaria de trabajo* (Regulation that determines work not subject to the limits of the ordinary work day), December 21, 1960.

<sup>218</sup> Article 116 of the Labor Code stipulates the eight-hour workday/48-hour workweek. Article 124 of the Labor Code states that certain categories of workers shall have no longer than a twelve-hour workday, except in exceptional cases, in which these workers shall receive overtime for every hour worked beyond twelve per day. These are: employee representatives, those who work without immediate superior supervision, watchmen, those on commission who work outside the office, and “those workers who perform jobs which are not subject to the workday because of their indubitable nature.” The code does not explain what this clause means.

<sup>219</sup> Labor Code, Article 164(a).

<sup>220</sup> This figure is based on a six-day workweek. A 1991 study found that domestic workers averaged sixty hours per week. UNDP, *La fuerza incluyente (The inclusive force)*, p. 169.

For these long hours, domestic workers do not earn the minimum wage. Whereas Article 103 of the labor code gives all workers in Guatemala the right to a minimum wage “that covers their normal material, moral and cultural necessities, and which allows them to satisfy their obligations as heads of household,” domestic workers are excluded from this right. According to the Ministry of Labor, Articles 161 and 162 of the labor code establish that the wage of a domestic worker be decided between the employer and the worker.<sup>221</sup> The first of these articles simply defines what constitutes a domestic worker; the second states that except in agreed upon cases, the remuneration of domestic workers shall include, in addition to salary, room and board. An executive decree issued on November 30, 2000, to raise the minimum wage for other categories of workers, excludes explicitly domestic workers.<sup>222</sup>

Domestic employee wages vary considerably among households, and appear to be determined in part by the tasks the worker is hired to perform and in part by the income of the employer. While the majority of workers we interviewed appeared to earn approximately Q722 (U.S. \$96) per month, Human Rights Watch spoke with one live-in domestic worker who had recently earned as little as Q400 (U.S. \$53) per month, as well as to another who at the time of the interview was earning Q1,100 (U.S. \$147) per month.<sup>223</sup> None of the

<sup>221</sup> Communication (letter) from José Girón Cano and Jacqueline Ortiz Morales, Consejo Técnico y Asesoria Jurídica (Technical and Legal Counsel Department), Ministry of Labor, dated August 10, 2000, Dictamen 250/2000. See Appendix A, second paragraph. The only other workers in Guatemala who are excluded are apprentices and sailors. Letter from José Girón Cano and Marco Túlio De León Villagrán, Consejo Técnico y Asesoria Jurídica (Technical and Legal Counsel Department), Ministry of Labor, dated September 25, 2000, Dictamen 290/2000.

<sup>222</sup> Government Decree No. 838-2000, November 30, 2000, Article 3. The article states: “...non-agricultural activities are understood to be those included in the Major Divisions numbers 2 through 9 of the cited Classification [the United Nations International Standard Industrial Classification (ISIC)], with respect to the private sector, with the exception of domestic work.” Major Divisions 2-9 of ISIC are: Mining and Quarrying; Manufacturing; Electricity, Gas and Water; Construction; Wholesale and Retail Trade and Restaurants and Hotels; Transport, Storage and Communication; Financing, Insurance, Real Estate and Business Services; and Community, Social and Personal Services. Government Decree No. 020-2000, of January 6, 2000, which was in effect when this research was conducted, contains the same language.

<sup>223</sup> In 2000, the non-agricultural monthly minimum wage was around Q725 (U.S. \$97). This is based on a 25-day work month at Q29 (U.S. \$3.9) per day (Q23.85 was the minimum wage, and Q5.15 [U.S. \$0.68] was the incentive bonus). The vital basic basket (*canasta básica vital*) for a family of 5.38 people in October 2000 was estimated at Q2,105 (U.S. \$281). “Guatemala: Comparación entre salario mínimo y Bonificación Incentivo en el Sector No Agrícola y las Canastas Básicas de Alimentos (CBA) y Vital (CBV)” (“Guatemala: Comparison Between Minimum Wage and Incentive Bonus in the

domestic workers we spoke with had ever earned overtime pay. The following cases were typical.

- Sofia Martín López, a fifteen-year-old Mam from the department of San Marcos, migrated to Guatemala City in January 2000. As a domestic worker, she gets up at 5 a.m. every day to prepare breakfast for the household and she finishes her work around 10 or 11 p.m. For this, she earns Q500 (U.S. \$67) per month.<sup>224</sup>
- Elena Bax is a nineteen-year-old K'iche' who migrated from her town in the department of Totonicapán in 1998 to find work in a factory. She worked from October 1999-January 2000 as a domestic employee in between two maquila jobs. She earned Q500 (U.S. \$67) per month, working from 5:30 a.m. to 10:30 p.m. every day but Sunday. "I almost never got a rest. I cleaned, I washed, [and] I ironed." She had a half-hour for lunch, and a half-hour for dinner.<sup>225</sup>
- Victoria López, a thirty-five-year-old Mam from San Marcos, has been working as a domestic in Guatemala City for fourteen years. At a typical job, she worked from 6 a.m. to 8 or 9 p.m. every day. Every few weeks, the couple threw dinner parties, and López had to work until much later, often until 1 a.m. She was earning Q300 (U.S. \$57) per month by the time she left in 1991.<sup>226</sup>
- Elisabeth González, a twenty-year-old K'iche' from Totonicapán, came to Guatemala City on her own when she was fifteen. In the second job she held, she rose at 3 or 4 a.m. to start cleaning and preparing breakfast. She worked until 10 or 11 p.m. She left that job to begin working in another household, where again she had to get up at 3 or 4

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*Non-Agricultural Sector and the Basic Food Basket (CBA) and the Vital Basic Basket (CBV),*" MINUGUA figures, based on data from the Ministry of Labor and the National Statistics Institute (INE). Communication (email) from Ricardo Changala, verification officer, MINUGUA, February 5, 2001. Unless otherwise noted, all figures in this report are based on exchange rate U.S. \$1:Q7.50.

<sup>224</sup> Human Rights Watch interview, Sofia Martín López, Guatemala City, June 24, 2000.

<sup>225</sup> Human Rights Watch interview, Elena Bax, Guatemala City, June 20, 2000.

<sup>226</sup> Human Rights Watch interview, Victoria López, Guatemala City, June 18, 2000. Based on exchange rate U.S. \$1:Q5.30. This was the exchange rate in January 1993. Figures for 1991 were unavailable.

a.m. to collect water. She would work until 8:30 or 9 p.m. Where she is now, she works from 6 a.m. to 8 p.m. "I hardly ever rest, not even for a minute. There's no fixed time for meals. They interrupt me while I'm eating."<sup>227</sup> She earns Q700 (U.S. \$93) a month.

- Isabel Morabayer Rodriguez, a thirty-year-old ladina from the department of Santa Rosa, worked from 1989-1992 earning Q100 (U.S. \$19) per month. She shared a room with her employer and her employer's baby. Morabayer's workday began at 5 a.m. when she got up to make breakfast, and ended at 9 p.m. At her next job, where she stayed from 1992 to 1996, she earned Q250 (U.S. \$42) per month. There she also rose at 5 a.m. to make breakfast, worked all day, and went to bed at 9 p.m. She was fired when she asked for more money. Since September 1998, Morabayer has worked in a household where she works the same hours, 5 a.m. to 9 p.m., earning Q550 (U.S. \$73) per month.<sup>228</sup>
- Rosa Lopez Cruz, twenty-eight years old, migrated to Guatemala City in 1990 from the department of Jutiapa. She has been working off and on in the same household for ten years. She now earns Q900 (U.S. \$120) for a 5 a.m.-9 p.m. workday.<sup>229</sup>
- Marisol López Muñez is forty-three years old and has been working as a domestic for twenty-two years. She migrated from the department of Quiché in 1980 when the war was at its worst. She has now been working in the same household for eight years. She does everything, including caring for the children aged sixteen and eighteen. López gets up at 4:30 a.m. to prepare breakfast for the family. The children leave the house early, then López takes her employer, the personnel director in a maquila, her breakfast in bed. López's day finishes around 10 p.m., after she has served her employer a late dinner. She earns approximately Q800 (U.S. \$107) per month.<sup>230</sup>

<sup>227</sup> Human Rights Watch interview, Elisabeth González, Guatemala City, June 24, 2000.

<sup>228</sup> Human Rights Watch interview, Isabel Morabayer Rodriguez, Guatemala City, June 4, 2000. 1989-1992 earnings based on exchange rate U.S. \$1:Q5.3; 1992-1996 earnings based on exchange rate U.S. \$1:Q6 (the rate of exchange in December 1996).

<sup>229</sup> Human Rights Watch interview, Rosa López Cruz, Guatemala City, June 11, 2000.

<sup>230</sup> Human Rights Watch interview, Marisol López Muñez, Guatemala City, June 18, 2000.

The domestic employees interviewed by Human Rights Watch worked an average of 15.4 hours per day for an average of Q722 (U.S. \$96) per month.<sup>231</sup> Assuming these workers have four days off per month, this translates into Q27.70 (U.S. \$3.70) per day. This figure is slightly higher than the minimum wage for non-agricultural workers, set at Q23.85 (U.S. \$3.18) per day when this research was conducted.<sup>232</sup> This minimum wage, however, is based on an eight-hour workday, such that each hour worked is worth Q3 (U.S. \$0.40). After that, the overtime rate is time-and-a-half (Q4.5, or U.S. \$0.60). If domestic workers were afforded the same rights as other workers, they could be earning, using the averages above: Q23.85 (U.S. \$3.18) per day, plus Q33.30 (U.S. \$4.44) for overtime (7.4 hours at Q4.5 per hour). This adds up to a total of Q57.15 (U.S. \$7.62) per day, or Q1485 (U.S. \$198.12) per month. This is over double what the average domestic worker Human Rights Watch interviewed actually earns.

The Ministry of Labor interpretation of the labor code suggests that room and board is factored into the overall remuneration. As far as Human Rights Watch was able to ascertain, none of the workers we spoke with had any sense of whether or how much money was deducted from their monthly wages to cover for their housing or food costs. To our knowledge, no official guidelines exist for how much can be deducted, nor indeed for the quality of accommodation and food. Domestic workers encounter a wide variety of conditions in their different jobs, and there are no minimum standards established by the government to ensure health and safety measures are respected.

Domestic workers do not have the right to rest on Sundays or national holidays. Instead, the labor code states that these workers must enjoy six hours of additional rest on those days (on top of the mandatory ten hours of rest).<sup>233</sup> This means that domestic employees can in fact be required to work eight hours on Sundays and national holidays—the normal workday for most other Guatemalan workers. It is indeed customary to give domestic workers Sundays off. However, many employees perform chores for the household on their free day. They are often expected to prepare breakfast and clean up afterwards before they leave, and prepare dinner and clean up once they return in the

<sup>231</sup> This figure is based on complete data available for eighteen of the domestic workers interviewed.

<sup>232</sup> Government Decree No. 838-2000, adopted November 30, 2000, raised the minimum wage by 16 percent.

<sup>233</sup> Labor Code, Article 164(b).

evening. Rather than giving their domestic workers the whole day off, many employers set precise hours when the workers can leave and must return.

- Rosa López Cruz has been working in the same household for the better part of ten years, and she still does not get every Sunday free.<sup>234</sup>
- Sylvia Marcela García, a thirty-one-year-old K'iche' from the department of Uspantán, migrated to Guatemala City in 1993. She worked for two years in a household in the mid-1990s earning Q90 (U.S. \$15.5) per month for a 5 a.m.-9 p.m. workday. She had to make tortillas, do the cleaning and cooking, and look after the children. She did not know the city so she did not go out at all, and she did not have Sundays off. Her employers gave her permission only once in two years to travel to her hometown; they deducted the days she spent away from her monthly wage.<sup>235</sup>
- Sofia Martín López gets up at 6 a.m. on Sundays to prepare breakfast for the household. She leaves around 8 a.m. to enjoy her day off. When she returns that evening around 8 p.m., often she must prepare dinner, set the table, clear and wash the dishes, etc.<sup>236</sup>
- Andrea Rodriguez, ladina, now thirty-three, migrated to Guatemala City from San Marcos when she was nineteen years old. At her first job, in 1986, she worked from 5:30 a.m. to 9:30 p.m. and never had a day off. At her next job, from 1987-1990, Rodriguez did have Sundays free, but she was not permitted to leave the house until she had served the family breakfast, and she had to return by seven o'clock. Rodriguez remembers that on regular workdays she could not rest for five minutes without her employer telling her to get busy. "She said that she did not want to see me just 'sitting around.'"<sup>237</sup>
- Daniela Santos Pérez, a thirty-one-year-old ladina also from San Marcos, migrated to Guatemala City when she was fourteen. In 1996,

<sup>234</sup> Human Rights Watch interview, Rosa López Cruz, Guatemala City, June 11, 2000.

<sup>235</sup> Human Rights Watch interview, Sylvia Marcela García, Guatemala City, June 17, 2000. Based on exchange rate U.S. \$1:Q5.80 (the average rate of exchange for 1995).

<sup>236</sup> Human Rights Watch interview, Sofia Martín López, Guatemala City, June 25, 2000.

<sup>237</sup> Human Rights Watch interview, Andrea Rodriguez, Guatemala City, June 18, 2000.

she worked for a family of seven people, earning Q500 (U.S. \$83) per month, working 5 a.m. to 9 p.m. every day. She slept in the storage room. Because there was no washing machine, Santos had to wash all their clothes by hand. "It was horrible," she remembers. "I stayed working on Sundays also because there was so much work. Otherwise, I would never have caught up. Anyway, if I was in the house, I was working, regardless of the day. There was no privacy at all. They would knock on my door and ask me to do things."<sup>238</sup>

Even when they are ostensibly resting or on their own time, domestic workers are subject to the quixotic rules of the household. As in Santos Pérez's case, they are often required to work during their rest periods if they are in the house. Many spoke of being obliged to remain in the household, even on their time off. Sometimes these rules are quite explicit. Where Santos Pérez worked when she first migrated to Guatemala City, her employers allowed her to leave the household only with the family. They told her that since she did not know Guatemala City, she should only go out to run errands that were nearby. She worked there for five years and only had one day off during that entire time.<sup>239</sup> Delia Johanna Velásquez, a seventeen-year-old K'iche' woman from Totonicapán, worked in a household for the first quarter of 2000. There, the señora told her that she was forbidden to go out because the house should never be left empty. She also told Velásquez that the streets were very dangerous and that thieves abounded.<sup>240</sup>

Employers attempt to control their domestic workers' movements in a variety of ways. Elisabeth González told a familiar story: "The señora didn't want me to talk to other maids, because they are going to say uninteresting things, because they are ignorant. I couldn't even talk to the neighbors, because then they would find out how one lives, and it's better that that stays between employer and maid. I would take the kids out, or go to the store. The señora forbade me to talk to anyone, I had to return quickly to the house."<sup>241</sup>

Few domestic workers are given keys to the house, making coming and going on their own time practically impossible. Some recounted being

<sup>238</sup> Human Rights Watch interview, Daniela Santos Pérez, Guatemala City, June 11, 2000. Based on exchange rate U.S. \$1:Q6 (the rate of exchange in December 1996).

<sup>239</sup> Human Rights Watch interview, Daniela Santos Pérez, Guatemala City, June 11, 2000.

<sup>240</sup> Human Rights Watch interview, Delia Johanna Velásquez, Guatemala City, June 14, 2000.

<sup>241</sup> Human Rights Watch interview, Elisabeth González, Guatemala City, June 24, 2000.

locked into the house to prevent them from leaving when no one else was there. Violeta Calel, eighteen years old, a K'iche' woman from Totonicapán, explained that "when the señora leaves, she locks everything. I remain locked in the kitchen and my bedroom."<sup>242</sup> Jesica Gutierrez García, a twenty-three-year-old K'iche' from the department of Alta Verapaz, was also locked in her employer's house whenever the employer left her alone. Gutierrez could only access the terrace.<sup>243</sup>

While some workers are locked in, others are locked out, and suffer sometimes extreme consequences. Julia Sabas was raped by a neighborhood mechanic in a field near the household where she worked on a night when she was left standing outside for hours awaiting the return of her employers. Every week, Sabas went to an English class and returned to the house at seven o'clock. Her employers also had a regular engagement those evenings until ten o'clock. Yet they never gave Sabas a key to the house, ensuring that she would have to stand outside the door for several hours. On one of those evenings, a man she had seen several times before approached her. Sabas said he treated her nice, sweet-talked her, and then attacked and raped her.<sup>244</sup>

Many domestic workers explained that they rarely asked for permission to leave the household because they knew their employers would disapprove. As Victoria López said, "It was rare for me to go out, the señora would get really mad when I asked for permission."<sup>245</sup> Elisabeth González explained that "employers get annoyed when you ask for permission. One time in an interview, they told me, 'look cutie, first you are a maid. Second, if you want time off, etc., you have to be a professional'...They tell you, if you work in the house, you don't have the right to time off...[and] that your duty is to keep working."<sup>246</sup>

#### **Discrimination on Basis of Pregnancy or Family Responsibilities**

While domestic workers are not explicitly excluded from maternity rights established for all women workers in the labor code, only one of the workers we spoke with had ever enjoyed these rights. Workers who become pregnant on the job are either fired, or kept on only until the pregnancy begins to

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<sup>242</sup> Human Rights Watch interview, Violeta Calel, Guatemala City, June 18, 2000.

<sup>243</sup> Human Rights Watch interview, Jesica Gutierrez, Guatemala City, June 18, 2000.

<sup>244</sup> Human Rights Watch interview, Julia Sabas, Guatemala City, June 12, 2000.

<sup>245</sup> Human Rights Watch interview, Victoria López, Guatemala City, June 18, 2000.

<sup>246</sup> Human Rights Watch interview, Elisabeth González, Guatemala City, June 24, 2000.

impede the carrying out of her duties or the birth of the baby. Only one domestic worker had her employer pay for her prenatal health care.

- Julia Domingo, twenty-one-years-old, a Mam from the department of Huehuetenango who migrated to Guatemala City at the beginning of 1999, was about to give birth when we spoke to her. Her employer and her employer's sister pressured her to give up her baby for adoption. "She gave me the advice that I should give up my child to people who can't have children, so the child would grow up better." Domingo, who was never able to study and is illiterate, had asked her employer to help her get identification papers, which she lacked, but her employer refused to do so unless she complied and put the baby up for adoption. When Julia refused, her employer threw her out on the street late at night, telling her she was a "useless Indian."<sup>247</sup>
- Jesica Sánchez González, a twenty-one-year-old single mother from the department of Retalheu, has a one-year-old baby. Sánchez told her employer that she was expecting a child when she was four months pregnant. At first, the employer said she could stay, give birth there, and continue working after the child was born. Then she abruptly changed her mind and fired Sánchez eight days before her delivery date. Sánchez paid for her own prenatal health care.<sup>248</sup>

Live-in workers with children encounter serious problems responding to their family responsibilities. If they are fortunate enough to return to the job after the baby's birth, they are usually obliged to leave their newborns in the care of family members back home. In general, it is extremely difficult to find a placement with a child. Because the majority of domestic workers are migrants, leaving their children with relatives back home means a distant separation for long periods of time. All of the workers we spoke with who had children had difficulty securing time off to visit them. Employers often refuse to give workers time off even when a child is ill.

- Daniela Santos Pérez worked in Mexico as a domestic worker for three years. She returned to San Marcos in 1995 when her daughter was born, but soon decided to migrate to Guatemala City, where she had

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<sup>247</sup> Human Rights Watch interview, Julia Domingo, Guatemala City, June 4, 2000.

<sup>248</sup> Human Rights Watch interview, Jesica Sánchez González, Guatemala City, June 18, 2000.

worked previously, to find employment as a domestic worker. At first, she could not find a job because of her daughter, and then when she did, she was paid less because of the child. She worked in a series of households for short periods of time, including one in 1996 where she had to sleep with her baby in a storage room. She finally found a more permanent situation, where she stayed one-and-a-half years. Her child started walking and fell down the stairs, and Santos had to keep the child locked in her room to prevent injury. Her employer fired her, saying it was too difficult with the child around. Santos returned to San Marcos for a period of time, and at the time of the interview had just returned to Guatemala City to look for work. She had left her daughter in her mother's care.<sup>249</sup>

- Delia Johanna Velásquez is caught in a bind: she wants live-in work so she will not have to pay room and board, but she has a young child. She has not been able to get live-in work where she can bring the baby with her. She took one live-in job and paid someone Q200 (U.S. \$27) a month, or almost half of her salary, to take care of her baby. Then she tried day work, but found she just could not afford room and board.<sup>250</sup>
- Briseida Méndez, a twenty-one-year-old Mam from the department of Quetzaltenango, was fired because she asked for time off to visit her sick daughter back home. In July 1999, Méndez's mother called and left a message with her employer that her baby daughter was very sick. Méndez's employer did not inform her of the phone call. A few days later, Méndez spoke directly with her mother and learned the news. Her employer refused to give her time off. For the next twenty days, Méndez continued to ask for permission. Finally, the employer simply fired her.<sup>251</sup>
- Where she worked for three years from 1988-1991, Victoria López, had three days off every three months to visit her child in San Marcos.

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<sup>249</sup> Human Rights Watch, Daniela Santos Pérez, Guatemala City, June 11, 2000.

<sup>250</sup> Human Rights Watch interview, Delia Johanna Velásquez, Guatemala City, June 14, 2000.

<sup>251</sup> Human Rights Watch interview, Briseida Méndez, Guatemala City, June 14, 2000.

“They deducted the whole day [from my pay] if I arrived late on Monday,” she explained.<sup>252</sup>

#### Access to Health Care

Compared to other salaried employees, domestic workers have disadvantaged access to health care. The Guatemalan labor code requires all employers with over three employees to register them with the Guatemalan Institute for Social Security (*Instituto Guatemalteco de Seguridad Social* – IGSS), an employee health care system.<sup>253</sup> Because of the three-employee requirement, most domestic workers are effectively denied the right to social security. Instead, Article 165 of the labor code outlines the rights and obligations of employers in case of illness on the part of the domestic worker. These stipulations combine paternalism with serious disregard for these workers’ rights. Where a domestic worker contracts a contagious disease within the household, her employer must assume all medical costs toward recovery and pay the worker’s salary in full until such time.<sup>254</sup> The employer must likewise pay for medical attention and medicine to treat health problems that incapacitate a worker for a week or less.<sup>255</sup>

If, however, the domestic worker becomes ill with an infectious disease *not* contracted in the household, the employer can dismiss her at will.<sup>256</sup> Similarly, the employer can fire a domestic worker who becomes seriously ill, and is incapacitated for more than a week. In these cases, the employer is obliged to pay the domestic worker her severance pay (one month salary for every year worked, or a proportionate fraction thereof for less than one year worked; there is no severance pay for workers who have been on the job for less than three months). The labor code stipulates that this severance pay cannot exceed four months’ salary.<sup>257</sup> In all cases of illness that require hospitalization,

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<sup>252</sup> Human Rights Watch interview, Victoria López, Guatemala City, June 18, 2000.

<sup>253</sup> Labor Code, Article 102. This article actually only states that employers with between three and nine workers must keep records in accordance with the modules adopted by the IGSS, and that employers with ten workers or more must keep an authorized payroll account in accordance with Ministry of Labor standards. This article has been interpreted to mean that employers with fewer than three workers do not have the obligation to pay into the social security system.

<sup>254</sup> Labor Code, Article 165(d).

<sup>255</sup> *Ibid.*, (b).

<sup>256</sup> *Ibid.*, (a).

<sup>257</sup> *Ibid.*, (c).

whether the domestic worker is or will be fired, the employer has the duty to pay for her transport to the nearest facility, must pay for emergency care, and must inform her closest relatives.<sup>258</sup> In the event of the worker's death, the employer must pay "reasonable" funeral costs.<sup>259</sup>

In practice, employers take little or no responsibility for the health of their domestic workers. Only one worker we met was affiliated with IGSS through her employers' business. María Luisa González, a forty-three-year-old ladina originally from Quetzaltenango, had been working for the same family since 1980. They affiliated her with IGSS through the family business in 1995.<sup>260</sup> Another worker, Victoria López, held out hope that she would be able to affiliate through her employer's business. López had been living and working with the same family for five years. A few years ago, the woman of the household started her own business, and asked López and the other domestic worker (a cook) if they wanted to register as workers there and join IGSS. López said yes, but nothing came of it. "I've been on the edge of asking her [the señora] again, because I do want to be affiliated," said López, but she is worried about bothering her employer. In the meantime, she sees a private doctor and pays out of her own pocket.<sup>261</sup>

Other workers, like Elisabeth González, believe they will never have the chance to belong to IGSS. One of her employers, a lawyer, told his wife in front of González, "why would we put the maid in IGSS, the cost isn't worth it."<sup>262</sup> What other workers can consider a right, for domestic workers is treated as an optional kindness on the part of the employer. Jenifer Pérez Rosa, now thirty-four, was working in a household in 1987 when she got pregnant and decided to marry the father. Her employer told her if she did not and remained with them, they would register her in the IGSS through the pastry shop they owned. She married, and they never registered her.<sup>263</sup>

Time and again, Human Rights Watch heard about the difficulties domestic workers experienced when they became ill or injured themselves on the job. Often, domestic employees are forced to work while sick or injured.

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<sup>258</sup> Ibid., (e).

<sup>259</sup> Ibid., (f).

<sup>260</sup> Human Rights Watch interview, María Luisa González, Guatemala City, June 18, 2000. In order to do so, the family placed González on the family business payroll, and registered her with the IGSS as an employee of that business.

<sup>261</sup> Human Rights Watch interview, Victoria López, Guatemala City, June 18, 2000.

<sup>262</sup> Human Rights Watch interview, Elisabeth González, Guatemala City, June 24, 2000.

<sup>263</sup> Human Rights Watch interview, Jenifer Pérez Rosa, Guatemala City, June 11, 2000.

Sofia Martín López had a typical experience in the job where she had been working since early 2000: “I came down with a fever. I couldn’t rest, the señora gave me some pills, and I kept on working.”<sup>264</sup> Jesica Gutierrez García fell and sprained her ankle while at work in 1997. She recalls crying because of the extreme pain, and she asked to go to the hospital, but her employer refused. Instead, she gave Gutierrez some pills that did not lessen the pain. Gutierrez continued to insist, and finally her employer took her to a public hospital and paid the bills. Once she was home again, her employers expected her to resume her cooking and other duties immediately. “They told me I wasn’t going to die, that I could manage, that I could clean even if I had to do it slowly,” Gutierrez recalls.<sup>265</sup>

Employers routinely renege on their legal obligation to pay for health care. In 1999, Rosa López Cruz started having severe pain in her right leg. She had to pay Q500 (U.S. \$65) for the doctor’s visit and Q100 (U.S. \$13) for medicine. Her employer only paid for the medicine and made López work even while she was sick.<sup>266</sup> Andrea Rodriguez Dorado had worked with the same family for ten years. A short while before our interview, Rodriguez hurt her leg. Her employer recommended a private doctor, but Rodriguez had to pay for the visit even though she considered it a work-place injury. Her employer did, however, give her a week’s rest.<sup>267</sup>

#### **Sexual Harassment**

Live-in domestic workers are particularly vulnerable to sexual harassment and sexual violence in the workplace. Sexual harassment of domestic workers, especially indigenous workers, has been identified as a “widespread phenomenon” throughout Latin America.<sup>268</sup> In Guatemala, it is not uncommon for young ladino men—and, far less frequently, indigenous men—to initiate themselves sexually with the family domestic worker. “The men of the house appropriated the bodies of these women, and this continues in the present

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<sup>264</sup> Human Rights Watch interview, Sofia Martín López, Guatemala City, June 25, 2000.

<sup>265</sup> Human Rights Watch interview, Jesica Gutierrez García, Guatemala City, June 18, 2000.

<sup>266</sup> Human Rights Watch interview, Rosa López Cruz, Guatemala City, June 11, 2000. Based on exchange rate U.S. \$1:Q7.68 (the rate of exchange in December 1999).

<sup>267</sup> Human Rights Watch interview, Andrea Rodriguez Dorado, Guatemala City, June 18, 2000.

<sup>268</sup> Gaby Ore-Aguilar, “Sexual Harassment and Human Rights in Latin America,” in Adrien K. Wing, ed., *Global Critical Race Feminism. An International Reader* (New York: New York University Press, 2000), p.368.

day,” according to Amanda Pop Bol, a psychologist and researcher who has interviewed extensively domestic workers in the Alta Verapaz region.<sup>269</sup> Alfonso Bauer Paiz, Guatemala’s first labor minister in the late 1940s, told Human Rights Watch that “there are cases of parents who want their son to have his first sexual experiences with the young woman employed as a domestic.”<sup>270</sup>

One third of the domestic workers Human Rights Watch interviewed reported having suffered some kind of unwanted sexual approaches and/or demands by men living in or associated with the household. Most of the women quit their jobs, and as a consequence, moved out, immediately following the incidents. Only a few felt they could tell the woman (or another man) of the household what had happened; none of them reported the incident to the police.

- María Ajtún, a twenty-four year old K’iche’ from Totonicapán, began working as a domestic worker when she was only eight years old. When she was fourteen or fifteen, in 1988 or 1989, the man of the household where she was working tried twice to molest her sexually. “The *señor* wanted to take advantage of me, he followed me around...he grabbed my breasts twice from behind while I was washing clothes in the *pila*.<sup>271</sup> I yelled, and the boy came out, and the *señor* left. I didn’t tell the *señora*, because I was afraid. I just quit.<sup>272</sup>
- Julia Sabas, a thirty-one-year-old Keqchikel woman from the department of Chimaltenango, moved to Guatemala City to work as a domestic employee as a young teenager. She experienced sexual harassment in several houses. When she was fifteen, in 1985, the son of her employer would come into her room and “say ugly things.” When she was eighteen, in 1988, in another household, the brother of her employer harassed her repeatedly. “He told me that if I slept with him, he would buy me things.”<sup>273</sup>
- Berta Pacahá, a sixteen-year-old K’iche’ from the department of Mazatenango, worked as a domestic employee for one year in 1998 in

<sup>269</sup> Human Rights Watch telephone interview, Amanda Pop Bol, social psychologist, Guatemala City, November 17, 2000.

<sup>270</sup> Communication (email) from Alfonso Bauer Paiz, November 24, 2000.

<sup>271</sup> The *pila* is a stone washing basin.

<sup>272</sup> Human Rights Watch interview, María Ajtún, Guatemala City, June 18, 2000.

<sup>273</sup> Human Rights Watch interview, Julia Sabas, Guatemala City, June 12, 2000.

Guatemala City, earning Q300 (U.S. \$45) per month. “I was scared, it was the first time [I was in the city], I didn’t even go out on Sundays sometimes,” she explained. When she ventured out on two Sundays to go to the central plaza, where many domestic workers congregate on their one day off, her employer complained to her father, “saying I was brazen.” Her father made her return home. She then found work in the estate house on a large farm for about eight months. There, the son of the cook raped her in a coffee field. “I threw up. I didn’t tell anyone. My mother took me to the doctor, but I didn’t have anything, but I kept throwing up. I’m afraid to have a boyfriend, to get married. They say that you will never be happy, men say you’re no longer a girl.”<sup>274</sup>

- Jesica Gutierrez suffered sexual harassment in two households in Cobán in 1996 when she was nineteen. In the first household, it was her employer’s brother who harassed her. He entered her room forcibly on three different occasions with what Gutierrez interpreted to be sexual motivations, but left when she demanded he do so. He told her repeatedly that she need not bother telling anyone, because it would be “my word against his,” and no one would believe her. In the second household, the man of the house tried to molest her, chasing her around her bed. When she threatened to tell his wife, he promised not to do it again.<sup>275</sup>
- Rosa Angélica Hernández Vásquez, twenty-three, a K’iche’ woman from Totonicapán, migrated to Guatemala City when she was only fourteen years old, in 1991. On Christmas Eve that year, Hernández saw the man of the house put something in her drink; it looked like a pill. She told the man’s mother, who was visiting for the holidays, who reprimanded him. But later that night, he knocked at her door and told her that he had to go to the bathroom, and that his mother was in their bathroom. When she opened the door, he came into the room with his pants down. He was drunk. He tried to jump onto her bed, and she started yelling, and he ran away. The next day, Hernández told the

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<sup>274</sup> Human Rights Watch interview, Berta Pacahá, Guatemala City, June 25, 2000. By “girl,” Pacahá means virgin. Based on exchange rate U.S. \$1:Q6.7 (the rate of exchange in December 1998).

<sup>275</sup> Human Rights Watch interview, Jesica Gutierrez García, Guatemala City, June 18, 2000.

man's mother and wife what had happened; he denied it. But he apologized to her privately. Hernández left the job two days later, fearing that the man would try to force himself on her again. Although her employer, the man's wife, had to that point always paid her in full and on time, she refused to pay her for the last period worked.<sup>276</sup>

- Marta Julia López, twenty-two-years-old, a K'iche' from Totonicapán, started working as live-in domestic in 1989 when she was eleven years old with a family in Quetzaltenango. After she had been there four months, the man of the house tried to abuse her sexually. López told the woman of the house what had happened, and she believed her. It never happened again. López ended up working there for five years, until she was sixteen, and moved to Guatemala City.<sup>277</sup>
- Andrea Rodriguez migrated to Guatemala City when she was nineteen. At her first job, in 1986, she had been there nearly a year when the man of the house tried to make her sit on his lap when they were home alone. She threatened to tell his wife, and he let her go. She worked there another fifteen days while she looked for another job. The man warned her not to tell his wife because she simply would not believe her. In the end, Rodriguez simply left the job, and returned to San Marcos to work on a coffee plantation.<sup>278</sup>
- Veronica Jímenez Sacaxote is a forty-eight-year-old K'iche' from Totonicapán who started working as a domestic in Quetzaltenango when she was sixteen. After three or so years there, around 1972, she moved to Guatemala City. She worked as a live-in domestic for twenty years in the capital, in about fifteen different houses; she now does day-work in three different homes. When Jímenez was nineteen or twenty, the cousin of her employer tried to sexually assault her one night when he was drunk. She fought him off, and it never happened again. She never told anyone what had happened, and stayed on the job.<sup>279</sup>

<sup>276</sup> Human Rights Watch interview, Rosa Angélica Hernández Vásquez, Guatemala City, June 18, 2000.

<sup>277</sup> Human Rights Watch interview, Marta Julia López, Guatemala City, June 18, 2000.

<sup>278</sup> Human Rights Watch interview, Andrea Rodriguez Dorado, Guatemala City, June 18, 2000.

<sup>279</sup> Human Rights Watch interview, Veronica Jímenez Sacaxote, Guatemala City, June 21, 2000.

- Angélica María del Artist is a fifty-five-year-old Salvadoran woman who migrated to Guatemala twenty-five years ago. In 1997, her employer tried to touch her bottom as she walked down some stairs. When she resisted him, and complained to the señora, she was told to simply ignore the man and continue working. Later, she worked in a household for one year for an elderly widower and his adult son. The son, approximately thirty-five-years-old, wanted to have sex with her, and she refused. She told him she was paid to do the work around the house, not to have sexual relations with her employers. Del Artist complained to the father, who believed her and threatened to evict his son over the matter. There were no further incidents, although Del Artist claims that the son took any opportunity after that to yell at and upbraid her.<sup>280</sup>

None of the women Human Rights Watch spoke with had ever tried to lodge a legal complaint against their aggressors. Sabas summed up the feeling of most domestic workers, saying “I never reported anything, because I knew no one would believe me.”<sup>281</sup> Had she done so, her claim would have had scant chance of proceeding successfully. Olimpia Romero Pérez, an organizer with CENTRACAP, explained, “It’s unlikely that women want to file for sexual harassment, because they don’t want to expose themselves, because they lack the resources, because there’s no law.”<sup>282</sup> Indeed, Guatemala does not yet have a law against sexual harassment.<sup>283</sup>

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<sup>280</sup> Human Rights Watch interview, Angélica María del Artist, Guatemala City, June 24, 2000.

<sup>281</sup> Human Rights Watch interview, Julia Sabas, Guatemala City, June 12, 2000.

<sup>282</sup> Human Rights Watch interview, Olimpia Romero Pérez, coordinator of services, CENTRACAP, Guatemala City, June 1, 2000.

<sup>283</sup> The experience of Floridalma de la Paz Gallardo, a former data technician with IGSS, illustrates the difficulty of seeking redress for sexual harassment in the absence of a specific law. In May 1998, De la Paz filed a historic case against her boss, alleging he had repeatedly sent her messages through a colleague to ask her out, and finally intercepted her in a dark hallway, grabbed her breasts, and tried to kiss her. She was forced to accuse her boss of “threats and coercion” (*amenazas y coacción*), the only applicable crime under the current criminal code. In September 1998, the Twelfth Criminal Court (*Tribunal Duodecimo de Sentencia Penal*) convicted Julio Domingo González and sentenced him to two years in prison, commutable to a fine equivalent to Q5 (U.S. \$0.75) per day (based on exchange rate U.S. \$1:Q6.7). González immediately appealed, and in July 1999 the Second Criminal Court (*Tribunal Segundo de Sentence Penal, Narcoactividad y Delitos Contra el Ambiente*) overturned the conviction, arguing

### **Undocumented and Unprotected**

Provisions in the labor code leave domestic workers undocumented and unprotected. While all other employers must provide the Ministry of Labor, at the beginning of every year, a list of all employees—including name, age, nationality, sex, job, number of days worked, and salary—household employers need not report domestic workers.<sup>284</sup> In addition, domestic workers do not have the right to a written employment contract.<sup>285</sup> Their employers must, however, give them a piece of paper or card that states the first day of employment and the agreed-upon salary.<sup>286</sup> In practice, most domestic workers never receive any proof of employment. While most never even ask, some workers are explicitly denied a contract. Rosa López Cruz, for example, did ask her employer for a written record. Her employer refused.<sup>287</sup> The result is that the Ministry of Labor has no record of how many domestic workers are employed. The institution has no ability therefore to monitor working conditions, nor can it track data, such as average wages and hours worked.

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insufficient proof to establish guilt and criminal liability of the defendant. De la Paz in turn appealed that decision, and in June 2000, the Third Appellate Court (*Sala Tercera de Apelaciones Penal, Narcoactividad y Delitos contra el Ambiente*) ruled that there had been a violation of due process and ordered a new trial. The trial, which will be held once again in the Twelfth Criminal Court, has yet to begin. In the meantime, De la Paz has been fired from her job at IGSS. All information collected in Human Rights Watch interview, Floridalma de la Paz, Guatemala City, June 21, 2000 and communication (fax) from Walter Raúl Robles Valle, attorney-at-law, dated March 15, 2001.

<sup>284</sup> Labor Code, Article 61(a).

<sup>285</sup> Labor Code, Article 27(b). This article states that a contract can be verbal also for agricultural workers, substitute or temporary workers on contracts no longer than sixty days, and workers hired to complete a specific task for an amount no greater than 100 Quetzals (U.S. \$14).

<sup>286</sup> Ibid.

<sup>287</sup> Human Rights Watch interview, Rosa López Cruz, Guatemala City, June 11, 2000.

### **Maquila Workers: Discrimination on Basis of Reproductive Status**

*It's difficult to find work anywhere else, and it's easy for the maquila to trick them.*<sup>288</sup>

*There's no other work, but I'm tired of the maquila. [There is] so much mistreatment.*<sup>289</sup>

According to VESTEX, the apparel export business group, some 80,000 people are employed in apparel maquilas in Guatemala.<sup>290</sup> The vast majority, roughly 80 percent, are women.<sup>291</sup> A study conducted by the Central American Network of Women in Solidarity with Maquila Workers found that 37 percent are under twenty-four years of age, while 51 percent are over twenty-five (nearly 12 percent are under sixteen years of age).<sup>292</sup> The industry showed a preference for female labor early on for a variety of reasons. First, women are culturally associated with sewing, and are more likely to have had some exposure to this kind of work and to be able to operate a sewing machine more adeptly than a man. Second, women, especially younger women, are thought to have nimble hands and therefore to be more dexterous and faster than men. Third, women are considered to be more obedient and less combative than men.<sup>293</sup>

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<sup>288</sup> Human Rights Watch interview, María Mejía, union organizer, FESTRAS, Guatemala City, June 9, 2000.

<sup>289</sup> Human Rights Watch interview, Patricia Gomez, Chimaltenango, June 11, 2000.

<sup>290</sup> AGEXPORT/VESTEX mimeograph, given to Human Rights Watch on June 21, 2000.

<sup>291</sup> ILO Proyecto para Mujeres Trabajadoras del Sector de la Maquila (Project for Women Working in the Maquila Sector), "Diagnóstico preliminar sobre el trabajo de maquila en Guatemala" (Preliminary diagnostic of the work on maquilas in Guatemala), RLA/97/07/MNET. The Ministry of Economy told Human Rights Watch in June 2000 that women constituted seventy percent of the maquila workforce. By all accounts, more and more men are indeed working in maquilas. Human Rights Watch interview, Nora González M., director, Department of Industrial Policy, Ministry of Economy, June 21, 2000.

<sup>292</sup> Red Centroamericana de Mujeres en Solidaridad con las Trabajadoras de Maquila (Central American Network of Women in Solidarity with Maquila Workers), *Empleo Sí, pero con Dignidad (Yes to Employment, but with Dignity)*, Guatemala, 1997.

<sup>293</sup> Petersen, *Maquiladora Revolution*, pp. 42-43; AVANCSO, *Significado de la Maquila (Significance of the Maquila)*, pp.126-131.

Human Rights Watch interviewed thirty-seven women currently or previously employed as maquila line operators. Between them, these women had worked in thirty different factories. Of these workers, seventeen reported twenty-four incidents of questions about pregnancy status or pregnancy testing when applying for jobs at maquilas. Human Rights Watch documented two cases in which workers were fired for becoming pregnant, and two cases in which workers were denied full maternity benefits. In addition, we documented three cases in which workers' reproductive health suffered as a result of maquila obstruction of access to health care.

The vast majority of these workers were ladina; we interviewed only five indigenous women with maquila experience. The average age of the women was twenty-seven years old. On the whole, the maquila workers with whom we spoke had received more education than the domestic workers. The majority had finished some level of elementary school, five had studied in high school, and two had actually graduated. Two of the workers were illiterate. Although the average age in our two samples was virtually identical, 55 percent of maquila workers (twenty-one out of thirty-eight) had at least one child, compared to 41 percent of domestic workers (twelve out of twenty-nine).

In the following section, we discuss a series of gender-specific violations women maquila workers encounter both in the pre-hire process and at work. Many of the workers we spoke with also complained of other illegal practices that, although not gender-specific, have a severe impact on maquila workers' lives. Almost every worker we interviewed complained that maquilas require two hours' overtime on a daily basis. In addition, workers from a variety of maquilas reported that management often forced them to work more overtime to fulfill orders. Sometimes, the overtime hours are paid at overtime rate, sometimes they are not. Pay slips rarely document in detail the hours worked and at what rate. Indeed, many of the workers Human Rights Watch interviewed had never received any kind of pay slip. The maquila workers we spoke with earned the daily minimum wage.<sup>294</sup> Most factories use complicated—and often arbitrary—systems of piece-rate pay and incentives based on the total production output of an assembly line to determine bonus pay.

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<sup>294</sup> Government Accord No. 020-2000, dated January 6, 2000, established a non-agricultural minimum wage of Q23.85 (U.S. \$3.18) per day. This minimum wage was in effect at the time this research was conducted. On December 15, 2000, the government increased the minimum wage for non-agricultural workers by sixteen percent to Q27.67 (U.S. \$3.68). Government Accord No. 838-2000, dated November 30, 2000. Guatemalan workers are also entitled to a series of bonus payments: the incentive bonus (*bono incentivo*), the Christmas bonus (*aguinaldo*), and the 14<sup>th</sup> month bonus (*bono 14*). The aguinaldo and the bono 14 are each equivalent to one month's salary.

Workers complained that this system, while it can increase their monthly income, fosters an unhealthy level of competition among the workers and imposes tremendous pressure to work overtime.

Workers consistently objected to the daily pat-down searches they must endure upon entering and leaving most factories. These searches generally take place outside, near the main door, where men and women form parallel separate lines to be searched by same sex guards. At some factories, like Dong Bang Fashions, S.A. in Chimaltenango, workers are searched first when they leave the building, and then once again when they board the company buses. Several women we spoke with complained that these searches, in and of themselves often extremely intrusive, provided occasions for inappropriate commentary from male colleagues. Kimberly Estrada, who works at Dong Bang Fashions, S.A., said the guards “are very uncivil in their searches, [and] the men make fun of us.”<sup>295</sup> Marlen Torres, who has been working at Sam Bridge, S.A. for three years, said that some of the guards there “are very rough.”<sup>296</sup>

Indigenous women working in the maquilas spoke of being singled out for more aggressive searches. Patricia Gómez, a twenty-four-year-old Keqchikel woman who works at Dong Bang Fashions, S.A., said the guards “search indigenous women more because they think we’re hiding something underneath our *cortes*.”<sup>297</sup> The traditional Mayan skirt, called a corte, is a large swath of fabric tied around the waist. Sandra Chicop, speaking of her experience working at Lindotex, S.A., said there the guards always touched her whole body. “We Mayan women had to undo our corte, and they put their hands on us. More to us than to ladinas, because our dress is thicker.”<sup>298</sup> These searches always took place in full view of other workers.

#### **U.S. Corporate Involvement**

Monitoring abuses in maquila factories can be difficult due to the relatively low levels of unionization and the fear of retaliation that prevents many workers from seeking help or lodging complaints. Tracking the responsibility of U.S. corporations who subcontract to individual maquilas in Guatemala presents even more of a challenge. These corporations can subcontract to a variety of different maquilas, which can then subcontract among

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<sup>295</sup> Human Rights Watch interview, Kimberly Estrada, Chimaltenango, June 11, 2000.

<sup>296</sup> Human Rights Watch interview, Marlen Torres, Chimaltenango, June 25, 2000.

<sup>297</sup> Human Rights Watch interview, Patricia Gomez, Chimaltenango, June 11, 2000.

<sup>298</sup> Human Rights Watch interview, Sandra Chicop, Santiago Sacatepequez, June 18, 2000.

themselves. Some maquilas have standing orders with U.S. corporations, while others have short-term contracts that are constantly shifting. Most of the maquila line operators have no idea what brand names are behind the shirts and pants they are sewing, because the labels are affixed at the end of the process. In addition, it can be quite risky for workers to take labels out of the factories, as management is increasingly concerned about disclosure and bad publicity.

Human Rights Watch was able to collect information about the contractual relationships between certain maquilas and U.S. corporations in a variety of ways. In some cases, we collected worker testimony about the labels being produced in a given factory. In other cases, we drew on documentation conducted by a labor union, FESTRAS, and a women's rights organization, AMES. Finally, Human Rights Watch contacted every maquila where we documented an abuse and asked them to provide information about their production and relationship with U.S. corporations. Where we had information regarding U.S. corporate involvement, either through documentation on the ground or via the maquilas themselves, we contacted the U.S. corporations and asked them to confirm the existence of a contractual relationship. In the sections that follow, we clearly note how we obtained the information and the responses we received from both maquilas and U.S. corporations (See also Appendices D and E for charts of these responses).

Several of the U.S. corporations subcontracting to factories where we documented abuses have subscribed to either their own or an industry voluntary code of conduct. Over the past five years, corporate codes of conduct have emerged as an alternative tool for promoting respect for labor rights and holding private enterprise accountable. In part, this trend is due to the widespread recognition that many governments do not enforce national and international labor standards. Most codes of conduct, inspired by ILO standards, include a nondiscrimination provision. One example is the Workplace Code of Conduct adopted by the Apparel Industry Partnership. The code states, “[n]o person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.”<sup>299</sup> Seven U.S. apparel companies have subscribed to this code of conduct, including Liz Claiborne, Inc. and GEAR for Sports. Human Rights Watch believes that corporate codes of conduct are a welcome development if properly implemented and independently monitored;

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<sup>299</sup> Apparel Industry Partnership Workplace Code of Conduct, <http://www.fairlabor.org/html/CodeOfConduct/index.html> (March 13, 2001).

however, these codes can never serve as a substitute for government enforcement of national and international law.

The Guatemalan apparel export business group, VESTEX, has an eight-point voluntary code of conduct. Article 1 of the code states that “[f]ull respect for human dignity will be promoted in order to achieve equality between men and women, preventing all discrimination in the workplace because of race, color, religion or political opinion.” The manual designed to provide guidelines for monitoring compliance with the code of conduct states that “the company will not employ personnel using discrimination based on race, caste, nationality, religion, disability, sex, sexual orientation or political affiliation in the hiring, determination of salaries, access to training, promotions, termination or retirement.”<sup>300</sup>

#### **Pregnancy Questions and Pregnancy Testing**

Many Guatemalan maquilas have adopted practices to identify pregnant female job applicants in order to deny them employment. Female applicants for jobs in the maquilas are routinely required to state whether they are pregnant as a condition for employment. The practice is widespread, usually taking the form of a direct question on the application form, or a verbal question in individual or group hiring interviews. Human Rights Watch found that some maquilas go further and require pregnancy exams. Some conduct them in the maquila, sometimes as crudely as a prod in the stomach by in-house medical personnel. Others require the applicant to supply a certificate, at her own cost, to prove she is not pregnant. These efforts systematically to weed out pregnant workers fit more generally in a pattern of employers avoiding hiring workers with too many family responsibilities. Women applicants are routinely asked, either directly on the application forms or in the interview, how many children they have, how old their children are, and whether they are married. COVERCO, an independent monitoring group in Guatemala, has also documented cases in which workers have had to write and sign on the applications that they will not have more children.<sup>301</sup> The candid description of

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<sup>300</sup> VESTEX, *Código de Conducta: Herramienta para Mejorar la Competitividad. Manual para el cumplimiento de los principios de observancia laboral y ambiental de los miembros de la Comisión de Industria de Vestuario y Textiles* (Code of Conduct: A Tool to Improve Competitiveness. Manual for implementation of the principles of labor and environmental compliance by members of the Commission of Clothing and Textile Industry) (Guatemala City: AGEXPORT), p.11. .

<sup>301</sup> Communication (email) from Kenneth Kim, coordinator, COVERCO, dated February 16, 2001.

the ideal worker a maquila personnel manager gave an academic researcher in 1990 is still relevant today:

Eighteen to twenty-four is the ideal age. They should not be married because when they are married they tend to have added responsibilities. Before you know it they start to have children, which is a problem. We do not hire a woman if she has small children because it is likely they will become sick, and she will often need to go to the doctor. If a woman is large, she will likely get sick often and have to go to the doctor as well. My ideal worker is young, unmarried, healthy, thin and delicate, single, lives close, and does not have previous experience.<sup>302</sup>

Claudia Amparo Herrera Gómez, a thirty-six-year-old who worked as a line supervisor at the now defunct Modas One Korea, explained that at that maquila, they did not conduct exams, “but they did ask if you were pregnant and if you were willing to do a pregnancy exam. Why? Because they do not want pregnant workers. They need too many permissions to go to IGSS, [and] you can’t be as demanding with them. And you have to hold their spot while they’re on maternity leave.” Herrera claimed that some women on her line had abused the system. “They missed a lot of time and should have been fined or had their pay reduced. And you could not make them work extra hours, which everyone needs to do. The women complain they are not feeling well and there is high absenteeism.” In the end, Herrera added, “I guess I would do the same [as the employers].”<sup>303</sup>

The following stories are illustrative of the discrimination countless women seeking work in the maquilas in Guatemala face:

- Sara Fernández, a twenty-three-year-old ladina, began working at Textiles Tikal, S.A. in Guatemala City in October 1999. She knocked on the door, and spoke with the personnel director. He told her to come back in two days with her identity card, a photograph, and proof that she was not pregnant. She went to a laboratory and paid Q20 (U.S. \$2.60) for the test. When she returned two days later, she was hired as a manual worker (those who, for example, snip loose threads off

<sup>302</sup> Petersen, *Maquiladora Revolution*, p.42.

<sup>303</sup> Human Rights Watch interview, Claudia Amparo Herrera Gómez, Guatemala City, June 17, 2000.

garments).<sup>304</sup> She has since been promoted to sewing machine operator.<sup>305</sup>

According to Fernández, in June 2000, Textiles Tikal, S.A. was producing the following labels: Tracy Evans Ltd., First Option, and No Boundaries, all of which are sold by the Tracy Evans Ltd. Company; and Venezia Jeans, sold by Lane Bryant, a division of The Limited.<sup>305</sup> She was unable to provide information about what was being produced at the time when she was hired. Mark Cohen, president of Tracy Evans, Ltd., responded to Human Rights Watch queries calling the practice of asking female job applicants questions related to pregnancy “unlawful and...unacceptable to us.” He added that his company has “received assurances that in those shops where we have work in process, all management employees have been advised of this impropriety.” Although Mr. Cohen did not state whether or not Tracy Evans, Ltd. had a contractual relationship at any time with Textiles Tikal, S.A.,<sup>306</sup> the legal representative of Textiles Tikal, S.A. informed Human Rights Watch that it produced clothing for Tracy Evans, Ltd., in October 1999 and June 2000.<sup>307</sup> The factory representative stated that “at no time” does the factory use “such rudimentary methods” as pregnancy testing in its hiring process.

Representatives of The Limited informed Human Rights Watch that The Limited did source products from Textiles Tikal, S.A. between January 1, 1999 and December 31, 2000.<sup>308</sup> Although The Limited has a code of conduct and an established system for auditing suppliers for compliance, no audit was ever conducted at Textiles Tikal, S.A.<sup>309</sup>

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<sup>304</sup> Human Rights Watch interview, Sara Fernández, Guatemala City, June 22, 2000. Price of exam based on exchange rate U.S. \$1:Q7.68 (the rate of exchange in December 1999).

<sup>305</sup> The Limited sold Lane Bryant to Charming Shoppes in July 2001.

<sup>306</sup> Communication (letter) from Mark Cohen, president, Tracy Evans Limited, dated March 6, 2001.

<sup>307</sup> Communication (fax) from the legal representative for Textiles Tikal, S.A., dated March 13, 2001.

<sup>308</sup> Human Rights Watch interview, Claude G.B. Fontheim and Eric R. Biel of Fontheim International, LLC, outside counsel for The Limited, Washington D.C., March 22, 2001. This information was confirmed in a letter from Anthony Hebron, director of external communications, dated April 18, 2001.

<sup>309</sup> Human Rights Watch interview, Claude G.B. Fontheim and Eric R. Biel of Fontheim International, LLC, outside counsel for The Limited, Washington D.C., March 22, 2001.

- Kimberly Estrada is a twenty-one-year-old Keqchikel from Chimaltenango. In early 1998, when she sought work at Dong Bang Fashions, S.A., she was forced to undergo a physical exam by a doctor on the premises to determine if she was pregnant. In addition, the doctor asked her if she had regular sexual relations with anyone.<sup>310</sup>

Kye Hoon Kim, general manager of Dong Bang Fashions, S.A. stated that the factory does not use pregnancy testing. The factory has a clinic where such tests are conducted only at the request of employees, according to Kim.<sup>311</sup>

- Sabrina Clarisa Montenegro is thirty-two years old and had been working at Modas Cielo, S.A. for two weeks when we spoke. A week after she started the job in early June 2000, she had to tell a doctor employed by the maquila whether she was pregnant and whether she was using birth control.<sup>312</sup>

In a letter dated March 12, 2001, Sebastián Choi, manager of Modas Cielo, S.A., acknowledged that it asked female employees whether they were pregnant in order to provide workers an appropriate job in the factory. According to Choi, the factory stopped the practice in October 2000.<sup>313</sup> Mr. Choi sent Human Rights Watch a copy of a letter directed to all employees, dated March 12, 2001, stating that all workers who are pregnant or believe that they may be can opt to be tested; absent this request, the factory will not obligate any worker to submit to a test. The letter also states that the factory will provide an appropriate place and environment for pregnant workers, protection for both worker and fetus, as well as medical attention. The factory also sent Human Rights Watch the original signatures of 149 women (and one man) employed in the factory to a statement apparently giving their prior, voluntary authorization for medical attention in the event of pregnancy. The abovementioned letter was attached to all of the signature lists.<sup>314</sup>

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<sup>310</sup> Human Rights Watch interview, Kimberly Estrada, Chimaltenango, June 11, 2000.

<sup>311</sup> Communication (fax) from Kye Hoon Kim, general manager, Dong Bang Fashions, S.A., dated March 22, 2001.

<sup>312</sup> Human Rights Watch interview, Sabrina Clarisa Montenegro, Barcenas, June 25, 2000.

<sup>313</sup> Communication (email) from Sebastián Choi, manager, Modas Cielo, S.A., received March 12, 2001.

<sup>314</sup> The wording of the document is somewhat confusing. The original Spanish reads: "Por este medio informamos a los trabajadores de Modas Cielo que se les estará tomando

FESTRAS documented that Modas Cielo, S.A. was producing the following labels in March-July 2000: White Stag, owned by Warnaco Corporation; Riveted by Lee, a brand of Lee Apparel, a division of VF Corporation.; and Venezia Jeans, sold by Lane Bryant, a division of The Limited. Modas Cielo, S.A. confirmed that it had a contractual relationship with all of these companies.<sup>315</sup> Warnaco Corporation told Human Rights Watch that it has never had a contractual relationship with Modas Cielo, S.A.<sup>316</sup> In a letter dated March 13, 2001, VF Corporation stated that it has produced Lee knit tops at Modas Cielo, S.A. over the past two years, having found the maquila to be an “acceptable facility” through its inspection process. Ron Martin, director of compliance at VF Corporation, stated that “the issue of women’s rights, including the prohibition of pregnancy testing are principal elements in our Terms of Engagement, which every factory has to sign as a prerequisite for doing business with VF.”<sup>317</sup>

In a letter dated April 18, 2001, Anthony Hebron, director of External Communications for The Limited, confirmed that The Limited did source products from Modas Cielo, S.A. “during the past two years,” but at the time of writing no longer did so.<sup>318</sup> While Mr. Hebron did not respond directly to the specific report of pregnancy testing at Modas Cielo, S.A., he stated The Limited’s commitment “not to tolerate discrimination in the workplace on the

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sus nombres y firmas para que con voluntad propia den autorización a las atenciones que se les estarán otorgando a las empleadas que se encuentren embarazadas a esta hoja se adjunta carta de autorización tanto de representante legal y coreanos de planta.” English translation: “We inform the workers of Modas Cielo that we will be taking their names and signatures so they can give authorization of their free will to the attention pregnant workers will receive attached to this form is the letter of authorization from the legal representative and the factory Koreans.” Forms dated March 12, 2001. The forms are stamped “received” by the Ministry of Labor.

<sup>315</sup> Communication (email) from Sebastián Choi, manager, Modas Cielo, S.A., received March 16, 2001.

<sup>316</sup> Communication (letter) from Stanley P. Silverstein, vice president, general counsel and secretary, Warnaco Corporation, dated March 5, 2001. Warnaco filed for bankruptcy on June 11, 2001.

<sup>317</sup> Communication (fax) from Ron Martin, director of compliance, VF Corporation, dated March 13, 2001.

<sup>318</sup> Communication (letter) from Anthony Hebron, director of External Communications, The Limited, Inc., dated April 18, 2001.

part of our own company and our factories.”<sup>319</sup> The Limited did not conduct an audit at Modas Cielo, S.A.<sup>320</sup>

- When she was fourteen years old, in 1996, Sandra Chicop went to work at Lindotex, S.A., a maquila in Chimaltenango. She worked there for one year in packing. In the interview for the job, they asked her age, how many siblings she had, how many children she had, whether she had to support anyone on her salary, and if she was pregnant. “They sent me first to a room, there’s the lady doctor, and she touched my stomach. She said, you’re expecting, she insisted that I had been with a man, and I told her no. And then she examined me again, and said no. And I was an adolescent, I didn’t know anything about any of that.”<sup>321</sup>

Lindotex, S.A. is now named Beautex Guatemala, S.A. Hark Yong Park, the president of the company, told Human Rights Watch that the factory no longer conducts pregnancy tests and added that they “have felt the need to adopt new policies in the factory and associate ourselves with the world values of human rights.”<sup>322</sup>

- Soel Esperanza López, a twenty-two-year-old with three children, was hired at Procesadora Industrial de Exportación, S.A.(Proindexsa) in 1996 only after she provided a urine sample. The supervisor who interviewed her told López that if she did not take the pregnancy test, she would not get the job.<sup>323</sup>

Sun Apparel, a subsidiary of the Jones Apparel Group, the licensee for Polo Ralph Lauren, had a contractual relationship with Proindexsa between

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<sup>319</sup> Ibid.

<sup>320</sup> Human Rights Watch interview, Claude G.B. Fontheim and Eric R. Biel of Fontheim International, LLC, outside counsel for The Limited, Washington D.C., March 22, 2001.

<sup>321</sup> Human Rights Watch interview, Sandra Chicop, Santiago Sacatepequez, June 18, 2000.

<sup>322</sup> Communication (fax) from Hark Yong Park, president, Beautex Guatemala, S.A., dated March 1, 2001.

<sup>323</sup> Human Rights Watch interview, Soel Esperanza López, Barcenas, June 25, 2000. According to a worker’s testimony, Proindexsa, S.A. was producing Polo apparel for Polo Ralph Lauren Corporation, Inc., between January and June 2000.

November 1999-November 2000.<sup>324</sup> The corporation did not have a relationship with the factory at the time of the incident. Laura Wittman, contractor compliance manager at Jones Apparel Group, told Human Rights Watch that the company conducted a workplace compliance audit at Proindexsa before giving them the contract. Approval of the contractual relationship was initially withheld “for several reasons, including pregnancy testing.” A second audit was conducted in which Jones Apparel Group determined that Proindexsa had taken steps to enter into compliance with the company’s operating standards, including the discontinuation of pregnancy testing.<sup>325</sup> Indeed, Mayra Alejandra Barrios Pérez, another employee of Proindexsa since 1997, stated that she believed the contract with Polo, as she understood it to be, had brought improvements to the factory.<sup>326</sup> Proindexsa did not respond to our letter of inquiry.

- Carla Alvarez, a twenty-five-year-old foreigner who emigrated to Guatemala in 1992, had to answer questions about her pregnancy status and willingness to take an exam at Shin Kwang, S.A., factory in 1996, and again at Textiles Sung Jae, S.A. in April 1999 and March 2000.<sup>327</sup> Edna Julieta López Méndez, thirty-one and ladina, was asked to state whether she was pregnant when she applied for a job at Textiles Sung Jae, S.A. in 1998.<sup>328</sup>

According to workers’ testimony, in June 2000, Textiles Sung Jae, S.A. was producing Cherokee and Merona, labels carried by Target Corporation. Neither Textiles Sung Jae, S.A. nor Target Corporation responded to Human Rights Watch letters of inquiry.<sup>329</sup> See Appendix B for a copy of the job application

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<sup>324</sup> Communication (letter) from David M. Uricoli, senior director of Global Human Rights Compliance, Polo Ralph Lauren, dated March 12, 2001.

<sup>325</sup> Communication (fax) from Laura Wittman, contractor compliance manager, Jones Apparel Group, dated March 13, 2001.

<sup>326</sup> Human Rights Watch interview, Mayra Alejandra Barrios Pérez, Guatemala City, June 17, 2000.

<sup>327</sup> Human Rights Watch interview, Carla Alvarez, Guatemala City, June 3, 2000.

<sup>328</sup> Human Rights Watch interview, Edna Julieta López Méndez (her real name), Guatemala City, June 23, 2000.

<sup>329</sup> Human Rights Watch made the following attempts to contact Textiles Sung Jae, S.A.: fax dated February 27, 2001, letter sent registered mail February 28, 2001, and two follow-up phone calls on March 14 and 30, 2001.

Textiles Sung Jae, S.A. was using in 2000 that includes the question about pregnancy status.

- Maribel González Solís, eighteen years old, started working at Shin Kwang, S.A., factory in January 2000. The application asked her whether she was pregnant.<sup>330</sup>

The factory did not respond to our letter of inquiry.<sup>331</sup>

- Flor de María Silva Figueroa, twenty-one years old, began working at Ventas Unidas, S.A. on June 13, 2000. She filled out an application that asked whether she was married, whether she had any children, and whether she was pregnant. The head of personnel asked her the same questions in an interview, and explicitly told her he did not hire pregnant workers.<sup>332</sup>

According to Silva Figueroa, Ventas Unidas, S.A. was producing trousers for Pierre Cardin in June 2000. Xiomara Solorzano of Ventas Unidas, S.A. confirmed that the facility is the Central American and Caribbean supplier for Pierre Cardin; essentially this means that the factory pays a royalty to Pierre Cardin in order to manufacture clothing under his name. Ventas Unidas, S.A. only produces for the local market and does not export to the United States.<sup>333</sup> The factory, according to Solorzano, does ask applicants about pregnancy status “in order to take into consideration the woman with respect to licenses [to leave work], or any other need she may have. The question is not for hiring directly, but rather in consideration of the person.”<sup>334</sup> Following our inquiry, Roberto Hirst, the Pierre Cardin agent for Central America, told Human Rights Watch he had asked Ventas Unidas, S.A. to remove the question about pregnancy from

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<sup>330</sup> Human Rights Watch interview, Maribel González Solís, Villa Nueva, June 25, 2000.

<sup>331</sup> Human Rights Watch made the following attempts to contact the management at Shin Kwang, S.A.: fax dated February 26, 2001, letter sent registered mail February 28, 2001, two follow-up phone calls March 14 and 19, 2001, and letter refaxed March 19, 2001.

<sup>332</sup> Human Rights Watch interview, Flor de María Silva Figueroa, Guatemala City, June 20, 2000.

<sup>333</sup> Human Rights Watch telephone interview, Roberto Hirst, Pierre Cardin agent, San Salvador, El Salvador, April 2, 2001.

<sup>334</sup> Communication (email) from Xiomara Solorzano, Ventas Unidas, S.A., March 22, 2001.

their job application.<sup>335</sup> Another official at the French company, who wished to remain anonymous, told Human Rights Watch that Pierre Cardin, the founder and president of the company, has no direct control over his licensees and “doesn’t police [the manufacturing of his clothing] the way he once did.” According to this official, Pierre Cardin would have no knowledge of where licensees produce his clothing or the conditions in those factories.<sup>336</sup>

- Elena Bax, nineteen-years-old, sought a job at Sertegua, S.A. in February 2000. In order to get the job, she had to fill out an application stating whether she was pregnant.<sup>337</sup>

Edgar Alfredo Perdomo Barrientos, general manager of Sertegua, S.A., informed Human Rights Watch that the factory asked the question about pregnancy status in order to better assign work posts, because “the factory has activities such as “ironing, cutting loose threads, transporting, carrying, etc. that require an effort that at a certain time might be harmful to the mother and the fetus.” In the same letter, Perdomo stated that in February 2000, the factory’s clients were Oxford Industries and Face to Face Industries. Neither company responded to Human Rights Watch letters of inquiry.<sup>338</sup> According to Perdomo, the factory removed questions about pregnancy status from its application forms and interviews as of February 2001 following the suggestion of “enterprises related to the observance of human rights.”<sup>339</sup>

- Susana Aragón, a twenty-eight-year-old ladina, began working for Sul-Ki Modas, S.A. on March 21, 2000. She completed an application that

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<sup>335</sup> Communication (fax) from Roberto Hirst, Pierre Cardin agent, dated April 3, 2001.

<sup>336</sup> Human Rights Watch telephone interview, anonymous Pierre Cardin official, April 2, 2001.

<sup>337</sup> Human Rights Watch interview, Elena Bax, Guatemala City, June 20, 2000.

<sup>338</sup> Human Rights Watch made the following attempts to contact these companies: fax March 14, 2001, certified mail letter March 15, 2001, and follow-up phone calls March 27 and 29, 2001 to Oxford Industries; fax March 14, 2001, certified mail March 15, 2001, and follow-up phone calls March 27 and 29, 2001 to Face to Face Industries. Perdomo also mentioned a company named Sinary, Inc. Human Rights Watch was unable to find any information about this company.

<sup>339</sup> Communication (fax) from Edgar Alfredo Perdomo Barrientos, general manager, Sertegua, S.A., dated March 12, 2001.

asked if she was pregnant, and the personnel employee who interviewed her repeated the question in the interview.<sup>340</sup>

According to AMES, Sul-Ki Modas, S.A. was manufacturing a variety of labels for Wal-Mart Stores, Inc. between October-December 1999, when they conducted their research. Wal-Mart Stores, Inc. confirmed that it has a continuing contractual relationship with Duck Hung, the name under which Sul-Ki Modas, S.A. exports to the United States. According to Denise Fenton, director of Corporate Compliance at Wal-Mart Stores, Inc., the company conducted an audit of the facility in December 2000 and found that pregnancy testing was indeed a hiring practice. Fenton stated that Wal-Mart Stores, Inc. considers pregnancy testing to be an indication of management practices the corporation does not want to be associated with and ordered that remedial action be taken. Wal-Mart Stores, Inc. has received assurances that the practice of pregnancy testing has been discontinued, and plans a follow-up audit by the end of April 2001 to verify the change.<sup>341</sup> Hugo Leonel Najarro, administrative manager of Sul-Ki Modas, S.A., told Human Rights Watch the factory asked about pregnancy status for two reasons: to make sure pregnant workers were assigned appropriate jobs within the factory and to ensure that the personnel department solicited the necessary paperwork from IGSS.<sup>342</sup>

- Veronica Alejandra Pérez, a twenty-nine year old ladina, has been ironing and doing other manual labor at Modas One Korea since July 1999. When she started working there, she had to state on the application and again in an interview that she was not pregnant.<sup>343</sup>

According to another worker's testimony, Modas One Korea was producing the following labels in May 2000: Arizona Jean Co., a label of J.C. Penney Company, Inc.; Villager, a label of Liz Claiborne, Inc.; and Hanes. Sara Lee Corporation, the parent company of Hanes, told Human Rights Watch that it does not have any record of having produced any Hanes product at this

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<sup>340</sup> Human Rights Watch interview, Susana Aragón, Barcenas, June 25, 2000.

<sup>341</sup> Human Rights Watch telephone interview, Denise Fenton, director, Corporate Compliance, Wal-Mart Stores, Inc., Bentonville, Arkansas, March 16, 2001.

<sup>342</sup> Communication (letter) from Hugo Leonel Najarro, administrative manager, Sul-Ki Modas, S.A., dated February 27, 2001.

<sup>343</sup> Human Rights Watch interview, Veronica Alejandra Pérez, Barcenas, June 25, 2000. Modas One Korea is sometimes referred to as Modas One Corea.

factory. In addition, Douglas C. Voltz, vice president of employee relations, stated that Sara Lee Corporation has a long standing code of conduct to which all of its operating divisions are bound and that the company takes allegations of this type “extremely seriously.”<sup>344</sup> J.C. Penney Company, Inc. also told Human Rights Watch that it found no evidence that any of its suppliers ever used Modas One Korea to produce apparel for that company.<sup>345</sup> Liz Claiborne, Inc. verified that another maquila in Guatemala, Shin Won, subcontracted work to Modas One Korea without the corporation’s permission and in violation of the contract with Shin Won. Roberta Schuhalter Karp, senior vice president for Corporate Affairs and general counsel, told Human Rights Watch that Liz Claiborne, Inc. suppliers may use subcontractors only with the corporation’s express permission and only after a human rights audit has been conducted at the facility.<sup>346</sup> Liz Claiborne, Inc. engaged COVERCO, an independent monitoring group in Guatemala, to track working conditions at an undisclosed factory in Guatemala. Modas One Korea closed its doors in October or November of 2000.

- Leslie Alejandra Lejos, a thirty-eight-year-old ladina with seven children, began working at Industrias Modas Gooryong, S.A. in April 1999. The application asked if she was pregnant, and she was again asked if she was pregnant in an interview.<sup>347</sup>

According to Lejos, she sewed clothing for the Cherokee brand, carried by Target Corporation, between April 1999 and February 2000, when she quit her job. Neither Modas Gooryong, S.A. nor Target Corporation responded to our letter of inquiry.

- María Aguilar, a twenty-three-year-old ladina, was asked to complete an application form including a question about pregnancy in a maquila in 1993, another in 1994, and in Sam Bridge, S.A. in September 1999.<sup>348</sup>

<sup>344</sup> Communication (fax) from Douglas C. Voltz, vice president of employee relations, Sara Lee Corporation, dated March 13, 2001.

<sup>345</sup> Communication (fax) from Peter M. McGrath, vice president and director of Quality and Sourcing, dated March 14, 2001.

<sup>346</sup> Communication (letter) from Roberta Schuhalter Karp, senior vice president for Corporate Affairs and general counsel, Liz Claiborne, Inc., dated March 13, 2001.

<sup>347</sup> Human Rights Watch interview, Leslie Alejandra Lejos, Barcenas, June 25, 2000.

<sup>348</sup> Human Rights Watch interview, María Aguilar, Chimaltenango, June 25, 2000.

The factory did not respond to our letter of inquiry.<sup>349</sup>

- Lourdes López, a twenty-eight-year-old ladina, has worked at Internacional de Alimentos Procesados, S.A. (INAPSA), a food processing and freezing plant, and Dong Bang Fashions, S.A., a textile maquila. Both are located in Chimaltenango. She worked at INAPSA from 1989-1992, and then again 1995-1998. She quit for several months, and then resumed working at INAPSA in mid-1998 and remains there to this day. All three times she started anew, she was asked if she was pregnant. In 1998, she had to sign a form, filled out by the secretary who interviewed her, attesting to not being pregnant. López worked at Dong Bang Fashions, S.A. from June 1992 to December 1993. There, she had to go to the maquila clinic and give a urine sample for a pregnancy test.<sup>350</sup>

López told Human Rights Watch that INAPSA was processing produce, such as broccoli and okra, for H.J. Heinz Company and Sysco Corporation. INAPSA did not respond to our letter of inquiry. Laura Stein, senior vice president and general counsel at H.J. Heinz Company, informed Human Rights Watch that although the company does not have a direct contractual relationship with INAPSA, Heinz does purchase frozen vegetables from a distributor in California that does get supplies from INAPSA. Stein stated that Heinz was making inquiries with the California distributor about INAPSA and would require a report about discrimination in the factory. If the response is not satisfactory, Stein added, Heinz will instruct the distributor to terminate purchases of INAPSA products for sale to Heinz.<sup>351</sup>

Mike Nichols, general counsel for Sysco Corporation, told Human Rights Watch that his company buys product from Superior Foods, Inc., which does buy from INAPSA.<sup>352</sup> According to Nichols, Sysco Corporation does not have any mechanisms in place for monitoring of labor practices by its suppliers

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<sup>349</sup> Human Rights Watch repeatedly attempted to contact the management at Sam Bridge, S.A. at their officially listed phone numbers. There was no answer.

<sup>350</sup> Human Rights Watch interview, Lourdes López, Chimaltenango, June 25, 2000.

<sup>351</sup> Communication (letter) from Laura Stein, senior vice president and general counsel, H.J. Heinz Company, dated March 19, 2001.

<sup>352</sup> Human Rights Watch telephone interview, Mike Nichols, general counsel, Sysco Corporation, Houston, Texas, March 22, 2001.

or their contractors. Mateo Lettunich, president and chief executive officer of Superior Foods, Inc., confirmed that his company is a supplier to both Sysco Corporation and H.J. Heinz, and has been working with INAPSA for the last ten years. Lettunich spoke to Human Rights Watch by phone from Guatemala, where he said he investigated thoroughly INAPSA policies. Plant managers at INAPSA assured Lettunich that they do not require female applicants to reveal pregnancy status.<sup>353</sup>

As mentioned above, a representative for Dong Bang Fashions, S.A. maintained that the factory does not use pregnancy testing.<sup>354</sup>

- Reina Súarez, a sixteen-year-old who falsified her papers in order to get a job with a maquila, started working at Pacific Modas, S.A. in early 1999. She had to first answer questions about whether she was pregnant and whether she already had children.<sup>355</sup>

Pacific Modas, S.A. changed its name to Atlantic Modas, S.A. on September 1, 2000. Sam Lee, president of Atlantic Modas (Pacific Modas), S.A. explained that the factory did ask potential female employees if they were pregnant or not, but no longer does. He did not clarify when the practice was discontinued.<sup>356</sup> According to Lee, the factory produced clothing for GEAR for Sports, Aeropostale, Inc., and Target Stores during 2000. Although in his initial letter, Lee stated the factory did not produce for Michael Brandon Sportswear, in a follow-up communication, he said Atlantic Modas (Pacific Modas), S.A. has produced for Brandon Sportswear since June 1999.<sup>357</sup> Lucia Pangan, the chief financial officer of B.J.D., Inc., the company that owns the Michael Brandon Sportswear label, informed Human Rights Watch that her company had no direct knowledge of the Atlantic Modas (Pacific Modas), S.A. factory. In 1999, B.J.D., Inc placed an order with a South Korean company named Fount, which

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<sup>353</sup> Human Rights Watch telephone interview, Mateo Lettunich, chief executive officer, Superior Foods, Guatemala City, Guatemala, March 27, 2001.

<sup>354</sup> Communication (fax) from Kye Hoon Kim, general manager, Dong Bang Fashions, S.A., dated March 22, 2001.

<sup>355</sup> Human Rights Watch interview, Reina Súarez, Villa Nueva, June 10, 2000. In July/August 2000, Pacific Modas moved and changed names to Atlantic Modas, S.A. It is the same company.

<sup>356</sup> Communication (letter) from Sam Lee, president, Atlantic Modas, S.A., dated March 26, 2001.

<sup>357</sup> Communication (letter) from Sam Lee, president, Atlantic Modas, S.A., dated March 30, 2001.

then sourced the manufacturing to factories in Central America, according to Pangan. B.J.D, Inc. discontinued the dealings with Fount due to unsatisfactory production. Pangan said it did not have any additional information on Fount.<sup>358</sup>

In a letter dated March 13, 2001, John Joerger, director of Global Human Rights Compliance at GEAR for Sports, confirmed that Atlantic Modas (Pacific Modas), S.A. was and continues to be a partner factory.<sup>359</sup> Joerger stated in a follow-up phone call that the first order shipped to GEAR for Sports from the Atlantic Modas (Pacific Modas), S.A. factory in May 1999.<sup>360</sup> Joerger did not respond specifically to any report of pregnancy discrimination at Atlantic Modas (Pacific Modas), but he explained that all partner facilities must comply with the GEAR for Sports code of conduct, which specifically prohibits discrimination on the basis of gender, among other grounds, and pregnancy testing (except as required by national law). GEAR for Sports has both an internal and an external monitoring program.

Julian Geiger, chairman and chief executive officer of Aeropostale, Inc., clarified that it contracts with Intertex Group, an importer that has used Atlantic Modas (Pacific Modas), S.A. Without specifically responding to any allegation of pregnancy discrimination, Geiger stated that Aeropostale, Inc. requires all of its vendors to sign a letter stating its intentions to comply with the United States Fair Labor Standards Act, with a particular emphasis on compliance with U.S. laws regarding forced and child labor. The statement of intent does not explicitly address situations in which vendors source manufacturing overseas.<sup>361</sup>

Target Corporation did not respond to our letters of inquiry.

- Leticia Fernández, eighteen, started working at Modas Young Nam, S.A. in early 1999. She signed an application form that asked whether she was married, had children, and whether she was pregnant.<sup>362</sup>

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<sup>358</sup> Communication (letters) from Lucia Pangan, chief financial officer, B.J.D., Inc., dated March 6, 2001 and March 29, 2001.

<sup>359</sup> Communication (letter) from John Joerger, director of Global Human Rights Compliance, GEAR for Sports, dated March 13, 2001.

<sup>360</sup> Human Rights Watch telephone interview, John Joerger, director of Global Human Rights Compliance, GEAR for Sports, March 23, 2001.

<sup>361</sup> Communication (fax) from Julian Geiger, chairman and chief executive officer, Aeropostale, Inc., dated April 11, 2001.

<sup>362</sup> Human Rights Watch interview, Leticia Fernández, Villa Nueva, June 10, 2000.

In a letter dated March 1, 2001, Kun Seo Park, president of Modas Young Nam, S.A., stated that “at no time has this company had answering the question if pregnant or not as a requirement for hiring.” Modas Young Nam, S.A. had a contractual relationship with Montgomery Ward throughout 1999, according to Park, but as of a year, the factory “does not have direct contracts.”<sup>363</sup> Montgomery Ward declared bankruptcy on December 28, 2000.

#### **Post-hire Penalization of Pregnant Workers**

Maquila workers who become pregnant while employed rarely enjoy the full range of benefits and protections afforded them under the Guatemalan labor code. By law, pregnant workers who inform their employers in writing are entitled to a total of eighty-four days paid maternity leave and ten months of breastfeeding rights. The worker must be allowed two thirty-minute breaks every day to breastfeed her child in an appropriate room on the premises, or alternatively, allowed to work one hour less each day. This hour for breastfeeding is remunerated. Once the worker has informed her employer, and through her maternity leave and breastfeeding months, the worker may not be fired except with the prior authorization of a labor judge. Pregnant workers should be accommodated, and their health and the health of the fetus protected.<sup>364</sup> In reality, however, management in maquilas obstruct workers’ access to health care, including reproductive health care, and do not respect workers’ full maternity rights.

#### **Access to Health Care**

Access to health care in general, and reproductive and prenatal health care in particular, is a significant problem for maquila workers. Unlike domestic workers, maquila workers are entitled to the employee health care system known as IGSS. The IGSS is supported through a combination of employer, employee, and state contributions. Membership in the IGSS entitles workers to receive free health care, among other benefits. However, many workers complained that they had not been registered with IGSS, even though the maquila continued to deduct their employee contribution from every paycheck. Other workers who were registered reported serious difficulty obtaining the necessary employer

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<sup>363</sup> “...EN NINGUNA OPORTUNIDAD ESTA EMPRESA HA TENIDO COMO REQUISITO DE CONTRATACION PARA EL PERSONAL FEMININO EL CONTESTAR A LA PREGUNTA SI ESTAN O NO EMBARAZADAS.” Communication (fax) from Kun Seo Park, president, Modas Young Nam, S.A., dated March 1, 2001.

<sup>364</sup> Labor Code, Articles 151-153.

permission for time off to visit an IGSS facility. Claudia Amparo Herrera, a former line supervisor at Modas One Korea, told us she resigned in part because her superiors kept refusing to give IGSS permissions to people in her line.<sup>365</sup>

AMES conducted a survey in late 1999 of 649 women working in fourteen different maquilas in Villa Nueva and found that while 95 percent of women surveyed said the factory discounted for IGSS every pay period, only 52 percent were actually enrolled.<sup>366</sup> Thirty-one percent of the women said they were never able to get permission to go to a doctor or to IGSS, and 57 percent said that they were never able to get permission with pay. Of those who had taken time off without pay to visit the doctor, over 75 percent said some amount of money was deducted from their paycheck for that pay period. CEADEL, an organization that services young people working the maquilas in Chimaltenango, surveyed sixty of their women members in 2000 and found that only five were affiliated with IGSS.<sup>367</sup> Kenneth Kim, coordinator of COVERCO, an independent monitoring group in Guatemala, confirmed that obstructed access to health care is “very common,” adding that his group documents this problem “in every factory just about all the time. It’s a bureaucratic process and the factories are reluctant to lose workers for health care reasons.”<sup>368</sup>

Human Rights Watch learned of some egregious cases in which maquila workers were unable to secure critical health care due to the obstruction of management. Laura Espinosa Hidalgo’s story is the most shocking. Espinosa is thirty years old and has leukemia. She first worked at Textiles Sung Jae, S.A. from March to June 1999, but quit in order to seek the intensive medical care she needed. She asked repeatedly to be affiliated with IGSS at the factory, in order to get her care through the social security system, but was repeatedly rebuffed. “They kept telling me the paperwork isn’t ready yet,” she remembers. Yet, they discounted her employee contribution from the day she started. After she quit, for three months she underwent blood transfusions, chemotherapy, and

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<sup>365</sup> Human Rights Watch interview, Claudia Amparo Herrera Gómez, Guatemala City, June 17, 2000.

<sup>366</sup> Asociación Mujeres en Solidaridad (AMES) (Association of Women in Solidarity), *Diagnóstico sobre las condiciones socio laborales de 14 empresas maquiladoras de confección del área de Villa Nueva* (*Diagnostic of the socio-working conditions in 14 apparel maquilas in Villa Nueva*) (Guatemala City: AMES, January 2000) (forthcoming).

<sup>367</sup> Human Rights Watch interview, Gabriel Zelada, director, CEADEL, Chimaltenango, June 11, 2000.

<sup>368</sup> Communication (email) from Kenneth Kim, coordinator, COVERCO, dated February 16, 2001.

other intensive treatments, including hospitalization. She had to spend her own money (Q6,000, or U.S. \$826) for her treatment at a public hospital. She returned to work at Textiles Sung Jae, S.A. in April 2000 and was working there when we first interviewed her. A week later, however, she was fired. She had missed the previous week of work because she was sick, and the maquila management did not want to accept her doctor's certification of illness because he is with a private clinic. On the day she was fired, as on many occasions before, Espinosa had that day once again asked for her IGSS carnet because she needed to get medicine, and the supervisor had yelled at her. The real reason she was fired, according to Espinosa, was her insistence that she be given an IGSS card and her need to get medical treatment.<sup>369</sup> Textiles Sung Jae, S.A. did not respond to our letter of inquiry.

Both men and women are affected by maquila policies and practices regarding IGSS and work certificates. Women face gender-specific repercussions with respect to access to reproductive healthcare, especially prenatal, birth, and postpartum care. The following cases illustrate these consequences.

- In July 1998, after she had been working at Sam Lucas (now Sam Bridge, S.A., S.A.) for roughly a year and a half, María Aguilar, a twenty-three-year-old ladina, became pregnant. She went to the maquila personnel office to report officially her pregnancy, but they refused to accept her doctor's note. She was told to wait two or three months before she went to IGSS "so I wouldn't get too hopeful, in case I lost the baby." She explained her work at that time: "I sewed on backs, I had to pick up big bundles of 120 pieces, and they forced me to work extra hours. I had a lot of nausea [and] I was really tired. I couldn't go to the bathroom to throw up because they only opened from 8:30-11:30 a.m.. Sometimes I had to vomit where I worked." In October, she woke up with severe abdominal pains. "I thought they were normal, and I went to work. Then I started to bleed, and I went to the supervisor to ask for permission [to go to the doctor]." Her supervisor told her to wait until the maquila doctor showed up at ten o'clock, a couple of hours later. She was the second person to be seen. At around 11 o'clock, the head of personnel finally gave her permission

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<sup>369</sup> Human Rights Watch interview, Laura Espinosa Hidalgo, Villa Nueva, June 10 and June 17, 2000. Treatment costs based on exchange rate U.S. \$1:Q7.26 (the rate of exchange in May 1999).

to go to a hospital. Once she got there, the doctor told her there was nothing he could do. She lost the baby.<sup>370</sup>

Despite repeated attempts to contact them, the management at Sam Bridge, S.A. did not respond to our queries.

- Carla Alvarez, a twenty-five-year-old national of another Latin American country who has been living in Guatemala for nearly a decade, started working at Textiles Sung Jae, S.A. in April 1999. She became pregnant shortly after starting to work. When she realized she was pregnant, she spoke to her line supervisor and asked to have her papers arranged to be affiliated with IGSS. Her line supervisor kept telling her he would take care of it, but never did. Finally, he told her she did not have the right to IGSS as a foreigner, even though they had been deducting her employee contribution since the day she began. He also never gave her official permission to go to her prenatal check-ups: every time she went, she lost a full day's pay, even if she had only been away half a day. Alvarez suffered from blood circulation problems during her pregnancy. The private doctor to whom she went for her visits gave her an official letter asking the maquila to suspend her with pay for the rest of her pregnancy. This was denied. She eventually gave birth prematurely at home, with the help of a neighbor. She ended up returning to the same maquila because she was afraid that she would not be able to find work elsewhere.<sup>371</sup>

Despite repeated attempts to contact them, management at Textiles Sung Jae, S.A. did not respond to our queries.

- Lourdes López became pregnant in 1998 while working at INAPSA. Even though her employee contribution had been deducted from her paycheck since she began working there, the head of personnel told her she did not have the right to visit IGSS or receive maternity benefits. As a result, López went for only two check-ups during her entire pregnancy. She had to see a private doctor and pay for the visits herself.<sup>372</sup>

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<sup>370</sup> Human Rights Watch interview, María Aguilar, Chimaltenango, June 25, 2000.

<sup>371</sup> Human Rights Watch interview, Carla Alvarez, Guatemala City, June 3, 2000.

<sup>372</sup> Human Rights Watch interview, Lourdes López, Guatemala City, June 25, 2000.

INAPSA management did not reply directly to our letter of inquiry. Matteo Lettunich, president and CEO of Superior Foods, Inc., a company that buys from INAPSA and supplies to H.J. Heinz and Sysco Corporation, told Human Rights Watch that the owners and managers of the factory “categorically deny” this allegation, and that his own interviews in the plant did not find any evidence to support these claims.<sup>373</sup>

#### ***Failure to Abide by Maternity Protection Laws***

##### **Dismissals of Pregnant Workers**

Direct dismissal of pregnant workers is less common now than it was in the past. Strong maternity protections in the labor code, and a clear awareness among workers and labor officials about the rights of pregnant workers, have had a positive impact. The practice has not been eliminated, however. According to a Ministry of Labor Inspectorate document, in 1998 and through August 1999, the Inspectorate received forty-two reports of illegal dismissal of a pregnant worker. In the same period, the Inspectorate received twenty reports of illegal dismissal of workers during their protected ten-month period of breastfeeding.<sup>374</sup> Human Rights Watch interviewed two women who were fired because they were pregnant.

Miriam de Rosario, a twenty-seven-year-old originally from the department of Esquintla, was six-months pregnant with her third child at the time of our interview. She was fired from her job at the now defunct Modas One Korea at the end of May 2000. When she found out she was pregnant, she did not tell her supervisor because she had heard that other women had lost their jobs when they became pregnant, and she decided she would work until someone noticed. In late May, when she was five-months pregnant, the director of personnel called her into the office and asked her if she was pregnant. The director told De Rosario she had been working there for a very short time (she had started work in late March) and that she could not continue because she was pregnant. The director complained that pregnant employees cannot work extra hours, cannot stand for long periods of time, and do not work as hard as others. De Rosario did not lodge a complaint with the labor ministry because she had heard of another woman who had been fired and had not received any help.<sup>375</sup>

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<sup>373</sup> Communication (email) from Matteo Lettunich, president and chief executive officer, Superior Foods, Inc., dated April 2, 2001.

<sup>374</sup> Ministry of Labor Inspectorate document.

<sup>375</sup> Human Rights Watch interview, Miriam de Rosario, Guatemala City, June 25, 2000.

Soel Esperanza López, twenty-one years old, was three-months pregnant when she was fired from Tanport, S.A. maquila in November 1999. She had informed her supervisor in human resources she was pregnant when she asked for permission to go to IGSS for the initial check-up and to schedule her prenatal visits for the remainder of her pregnancy. When López returned with the IGSS confirmation of her status, the supervisor said she did not believe her because López did not look pregnant. The supervisor fired López, allegedly saying she was demanding too much time off, because of visits to IGSS and because she had taken a week's leave to care for her sick mother-in-law. A couple of weeks later, López filed a complaint with the labor ministry. Her supervisor failed to appear when summoned, so the inspector gave López a letter to deliver personally. After several attempts, the supervisor finally agreed to see López. According to López, she told her that she had no right to a job and that she could file all the complaints she wanted. "Just wait, we'll see who wins," the supervisor told her. López told Human Rights Watch she then desisted in the case because she felt discouraged. At the time of our interview, the maquila had not only not reinstated her in her job, but had not paid her for the last week she worked or her severance pay.<sup>376</sup>

On February 26, workers at Tanport, S.A. found the doors to the factory locked and a sign indicating the facilities had moved to another location. When the workers arrived at the new address, the security guard told them they could not enter.<sup>377</sup> Human Rights Watch repeatedly attempted to call the factory without any response. Letters of inquiry were sent to both the old and new addresses. The courier for Federal Express verified on March 13 that the factory no longer existed at the old address, where a sign did indeed indicate the new address. On March 14, at the new location, the courier found an abandoned building. A neighborhood private security guard told the courier that the owners had simply left due to problems with their employees.<sup>378</sup>

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<sup>376</sup> Human Rights Watch interview, Soel Esperanza López, Guatemala City, June 22, 2000.

<sup>377</sup> "Continúan maniobras de empresarias maquiladoras de Tanport, S.A." ("Manipulation by Maquiladora Owners of Tanport, S.A. Continues"), UNSITRAGUA press release, February 2001; and Human Rights Watch telephone interview, Irene Barrientos, head, international relations, UNSITRAGUA, Guatemala City, February 27, 2001.

<sup>378</sup> Human Rights Watch telephone interview, Michele Mata, Federal Express employee, Guatemala City, March 16, 2001.

**Maternity leave and breastfeeding rights**

The 1999 AMES study mentioned above found that of those women who had given birth while working for a maquila (28 percent of those surveyed), nearly 39 percent had not been allowed to take time off for maternity leave.<sup>379</sup> Of those women who were allowed to take maternity leave, nearly 40 percent were not paid their salary during that period.<sup>380</sup> Carla Alvarez was one such example. When she became pregnant and was denied access to IGSS, she ended up giving birth prematurely in her own home (see above). The management at Textiles Sung Jae, S.A. told her she had to resign and that they would rehire her several months later. Although management did rehire Alvarez, they have so far refused to pay her the severance she would be due for the time she worked up until the resignation. She is not allotted her one hour for breastfeeding per day, as required under law.<sup>381</sup> Alvarez told Human Rights Watch there were two other women at Textiles Sung Jae, S.A. who were about to give birth at the time of the interview, but who had not been given IGSS carnets, and were unsure whether they would enjoy their rightful maternity benefits. As mentioned above, Textiles Sung Jae, S.A. did not respond to our inquiry.

Lourdes López, after returning to work at INAPSA after her maternity leave, was allowed to leave one hour early to breastfeed her baby, but the maquila started counting the ten months from the time she went on maternity leave, rather than from the time she returned to work as stipulated by law.<sup>382</sup>

**Daycare Facilities**

According to interviews conducted in June 2000, none of the maquilas investigated by Human Rights Watch had the legally mandated daycare facilities for their employees. The labor code stipulates that employers

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<sup>379</sup> AMES, *Diagnóstico (Diagnostic)*.

<sup>380</sup> Ibid.

<sup>381</sup> Human Rights Watch interview, Carla Alvarez, Villa Nueva, June 3, 2000.

<sup>382</sup> Human Rights Watch interview, Lourdes López, Guatemala City, June 25, 2000.

with thirty or more female employees must provide free daycare services, on site and staffed by appropriate personnel. Only 1 percent of the women surveyed by AMES in Villa Nueva said their maquila had a day care center.<sup>383</sup>

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<sup>383</sup> AMES, *Diagnóstico (Diagnostic)*.

## VI. RESPONSE OF THE GUATEMALAN GOVERNMENT

*There's deficiency and impunity in the administration of labor justice.*  
-- *Augusto Salazar, FESTRAS*<sup>384</sup>

*The Ministry of Labor has criticized us for taking over their role, but it's not true. We exist because the ministry doesn't function well.*  
-- *Kenneth Kim, COVERCO*<sup>385</sup>

This report describes the statutory and practical sex discrimination that domestic workers and maquila line operators endure on a daily basis. In the case of domestic workers, this is in large part due to discrimination in legal protection. Despite its obligations under international law and specific commitments made in the peace accords, the Guatemalan government has failed to rectify this discrimination. The labor code does, however, guarantee domestic workers some rights, and provides for extensive protections for maquila line operators. Human Rights Watch has identified three critical inadequacies in the Guatemalan response to gender-specific labor rights violations. First, the government has demonstrated a lack of due diligence in monitoring labor rights conditions and enforcing the labor code. Second, sanctions for labor rights infractions were until recently so inadequate as to fail to provide an effective disincentive to would-be violators of the law. Last, the lack of coordination among state institutions obstructs even the most modest attempts to protect worker rights.

### **Lack of Due Diligence**

#### **Ministry of Labor**

Article 103 of the Guatemalan Constitution establishes the *tutelaridad*, or protective nature, of labor law in Guatemala.<sup>386</sup> Under the labor code, the Ministry of Labor is charged with enforcing labor legislation following the guiding principle of "protection:" a responsibility to engage in the active

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<sup>384</sup> Human Rights Watch interview, Augusto Salazar, national coordinator, FESTRAS, Guatemala City, June 9, 2000.

<sup>385</sup> Human Rights Watch interview, Kenneth Kim, project coordinator, COVERCO, Guatemala City, June 1, 2000.

<sup>386</sup> Constitution of the Republic, Article 103: "The laws that regulate relations between employer and work [sic] are conciliatory, protective of the workers and will attend to all the pertinent economic and social factors."

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protection of worker rights, not simply to serve as an impartial arbiter between the employer and the employee. In its last paragraph, Article 106 provides that in cases of doubt over the interpretation or scope of legal, regulatory, or contractual matters in labor affairs, “the interpretation will be made in the manner most favorable for the workers.”

In addition to calling for specific reforms to labor legislation in Guatemala, the Social and Economic Agreement in the peace accords committed the government to take steps to “decentralize and expand labour inspection services, strengthening the capacity to monitor compliance with the labour norms of domestic law and those derived from the international labour agreements ratified by Guatemala, paying particular attention to monitoring compliance with the labour rights of women, migrant and temporary agricultural workers, household workers, minors, the elderly, the disabled and other workers who are in a more vulnerable and unprotected situation.”<sup>387</sup> Despite these promises, the monitoring and enforcement capacity of the labor ministry remains weak.

Workers who have suffered violations of their rights can go to the Ministry of Labor’s Inspectorate for assistance. The Inspectorate comprises of three divisions: Conciliation, Visitations, and Mediation. Workers who have been fired and seek either to be rehired or to obtain their legal severance pay report to Conciliation; workers with on-the-job complaints go to the Visitation division. The Mediation division, according to Roberto de León, the general secretary of the Inspectorate, handles the most complex cases, specifically those involving public sector employees.<sup>388</sup>

The system is not adequately tailored to detect gender-specific labor rights violations. The Inspectorate does conduct predetermined *ex officio* investigations on a regular basis. Roberto de León stated that the Inspectorate had conducted 1,700 *ex officio* visits between January and June 2000 alone, a significant increase over previous years.<sup>389</sup> However, self-initiated independent investigations by individual inspectors are not common. Indeed, the minister of labor told Human Rights Watch that self-initiated investigations must be approved at the ministerial level.<sup>390</sup> The ministry makes little or no use of what

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<sup>387</sup> Social and Economic Agreement, Article 26(d).

<sup>388</sup> Human Rights Watch interview, Roberto de León, secretary general, Labor Inspectorate, Guatemala City, June 22, 2000.

<sup>389</sup> Ibid. According to de León, the Inspectorate conducted 431 *ex officio* investigations in 1999 and 516 in 1998.

<sup>390</sup> Human Rights Watch interview, Juan Francisco Alfaro Mijangos, minister of labor, Guatemala City, June 23, 2000.

could be a powerful tool in the protection of workers' rights. The use of pregnancy testing and questions about reproductive status on application forms in the maquila sector are examples. Every official we spoke with was aware of these practices, including the minister of labor, and everyone agreed that these are "totally illegal, without a doubt."<sup>391</sup> Labor Magistrate Beatriz de Barreda categorically stated that the labor ministry could open an investigation into these practices if it so chose.<sup>392</sup> However, in an interview with Human Rights Watch, Minister of Labor Alfaro dismissed the idea, saying "I don't think we are into that level of detail."<sup>393</sup>

The fact that the Inspectorate is primarily reactive rather than proactive has a particularly harmful impact on domestic workers. There is, in effect, no monitoring or investigation into the situation of the tens of thousands (if not hundreds of thousands) of domestic workers throughout the country. Few domestic workers ever seek redress in the labor ministry, fewer still do so for on-the-job, continuing violations of their rights. This is due, in part, to lack of awareness of their rights, fear of retaliation, and a basic mistrust of the system. Part of the solution, as the minister of labor noted, is worker rights education.<sup>394</sup> An equally important part of the solution, however, is full compliance by the ministry with its duty to monitor the situation of domestic workers and investigate on-the-job conditions. The ability of the ministry to perform this duty is seriously impeded by the exemption enjoyed by employers of domestic workers from the obligations of providing a written contract<sup>395</sup> and depositing the names and details of employees with the Ministry of Labor.<sup>396</sup>

When a worker goes to Conciliation to lodge a complaint about alleged violations such as unjust dismissal or failure to pay severance money, the assigned inspector will summon the employer to seek an administrative solution to the conflict. If the employer fails to appear after three summonses, the inspector concludes his or her participation in the matter with a report. Until recently, and while Human Rights Watch conducted this investigation, the

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<sup>391</sup> Human Rights Watch interview, Berta Hilda de Alcántara, director, Working Women's Unit, Guatemala City, June 21, 2000.

<sup>392</sup> Human Rights Watch interview, Beatriz de León de Barreda, labor magistrate, Guatemala City, June 22, 2000.

<sup>393</sup> Human Rights Watch interview, Juan Francisco Alfaro Mijangos, minister of labor, Guatemala City, June 23, 2000.

<sup>394</sup> Ibid.

<sup>395</sup> Labor code, Article 27.

<sup>396</sup> Labor code, Article 61(a).

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worker was solely responsible for pursuing the case in the labor courts beyond this point. In July 2000, Minister of Labor Alfaro announced the creation of the Workers' Defense Office (*Procuraduría de Defensa del Trabajador*) within the ministry to provide legal aid to workers with no financial resources who have been fired without just cause.<sup>397</sup> As a rule, the office only accepts cases in which the severance pay due the worker is calculated at Q5,000 (U.S. \$667) or less, but it does accept all cases, regardless of the amount of severance pay, involving pregnant or breastfeeding workers, minors, or senior citizens.<sup>398</sup> As of February 2001, the Workers' Defense Office had received 670 cases; of these, 150 cases had been resolved or dropped, while the remaining 520 cases were still being processed.<sup>399</sup>

In the Visitation division, workers can lodge complaints about ongoing, on-the-job abuses. The receiving inspector is supposed to advise the employer of the report, and give the employer a certain number of days to comply with his or her obligations. The inspector may use his or her discretion in determining the length of time.<sup>400</sup> The inspector may also conduct an unannounced visit to the work site. During this visit, the inspector will call the worker who submitted the complaint to conduct what one inspector called "a direct hearing" between employee and employer.<sup>401</sup> If the employer fails to comply within the specified amount of time, the case is remanded to the legal section of the Inspectorate, which has the obligation of pursuing the case in court on behalf of the worker.

The practice of calling the worker before her employer in a quasi hearing has some troubling aspects. These hearings reflect the overarching emphasis of the labor ministry on conciliation and extrajudicial mechanisms for resolving labor conflicts. Unfortunately, the practice presupposes that the worker will be free to contest openly her employer as if they were equal parties to a negotiation when, in fact, the at-work power dynamic clearly favors the employer. Furthermore, this practice exposes the worker to employer retaliation, and may, in some cases, ultimately serve as a disincentive to other

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<sup>397</sup> "Ministerio de Trabajo inaugura procuraduría de defensa del trabajador" ("Ministry of Labor inaugurates a workers' defense office"), *Siglo Veintiuno*, July 14, 2000.

<sup>398</sup> Communication (fax) from Carmen Yolanda Monges Galván, Asistente General del Ministro (General Assistant to the Minister), Ministry of Labor, dated February 23, 2001, Of. 134-2001 CYN/slo.

<sup>399</sup> Ibid.

<sup>400</sup> Labor Code, Article 281(l).

<sup>401</sup> Human Rights Watch interview, anonymous labor inspector, Guatemala City, June 13, 2000.

workers. The message is that any attempt to defend one's rights will only put an individual in a worse situation.

Another troubling practice is the failure to investigate situations beyond an individual complaint, even when there exists the reasonable likelihood of a widespread problem or pattern. In general, the inspectors enjoy wide discretion over whether to initiate an investigation into potential violations, either on the basis of the individual complaint or on the basis of observed wrongdoings during an on-site inspection. An inspector who has worked in the labor ministry for a decade told Human Rights Watch that "we have the authority to conduct *ex officio* investigations, but sometimes we are limited [from doing so]...sometimes, the head of inspection will send around a memorandum saying that we should only look at the complaint, and no other problems in the business."<sup>402</sup> As a result, generalized problems may not be detected, and remedies will only be partial and limited.

Limited training and the lack of clear guidelines compound the shortcomings of the Inspectorate. The ministry has recently implemented some training cycles for new inspectors. However, many older inspectors never received any training, and attention to gender-specific labor rights violations in the trainings is minimal. The Working Women's Unit (*Sección de Promoción y Capacitación de la Mujer Trabajadora*), a division of the labor ministry created in 1994, conducts only limited internal training for labor inspectors on women's labor rights concerns.<sup>403</sup> Indeed, the two lawyers in the legal office of the Inspectorate had not received any training in women's labor rights, nor had the secretary general of the Inspectorate, who oversees the work of the inspectors.<sup>404</sup>

The Working Women's Unit has limited power to influence the performance of inspectors. The unit does not take complaints directly, but it does have the mandate to provide legal advice to working women with problems, and Inspectorate officials will sometimes send women up to the unit. However, the unit has no mandate to oversee the handling of cases involving gender-specific labor rights violations. The inspectors, according to Berta Hilda de Alcántara, the unit's director, do not openly share the details of their cases:

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<sup>402</sup> Human Rights Watch interview, anonymous labor inspector, Guatemala City, June 13, 2000.

<sup>403</sup> Human Rights Watch interview, Berta Hilda de Alcántara, director, Working Women's Unit, Guatemala City, June 21, 2000.

<sup>404</sup> Human Rights Watch interviews, José Antonio Recinos and César Augusto Prera, prosecutors, Labor Inspectorate, Guatemala City, June 22, 2000, and Roberto de León, secretary general, Labor Inspectorate, Guatemala City, June 22, 2000.

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“There’s nothing that obligates them to tell us what’s happening with their cases.”<sup>405</sup>

The Inspectorate does not have a procedures manual for its employees. According to one inspector, “everyone interprets [their duties] as they wish.”<sup>406</sup> Similarly, there is no established method for informing inspectors about new laws or regulations. “One finds out through the newspapers,” complained one inspector.<sup>407</sup> The consequences of limited training and lack of clear directives can be devastating. Pedro Barán, the lawyer for the women’s project at CALDH, remembers that one inspector refused to accept the complaint of a woman who was unable to get her medical certificate from the maquila where she worked in order to have her prenatal check-ups. The inspector wanted proof from her that she was pregnant. “He said he wasn’t going to waste his time without being sure that she was actually pregnant,” Barán told us.<sup>408</sup>

The lack of adequate staff and material resources clearly affects the ability of inspectors to carry out their responsibilities effectively. At the time of this investigation, there were twenty-three inspectors in Conciliation (five of whom dealt with cases being considered in Mediation), and thirty-two in Visitations.<sup>409</sup> As Misrahí Auyón, the CENTRACAP lawyer, acknowledged, inspectors “attend to many people every day, the treatment isn’t very in-depth.”<sup>410</sup> The Inspectorate relies on only two lawyers to shepherd all cases of on-the-job complaints and noncompliance through the labor courts on behalf of workers. Between the two of them, as of June 2000, they had some three hundred cases to follow in the courts.<sup>411</sup> At the time of this investigation, the Visitations division had only three vehicles available to inspectors to conduct

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<sup>405</sup> Human Rights Watch interview, Berta Hilda de Alcántara, director, Working Women’s Unit, Guatemala City, June 21, 2000.

<sup>406</sup> Human Rights Watch interview, anonymous labor inspector, Guatemala City, June 13, 2000.

<sup>407</sup> Human Rights Watch interview, anonymous labor inspector, Guatemala City, June 13, 2000.

<sup>408</sup> Human Rights Watch interview, Pedro Barán, lawyer, CALDH, Guatemala City, June 20, 2000.

<sup>409</sup> Human Rights Watch interview, Roberto de León, secretary general, Labor Inspectorate, Guatemala City, June 22, 2000.

<sup>410</sup> Human Rights Watch interview, Misrahí Iram Aben Auyón B., lawyer, CENTRACAP, Guatemala City, June 7, 2000.

<sup>411</sup> Human Rights Watch interview, José Antonio Recinos and César Augusto Prera, prosecutors, Ministry of Labor, Guatemala City, June 20, 2000.

worksite investigations. These vehicles are difficult to reserve in advance, and rarely available for emergency visits.<sup>412</sup>

#### **Guatemalan Institute for Social Security**

The Guatemalan Institute for Social Security (IGSS) was created in 1946 as an autonomous entity with the purpose of “providing minimum protection to the whole population of the country.”<sup>413</sup> This social security system functions as a public health care system for contributing employees. IGSS provides services and benefits not only in cases of work-related accidents and illnesses, but also general health care and maternity care, as well as disability care and payments.<sup>414</sup> Employers with more than three employees have an obligation to register those workers with IGSS, contribute the employer percentage, and deduct the employee contribution each pay period.<sup>415</sup>

The IGSS Inspectorate is charged with verifying compliance with employer obligations.<sup>416</sup> There are 125 inspectors in the whole country, sixty-five of whom are based in the capital.<sup>417</sup> This Inspectorate can receive complaints of noncompliance from workers, doctors treating a worker, authorities within the IGSS itself, or from a state institution. In acknowledgement of the difficulties workers have in reaching IGSS offices, the Inspectorate established a telephone hotline workers can call with complaints. The IGSS Inspectorate shares many problems with the labor ministry inspectorate: limited staff, inadequate resources, problematic procedures, and weak enforcement capacity.

Upon receiving a complaint, IGSS inspectors are supposed to visit the workplace without advance warning to investigate the allegations. However,

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<sup>412</sup> Human Rights Watch interview, anonymous labor inspector, Guatemala City, June 13, 2000.

<sup>413</sup> Organic Law of the Guatemalan Institute for Social Security, Decree No. 295, October 30, 1946, preamble.

<sup>414</sup> Organic Law, Chapter IV, Article 28. Children of employees are covered up to five years of age. Unlike their male counterparts, female employees affiliated with IGSS cannot extend the coverage to their spouses.

<sup>415</sup> Labor Code, Article 102. This article actually stipulates only that employers with three or more employees must maintain records in keeping with IGSS regulations. However, it is cited as the source for the rule that only these employers must register their employees with IGSS.

<sup>416</sup> Organic Law, Chapter VII, Article 50.

<sup>417</sup> Human Rights Watch interview, anonymous IGSS official, Guatemala City, June 23, 2000.

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like labor inspectors, IGSS personnel do not have the right to enter any workplace, be it a maquila, a private home, or an office, without permission. “One problem with the maquilas is that they don’t let us in,” a high ranking official of the IGSS Inspectorate told Human Rights Watch.<sup>418</sup> If the inspector is allowed to enter, he or she will look at the company’s personnel files. If the documents do not corroborate what the worker has alleged, the IGSS simply halts the investigation and closes the case.<sup>419</sup> If the worker’s name does not appear in the personnel files, the inspector will require the worker to show proof that he or she works or worked in that establishment. The difficulties of proving this fact can be substantial. The maquilas, for example, rarely give employees copies of their work contracts, and paychecks rarely come with pay stubs. Where workers do receive pay stubs, these often do not have the name of the business anywhere on them.

Like their colleagues in the labor ministry inspectorate, IGSS inspectors normally only investigate upon complaint, and rarely attempt to establish whether other workers under the same employer are faced with the same problems. For example, an IGSS inspector responding to a complaint from a maquila worker that she is unable to secure a medical certificate will only look into the specific complaint, and not investigate whether the problem is widespread in the maquila. Similarly, although a complaint of failure of the company to register a single worker with IGSS could be symptomatic of a widespread problem, inspectors will rarely open independent investigations. Carmen López de Cáceres, the director of the ILO’s project on maquilas in Guatemala, complained that the “IGSS is not concerned with verifying the affiliation of workers. It’s a general problem.”<sup>420</sup> A highly-placed official in the IGSS Inspectorate acknowledged that “a high number” of workers are not registered with the Institute.<sup>421</sup>

The IGSS can neither impose fines directly nor take any action against employers who fail to comply with IGSS regulations. In cases in which the inspector verifies an infraction, such as the failure of the employer to register workers with the IGSS, the Institute has the obligation to lodge a formal legal complaint. The IGSS official explained that this obligation is rarely pursued. “It takes too much time. We try to reach a conciliation, an extrajudicial

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<sup>418</sup> Ibid.

<sup>419</sup> Ibid.

<sup>420</sup> Human Rights Watch interview, Carmen López de Cáceres, director, ILO Project for Women Working in the Maquila Sector, Guatemala City, June 2, 2000.

<sup>421</sup> Human Rights Watch interview, anonymous IGSS official, Guatemala City, June 23, 2000.

resolution.” According to the official, the Inspectorate receives an average of ten complaints every month from maquila workers about their inability to get a medical certificate. He claimed most are resolved in favor of the worker. He explained that the last complaint the IGSS Inspectorate lodged in the labor courts was in 1992. “They haven’t summoned us yet.”<sup>422</sup>

#### **Ineffective Sanctions**

Absurdly low fines, drawn-out court proceedings, and the difficulties of enforcing sanctions when applied have all left the worker little choice but to try to reach a negotiated settlement. Even those charged with taking cases to court, the two labor ministry prosecutors, believe that “conciliation is better for the worker.”<sup>423</sup> “There’s deficiency and impunity in the administration of labor justice,” according to Augusto Salazar, a union organizer. “There are no sanctions, no coercive measures. If you exhaust the conciliatory avenue, then you can go to the courts, but there the case will take two years. Impunity reigns in all areas.”<sup>424</sup>

At the time this research was conducted, the Ministry of Labor was not empowered to impose sanctions directly. Only the labor courts, which are part of the Ministry of Justice, could order penalties for labor rights violations.<sup>425</sup> But court cases take an extremely long time, and sentences can be difficult to enforce. Pedro Barán, the lawyer for CALDH’s women’s rights project, explained that it can take months simply to get a court date, then months before the case will actually be heard. A labor magistrate agreed, telling Human Rights Watch that the average case takes two years to work itself through the courts.<sup>426</sup> “They don’t comply with the principle of prompt justice, so that hunger doesn’t arrive before justice,” complained Barán.<sup>427</sup>

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<sup>422</sup> Human Rights Watch interview, anonymous IGSS official, Guatemala City, June 23, 2000.

<sup>423</sup> Human Rights Watch interview, José Antonio Recinos and César Augusto Prera, prosecutors, Ministry of Labor, Guatemala City, June 20, 2000.

<sup>424</sup> Human Rights Watch interview, Augusto Salazar, national coordinator, FESTRAS, Guatemala City, June 9, 2000.

<sup>425</sup> Labor Code, Articles 269-272, 281 (l).

<sup>426</sup> Human Rights Watch interview, Beatriz de León de Barreda, labor magistrate, Guatemala City, June 22, 2000.

<sup>427</sup> Human Rights Watch interview, Pedro Barán, CALDH lawyer, Guatemala City, May 29, 2000.

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According to several lawyers and the labor magistrate, employers use several tactics to delay judicial proceedings indefinitely. Chief among these are claims of inability to attend the hearings due to illness (which can be filed up to three times) and allegations of incompetence of the judge to hear the case. This latter charge is routinely filed, regardless of the case or the appointed judge. Once filed, “the judge must give it due process. This is filed only to delay the process,” according to labor magistrate de Barreda.<sup>428</sup> Lawyers for employers will file these motions at every step in the process, including appeals, every time causing “another stagnation of months,” according to Auyón.<sup>429</sup>

Even when a worker persists and sees the case through the courts, there are no guarantees that she will actually receive redress even in the event of a favorable decision. Labor magistrate de Barreda complained, “the fines are ridiculous, and they [employers] don’t even pay them.”<sup>430</sup> In the specific case of domestic workers, Auyón explained that workers often have a difficult time collecting damages. A ruling against the employer means the court can embargo his or her goods to ensure payment to the worker. Often, says Auyón, the accused in a domestic worker case is the woman of the household, who does not have any goods, property, or bank accounts registered in her name. From 1999 through June 2000, Auyón had handled a total of sixteen cases for CENTRACAP, and this had been a problem in the four cases that received favorable sentences. In these cases, the courts had failed to act to seize the male head of household’s goods. “So there’s a declared right but without effect,” commented Auyón.<sup>431</sup>

As this report was finalized, the Guatemalan Congress adopted a series of reforms to the labor code. These reforms attempt to redress a situation in which sanctions for infractions of the labor code were so minimal that they provided no disincentive to employers. Until the May 2001 reforms were adopted, the labor code established fines that were so low that it was far easier for employers to violate the law and pay the fine than take the necessary measures to protect workers’ rights. For example, the labor code stipulated a fine of Q500-Q2500 (U.S. \$67-U.S. \$333) for a violation of any article referring

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<sup>428</sup> Human Rights Watch interview, Beatriz de León de Barreda, labor magistrate, Guatemala City, June 22, 2000.

<sup>429</sup> Human Rights Watch interview, Misrahí Iram Aben Auyón B., lawyer for CENTRACAP, Guatemala City, June 7, 2000.

<sup>430</sup> Human Rights Watch interview, Beatriz de León de Barreda, labor magistrate, Guatemala City, June 22, 2000.

<sup>431</sup> Of the other cases, two were resolved without going to court, one was resolved in court through arbitration by the judge, and nine were outstanding.

to salaries, workdays, rest periods, etc. Health and safety violations gave rise to a Q250-1,250 (U.S. \$33-U.S. \$167) fine. The May 2001 reforms establish a range of minimum wage amounts per type of infraction, rather than absolute quantities of money. Thus, an infraction of legislation related to salaries, workdays, and rest periods, is subject to a fine between three and twelve monthly minimum wages for non-agricultural activities.<sup>432</sup> The same reforms give the Ministry of Labor the authority to directly apply and collect fines for infractions of the labor code.<sup>433</sup> These welcome reforms conform to the government's long-standing commitment acquired in the 1996 peace accords to temalan government undertook to "promote, in the course of 1996, legal and regulatory changes to enforce the labour laws and severely penalize violations, including violations in respect to the minimum wage, non-payment, withholding and delays in wages, occupational hygiene and safety and the work environment."<sup>434</sup> The reforms came at a time when the United States had threatened to remove Guatemala's benefits under two separate preferential trade agreements—GSP and CBTPA—unless, among other steps, the government did not reform the labor code.

### **Ineffective Mechanisms**

The ineffectiveness of state institutions in responding to labor rights violations is due in part to lack of coordination among them. This is especially true for violations in the maquila sector, where the Ministry of Labor, the IGSS, and the Ministry of Economy have important roles. The Guatemalan state now counts on several bodies charged with defending women's rights and overseeing state policies on gender equity. These entities could also have a role to play in monitoring gender-specific labor rights violations and the overall state response.

The Ministry of Economy has far greater coercive power than the labor ministry in cases involving maquilas. Under Decree 29-89 that regulates the maquila sector, the Department of Industrial Policy in the Ministry of Economy is authorized to cancel benefits in the event of non-compliance with national law.<sup>435</sup> Everyone agrees that managers in the maquila sector are far more concerned with the scrutiny of the Department of Industrial Policy than with that of the Ministry of Labor. The department's head, Nora González M.,

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<sup>432</sup> Decree Number 18-2001, Reforms to the Labor Code Decree Number 1441, adopted May 14, 2001, Article 17.

<sup>433</sup> Ibid., Article 15.

<sup>434</sup> Social and Economic Agreement, Article 26(c).

<sup>435</sup> Decree 29-89, Article 43 (f).

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explained that “the labor ministry goes [to a maquila] and doesn’t find the information, the economy ministry asks for the information, and gets it.”<sup>436</sup> Indeed, the secretary general of the labor ministry’s Inspectorate acknowledged that “their power of persuasion is greater than ours.”<sup>437</sup> Even though the threat of sanctions is greater, the Ministry of Economy has in fact only cancelled benefits six times since 1990.<sup>438</sup>

The Ministry of Economy cannot initiate its own investigations. Rather, it can only proceed upon receipt of an official report from the labor ministry. Staff from the Department of Industrial Policy will then call or visit a factory to investigate the allegations and apply pressure. The maquila is given a period of time during which it must rectify the situation, under threat of cancellation of benefits under Decree 29-89. The system of information sharing and transferring of cases from the labor ministry is not adequately developed. According to Roberto de León from the labor Inspectorate, the system “sort of worked last year.”<sup>439</sup> His counterpart, Nora González, agreed that there had been more cases in 2000, claiming whatever coordination exists “depends on the political will of each government.”<sup>440</sup> González informed Human Rights Watch that the Ministry of Economy received five reports from the labor ministry regarding noncompliance with national labor laws in maquilas; as a result, benefits were cancelled for four maquilas.<sup>441</sup>

Coordination between the labor ministry and IGSS has also been difficult. “There’s a certain atomization, certain jealousy between the Ministry of Labor and IGSS. There should be more collaboration between them, but there isn’t. Those who come out losing are the workers,” according to Pedro Barán, legal advisor to the women’s project at CALDH.<sup>442</sup> Apparently, an

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<sup>436</sup> Human Rights Watch interview, Nora González M., director, Department of Industrial Policy, Ministry of Economy, Guatemala City, June 21, 2000.

<sup>437</sup> Human Rights Watch interview, Roberto de León, secretary general, Labor Inspectorate, Guatemala City, June 22, 2000.

<sup>438</sup> Communication (email) from Nora González M., director, Department of Industrial Policy, Ministry of Economy, dated March 1, 2001.

<sup>439</sup> Human Rights Watch interview, Roberto de León, secretary general, Labor Inspectorate, Guatemala City, June 22, 2000.

<sup>440</sup> Human Rights Watch interview, Nora González M., director, Department of Industrial Policy, Ministry of Economy, Guatemala City, June 21, 2000.

<sup>441</sup> Communication (email) from Nora González M., director, Department of Industrial Policy, Ministry of Economy, dated March 1, 2001.

<sup>442</sup> Human Rights Watch interview, Pedro Barán, lawyer, CALDH, Guatemala City, June 20, 2000.

agreement existed years ago to facilitate coordination of efforts between the two institutions, but now “there is no information sharing, in other words, there’s no coordination,” said an official in the IGSS Inspectorate.<sup>443</sup>

CALDH proved the catalyst for initiating a dialogue among these institutions. In February 1999, the NGO organized the “Coordinating Body” (*Instancia Coordinadora*), an informal mechanism for promoting coordination not only among state institutions, but also with NGOs. The Instancia includes the Ministry of Labor (Inspectorate, Health and Safety, and the Working Woman’s Unit), IGSS (Inspectorate, Health and Safety), Ministry of Economy (Department of Industrial Policy), Immigration Department, Human Rights Ombudsman’s Office (Education Department), GRUFEPROMEFAM, AMES, CEADEL and COVERCO. The ILO and MINUGUA participate as observers. While all members applaud the effort, few concrete measures have resulted. For example, the Instancia has proposed a system in which the Ministry of Economy would send information about newly established maquilas to the IGSS Inspectorate every month. This would facilitate the ability of IGSS to ensure compliance with registration of workers and contributions. There is, however, no formal agreement yet, and therefore no information is currently being shared.<sup>444</sup>

The vast majority of the women workers we spoke with had not even considered seeking redress through the labor ministry, much less through adjudication in the labor courts. The few who had gone to the labor ministry had for the most part done so after losing their job in order to force their ex-employer to give them their severance pay. Far fewer workers with on-the-job complaints sought help from the state. The reasons for this reluctance are many-fold. The majority of workers are unaware of their rights, or do not know how to exercise them. Others are afraid of retaliation from their employer. Still others are convinced they will receive poor treatment and decide the effort is not

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<sup>443</sup> Human Rights Watch interview, anonymous IGSS official, Guatemala City, June 23, 2000.

<sup>444</sup> Ibid.

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worth it. Overall, there is a lack of confidence that the system can help them. Human Rights Watch found that this overall reluctance is well-founded and the practices and failings of state institutions reinforce working women's fears and serve to further dissuade them from demanding their rights.

## **VII. CONCLUSION**

Women employed as domestic workers and maquila line operators in Guatemala are discriminated against because they are women. While domestic work is a long-standing option for women, primarily indigenous women from rural areas, with little or no formal or vocational training, the maquila industry presents an alternative for Guatemalan women in the form of new economic opportunities. Some have argued that globalization, in the form of maquilas, is sweeping Guatemalan women into modernity. At last liberated from domestic work, at least the paid kind, women in Guatemala can enter the real labor force to work in factories where they will have more rights and more freedom. The reality is a mixed bag. Many women find themselves trapped between work in which they have restricted rights, little freedom, and no guarantees, and work in which their privacy is invaded and their right to equality is violated.

Domestic workers are among the least protected and most exploited workers in Guatemala. The labor code has essentially established a hierarchy of workers, in which domestic workers are afforded curtailed rights because the work they perform is devalued. It is devalued precisely because it is performed by women and takes place in the private sphere. Domestic workers are denied key labor rights, such as the right to the eight-hour workday, the right to the minimum wage, the right to a full day's weekly rest, and these workers are largely excluded from the national employee health care system. In addition, domestic workers are routinely denied access to maternity benefits and are largely unable to attend to their family responsibilities. Domestic workers are extremely vulnerable to sexual harassment on the job. It is clear that domestic workers do not enjoy equal protection under the law. The exclusion of domestic workers has a disparate impact on women, who constitute the vast majority of this workforce.

Maquila workers, although employed in a highly regulated industry where they should enjoy the full range of labor rights guaranteed in the labor code, are nonetheless discriminated against on the basis of reproductive status. In order to secure a job in a maquila, women applicants must often answer questions about their pregnancy status and, sometimes, take a pregnancy test. Once employed, workers who become pregnant frequently do not have access to appropriate health care and do not always enjoy the full range of maternity benefits provided for in Guatemalan law. Discrimination on the basis of reproductive status is contrary to the fundamental principle of equality of opportunity and treatment.

The Guatemalan government has international obligations to respect, protect, and fulfill women's human rights. This means Guatemala must eliminate legal discrimination where it exists, take steps to prevent

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discrimination by both public and private actors, and ensure that women whose rights have been violated have access to effective remedies. In practice, Human Rights Watch found that the government of Guatemala is not living up to these obligations. The result is that women workers are subject to sex discrimination and violations of their right to privacy. As more and more women enter the Guatemalan workforce, the government must take all necessary measures to ensure they do so with equal rights and equal opportunities, in law and in practice.

## **APPENDICES**

### **APPENDIX A: Ministry of Labor Response to HRW Queries**

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**APPENDIX B:**  
**Example of Job Application**

**APPENDIX C:**  
**Maquilas and Affiliated U.S. Corporations and**  
**Their Reported Practices**

REPORTEDLY REQUIRED APPLICANTS TO ANSWER QUESTIONS  
 ABOUT PREGNANCY STATUS

<b>Maquila</b>	<b>Affiliated U.S. Corporation</b>
Atlantic Modas (formerly Pacific Modas, S.A.)	GEAR for Sports Target Corporation Aeropostale
INAPSA	H.J. Heinz Sysco Corporation
Industrias Modas Gooryong, S.A.	Target Corporation
Modas Cielo, S.A.	VF Corporation The Limited Warnaco Corporation <sup>†</sup>
Modas One Korea, S.A.	Sara Lee Corporation* J.C. Penney Company, Inc.* Liz Claiborne, Inc.
Modas Young Nam, S.A.	Montgomery Ward <sup>†</sup>
Sam Bridge, S.A. (formerly Sam Lucas, S.A.)	No information available
Sertegua, S.A.	Oxford Industries Face to Face Industries

<sup>†</sup> Declared bankruptcy in June 2001.

\* Sara Lee Corporation stated it had no relationship with Modas One Korea, S.A.

\* J.C. Penney Company, Inc. stated it had no relationship with Modas One Korea, S.A.

<sup>†</sup> Declared bankruptcy in December 2000.

Shin Kwang, S.A.	No information available
Sul-Ki Modas, S.A.	Wal-Mart Stores
Textiles Sung Jae, S.A.	Target Corporation
Ventas Unidas, S.A.	Pierre Cardin

**REPORTEDLY REQUIRED PREGNANCY TEST FOR  
FEMALE APPLICANTS**

<b>Maquila</b>	<b>Affiliated U.S. Corporation</b>
Textiles Tikal, S.A.	Tracy Evans Ltd. Company The Limited
Proindexsa	Jones Apparel Group
Lindotex, S.A./Beautex, S.A.	No information available
Dong Bang Fashions, S.A.	No information available

**REPORTEDLY DENIED OR LIMITED MATERNITY LEAVE AND  
BREASTFEEDING RIGHTS**

<b>Maquila</b>	<b>Affiliated U.S. Corporation</b>
Textiles Sung Jae, S.A.	Target Corporation
INAPSA	H.J. Heinz Company Sysco Corporation

**REPORTEDLY FIRED WORKER BECAUSE SHE WAS PREGNANT**

<b>Maquila</b>	<b>Affiliated U.S. Corporation</b>
Modas One Korea, S.A.	Liz Claiborne, Inc.

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Sara Lee Corporation\*  
J.C. Penney Company, Inc.\*

Tanport, S.A. No information available

REPORTEDLY DENIED PREGNANT WORKER ACCESS TO REPRODUCTIVE HEALTH CARE
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**Maquila**

Textiles Sung Jae, S.A.

INAPSA

Sam Bridge, S.A.  
(formerly Sam Lucas, S.A.)

**Affiliated U.S. Corporation**

Target Corporation

H.J. Heinz Company  
Sysco Corporation

No information available

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\* Sara Lee Corporation stated it had no relationship with Modas One Korea, S.A.

\* J.C. Penney Company, Inc. stated it had no relationship with Modas One Korea, S.A.

**APPENDIX D:**  
**List of Maquilas in Guatemala and Their Responses**

<b>MAQUILA</b>	<b>LETTER FAXED AND MAILED</b>	<b>RESPONSE</b>
Beautex, S.A. (formerly Lindotex, S.A.)	February 2001	The factory no longer conducts pregnancy tests.
Dong Bang Fashions, S.A.	February 2001	Stated do not conduct pregnancy testing.
INAPSA	March 2001	NONE
Modas Cielo	February 2001	Acknowledged asking about pregnancy status. Eliminated the question in October 2000.
Modas Gooryong, S.A.	February 2001	NONE
Modas One Korea	N/A	Factory closed in 2000.
Modas Young Nam, S.A.	February 2001	Stated that answering questions about pregnancy status has never been a requirement for hiring.
Atlantic (Pacific Modas), S.A.	March 2001	Acknowledged asking about pregnancy status, stated it has discontinued the practice.
Proindexsa, S.A.	February 2001	NONE
Sam Bridge, S.A. (formerly Sam Lucas, S.A.)	Unable to fax, mailed – March 2001	NONE
<b>MAQUILA</b>	<b>LETTER FAXED AND MAILED</b>	<b>RESPONSE</b>
Shin Kwang, S.A.	February 2001	NONE

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Sul-Ki Modas, S.A.	February 2001	Acknowledged asking about pregnancy status in order to assign jobs within factory and process paperwork with IGSS.
Tanport, S.A.	Unable to fax Mailed – March 2001	NONE
Textiles Sung Jae, S.A.	February 2001	NONE
Textiles Tikal, S.A.	March 2001	Stated do not conduct pregnancy testing.
Ventas Unidas	February 2001	Acknowledged asking about pregnancy status to accommodate needs of pregnant workers.

**APPENDIX E:**  
**List of U.S. Corporations and Their Responses**

<b>CORPORATION</b>	<b>LETTER FAXED AND MAILED</b>	<b>RESPONSE</b>
Aeropostale, Inc.	March 2001	Does business with Intertex Group, an importer that contracts with Atlantic Modas (Pacific Modas), S.A. Requires all suppliers to sign letter vouching to comply with U.S. law on forced and child labor. No direct comment on discrimination.
B.J.D., Inc.	February 2001	Stated had no direct relationship with Atlantic Modas (Pacific Modas), S.A. In 1999, Placed order with a South Korean company named Fount that sourced to factories in Central America. Discontinued order due to unsatisfactory production. Provided no information on South Korean company.
Face to Face Industries	March 2001	NONE
GEAR for Sports	February 2001	Ongoing relationship with Atlantic Modas (Pacific Modas), S.A. Company has both internal and external monitoring program to continuously verify compliance with with code of conduct, which prohibits pregnancy testing.

<b>CORPORATION</b>	<b>LETTER FAXED AND MAILED</b>	<b>RESPONSE</b>
H.J. Heinz Company	March 2001	Has a contract with a distributor that

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JC Penney Co., Inc.	February 2001	purchases from INAPSA. Will require a report from supplier on discrimination at INAPSA factory, and stated intent to instruct distributor to terminate relationship if response not satisfactory.
Liz Claiborne, Inc.	February 001	Stated no relationship existed with Modas One Korea.
Montgomery Ward		Supplier named Shin Won subcontracted to Modas One Korea without authorization in violation of contract. Liz Claiborne, Inc. allows subcontracting only after human rights audit has been conducted. Declared bankruptcy on December 28, 2000.
Oxford Industries, Inc.	March 2001	NONE
Pierre Cardin*	Refused to give fax # Mailed – March 2001	Following the Human Rights Watch inquiry, the Central America agent for the company asked Ventas Unidas, S.A. to discontinue practice of asking applicants about pregnancy status.

<b>CORPORATION</b>	<b>LETTER FAXED AND MAILED</b>	<b>RESPONSE</b>
Polo Ralph Lauren Corp.	February 2001	No direct business with Proindexsa. Sun Apparel, a subsidiary of Jones Apparel Group, which holds the license for "The Polo Jeans Company," contracted with Proindexsa November 1999-November

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\* Pierre Cardin is a French corporation.

Sara Lee Corporation	February 2001	Stated no relationship existed with Modas One Korea.
Sysco Corporation	March 2001	A supplier, Superior Foods, Inc., purchases product from INAPSA. The CEO of Superior Foods, Inc., investigated the allegations and received assurances from INAPSA that they do not ask applicants about pregnancy status.
Target Corporation	Refused to give fax # Mailed – February 2001	NONE

<b>CORPORATION</b>	<b>LETTER FAXED AND MAILED</b>	<b>RESPONSE</b>
The Limited, S.A.	February 2001	Orders were placed with Textiles Tikal, S.A. and Modas Cielo, S.A. in 1999 and 2000. The Limited's code of conduct prohibits discrimination. No audits were ever conducted at these factories.
Tracy Evans Ltd. Co.	February 2001	Did not confirm or deny relationship with Textiles Tikal, S.A. Called practice of questions about pregnancy testing "unacceptable."

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VF Corporation	February 2001	VF Corporation does produce Lee knit tops at Modas Cielo factory. Routine inspections have found factory to be acceptable. VF prohibits pregnancy testing in its terms of engagement with factories.
Wal-Mart Stores, Inc.	February and March 2001	Conducted audit at Sul-Ki Modas, S.A. factory in December 2000, found pregnancy testing to be an issue, and ordered the practice be discontinued.
Warnaco Corporation	February 2001	Stated no relationship existed with Modas Cielo, S.A. The factory stated it did. Warnaco filed for bankruptcy on June 11, 2001.