

MEXICO

NO GUARANTEES

Sex Discrimination in Mexico's Maquiladora Sector

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SUMMARY

Maquiladoras, or export-processing factories, along the U.S.-Mexico border account for over US\$29 billion in export earnings for Mexico and employ over 500,000 workers. At least half of the Mexicans employed in this sector, mainly in assembly plants, are women, and the income they earn supports them and their families at wages higher than they could earn in any other employment sector in northern Mexico.

These women workers routinely suffer a form of discrimination unique to women: the *maquiladoras* require them to undergo pregnancy testing as a condition of employment and deny them work if they are pregnant; if a woman becomes pregnant soon after gaining employment at a *maquiladora*, in some instances she may be mistreated or forced to resign because of her pregnancy. *Maquiladora* operators target women for discriminatory treatment, in violation of international human rights and labor rights norms. And despite its international and domestic legal responsibility to ensure protection for these workers, the Mexican government has done little to acknowledge or remedy violations of women's rights to nondiscrimination and to privacy. In addition, the Mexican government's failure to remedy discrimination in the *maquiladoras* infringes on women's right to decide freely and responsibly on the number and spacing of their children. In fact, government employees responsible for overseeing compliance with and enforcement of Mexico's federal labor law—which explicitly prohibits sex discrimination—inconsistently condemn such discriminatory practices; view themselves as incapable of enforcing the law; and, in one instance, defended the pregnancy-based discrimination as reasonable or legitimate.

Pregnancy as a condition is inextricably linked and specific to being female. Consequently, when women are treated differently by their employers or potential employers because they are pregnant or because they may become pregnant, they are being subjected to requirements for employment to which men are not. Thus pregnancy-based discrimination constitutes a form of sex discrimination, by targeting a condition only women experience.

It is difficult for workers—poor, under-educated, and female in a society with 6.3 percent official unemployment (Mexico's official, national unemployment figures are widely acknowledged by the U.S. Commerce Department and other U.S. agencies as being significantly underestimated)—with so few job alternatives to contest *maquiladora* policies. Most of the women Human Rights Watch interviewed had not finished primary school and had very little work experience outside the manufacturing sector. As a consequence, these women emphasized that their only other opportunity for work is in domestic service, which pays poorly, allows them very little control over their schedules and working conditions, and provides no health insurance or social security. Women repeatedly expressed unwillingness to challenge discriminatory practices in the *maquiladoras*, given the lack of other comparable employment opportunities.

For the Mexican government, there are economic disincentives to regulating closely the conduct of these companies, given the number of people the *maquiladora* industry employs and the amount of foreign currency earnings it produces.

In March 1995 the Human Rights Watch Women's Rights Project sent a mission to Mexico to investigate discrimination against pregnant workers or women who might become pregnant in the *maquiladora* sector. We interviewed women's rights activists, *maquiladora* personnel, labor rights advocates, Mexican government officials, community organizers, and victims of sex-based employment discrimination in five cities: Tijuana, in Baja California state; Chihuahua, in Chihuahua state; and Matamoros, Reynosa, and Río Bravo, in Tamaulipas state. We interviewed women who currently or in the recent past worked as line workers or assemblers in forty-three *maquiladora* plants along the border. Human Rights Watch interviewed women workers from the following factories in Tijuana: (Names in parentheses are parent companies.) Ensembles de Precisión (Los Angeles, CA-based Teledyne), Plásticos Bajacal (Phoenix, AZ-based Carlisle Plastics), Panasonic (Osaka, Japan-based Matsushita Electric Works), Zettler (Aliso Viejo, CA-based American Zettler), KW de México, Dalila (closed), Etcétera (closed), *Maquiladora de Accesorios para Mascotas* (Chula Vista, CA-based Coyote Pet Supplies), Sanyo (based in Osaka, Japan), Afi de México (closed, made toys for Fisher Price), Exportadora de Mano de Obra (closed, was owned by Downey, CA-based American United

Global), Bebe Products (closed), Chappel (100 percent Mexican owned), Intercombustion (Los Angeles, CA-based Lipps Inc.), Temco, Ensamblados de Precisión de las Californias (Gardena, CA-based Pacific Electricord), Nellcor de Mexicanos (Pleasanton, CA-based Nellcor Puritan Bennet), and Administración de Maquiladoras (closed, was owned by Temecula, CA-based Hudson Oxygen Therapy Sales, now called Hudson Respiratory Care, Inc.).

We interviewed women workers from the following factories in Chihuahua: Electromex (Colorado Springs, CO-based Electromech), Industrias de Américas (closed), Sistemas Eléctricos y Conductores (SECOSA) (Tokyo, Japan-based Yazaki Corporation), Buena Ventura Auto Partes (BAPSA) (Tokyo, Japan-based Yazaki Corporation), and Alambrados y Circuitos Eléctricos (Detroit, MI-based General Motors).

We interviewed women workers from the following factories in Reynosa: Attel Fábrica (New York, NY-based AT&T), TRW (based in Cleveland, Ohio), Partes de Televisión de Reynosa (Glen View, IL-based Zenith, now majority owned by South Korea-based Goldstar), La Bonita Señorita de Reynosa (closed, was owned by McAllen, TX-based Sportswear International), Erika de Reynosa (Boca Raton, FL-based W.R. Grace), Delnosa (Detroit, MI-based General Motors), Sociedad de Motores Domésticos (Fairfield, CT-based General Electric), Rey Mex Bra (Reading, PA-based VF Corp., supplies bras to Sears Roebuck), Jen-O-Mex (Totowa, NJ-based Jenncraft Corp.), Controles de Reynosa (Milwaukee, WI-based Johnson Controls), Datacom de México (Chantilly, VA-based GENICOM Corporation).

We interviewed women workers from the following factory in Río Bravo: ITT (based in New York, New York).

We interviewed women workers from the following factories in Matamoros: Trico Componente Fábrica (Richmond, IN-based TRICO STANT Co.), Sunbeam-Oster (based in Fort Lauderdale, FL), MagneTek Componentes Eléctricos (Nashville, TN-based Magnetek), Nova/Link (made undergarments for Fruit of the Loom until 1993; now subcontracts for Polo and Liz Claiborne), Deltrónicos (Detroit, MI-based General Motors), Textitron de México (Chicago, IL-based Midwestco Enterprises), Lepco (Brownsville, TX-based Leonard Electric); and Zenith (based in Glen View, IL., now majority owned by South Korea-based Goldstar).

Where possible, Human Rights Watch has contacted parent companies implicated in this report to alert them to our findings and seek their responses. We have received written responses from Zenith, American Zettler, W.R. Grace, Carlisle Plastics, Pacific Electricord, and Sanyo. The responses range from a complete disavowal of any discriminatory behavior (American Zettler) to promises to investigate the allegations immediately and rectify the practice where appropriate (Sanyo), to admissions that pregnant women are in fact screened out of the applicant pool as a way to avoid paying for maternity leave (Zenith). A copy of the letter Human Rights Watch wrote can be found in the appendices, as well as copies of all the corporate responses we received.

Maquiladora employers discriminate against pregnant female employees, or women who might become pregnant (women of childbearing age, sexually active women, women who use contraceptives), largely to keep costs down. Starting in the 1960s, many U.S. and other companies relocated production to northern Mexico to take advantage of favorable tariff structures for importing unassembled goods and exporting finished products; low wages; and an abundance of available workers. Hiring or employing pregnant women could entail higher costs because Mexico's federal labor law contains explicit maternity provisions. According to the federal labor code, companies are required to protect pregnant women from executing tasks that would cause danger to their health in relation to the fetus; pay pregnant women maternity leave of six weeks before delivery and six weeks after delivery; allow new mothers two paid extra breaks of half hour each to breast feed their infants; and allow pregnant women to take an extra sixty days off while receiving 50 percent of their salary, if they so desire, apart from the twelve weeks of maternity leave, so long as no more than one year after the birth has passed. Thus, while many maquiladoras seek to hire women workers because they are believed to work harder and to be especially equipped emotionally and anatomically to execute such work, employers attempt to weed out potentially costly women workers from the applicant pool and at times force to resign those who become pregnant soon after beginning to work.

In maquiladoras along the U.S.-Mexico border, from Tijuana to Matamoros, we found, with few exceptions, that in the course of the hiring process employers require women applicants to submit to pregnancy exams, most commonly given through urine samples. These exams are administered by doctors or nurses employed at individual maquiladoras or by private clinics contracted by companies. Maquiladora staff also try to determine a woman's pregnancy status by asking intrusive questions about the woman applicant's menses schedule, whether she is sexually active, or what type of birth control she uses. Once a woman is hired to work in a maquiladora, should she become pregnant shortly after starting to work, maquiladora managers sometime attempt to reassign women to more physically difficult work or demand overtime work in an effort to force the pregnant woman worker to resign. The results of Human Rights Watch interviews suggest that the longer a woman is employed in a maquiladora the more able she might be to rely on her relationship with her supervisor to avoid being fired if she becomes pregnant. Nonetheless, there are no guarantees.

The women affected by pregnancy discrimination in the maquiladora sector are among the poorest, least experienced, and least educated in the workforce. Most women who work in the maquiladoras do so because their lack of schooling and previous significant work experience renders them unqualified for most other jobs and because work in the maquiladora sector affords them a better wage than they might earn in other sectors. Screened out of the applicant pool and denied jobs in the maquiladora sector, these pregnant women would be rendered virtually unemployable. Women applicants are often single mothers or their families' primary wage earners. Their desperation to get or retain maquiladora jobs combined with ignorance of the law make them reluctant to contest the discriminatory testing or forced resignations. Furthermore, Human Rights Watch is greatly concerned that such discriminatory treatment may directly compromise women workers' regulation of their pregnancies by forcing them into a situation of fearing the loss of their jobs if they become pregnant. In cases when women workers become pregnant, the fear of losing their jobs often compels women to hide their pregnancies, and risk their and their fetuses' well being. In many instances women find themselves in the untenable position of choosing between their jobs and their rights.

Such employment practices constitute discrimination on the basis of sex, an invasion of a woman's privacy, and, in some instances, an undue limit on a woman's ability to decide freely and responsibly on the number and spacing of her children. By failing to address and remedy these practices the Mexican government fails to fulfill its human rights obligation to protect those under its jurisdiction from human rights abuses; promote respect for human rights within its borders; and ensure that those under its jurisdiction are able fully to enjoy and exercise their rights under the International Covenant on Civil and Political Rights (ICCPR), the Convention to Eliminate All Forms of Discrimination against Women (CEDAW), the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Labor Office (ILO) standards, and the North American Agreement on Labor Cooperation. Such discriminatory treatment also contravenes Mexico's domestic laws prohibiting discrimination and guaranteeing the protection of women's reproductive health.

Women victims of sex discrimination in the maquiladoras have few tenable options for legal redress. Various states within Mexico have a human rights commission, and these are tasked, under their charters, to investigate human rights abuses involving public officials, but they cannot investigate private sector labor issues. Government mechanisms such as the Inspector of Labor's Office, which is responsible for assuring compliance with federal labor law; the Labor Rights Ombudsman's Office, which is responsible for offering workers free legal advice and assisting them in the resolution of labor disputes; and the Conciliation and Arbitration Board (hereafter CAB), which adjudicates worker disputes and issues binding resolutions, are not legally empowered to address sex discrimination in the hiring process and fail consistently to condemn such discrimination in those instances where women are already employed. Furthermore, none of these offices collects data on cases and their resolution disaggregated by gender or gender-specific claims.

To end the widespread discrimination against women in the maquiladora sector and the related denial of their right to privacy and, in some instances, to decide freely and responsibly on the number and spacing of their children, Human Rights Watch calls on the government of Mexico, the state legislatures, the Mexican commissions for human

rights, the government of the United States, corporations that operate maquiladoras, and corporations that use maquiladoras as subcontractors, to take the following steps:

RECOMMENDATIONS

Human Rights Watch urges the Government of Mexico to:

- Uphold international human rights obligations to guarantee the right to nondiscrimination, the right to privacy and the right to decide freely and responsibly on the number and spacing of children without discrimination.
- Acknowledge and publicly condemn pregnancy discrimination as discrimination based on sex.
- Publicly condemn employment practices and procedures that discriminate against women in their intent or impact.
- Enact federal 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.
- Fortify existing labor-resolution mechanisms by staffing the offices of the Inspector of Labor, the Labor Rights Ombudsman, and the Conciliation and Arbitration Boards with employees who are well informed about federal labor law and by putting resources at the disposal of these offices so that they may enforce federal labor law.
- Amend the rules governing the work of the Office of the Inspector of Labor, the Office of the Labor Rights Ombudsman, and the Conciliation and Arbitration Board so that these offices can investigate and adjudicate cases of discriminatory non-hiring as well as disputes involving an established labor relationship.
- Under the authority of the Secretary of Labor and Social Security, establish labor offices at the state and local level that have full powers to investigate and remedy discrimination in the hiring process, in compliance with obligations under the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW).
- Oblige the Office of the Inspector of Labor, the Office of the Labor Rights Ombudsman, and the Conciliation and Arbitration Boards to maintain statistics on their investigations, case loads and decisions, where appropriate, disaggregated by gender and the type of claim filed.
- Establish and enforce penalties, including fines, to punish companies, foreign or domestic-owned, engaged in pregnancy-based sex discrimination, in accordance with CEDAW provisions.
- Investigate vigorously all allegations of sex-based discriminatory employment practices and punish those responsible.
- Include specific information on efforts undertaken to eradicate discrimination against women in the workplace, including specific measures to end the testing of women for pregnancy, and the use of such information to make discriminatory hiring or firing decisions in its country compliance reports under CEDAW.
- Encourage state legislatures to amend the charter of the state human rights commissions so that it includes the ability to investigate private action as it relates to the state's human rights obligation to combat sex discrimination.

In compliance with the International Labor Office's Convention Concerning Discrimination in Respect of Employment and Occupation [Convention No. 111], Mexico should:

- Pursue national policies to promote equality of opportunity and treatment in employment and occupation;
- Take practicable measures to foster public understanding and acceptance of non-discrimination; and
- Receive and examine complaints of abrogation of non-discrimination principles.

Mexico is also obligated, under the North American Free Trade Agreement's North American Agreement on Labor Cooperation, to:

- Promote elimination of employment discrimination;
- Ensure that its labor laws are enforced;
- Initiate, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law; and
- Publicize the content of its labor law regarding non-discrimination, thereby upholding its obligations under the NAFTA's Article 6, which states, "Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them."

Human Rights Watch urges Mexico's state legislatures to:

- Amend the charters of state human rights commissions so that they are able to investigate and report on unremedied private sector employment sex discrimination.

Human Rights Watch urges Mexico's state commissions for human rights to:

- Recognize that unremedied private sector employment sex discrimination is within the mandate of the state commissions for human rights because it is a violation of a woman's right to nondiscrimination and infringes on her ability to decide freely and responsibly on the number and spacing of children;
- Incorporate the monitoring of discrimination against women in the private sector labor force into the cases they investigate and report on; and
- Monitor and report on steps taken by Mexico to comply with nondiscrimination requirements of international human rights law in a manner that would promote the eradication of discrimination against women in the work place.

Human Rights Watch urges the United States Government to:

- Take up the case of pregnancy-based sex discrimination and encourage the Mexican government to take immediate steps to combat it, in any interaction with the Mexican government; and
- Encourage the Government of Mexico to meet its obligations under the North American Free Trade Agreement's North American Agreement on Labor Cooperation, including the enforcement of its own labor law and the elimination of employment discrimination.

Human Rights Watch urges private corporations that own maquiladoras to:

- End the practice of requiring women applicants to provide proof of pregnancy status or contraception use or information about sexual habits in order to be considered for or to obtain employment in the maquiladoras;

- End the practice of denying pregnant women applicants work by screening them out of the applicant pool;
- Explicitly prohibit pregnancy exams for women applicants or any other such method that would invade a woman's privacy regarding her pregnancy status and right to nondiscrimination;
- End harassment, intimidation, and forced resignation of female employees who become pregnant;
- Reprimand personnel officers and other maquiladora employees who continue to discriminate against women workers by subjecting them to practices to determine their pregnancy status, including the practice of obliging them to provide proof of that status;
- Explicitly prohibit discrimination based on sex in all company materials, including materials in Spanish that are easily accessible to both management and workers at all Mexico-based company branches; and
- Accommodate pregnant women during their pregnancies, as per international standards and Mexican domestic law, by giving them seated work; allowing them to take maternity leave; and allowing them temporary transfers to less physically taxing work.

Human Rights Watch urges corporations that use maquiladoras as subcontractors to:

- Require proof that subcontracting factories are being operated without discrimination, as a condition for a continuing contractual relationship; and
- Monitor subcontractor plants on an ongoing basis, by, at a minimum, requiring periodic, timely certification that plants are being operated without discrimination; establishing an independent, impartial group wholly unconnected to the factory to monitor compliance; and periodically visiting the subcontractor plants to review the hiring process and solicit information from workers on the absence of discrimination.

BACKGROUND

The practice of widespread pregnancy-based sex discrimination in Mexico's maquiladora sector is rooted in economic interest on the part of the maquiladora operators. The discrimination persists because of a confluence of interests and needs: the economic interest of maquiladora operators to keep their operating costs as low as possible, government interest in attracting and keeping foreign investment, and women's desperation for jobs.

Maquiladora owners operate factories in Mexico largely because of the low cost of doing business there. Low wages allow them to remain operational and make Mexico attractive for investment. U.S.-owned companies relocated to the border area in the late 1960s, drawn primarily by the potential to reduce their labor costs. U.S. multinationals were faced with a choice between improving productivity at home or reducing cost by moving to "Third World countries that offered low-cost, plentiful (and female) labor . . ."¹

¹ Patricia A. Wilson, *Exports and Local Development: Mexico's New Maquiladoras* (Austin: University of Texas Press, 1992), p. 9.

The Mexican government may overlook this sex discrimination because of the importance of maquiladoras in the Mexican economy. In the first eleven months of 1995, the maquiladora sector generated US\$29.5 billion in export earning for Mexico. The 2,100-plant² maquiladora sector is the largest source of dollars for Mexico, surpassing oil and tourism.³ The Mexican government benefits from the hard currency earned from the value assessed on finished maquiladora goods and the employment the maquiladora sector provides for hundreds of thousands of Mexicans. In addition, owners and operators of maquiladoras send dollars to Mexico to meet their payroll and other expenses.⁴ Those dollars are converted into pesos to pay workers' salaries.

The Mexican government's reliance on income from the maquiladora sector,⁵ combined with sex discrimination in Mexico's legal and social systems,⁶ is a powerful disincentive to remedying pregnancy-based discrimination. Moreover, official lack of interest in addressing this problem has extended even to employment in the government sector, as noted and condemned by the Commission for Human Rights of Mexico City in 1995.⁷

Women workers are themselves very reluctant to challenge pregnancy-based sex discrimination, largely for fear of losing jobs they desperately need.⁸ The tolerance of this discriminatory treatment by women workers is rooted in the women's own economic desperation. Women who work in the maquiladora sector, because of their lack of education and previous significant labor experience, have almost no opportunity outside of the maquiladora sector to earn a wage

² Diane Lindquist, "Peso's Loss Plants' Gain," *San Diego Union-Tribune* (California), February 14, 1995.

³ Hayes Ferguson, "Contrast in Fortunes," *San Diego Union-Tribune* (California), May 7, 1995.

⁴ Tony Ramírez, Vice President of the San Diego-based International Maquiladora Association, estimated that maquiladoras generated (including payroll costs) 5 to 7 billion dollars a year for Mexico. Mr. Ramírez also pointed out that currency benefits aside, Mexico benefits enormously from the technological transfers and training that maquiladoras bring. Human Rights Watch telephone interview, San Diego, February 6, 1996.

⁵ "Manufacturing/Maquila: Maquila Industry Growth," *Mexico Business Monthly* (Maplewood, New Jersey), Vol. 6, No. 1, February 1, 1996.

⁶ U.S. Department of State, *Country Reports for Human Rights Practices for 1995*, (Washington, D.C.: Government Printing Office, 1996), p. 472, states, "Although the [Mexican] Constitution provides for equality between the sexes, neither the authorities nor the society in general respect this practice." It further goes on to say that "The legal treatment of women's rights is uneven."

⁷ In June 1995, the Commission for Human Rights of Mexico City (CDHDF) issued a recommendation [Recomendación 6/95] to the capital city that several of its entities, including the Superior Tribunal of Justice, the office of the Institute of Professional Formation of the Attorney General of Justice of the Federal District, and the Institute of Training and Development of the Collective Transportation System (Metro) stop requiring women job applicants to provide proof of non-pregnancy status in order to be considered for employment. The report concluded: "To require unjustifiedly of women that they not be pregnant to give them work is a discriminatory and sexist act that violates the principle of social and legal equality between a man and a woman. The role of women in procreation cannot be a cause for discrimination, be it with the pretext of a debatable productivity or with that of a supposed protection." See: "Carta del Presidente de la CDHDF al Jefe del Departamento del Distrito Federal" (Letter from the President of the CDHDF [The National Human Rights Commission of the Federal District] to the Head of the Federal District) in *La Gaceta* (Mexico City), June 1995.

Human Rights Watch has copies of several of the responses sent in to the CHRDF by the entities cited for practicing discrimination against women. Most wrote that they would discourage the practice by sending out a notice that it was prohibited.

Unless otherwise noted, all translations are by Human Rights Watch.

⁸ In over half of the interviews Human Rights Watch conducted with women workers, the women expressed reluctance to contest pregnancy exams or deplorable working conditions for fear of either not being employed or of losing the jobs they had.

that will allow them to support themselves and their families.⁹ Many told us that they feel fortunate to have work and to receive the steady income that maquiladora work supplies. The Mexican government has failed to ensure that women participating in the maquiladora sector are protected from discrimination and do not have their privacy invaded.

⁹ Leslie Sklair, *Assembling for Development* (Boston: Unwin, 1989), p. 168.

The women workers Human Rights Watch interviewed, the majority of whom had not completed primary school,¹⁰ felt their only alternative to working at maquiladoras was to work as domestic servants—positions which entail considerable physical work for relatively little monetary compensation and scant possibilities to set firm working hours or to receive health insurance or social security.¹¹ A 1978-1979 study of women in the maquiladora sector in Ciudad Juárez, notes that of the 510 women surveyed, "[f]ifty-six percent of those with a labor history started to work between the ages of 13 and 15 as maids."¹² A 1989 to 1990 study of 1,029 women workers in the maquiladora sector in the Mexican state of Chihuahua noted that there was a strong correlation between women's education level and their reasons for entering the maquiladora sector. The study found that a majority of women workers who had not completed primary school cited economic necessity as being the motivating factor behind their entry into the maquiladora sector—78.6 percent in Chihuahua city and 68.6 percent in Ciudad Juárez city. It also showed that even among those who completed primary school—61.9 percent in Chihuahua city and 63.5 percent in Ciudad Juárez city—a majority cited economic necessity for their entry into the sector.¹³

Many women workers' incomes are not supplemental to incomes of spouses or partners, but are essential to maintaining the their households and providing for their children. Many women we interviewed were working outside of the home for the first time and had few skills. When such women begin looking for work, they have severely limited prospects. For example, jobs traditionally available to unskilled workers—working in a supermarket or in some other service-sector position—are now beginning to require applicants to have completed secondary school, at a minimum.¹⁴ In the past, maquiladoras accepted applicants who had finished primary school only, but did not routinely verify the completion of primary school. Now, more and more maquiladoras are requiring proof of secondary education.¹⁵ For women currently working in the maquiladoras, many without the benefit of a secondary education, this seemingly minor change in hiring criteria could directly challenge their ability to continue working in the sector. They do not want to risk having to look for new jobs in the maquiladora sector and be unable to meet the minimal education requirement.

Women workers' fear of challenging pregnancy-based discrimination is compounded by the fact that many have traveled great distances from Mexico's interior and do not wish to risk being fired for challenging maquiladora practices. Many women workers told Human Rights Watch that they and their families migrated from Mexico's interior to the border area specifically to seek work in the maquiladora sector. Women workers we spoke with in Tijuana had migrated from other areas in southern Baja California to look for work in the maquiladoras. This pattern was repeated in Chihuahua, where many women and their families migrated from as far away as San Luis Potosí in east-central Mexico to find work in the maquiladoras; and in the Matamoros-Reynosa-Río Bravo area, where workers migrated from Veracruz and Guadalajara, in western and eastern Mexico, respectively, to find work in the maquiladoras. As a worker at Sunbeam-Oster de Matamoros explained to us:

¹⁰ In a 1994 UNESCO report, based on data from 1990, 21.4 percent of Mexican women 25 and over had no schooling and 29 percent of Mexican women 25 and above had not completed primary school. UNESCO, *Statistical Yearbook 1994* (Paris: UNESCO), 1994, pp. 1-43.

¹¹ Human Rights Watch interview, Edgar Krueger, director, Border Communities Project, American Friends Service Committee (AFSC), Reynosa, March 14, 1995.

¹² María Patricia Fernández-Kelly, *For We Are Sold, I and My People: Women and Industry in Mexico's Frontier* (Albany: State University of New York, 1983), p. 53.

¹³ Luis Reygadas, *Un Rostro Moderno de la Pobreza* (A Modern Face of Poverty) (Chihuahua: Government of Chihuahua, 1992), p. 62.

¹⁴ Human Rights Watch interview, Edgar Krueger, director, Border Communities Project, AFSC, Reynosa, March 15, 1996.

¹⁵ *Ibid.*

I was one of twelve kids in my family. We were very, very poor, and my parents could not afford to keep all the children in school. I was the oldest and so I dropped out and helped around the house and helped in neighbors' houses to earn a little money. We had to leave San Luis Potosí because there was just no work and no way to feed a family. It was even worse for women. No one would hire you for anything except to clean houses. And we were nine girls in my family. Work in the maquiladoras was our only hope. When we arrived here we saw how bad it was with no place to live and working like machines all day long. But we would have been returning to nothing in San Luis Potosí.¹⁶

Mexico's maquiladora sector was created in 1965¹⁷ with the goals of industrializing the northern border area; providing employment to a vastly under-employed and unemployed northern Mexico population; and stemming the tide of illegal immigrants seeking to cross the U.S.-Mexico border to obtain work in the United States. Maquiladoras in the border area employ over 420,000 Mexicans as assemblers; some 242,000 of these are women. Nationwide, the maquiladora sector employs over 600,000 people, over 493,000 as assemblers.¹⁸ In 1990, 90 percent of all maquiladoras were partially or completely owned by U.S. corporations,¹⁹ although over the last five years both Korean and Japanese firms have increased their presence in this sector.²⁰

¹⁶ Human Rights Watch interview, Laura, Matamoros, March 19, 1995. Unless otherwise noted, all names have been changed by Human Rights Watch.

¹⁷ In December 1964 the U.S. unilaterally canceled the *bracero* program with Mexico, which had allowed Mexican laborers to enter the U.S. to work in the agricultural sector. Since its introduction in August 1942, the bracero program had involved over four million Mexican workers. As a result of this unilateral cancellation, Mexico faced worsening economic conditions made that much more evident by the failure in 1971 of the National Border Program (Programa Nacional Fronterizo, PRONAF), designed to promote social and economic development along the border. PRONAF was usurped by the Border Industrialization Program (BIP) which allowed foreign and Mexican investors to import temporarily duty-free all the inputs, machinery, and replacement parts needed for assembly as long as the investor bought a bond that would ensure their eventual reexportation. BIP provided the framework within which the maquiladora industry was created.

¹⁸ See generally "Avance de Información Económica Industria Maquiladora de Exportación" (Advance of Economic Information Maquiladora Export Industry), January, 1995, Instituto Nacional de Estadística, Geografía e Informática (INEGI)(National Institute of Statistics, Geography and Information), p. 5.

¹⁹ "Maquiladoras 1990: A Guide to Binational Manufacturing in the San Diego-Tijuana, Mexico Area," *San Diego Business Journal* (California), p. 5.

²⁰ Human Rights Watch interview, Edgar Krueger, director, Border Communities Project, AFSC, Reynosa, March 15, 1995.

Today, many U.S. companies continue to relocate their production to the U.S.-Mexico border area to take advantage of Mexico's pay scales. The devaluation of the Mexican peso by 40 percent on December 20, 1994, for example, dropped workers' wages in some maquiladoras to approximately US\$5 a day.²¹ According to Alfred Rich, chairman emeritus of the Western Maquiladora Trade Association, a San Diego-based maquiladora membership organization, these lower labor costs helped the maquiladoras lower payroll costs,²² which normally constitute 80 percent of a maquiladora's operating budget.²³ The manager of one maquiladora, Productos MG de México,²⁴ noted that after the peso devaluation, some Mexican companies closed but maquiladoras remained open and some hired even more workers.²⁵ In fact, between the 1994 devaluation and March 1996, maquiladora exports grew 20 percent.²⁶

President Ernesto Zedillo, facing the prospect of further economic deterioration, has encouraged leading companies with maquiladora investments to attract additional investors to the sector.²⁷ Commerce Minister Herminio Blanco, citing southern Mexicans' desperation for work and the possibility of paying even lower wages there than in the border states, has spoken of the government's desire to "maquiladorize" the southern part of Mexico—that is, to promote it as a manufacturing center in order to attract investors.²⁸

The Preference for Women Workers

Women have always constituted a large percentage of the maquiladora workforce, reaching a high point in the early 1980s of approximately 80 percent.²⁹ Although the proportion of men working in maquiladoras has increased steadily since the 1980s,³⁰ women are still in the majority. Some estimate their participation at 70 percent in the Matamoros-Río Bravo-Reynosa border area, which is dominated by light assembly-oriented plants.³¹ According to labor activists and organizers in Mexico, employers seek out women workers because they view them as more diligent and hard working than men, and consider women's hands more adept at executing the repetitive motions necessary for

²¹ Douglas W. Payne, "Mexico and its Discontents: After the Peso's Collapse, an Unemployed Population Looks North," *Harper's Magazine* (New York City), April 1995. When Human Rights Watch conducted its mission to Mexico, the exchange rate was seven Mexican pesos to one U.S. dollar.

²² As quoted in Sabrina Youmans, "Maquilas find profits, complexity increasing," *San Diego Business Journal* (California), April 24, 1995.

²³ "Peso Devaluation Cuts Both Ways," Associated Press, February 1, 1995.

²⁴ Productos MG de México is located in Tijuana. It manufactures decorative lights for homes and glass panel doors. Its parent company is MG Products, based in Chula Vista, California.

²⁵ Youmans, "Maquilas find profits. . .," *San Diego Business Journal* (California).

²⁶ Julia Scheeres, "Mexicans See Benefits for NAFTA Partners," *El Financiero* (Mexico City) (English abstracts), March 25, 1996.

²⁷ Lindquist, "Peso's Loss . . .," *San Diego Union-Tribune* (California).

²⁸ Scheeres, "Mexicans See. . .," *El Financiero*.

²⁹ Kathryn Kopinak, "Gender as a Vehicle for the Subordination of Women Maquiladora Workers in Mexico," *Latin American Perspectives* (Boulder), Issue 84, Vol. 22, No. 1, Winter 1995, p. 31.

³⁰ Sklair, *Assembling for Development*, p. 167.

³¹ This area is in the northeast of Mexico, along the border with Texas. Human Rights Watch interview, Edgar Krueger, director, Border Communities Project, AFSC, Reynosa, March 15, 1995.

rote assembly work.³² Some labor activists discount the notion that women are prized for their supposed dexterity and work ethic, and instead point to the fact that women are considered to be less informed about their rights, and consequently less insistent in demanding them.³³

³² Human Rights Watch interview, Teresa Hernández Caballero, promotor, Comité Fronterizo de Obreras (CFO) (Border Committee of Women Workers), Matamoros, March 15, 1995. Human Rights Watch interview, Edgar Krueger, director, Border Communities Project, AFSC, Reynosa, March 15, 1995. The women workers themselves believed that their diligence and stamina were factors in their being recruited for work in the maquiladoras.

³³ Human Rights Watch interview, Oralia Saldaña, workers' rights activist with AFSC, March 18, 1995.

Maquiladora employers aggressively recruit female workers. Some companies, such as Zenith, TRW, and Delnosa (owned by General Motors), specifically advertise assembly jobs for "women only." Each of these companies sends trucks around to neighborhoods, with men using bullhorns to advertise available jobs.³⁴ Research into the hiring practices of maquiladoras in other areas of Mexico supports the analysis that women are sought for light assembly work within the maquiladora sector. One labor market analyst and sociologist who interviewed women maquiladora workers and examined job advertisements spanning the 1980s found that a pattern existed of preferring women for low-wage assembly work in Nogales, then Mexico's sixth-largest maquiladora center. Her study of advertisements by maquiladoras placed in the Spanish-language daily, *La Voz del Norte*, throughout the 1980s showed that, "39 percent specified the gender of the person to be hired. In over two thirds of these cases women were preferred. . . . [A]lmost 89 percent were unskilled production jobs."³⁵

An anthropologist who studied women in the maquiladora sector in the late 1970s (including working in an apparel manufacturing plant for two months in Ciudad Juárez) noted that maquiladora managers claimed to hire women for their skill level, performance, docility and because they were unlikely to unionize, and avoided hiring men because of their greater willingness to unionize and disinclination to tolerate inadequate working conditions and low wages. She concluded:

The employment of women with acute economic needs by the maquiladora industry represents, in objective terms, the use of the most vulnerable sector of the population to achieve greater productivity and larger profits. The employment of men to perform similar operations would require higher wages, better working conditions and more flexible work schedules, all of which would increase labor costs and reduce capitalist gains.³⁶

That women are willing to endure extremely poor conditions in order to keep their jobs, is also clear from the conditions that prevail in many factories without significant female-worker protest or opposition. Speaking only on the condition of anonymity, women working in the Erika factory in Reynosa told us of assembling medical kits without the benefit of mouth and nose covering to protect them from noxious fumes;³⁷ women workers at the Zenith plant in Reynosa told us that they were given protective gloves for their soldering work only when managers visited from the U.S.;³⁸ women working in the ITT plant in Río Bravo reported that because they were not given protective eyewear, when oiling car parts, the oil habitually fell into their eyes;³⁹ and women workers complained at the Erika factory in Reynosa that they were often dizzy from the fumes with which they worked but were not allowed to take breaks.⁴⁰

³⁴ Human Rights Watch interviews with women workers from the Zenith plant in Reynosa on March 11, 1995; women workers from the TRW plant in Reynosa on March 11, 1995; and women workers from the Delnosa (owned by General Motors) plant in Reynosa on March 10, 1995.

³⁵ Kopinak, "Gender as a Vehicle. . .," *Latin American Perspectives*, p. 41.

³⁶ Fernández-Kelly, *For We Are Sold*, pp. 66-67.

³⁷ Human Rights Watch interview, Celes, Río Bravo, March 13, 1995.

³⁸ Human Rights Watch interview, Sara, Río Bravo, March 11, 1995.

³⁹ Human Rights Watch interview, Roberta, Río Bravo, March 13, 1995.

⁴⁰ Human Rights Watch interview, Celes, Río Bravo, March 13, 1995.

A number of women from different factories told us of being paid for fewer hours than they had actually worked; of being denied time off to take their children to the doctor because the women themselves were not sick; of being short-changed on overtime pay; of being forced to work overtime on demand; of being temporarily laid off when work was slow or manufacturing orders were completely filled; of being told to clean the factory's restrooms when work was slow; and of being forced to sign probationary contracts typically of thirty or ninety days before a permanent one was offered.⁴¹

Formal studies conducted by Mexican professors Jorge Carrillo and Alberto Hernández in the 1980s regarding the role of women workers in the maquiladora sector in Ciudad Juárez corroborate the widely held view that women are recruited for assembly work in the maquiladoras because of the unlikelihood that they will challenge exacting working conditions. In their book *Mujeres Fronterizas en la Industria Maquiladora (Border Women in the Maquiladora Industry)*, Carrillo and Hernández point out that although maquiladora managers and administrators consistently claimed to hire women workers because of their patience, attention to detail, and dexterity, the facts belie their assertions. The authors concluded:

In reality what all this means is that women are hired [by maquiladoras] because they bear the workload with more ease, and because there are imposed on them great work assignments and certain conditions which a man would be less disposed to accept . . .⁴²

⁴¹ Provisional contracts are illegal in Mexico. They are used by companies to convince the worker that he or she is working on a trial basis and therefore has no legal right to contest a later firing.

These contracts hire workers on a trial basis and then allow managers to fire them for any reason. Under Mexico labor code Article 47, a company has thirty days to decide if it wants to employ permanently a worker or to let a worker go because of a lack of ability or qualifications. During those thirty days a company can rescind a contract without any obligations. A company can issue a short-term contract only when the work will last for a certain amount of definite time. For example, a contractor building a house may hire a worker only for the amount of time necessary to build the house. The nature of the work is such that it will be complete in a specified span of time. Since maquiladoras have on-going contracts for work, they are prohibited by law from asking workers to sign provisional contracts.

⁴² Jorge Carrillo and Alberto Hernández, *Mujeres Fronterizas en la Industria Maquiladora (Border Women in the Maquiladora Industry)*, (Mexico City: Consejo Nacional de Fomento Educativo, 1985), p. 106.

Historically, comparable labor had been done by men, calling into question maquiladora managers' pronounced belief that women were better suited for such work as a motivating factor for their being hired. In fact, at the time of the professors' investigation, there was a dearth of female workers in maquiladoras in Mexican towns such as Nogales and such traditionally "female" work was in fact being done quite successfully by males, in contradiction of the reasons maquiladora managers gave for preferring women as workers.

DISCRIMINATION AGAINST AND MISTREATMENT OF WOMEN WORKERS

Pregnancy-based discrimination against women workers in the maquiladora sector takes three forms: testing and other treatment of women applicants during the hiring process to determine their pregnancy status; refusal to hire women applicants who are pregnant; and mistreatment and forced resignation of women workers who become pregnant.

Discrimination in the Hiring Process

*Everyone knows not to even bother going [to the maquiladoras to look for work] if you are pregnant.
—Bonita, Matamoros, March 19, 1995*

Women applying for positions as line workers or assemblers in Mexico's maquiladora⁴³ sector are routinely required to undergo pregnancy exams as a condition of employment. This practice occurs in many factories across the northern Mexico border, from Tijuana to Matamoros. The implicated companies are: Ensamblés de Precisión (Los Angeles, CA-based Teledyne), Panasonic (Osaka, Japan-based Matsushita Electric Works), Zettler (Aliso Viejo, CA-based American Zettler), Maquiladora de Accesorios para Mascotas (Chula Vista, CA-based Coyote Pet Products), Sanyo (based in Osaka, Japan), Afi de México (closed; made toys for Fisher Price), Ensamblés de Precisión de las Californias (Gardena, CA-based Pacific Electricord), Intercombustion (Los Angeles, CA-based Lipps Inc.), Nellcor de Mexicanos (Pleasanton, CA-based Assemble in Mexico), and Administración de Maquiladoras (Temecula, CA-based Hudson Respiratory Care) in Tijuana; Industrias de Américas (closed), Sistemas Eléctricos y Conductores (SECOSA) (Tokyo, Japan-based Yazaki Corporation), and Buena Ventura Auto Partes (BAPSA) (Tokyo, Japan-based American Yazaki), in Chihuahua; Attel Fábrica (New York City, NY-based AT&T), TRW (based in Cleveland, Ohio), Partes de Televisión de Reynosa (Glen View, IL-based Zenith, now majority owned by South Korea-based Goldstar), La Bonita Señorita de Reynosa (closed; formerly owned by McAllen, TX-based Sportswear International), Erika de Reynosa (Boca Raton, FL-based W.R. Grace), Zenith (based in Glen View, IL; now majority owned by South Korea-based Goldstar), Datacom de México (Chantilly, VA-based GENICOM Corp.), Controles de Reynosa (Milwaukee, WI-based Johnson Controls), Delnosa (Detroit, MI-based General Motors), Sociedad de Motores Domésticos (Fairfield, CT-based General Electric), and Jen-O-Mex (Totowa, NJ-based Jenncraft Corp.) in Reynosa; International Telephone and Telegraph (ITT) (based in New York City) in Río Bravo; and Trico Componentes Fábrica (Richmond, IN-based TRICO STANT Co.), Sunbeam-Oster (based in Fort Lauderdale, FL), MagneTek Componentes Eléctricos (Nashville, TN-based Magnetek Inc.), Nova/Link (made undergarments for Fruit of the Loom, now subcontracts for Polo and Liz Claiborne), Lepco (Brownsville, TX-based Leonard Electric), and Deltrónicos (Detroit, MI-based General Motors), in Matamoros.

In the following maquiladoras, women applicants were required either to reveal their pregnancy status on a job application or during an interview with maquiladora personnel: Plásticos Bajacal (Phoenix, AZ-based Carlisle Plastics), Dalila (closed), Maquiladora de Accesorios para Mascotas (Chula Vista, CA-based Coyote Pet Products), Exportadora de Mano de Obra (closed; was owned by Downey, CA-based American United Global), Chappel (100 percent Mexican owned), Temco, Ensamblés de Precisión de las Californias (Gardena, CA-based Pacific Electricord), and Administración de Maquiladoras (closed, was owned by Temecula, CA-based Hudson Oxygen Therapy Sales now called Hudson Respiratory Care) in Tijuana; Alambrados y Circuitos Eléctricos (Detroit, MI-based General Motors) in Chihuahua; Partes de Televisión de Reynosa (Glen View, IL-based Zenith, now majority owned by South Korea-based Goldstar), Controles de Reynosa (Milwaukee, WI-based Johnson Controls), Datacom de México (Chantilly, VA-based

⁴³ The parent company is specified within the parentheses.

GENICOM), and Zenith (based in Glen View, IL; now majority owned by South Korea-based Goldstar) in Reynosa; and Sunbeam-Oster (based in Fort Lauderdale, FL), Texitron (Chicago, IL-based Midwestco), and Zenith (based in Glen View, IL; now majority owned by South Korea-based Goldstar) in Matamoros.

Among the companies from which we interviewed women, there were five that, to our knowledge, did not attempt to determine women's pregnancy status as a condition of employment: Bebe Products (closed); K.W. de México and Etcétera (closed) in Tijuana; Electromex (Colorado Springs, CO-based Electromech) in Chihuahua; and Rey Mex Bra (Reading, PA-based VF Corp., supplies bras to Sears Roebuck) in Reynosa.

Human Rights Watch interviews reveal that pregnancy exams are administered either by the corporations' own doctors and nurses or by contracted private clinics in conjunction with other medical tests, such as those measuring blood pressure and vision or testing for anemia or diabetes. Many times, these other tests serve as a pretext to test for pregnancy.⁴⁴ Women workers told us they thought that the results of the exams are forwarded to the heads of personnel at the factories, who examine them and decide which applicants will be selected for work. The women Human Rights Watch interviewed, many of whom went through the application process with friends, indicated that pregnant women seemed to be the only applicants not offered work. In some instances, doctors, nurses or other maquiladora personnel told women explicitly that if their pregnancy exams returned positive they would not be hired.⁴⁵ Personnel office employees from other companies, such as Zenith in Reynosa, admonished women that they should not become pregnant or they would lose their jobs.

Maquiladoras use a variety of means other than direct medical testing to ascertain whether a woman is pregnant. At some plants, personnel employees ask women applicants directly if they are pregnant; in other plants, women must indicate on their job applications if they are pregnant; and in still other instances, maquiladora employment personnel resort to asking intrusive questions, such as whether the applicant is sexually active, when she last menstruated, and what type of contraception she uses to determine her pregnancy status. A supervisor currently working at Alambrados y Circuitos Eléctricos in Chihuahua told Human Rights Watch that supervisors were routinely encouraged not to hire pregnant women (or overweight women, because they could not stand for a long time).⁴⁶ On their application is the question "Are you pregnant?" A copy of this application can be found in Appendix C.

Maquiladoras would be less successful in screening out pregnant women from their prospective applicants and denying them jobs if it were not for the direct participation in this discriminatory practice of some health care personnel, at the behest of the maquiladoras themselves. Dr. Adela Moreno,⁴⁷ who worked at the Matsushita-Panasonic Plant in Tijuana in 1993, told Human Rights Watch that her job consisted almost exclusively of testing women applicants for pregnancy so that pregnant women would not be hired:

⁴⁴ Fernández-Kelly, *For We are Sold*, p. 122.

⁴⁵ This occurred at Zenith in Matamoros, Delnosa in Reynosa, Intercombustion in Tijuana, and Erika in Río Bravo.

⁴⁶ Human Rights Watch interview, Ami, Chihuahua, March 8, 1995.

⁴⁷ This is the doctor's actual name.

When I first started working at Matsushita, the director of personnel told me to make sure that I tested every single female applicant for pregnancy because pregnant women were too costly to the company. It seemed that was all I did. I was appalled, but I did the pregnancy exams. At times, I would be so angry at what was going on at the plant and fed up with how they were exploiting these very young girls that I would tell them [supervisors] that girls were not pregnant when they were. I knew that what the factory was doing was illegal. It denied these girls their right to work, which is guaranteed in our constitution. Any applicant labeled as pregnant was told by the personnel director that she was not qualified, or that all the positions were taken. It was awful. For girls who managed to slip by—with my help or because they switched their urine samples—supervisors made life difficult for them when they discovered the girls were pregnant. They would do things like put them on the night shift—which is completely illegal under Mexican labor law.⁴⁸

According to Dr. Moreno, Matsushita-Panasonic fired her because she complained about the lack of a proper ventilation system and protective clothing and eyewear for workers who were welding. According to the doctor, there were many health and safety hazards at the plant. She had begun to try to raise the consciousness of the women workers by explaining to them what their rights were according to the federal labor code and encouraging them to exercise them. Dr. Moreno challenged her firing before a CAB but was not reinstated to her position. Instead, she was paid her full severance pay, which Matsushita-Panasonic had not paid upon firing her. In her case before the CAB, on the advice of her attorney, Dr. Moreno did not mention that Matsushita-Panasonic specifically used pregnancy exams to deny women applicants work, but included information on the widespread practice within the maquiladora sector of using pregnancy exams as a means to deny women work.⁴⁹

The following cases document the widespread use of a variety of techniques, from direct pregnancy testing to intrusive questioning of women applicants, to determine their pregnancy status:

- Bonita, now twenty-eight years old, assembles car radios for the General Motors-owned plant Deltrónicos in Matamoros. When she first started working there in the 1980s, she was sent directly to a private clinic in Matamoros to be examined. The pregnancy exam was the only exam they administered to her. Now the General Motors-owned plant has its own clinic, on the premises, staffed by a doctor and a nurse.⁵⁰
- Paula, now twenty-eight years old, began working at American Zettler in Tijuana in September 1994. When she went to apply for a job there as a line worker, she was required to undergo a pregnancy exam in order to be considered for work. The pregnancy exam was performed at the plant by a doctor employed by American Zettler.⁵¹
- Francesca, now twenty-one years old, applied for work in La Bonita Señorita de Reynosa in December 1994 to iron finished blouses. While she was not given a pregnancy exam because she recently had a baby, all of the other married women who applied for work that day with her were required to undergo pregnancy exams as a condition of employment with La Bonita Señorita de Reynosa.⁵²

⁴⁸ Human Rights Watch telephone interview, Dr. Moreno, Tijuana, July 9, 1995.

⁴⁹ Human Rights Watch telephone interview, Dr. Moreno, Tijuana, January 4, 1996.

⁵⁰ Human Rights Watch interview, Bonita, Matamoros, March 19, 1995.

⁵¹ Human Rights Watch interview, Paula, Tijuana, March 2, 1995.

⁵² Human Rights Watch interview, Francesca, Reynosa, March 10, 1996.

- In August 1991 Sofia, then twenty-three years old, applied for an assembly position at Sistemas Eléctricos y Conductores, S.A. (SECOSA) in Chihuahua.⁵³ She was given a general medical exam, including a pregnancy exam, when she applied for work there.⁵⁴
- Paloma, twenty-nine years old, has worked at the Datacom de México⁵⁵ factory in Reynosa for almost four years. The factory had a doctor ask the women applicants if they were pregnant and give them a pregnancy test.⁵⁶
- Graciela, now twenty-seven years old, worked for Panasonic in Tijuana in 1990. She had to undergo a pregnancy exam as a part of the application process.⁵⁷
- Reina, twenty-nine years old, works for Lepco⁵⁸ in Matamoros assembling product transformers. She was sent to a private laboratory to submit to a pregnancy exam before being offered a job.⁵⁹
- Clara, thirty-seven years old, has worked at Partes de Televisión de Reynosa for over seven years. She is an inspector of the cables that come out of the back of Zenith televisions. When she applied to work at Partes de Televisión de Reynosa seven years ago, the factory nurse asked her if she was pregnant. The nurse did not give her a pregnancy exam, but told her that they did not hire pregnant women.⁶⁰
- Rebeca, a twenty-two-year-old, works for MagneTek⁶¹ in Matamoros assembling ballasts for florescent lamps. Rebeca applied for work at MagneTek in November 1995. She was obliged to undergo a pregnancy exam after her three-month "probationary" period was up, as a condition of being offered a permanent position at the factory. Rebeca worked for Nova/Link⁶² in Matamoros for a year in 1992, putting elastic in Fruit of the Loom undergarments. She had to undergo a pregnancy exam as a part of the application process for work at Nova/Link.⁶³

⁵³ Owned by Yazaki Corporation.

⁵⁴ Human Rights Watch interview, Sofia, Chihuahua, March 7, 1995.

⁵⁵ Owned by GENICOM Corp.

⁵⁶ Human Rights Watch interview, Paloma, Reynosa, March 20, 1995.

⁵⁷ Human Rights Watch interview, Graciela, Tijuana, March 4, 1995.

⁵⁸ Owned by Leonard Electric.

⁵⁹ Human Rights Watch interview, Reina, Matamoros, March 19, 1995.

⁶⁰ Human Rights Watch interview, Clara, Río Bravo, March 10, 1995.

⁶¹ Owned by Magnetek Inc.

⁶² Nova/Link is a sub-contractor. It stopped sewing undergarments for Fruit of the Loom sometime in 1993. It presently make garments for Liz Claiborne, Best, and Polo.

⁶³ Human Rights Watch interview, Rebeca, Matamoros, March 19, 1995.

- Graciela, now twenty-seven years old, started working for the Sanyo plant in Tijuana in March 1995. When she was interviewed for the position of line worker, the manager asked her if she was pregnant. That same day, a nurse gave her a pregnancy exam.⁶⁴
- Elisabeta, now twenty-four years old, worked at Johnson Controls-owned Controles de Reynosa, assembling computer boards in Reynosa in 1993. She was sent to a private clinic to be given a pregnancy exam before she was hired.⁶⁵
- Orfilia is thirty-three years old. She began working for the General Motors-owned plant Delnosa in Reynosa in March 1995. On the day that she applied for a position as a line worker, she and approximately thirty other women applicants had to undergo pregnancy and blood tests.⁶⁶
- Julieta, twenty-five years old, works for a General Electric-owned Sociedad de Motores Domésticos plant in Reynosa. This is her first time working in a maquiladora. Julieta had to take a pregnancy exam in order to get a job there. She told us Sociedad has started testing applicants for pregnancy only in the last two or three years, because of the high number of women who were entering pregnant.⁶⁷
- Mirabel is a thirty-year-old. She worked at a TRW plant in Reynosa for five months in 1994 and 1995, assembling seat belts. She had to take a pregnancy exam in order to get an assembly position there.⁶⁸
- Lidia, a twenty-one-year-old, is one of four children in her family. She did not complete primary school because her father could no longer afford the school fees. She worked at Buena Ventura Auto Partes (BAPSA) in Chihuahua beginning in 1994 for one year covering electrical cables.⁶⁹ She had to submit to a pregnancy exam, as a part of a larger general exam, to get a job there doing assembly work.⁷⁰
- Sonia, thirty-three years old, began working for Industrias de Américas in Chihuahua in 1986 assembling electrical cables for cars, at which time she had to take a pregnancy exam in order to be considered for a job.⁷¹
- Carmen, thirty-three years old, started working at the TRW plant in Reynosa in April of 1992. As a part of the application process, she had to go to a private clinic in Reynosa to undergo a number of tests, including one for pregnancy.⁷²

⁶⁴ Human Rights Watch interview, Graciela, Tijuana, March 4, 1995.

⁶⁵ Human Rights Watch interview, Elisabeta, Reynosa, March 18, 1995.

⁶⁶ Human Rights Watch interview, Orfilia, Río Bravo, March 13, 1995.

⁶⁷ Human Rights Watch interview, Julieta, Reynosa, March 18, 1995.

⁶⁸ Human Rights Watch interview, Mirabel, Reynosa, March 9, 1995.

⁶⁹ BAPSA's parent is Yazaki Corporation. BAPSA assembles harnesses for automobiles, such as Toyota.

⁷⁰ Human Rights Watch interview, Lidia, Chihuahua, March 8, 1995.

⁷¹ Human Rights Watch interview, Sonia, Chihuahua, March 8, 1995. In 1992 Industrias de Américas was sold to Alambrados y Circuitos Eléctricos.

⁷² Human Rights Watch interview, Carmen, Río Bravo, March 11, 1995.

- Laura, twenty-four years old, assembles controls for electric blankets at the Sunbeam-Oster plant in Matamoros. When she began working there in 1993, she had to answer a question on the Sunbeam-Oster application about whether she was pregnant; later, during an interview, a personnel officer asked her if she was pregnant; and the next day she had to give a urine sample for a pregnancy test.⁷³
- Alina, thirty-one years old, has worked for Trico Componentes⁷⁴ in Matamoros since 1992 assembling windshield wipers. The nurse at the factory gave her a pregnancy exam during the hiring process.⁷⁵
- Liona, a forty-year-old, works for Ensamblados de Precisión de las Californias in Tijuana, assembling extension cords and electric cable.⁷⁶ During her interview, a maquiladora manager asked her if she was pregnant and whether she was willing to take a pregnancy exam. She was required to take a pregnancy exam later that day, before she was offered a position. Liona worked at Nellcor de Mexicanos as a line worker for approximately one year in 1990. She had to undergo a pregnancy exam as a part of the application process there.⁷⁷ In 1987 her first job at a maquiladora was as an assembler with Administración de Maquiladoras, where she assembled oxygen masks. Liona did not have to undergo a pregnancy exam when she applied for a position with Administración de Maquiladoras as the other women applicants did because she was breast feeding. However, on Administración de Maquiladoras' application was a question regarding the applicant's pregnancy status. Liona worked there two years.
- Estela, eighteen years old, began working at a Zenith plant in Matamoros in March 1994. As a part of the hiring process, Zenith sent her, and other women applicants, to a private clinic in Matamoros to be tested for pregnancy. During her interview with a Zenith manager, Estela was asked if she was sexually active. She found out about the position at Zenith through a local union office.⁷⁸
- Monze is twenty-nine years old. For eight months she worked at W.R. Grace-owned Erika in Reynosa, where she assembled medical kits.⁷⁹ Upon applying for a job there in 1990, she was asked by the nurse who worked for the factory if she was pregnant. The nurse went on to warn her that if her pregnancy test came back positive she would not be hired. Monze quit after eight months because the chemicals with which she worked gave her headaches on a daily basis. She also felt that her short-term memory was being impaired and, after losing her way home one day after getting off the bus after work, decided to quit.⁸⁰

⁷³ Human Rights Watch interview, Laura, Matamoros, March 19, 1995.

⁷⁴ Owned by TRICO STANT Co.

⁷⁵ Human Rights Watch interview, Alina, Matamoros, March 15, 1995.

⁷⁶ Ensamblados's parent company is Pacific Electricord.

⁷⁷ Human Rights Watch interview, Liona, Tijuana, March 5, 1995.

⁷⁸ Human Rights Watch interview, Estela, Matamoros, March 15, 1995.

⁷⁹ The parent company of Erika is W.R. Grace.

⁸⁰ Human Rights Watch interview, Monze, Río Bravo, March 18, 1995.

- Angelina, twenty-four years old, works at W.R. Grace-owned Erika in Reynosa. Before she was offered a job there in July 1994, a maquiladora administrator warned her that she should not get pregnant during her two-month probationary period or she would be fired.⁸¹
- Eva, twenty-four years old, worked for the Carlisle Plastics-owned Plásticos Bajacal factory in Tijuana for almost two years starting in 1990, assembling hangers. When she applied for a job there the manager asked if she was pregnant and warned her that if she were she would not be hired, and that if she became pregnant she would be fired. In 1989 Eva worked for nine months at Maquiladora de Accesorios para Mascotas in Tijuana, sewing dog collars by machine. In order to obtain a job there, she had to undergo a pregnancy exam. In addition, during her interview for the position, maquiladora personnel asked her whether she was pregnant and she had to reveal her pregnancy status on the job application.⁸²
- Alma, nineteen years old, is one of eight children in her family. She began working at a Zenith plant in Matamoros in November 1994. When she applied to work as an assembler, she was sent to a private clinic in Matamoros to be tested for pregnancy. She was explicitly told by Zenith maquiladora personnel that if her pregnancy test came back positive she would not be hired.⁸³
- In the early 1980s Rosa, now forty-six years old, worked at Dalila de México in Tijuana as a seamstress. During the interview process, maquiladora personnel asked Rosa whether she was pregnant and whether she was willing to submit to a pregnancy exam. She told them that she was not pregnant and they did not administer her a pregnancy exam. She also had to reveal her pregnancy status on her application. She responded that she was not pregnant.⁸⁴
- Rafa, twenty-three years old, worked at American United Global-owned Exportadora de Mano de Obra⁸⁵ in the early 1990s. When she started working there, the application she filled out contained the question "are you pregnant?"⁸⁶
- Cristina, twenty-one years old, works for Zenith in Reynosa, assembling television sets. She began working with them in 1989. Before being hired, she was sent to the infirmary for a vision exam, at which time the nurse warned her that she should not get pregnant within the first year or she would be fired.⁸⁷

⁸¹ Human Rights Watch interview, Angelina, Río Bravo, March 14, 1995.

⁸² Human Rights Watch interview, Eva, Tijuana, March 4, 1995.

⁸³ Human Rights Watch interview, Alma, Matamoros, March 19, 1995.

⁸⁴ Human Rights Watch interview, Rosa, Tijuana, March 3, 1995. Rosa was in fact pregnant when she began working for Dalila de México. Her case is discussed further below.

⁸⁵ In December 1994, 118 women of Exportadora de Mano de Obra (EMOSA) filed a claim in the U.S. against EMOSA's U.S. parent company, American United Global (AUG)/National O-Ring for sexual harassment, illegal firing, and denial of severance pay. During a visit by the president of AUG, John Shahid, women workers had been made to put on a bikini fashion show at a company picnic and were videotaped in September 1994. The next month, at a meeting at the plant, several women workers were propositioned by Shahid and were told that if they wanted raises they would have to sleep with him. They reached a satisfactory legal settlement in September 1995. This was the first time Mexican workers had sued a transnational corporation in U.S. courts for violations of Mexican labor law.

⁸⁶ Human Rights Watch interview, Rafa, Tijuana, March 3, 1995.

⁸⁷ Human Rights Watch interview, Cristina, Reynosa, March 11, 1995.

- Clarissa, eighteen years old, worked at Texitron⁸⁸ in Matamoros for three months at the end of 1994. When she applied for a position as an assembler there, her interviewer asked her whether she was pregnant, sexually active, and when she last menstruated.⁸⁹
- When Josefina, twenty-three years old, applied for an assembly position with the AT&T-owned factory Attel Fábrica in Reynosa in 1993, she was menstruating and therefore did not have to undergo a pregnancy exam. However, all the other approximately twelve women who were applying for positions that day had to give urine samples at the infirmary.⁹⁰
- Pamela, now eighteen years old, began working at a Zenith plant in Reynosa in February 1994. A nurse there asked her if she was pregnant as a part of the hiring process.⁹¹
- Dalia, now twenty-three years old, assembled toys at Afi de México in Tijuana in 1989 when she was fifteen years old.⁹² She had to take a pregnancy exam, in the form of a urine sample, in order to secure her job.⁹³
- Gina, now thirty-two years old, started working at the TRW plant in Reynosa in 1990, after a truck went through her neighborhood announcing that TRW needed operators to work its first shift. The announcer said the work was for women only. The following day, Gina went to the TRW plant to apply for a position as a line worker. She was given both a urine and a blood test. The woman administering the tests, whom Gina thought was a nurse, told her that they would test to see if she was pregnant. Gina waited for the results of her tests, at which time she was told to return the following day to begin her training to learn to make seatbelts.⁹⁴
- Dorotea, twenty-four years old, makes venetian blinds at the Jen-O-Mex⁹⁵ factory in Reynosa. She began working there in February 1995. Before she was offered her position, she, and all the other married women applying for positions that day, had to go to the company infirmary to take a pregnancy exam.⁹⁶

⁸⁸ Owned by Midwestco Enterprises.

⁸⁹ Human Rights Watch interview, Clarissa, Matamoros, March 19, 1995.

⁹⁰ Human Rights Watch interview, Josefina, Reynosa, March 9, 1995.

⁹¹ Human Rights Watch interview, Pamela, Reynosa, March 20, 1995.

⁹² Afi de México made toys for Fisher Price. In 1992 Afi de México was purchased by Mattel. The name was changed to Mattel de México or Mabamex. Mattel now owns Fisher Price.

⁹³ Human Rights Watch interview, Dalia, Tijuana, March 4, 1995.

⁹⁴ Human Rights Watch interview, Gina, Río Bravo, March 11, 1995.

⁹⁵ Owned by Jenncraft Corp.

⁹⁶ Human Rights Watch interview, Dorotea, Reynosa, March 17, 1995.

- Marina, now nineteen years old, worked at a Zenith plant in Reynosa in 1992, when she was sixteen years old. Zenith had sent a truck to her neighborhood to announce that well-paid assembly jobs were available for women only. When Marina applied for her position at Zenith a nurse there asked her if she was pregnant. She was also given a vision exam. Marina did not wonder why the nurse asked her if she was pregnant because she knew that pregnant women were not hired in the maquiladoras. Now Marina works for General Motors-owned Delnosa in Reynosa. In order to apply for the position at Delnosa as a line worker, she had to undergo pregnancy exam as a part of a general physical examination.⁹⁷
- Melissa, now thirty-one years old, has worked at Trico Componente⁹⁸ in Matamoros for six years. When she first started there, in 1990, she had to take a pregnancy exam as a part of the hiring process. During her interview with a maquiladora manager, she was warned that she would be tested for pregnancy and if the results were positive she would not be hired. She was sent to a private clinic in Matamoros for her exam.⁹⁹
- Marta, twenty-one years old, painted picture frames at Chappel in Tijuana for a year in 1993. She had to answer a question on Chappel's employment application regarding her pregnancy status. Later in an interview with a maquiladora manager, she was asked whether she was pregnant. She worked for Intercombustion,¹⁰⁰ also in Tijuana, in early 1994. She was given a pregnancy test before she was hired, and warned by the doctor that if she were pregnant she would not be hired. At the end of 1994 Marta began working at Temco, where she had to respond to a question on the employment application about her pregnancy status. Although she responded that she was not pregnant, she knew she was. While Marta was not given a pregnancy test at Temco, she was warned by a secretary there not to tell anyone she was pregnant or she would not be hired.¹⁰¹

Post-Hire Discrimination and the Punitive Use of Working Conditions

Once hired, if a woman worker in a maquiladora becomes pregnant, our interviews indicate that her ability to retain her job may depend very much on the attitude of the supervisor. We documented cases where pregnant women were forced to resign and where they were harassed and mistreated for becoming pregnant.

⁹⁷ Human Rights Watch interview, Marina, Reynosa, March 10, 1995.

⁹⁸ Owned by TRICO STANT.

⁹⁹ Human Rights Watch interview, Melissa, Matamoros, March 19, 1995.

¹⁰⁰ Owned by Lipps Inc.

¹⁰¹ Human Rights Watch interview, Marta, Tijuana, March 4, 1995.

Women workers told us of abusive practices and unreasonable conditions that they themselves experienced or that they saw other women colleagues subjected to because they were pregnant, but about which they were afraid or reluctant to complain, for fear of losing their jobs.¹⁰² While these conditions, *per se*, are outside the scope of this report, the punitive use of these conditions often plays a role in mistreating or forcing pregnant women workers to resign. Women told us of being reassigned to more physically difficult tasks; of having their work shifts altered on a weekly basis; of being forced to stand rather than be given a seat to do their work; and of being obliged to work uncompensated overtime hours on demand in order to keep their jobs.¹⁰³ Moreover, women who became pregnant reported that maquiladoras used probationary contracts of thirty to ninety days as a mechanism to refuse to offer permanent positions to pregnant women workers.

In other cases, women workers continued working unimpeded. Often the amount of time a woman had already worked was a factor in her chances of keeping her job, despite her pregnancy. However, no woman worker can be sure that she will be able to keep her job once she becomes pregnant. Interviews both with pregnant women who lost their jobs because they were pregnant and with pregnant women workers who were able to retain their positions revealed that if a woman had worked in a maquiladora several years, she was less likely to be dismissed or harassed for becoming pregnant. Workers told us that after lengthy employment, the woman worker would have established a good working relationship with a supervisor and would have consistently demonstrated her productivity and reliability, thereby bettering her chances of not being forced out.

Forced Resignations and Attempted Forced Resignations

Human Rights Watch investigated and documented cases in which maquiladora managers or other maquiladora personnel forced or attempted to force women workers to resign because they were pregnant. After being forced out of their positions within the maquiladora sector, women workers often lost contact with their co-workers, or sought jobs as domestic servants, which made it more difficult to find and interview them. However, Human Rights Watch was able to document several cases of forced resignation.

Women workers often used the term "forced" to describe their resignations. In the cases that follow, the women resigned only in the most technical sense of the word—which is to say that they tendered their resignations or signed a resignation letter at the insistence, instigation and urging of maquiladora managers. Human Rights Watch considers these forced resignations to be tantamount to firings, given the coercion involved and given the fact that the women workers all said they felt they had no other choice than to sign and leave the maquiladora on terms that would

¹⁰² Human Rights Watch interviews, March 1995. Women workers often complained that they feared being blacklisted by their current maquiladoras and therefore whenever they encountered problems of whatever variety, they preferred to leave and seek work at another maquiladora rather than risk angering someone and subsequently being unable to get a recommendation from one maquiladora for work at another.

Often on maquiladora applications there is the question "Have you ever worked in a maquiladora before?" Workers' rights advocates and women workers themselves were certain that previous experience in a maquiladora helped one gain employment and could not be certain of whether maquiladoras ever really called to check a character reference.

¹⁰³ Article 61 of Mexico's federal labor code states: "The maximum duration of a workday will be: eight hours diurnal, seven hours nocturnal and seven hours mixed [shift]." Articles 65 and 66 stipulate that the workday may be prolonged in order to avoid, among other things, calamities that threaten the existence of the company or of its employees, not to exceed three hours a day for three days within a week.

Article 68 stipulates that workers are not obligated to work more than the maximum time [nine hours a week] permitted in the chapter [on the work day] and that if they do work more than the nine extra hours, those hours beyond nine hours are to be compensated at the rate of double the hourly wage.

In addition, many maquiladoras establish their own set of internal rules and regulations in which it is specified that workers are expected to work overtime, when requested. This document is called the "Reglamento Interior de Trabajo" or "internal work regulation." In some factories, upon entering, workers are either given a book which contains the internal rules and regulations or are asked to sign a form saying they intend to comply with the factory's internal rules and regulations.

allow them later to seek work in another maquiladora. In all instances Human Rights Watch investigated where pregnant women workers were forced to resign, the workers themselves believed they were the only ones forced to resign, despite, in some instances, a company's claim that there was no longer enough work for all the workers.

Women workers often complained that when they were pregnant, a supervisor would look for any pretext to fire them and even when women were not actually fired, supervisors often used the threat of dismissal to intimidate women workers. One woman worker who has been employed in the maquiladora sector for over ten years and now works in a cooperative¹⁰⁴ told us that for a pregnant worker, "[a]ny small slip up, such as arriving late or not working quickly enough can be an excuse to get rid of her."¹⁰⁵

According to a maquiladora employee directly involved in the incident below, should a woman manage to get hired and she is pregnant, the company may find a way to get rid of her very quickly, as was done at Alambrados y Circuitos Eléctricos in Chihuahua. She told us :

¹⁰⁴ The factory is owned and managed by the employees.

¹⁰⁵ Human Rights Watch interview, Rosa, Tijuana, March 3, 1995.

A couple of months ago there was a woman who was pregnant. For some reason her pregnancy was not detected. I do not know if she lied on the application, or the test came back false, but she was definitely pregnant. She had signed a provisional contract for thirty days, which was perfect for her supervisor. It meant he could fire her without any problems. And that is exactly what he did: before thirty days had passed, he rescinded her contract and told her she was too slow.¹⁰⁶

Superiors may try to force pregnant women workers to resign. For example, Liliana worked at Zenith in Reynosa for four years beginning in 1981 as a welder of television circuit boards. It was her first time working in a maquiladora. She had worked previously as a domestic servant, but it paid poorly. A friend told her that Zenith was hiring and that she could earn more money there, so she went there to look for a job. Liliana realized she was pregnant approximately three months after beginning to work as a welder at Zenith. Liliana's supervisor at Zenith refused Liliana's requests to go to the doctor and was relentless, although ultimately unsuccessful, in attempting to force her to resign. Liliana finally resigned when her baby was four years old.¹⁰⁷

In another case, maquiladora managers forced Nieves to resign. Nieves worked at MagneTek Componentes¹⁰⁸ in Matamoros, assembling cables under an ultraviolet light. She is twenty-two years old. She came to the Matamoros area in 1992 from Veracruz, where she lived on a farm with her parents and four siblings. Nieves began working at MagneTek in November 1994 and work the 4:30 p.m. to 1:30 a.m. shift. She found the position through the local union office. Nieves was warned by maquiladora managers that she would be administered a pregnancy exam three months after she commenced working there. Nieves realized that she was pregnant before the three-month period had passed. She was sick and her supervisor sent her to see the company doctor, who gave her a pregnancy exam, which came back positive. Later, the supervisor told her that he no longer needed her.¹⁰⁹

In 1983, when Roberta began to work for ITT in Río Bravo the company did not require women applicants to take pregnancy exams. However, before she was forced to resign in 1992, ITT had started to require such exams of all prospective workers. Roberta had been ill several times and asked her union representative for permission to go to the hospital. Her pregnancy exam came back positive. Two months later, after having worked at ITT for almost nine years, Roberta was forced to resign. By then her pregnancy was showing. Roberta told us that in October 1992 one of the assistants to the union delegate came to her at her work station and told her to get her things because the factory no longer needed her. A staff member in the contracting office asked Roberta to sign a letter of resignation, which she did because the union delegate present told her to sign it. They told her there was no more work, yet, to her knowledge, she was the only worker asked to resign that day.¹¹⁰

¹⁰⁶ Human Rights Watch interview, Ami, Chihuahua, March 8, 1995.

¹⁰⁷ Human Rights Watch interview, Liliana, Reynosa, March 10, 1995.

¹⁰⁸ Owned by Magnetek Inc.

¹⁰⁹ Human Rights Watch interview, Nieves, Matamoros, March 19, 1995.

¹¹⁰ Human Rights Watch interview, Roberta, Río Bravo, March 13, 1995.

Zenith in Reynosa hired Rigoberta in 1981 for 1500 pesos (US\$62) a week.¹¹¹ All the married women who applied for jobs on the same day as Rigoberta were required to undergo pregnancy exams.¹¹² Rigoberta discovered she was pregnant after she had been working there for about five months. Once when she fainted while welding, her supervisor asked her if she wanted a pregnancy exam. She went to the infirmary, where the nurse administered the pregnancy exam, which came back positive. In Rigoberta's eighth month of pregnancy she began to feel worse, and her supervisor refused her permission to take time off to go the doctor. Instead, the supervisor told her to resign. Rigoberta delivered early by cesarean section. Zenith accused her of having lied about when she became pregnant and did not want to pay her post-partum maternity leave. She resigned and did not go back after the birth of her child.¹¹³

Supervisors make extraordinary demands on pregnant women in order to force them to resign. For example, Marta has worked at a series of maquiladora plants in Tijuana, always as an assembler. She is twenty years old and has completed the third grade. She began working at Temco in Tijuana at the end of 1994 under a provisional contract.¹¹⁴ The company did not require a pregnancy exam, but asked on its application whether the applicant was pregnant. Marta answered no and was later forced to resign when the company discovered she was pregnant. She told us:

I knew I was about one and a half month pregnant when I applied. But I needed to work. So although I answered no, I am not pregnant, I told the secretary there that I was pregnant. She knew that they were not going to give the pregnancy exams and so told me not to tell anyone or I would not be hired.

My supervisor did not notice I was pregnant until about the fourth month I was working there, since I intentionally wore loose clothes. When this supervisor realized I was pregnant, he told me that I would have to stay late and work extra hours, which I was not paid for, if I wanted to keep my job. What else could I do?

I worked late two extra hours every day, whenever he asked. I did what was necessary to keep my job, even though I was tired and on my feet too much. When my probationary period was up, they said that they did not want to keep me permanently. So I signed the letter of resignation. The secretary who was there when I started warned me not to contest the firing. She said it would not benefit me to try to fight back because I entered pregnant.¹¹⁵

When Marta, a single parent, lost her job at Temco, she lost the 180,000 nuevos pesos or US\$30 a week to sustain her family.

Mistreatment of Pregnant Workers

¹¹¹ 24.26 pesos to the U.S. dollar: *New York Times*, June 20, 1981, p. 35.

¹¹² The maquiladora managers assumed that unmarried women were not engaged in sexual activity and therefore did not require pregnancy exams of them.

¹¹³ Human Rights Watch interview, Rigoberta, Reynosa, March 10, 1995.

¹¹⁴ Provisional contracts are illegal in Mexico.

¹¹⁵ Human Rights Watch interview, Marta, Tijuana, March 4, 1995. Marta's case will be mentioned again below in another context.

A number of women workers complained to us that when maquiladoras did not force pregnant women to resign, they mistreated them. These women reported to us that, in a number of instances, maquiladora supervisors deliberately tried to make pregnant women overexert themselves.¹¹⁶ On December 11, 1989, a supervisor's refusal to allow a pregnant woman to leave the assembly line at the Carlisle Plastics-owned Plásticos Bajacal factory in Tijuana ended in her having a miscarriage. María Elena Corona Caldero¹¹⁷ worked at Plásticos Bajacal first assembling and later packing plastic hangers. She told us:

When I first started working at Plásticos Bajacal, none of the women had to do pregnancy exams. One simply had to work—and all the time. I realized I was pregnant in November. When I realized I was pregnant, I went to the supervisor to ask for seated work. He told me that there was no one to take my place and that I would have to continue in my position. In December, during one shift, I was feeling bad and asked my supervisor if I could have a break from packing hangers into boxes and putting the boxes on a conveyor belt. I was responsible for packing about seventy-five to ninety boxes a shift. He said no.

This same day, I started bleeding soon after the shift began. My husband, who also worked at the plant, asked my supervisor if he could take me to the hospital. Rojas [the supervisor] said no. He did, finally, let me go to the bathroom. I had to go see the guard because he had the key to the supply chest, where aspirin and toilet paper were kept. He told me there was neither toilet paper nor aspirin.

I did not leave the plant until 6:30 a.m., when my shift ended. I went directly to the doctor, but I had hemorrhaged so much that I had lost the fetus. While I was there, I read what the doctor wrote on my medical chart. He wrote that I had lost the baby as a consequence of work.¹¹⁸

María Elena left the hospital after five days and returned home, where she recuperated for another two weeks before returning to work. While she was in the hospital, she underwent a tubal ligation, explaining that she wanted to avoid future problems on the job.¹¹⁹

In the case of Mari-Luz, a nineteen-year-old who worked in the Ensamblés de Precisión¹²⁰ factory in Tijuana for two years beginning in June 1992, when her supervisor discovered she was pregnant he changed her assignment from testing cables and inspecting them for cleanliness to working with much larger, heavier cables. When Mari-Luz complained that the work was too exacting, the supervisor threatened to fire her if she did not meet production levels. She asked her supervisor to change her back to her previous tasks, and he refused. Mari-Luz endured in this position until she gave birth, requesting permission to visit the doctor only once so as not to give her supervisor a pretext to fire her.¹²¹

¹¹⁶ As discussed in more detail later, ILO and Mexican domestic federal labor law prohibit firing women workers because they are pregnant and require accommodation, for example, in the form of seated work, lighter work, etc.

¹¹⁷ Human Rights Watch interview, María Elena Corona Caldero, Tijuana, March 1, 1995. This is the worker's actual name. Her case has been widely reported in the Mexico press.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Owned by Teledyne Inc.

¹²¹ Human Rights Watch interview, Mari-Luz, Tijuana, March 5, 1995.

Rosa has worked in a series of maquiladoras and now works in a cooperative. She worked for Dalila de México in Tijuana in the early 1980s. Rosa knowingly entered the maquiladora pregnant. When the supervisor realized Rosa was pregnant, approximately four months after Rosa had been working, he yelled at her and asked her if she had filled out the job application that asked whether applicants were pregnant. Rosa claimed not to have known at the time of filling out her application that she was pregnant. The supervisor berated her in front of all her colleagues, saying it was obvious they did not want pregnant workers. He told her that if she made any errors in her work she would be fired.¹²²

Supervisors resort to other methods, such as reassigning pregnant women workers to more physically difficult work details, in order to pressure them to resign. In this way, a pregnant worker is forced to choose between having a healthy, full-term pregnancy and keeping her job. Eréndira, a former supervisor at the Industrias de Américas¹²³ plant in Chihuahua, told us of such mistreatment of pregnant women in the plant where she worked for several years.

She said that pressure on pregnant women to resign depended on the supervisor and that many supervisors wanted to get pregnant women off their assembly lines, claiming they lowered productivity. In one instance, for example, one supervisor was questioned by his superior about the low productivity of one of his lines. The supervisor blamed it on the presence of a pregnant workers. The superior told him to look for a solution to his problem. He subsequently moved the pregnant worker from assembling cables to packing them, which was much more physically taxing work. Eréndira and a few of the other women supervisors began to complain that the task was too strenuous for the pregnant woman on the line. The supervisor finally relented and put the worker back on the cable-assembly line. But, according to Eréndira, there had been many other pregnant women workers who were treated this way, did not last, and had no one to fight for them.¹²⁴

We also found instances in which maquiladora managers allowed women workers to keep their jobs once they became pregnant. However, these women's job security often depended on the good will of a supervisor. Isabel, who has three children and has worked for TRW in Reynosa since 1991, told us:

When I showed up to apply for the job, there were about forty of us there, all women. We were all asked by a doctor there when we had our last periods. She noted the responses on some red sheets of paper. We were also asked if we had active sexual lives and to name the diseases we've had. I can't remember the doctor's name. It was Sonia something. My period was overdue, so they did not let me stay. They told me to come back when I had my period, which I did, several days later. I went back and gave them a urine sample, with blood in it, and I was hired.

A couple of years later I became pregnant. My supervisor was very nice. She gave me lighter, packing work, instead of assembly work. I could take breaks. Everything was fine. Later, after the baby was born, I returned to work there without any problem. They never tried to run me out. They were accommodating. But much of it depends on the supervisor, because I have heard some horror stories about other pregnant women in other plants. My supervisor was a woman, and they say women supervisors are more conscientious.¹²⁵

¹²² Human Rights Watch interview, Rosa, Tijuana, March 3, 1995.

¹²³ Industrias de Américas was sold to Alambrados y Circuitos Eléctricos in 1992.

¹²⁴ Human Rights Watch interview, Eréndira, Chihuahua, March 8, 1995.

¹²⁵ Human Rights Watch interview, Isabel, Reynosa, March 14, 1995.

In each of the five cases in which women workers commended to Human Rights Watch the treatment they received from their maquiladoras when they were pregnant, the woman had worked at the maquiladora for more than a year and invariably got along well with her supervisor.¹²⁶ Women seemed far more likely to lose their jobs than not when they had been working at the maquiladora for less than one year and/or did not get along well with their supervisors.

However, seniority in no way guarantees that pregnant women workers will not be forced to resign because of pregnancy. Roberta, who worked at ITT in Río Bravo for nine years, was forced to resign when her supervisors at the maquiladora realized she was pregnant.¹²⁷

A number of women reported to Human Rights Watch that they concealed their pregnancies until it was no longer possible to work comfortably or until a supervisor noticed it. According to one member of the Tijuana-based Women's Network of Baja California, the fear of losing one's job compels women to hide their pregnancy and risk their and their fetuses' well-being:

When the women become pregnant they hide their condition so that they won't be fired, withstanding the difficult tasks and conditions of work that are imposed on them, even though they put their health in danger.¹²⁸

- Patricia worked at the Zenith plant in Reynosa. She worked at Zenith for four years before she was fired for absences related to her pregnancy. She told Human Rights Watch:

My husband does not work consistently because he is often ill. Often, because of his lack of work, we have no health insurance, which is one of the primary reasons I went to work in the maquiladoras. I started working in 1991.

I became pregnant about three years later, but did not tell anyone. I went to the Social Security Office [IMSS—Instituto Mexicano de Seguro Social], and they told me I was two months pregnant. I made sure that I did not miss work to go on this appointment—that would have made my supervisors suspicious. I ended up telling them I was pregnant about three months later—when my doctor thought I was going to miscarry. I started to feel very sick and missed a day of work. I went to the Social Security Office but they would not give me a slip indicating that I had been there.¹²⁹ When I returned to work my supervisor was very angry with me and no longer wanted me to work on her line.

I went to other managers at the plant and told them that I had been at the Social Security Office and that I was at risk of having a miscarriage. I asked them to change me to another line because I had been having problem with this supervisor. The managers told me that if I did not want to return to my position under that

¹²⁶ Human Rights Watch interview, Isabel, Reynosa, March 14, 1995; interview with Mirabel, who has worked at a TRW plant for three years, Reynosa, March 9, 1995; interview with Josefina, who has worked in an AT&T factory for four years, Reynosa, March 9, 1995; interview with Rafa, who worked at Exportadora de Mano de Obra for two years, Tijuana, March 3, 1995, and interview with María-Teresa, who has worked in a Zenith plant for ten years, Río Bravo, March 13, 1995.

¹²⁷ Human Rights Watch interview, Roberta, Río Bravo, March 13, 1995.

¹²⁸ Eva Solís, "Gran Violencia Padece la Mujer en Las Maquiladoras de la Region Fronteriza," (Women in the Border Region Suffer Great Violence in the Maquiladoras), *El Universal* (Mexico City), November 26, 1994.

¹²⁹ Most maquiladoras require that an absentee worker who claims illness present a form from the Social Security Office proving she was sick. Without this form, workers may be docked for as much as several days' salary for an unjustified absence. Many workers complained that it was extremely difficult, unless one was severely ill, to get the Social Security Office to issue a permission form.

supervisor, I could resign. Then the other supervisor began to say that this was not the first time I had missed a day without alerting her. She said that I had missed many days without permission from her. I felt very pressured and resigned that same day.

The resignation letter I copied and signed said I was resigning voluntarily, which was not exactly true. I felt like they wanted me out and that is why they did not want to change my supervisor. Afterwards, I went to complain to our union delegate. He said that he could not really help, since I signed the resignation letter—but that maybe he could do something to help me keep my insurance. In the end, he did not even manage that. I ended up having the baby prematurely in a clinic, where we had to pay because we were without insurance.¹³⁰

- Marta, twenty years old, worked at the Temco factory in Tijuana at the end of 1994. She intentionally hid her pregnancy from her supervisor until her fifth month by wearing loose clothing. Upon entering Temco, Marta knew they would not test her for pregnancy and decided to take the risk of working there, knowing that her pregnancy would eventually be detected. As noted above, Marta was eventually forced to resign from Temco after her probationary period of employment ended.¹³¹

THE ROLE OF THE MEXICAN GOVERNMENT

One knows that the pregnancy tests are done and from a personal point of view they are completely illegal. But the company won't say that it is testing for pregnancy. So, it is hard to get the company on a violation. . . . Workers will never be able to prove it in a court, even if the question about whether one is pregnant is on the application. . . . It is almost the law. In many cases, the woman who is pregnant does not even bother looking for work. She waits. And this is very hard for a woman who has few resources.

—C. Gustavo Belmares Rodríguez, *Inspector of Labor, Matamoros, March 15, 1995*¹³²

Pregnancy-Based Sex Discrimination

The Mexican government routinely tolerates pregnancy-based sex discrimination in private businesses, thereby violating both its international obligations to guarantee equal protection under the law and to ensure the human rights of all people under its jurisdiction, as well as a variety of domestic labor and anti-discrimination statutes.

¹³⁰ Human Rights Watch interview, Patricia, Río Bravo, March 13, 1995.

¹³¹ Human Rights Watch interview, Marta, Tijuana, March 4, 1995.

¹³² C. Gustavo Belmares Rodríguez is a government official charged with monitoring company compliance with the federal labor code.

The practice of obliging women applicants in the maquiladora sector to provide proof of pregnancy status is well documented and known to the Mexican government.¹³³ The former head of the Ombudsman's Office for Human Rights to Baja California, a government official, received complaints from activists on behalf of women working in Tijuana maquiladoras that they were being required to take pregnancy exams in order to apply for jobs in the sector.¹³⁴ A 1994 National Commission for Human Rights (CNDH) study focused on the human rights of women in Mexico generally, and examined the impediments to women enjoying full exercise of their human rights. Regarding discrimination, the study noted that "[a] recurrent discrimination is the requirement made of women of certificates of non-pregnancy at the time of hiring."¹³⁵ In its 1995 assessment of Mexico's human rights performance, the U.S. State Department points out that despite statutory equality between men and women in Mexico's labor codes, "... employers, including the Mexico City police department, frequently require women to certify that they are not pregnant at the time of hiring."¹³⁶ A government official in Matamoros charged with monitoring compliance with domestic federal labor codes admitted to knowing that pregnancy exams took place but found himself unable to address this problem because of the difficulty of proving it.¹³⁷

International Protection

¹³³ See generally María Patricia Fernández-Kelly, *For We are Sold, I and My People: Women and Industry in Mexico's Frontier* (Albany: State University of New York Press, 1983), p. 122; Kathryn Kopinak, "Gender as a Vehicle for the Subordination of Women Maquiladora Workers in Mexico," in *Latin American Perspectives* (Boulder), 1995, Issue 84, Vol. 22, Winter 1995, p. 44; Norma Iglesias, *La flor más bella de la maquiladora (The Most Beautiful Flower of the Maquiladora)*, (Mexico City: Centro de Estudios Fronterizos del Norte de México, 1985), p. 78; María Patricia Fernández-Kelly, "Asia y Frontera México-Estados Unidos" (*Asia and the Mexico-U.S. Border*), in Jorge Carrillo (compiler), *Reestructuración industrial: Maquiladoras en la Frontera México-Estado Unidos (Industrial Restructuring: Maquiladoras on the Mexican-U.S. Border)*, (Mexico City: Colegio de la Frontera México, 1986), p. 171; Jorge Carrillo and Alberto Hernández, *Mujeres fronterizas en la industria maquiladora (Border Women in the Maquiladora Industry)*, (Mexico City: Centro de Estudios Fronterizos del Norte de México, 1985), p. 178; Michelle Ruess, "Many Mexican Women Stuck in Factory Grind," *The Plain Dealer* (Cleveland), May 9, 1993; Kate Lebow, "For Women, the NAFTA Promises Anything but Freedom and Prosperity," *The Houston Chronicle* (Texas), November 14, 1993; Jay Root, "NAFTA's Impact Doesn't Reach Levels Predicted by Forecasters," *The Houston Post* (Texas), January 1, 1995; Eva Solís, "Gran violencia padece la mujer en las maquiladoras de la región fronteriza," (Women Suffer Great Violence in the Maquiladoras of the Border Region), *El Universal* (Mexico City), November 26, 1994; and Dora Elena Cortés, "Piden suspender el régimen de excepción a maquiladoras" (a suspension of the rule of exception for maquiladoras requested), *El Universal* (Mexico City), July 30, 1993.

¹³⁴ Human Rights Watch telephone interview, José-Luis Perez Canchola, then ombudsman for human rights for Baja California, October 27, 1993.

¹³⁵ "Los Derechos Humanos de las Mujeres en Mexico" (The Human Rights of Women in Mexico), July 1994, The National Commission for Human Rights, Mexico City, Mexico, p. 26. The U.S. Department of State, *Country Reports for Human Rights Practices for 1994* (Washington, D.C.: Government Printing Office, 1995), p.452, also notes the CNDH study and the pregnancy-based gender discrimination Mexican women suffer.

¹³⁶ U.S. Department of State, *Country Reports for Human Rights Practices for 1995* (Washington, D.C.: Government Printing Office, 1996), p. 472.

¹³⁷ Human Rights Watch interview, C. Gustavo Belmares Rodríguez, inspector of labor, Matamoros, March 15, 1995.
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Pregnancy-based discrimination constitutes discrimination based on sex, which is prohibited by the International Covenant on Civil and Political Rights (ICCPR);¹³⁸ the Convention to Eliminate All Forms of Discrimination against Women (CEDAW);¹³⁹ the American Convention on Human Rights,¹⁴⁰ and the International Labor Office's (ILO) Convention 111 on Discrimination in Respect of Employment and Occupation,¹⁴¹ all of which Mexico has ratified.¹⁴²

Pregnancy as a condition is inextricably linked and specific to being female. Consequently, when women are treated differently by their employers or potential employers because they are pregnant or because they may become pregnant, they are being subjected to requirements for employment to which men are not. Thus pregnancy-based discrimination constitutes a form of sex discrimination: by targeting a condition only women experience. Such differential treatment penalizes women exclusively.

Where pregnancy-based discrimination has been reviewed in light of international human rights and labor standards, bodies charged with interpreting those standards consistently have recognized pregnancy-based discrimination as being a form of sex discrimination. Thus, for example, the ILO Convention 111 on Discrimination in Respect of Employment and Occupation specifically prohibits discrimination based on gender in access to employment.¹⁴³ The ILO Committee of Experts has interpreted the scope of Convention 111 to prohibit pregnancy discrimination as a form of sex discrimination.¹⁴⁴

¹³⁸ Article 26 reads: "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 on any ground such as race, colour, sex, language, religion"

¹³⁹ Article 2 reads: "States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: . . . (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; © To establish legal protections of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women."

Article 11(1) reads: "State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: . . . (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; © The right to free choice of profession and employment"

¹⁴⁰ Ratified by Mexico on April 3, 1982. Article 24 states: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

¹⁴¹ ILO Convention 111 in its entirety prohibits discrimination on several grounds and outlines government obligations to enforce this policy. ILO conventions and recommendations bind governments and provide international legal guidance for the formulation or revision of domestic labor laws. ILO expert opinions are meant to provide definitive and authoritative interpretation of conventions and recommendations.

¹⁴² Mexico acceded to both the ICCPR and the ICESCR on March 23, 1981, ratified CEDAW on March 23, 1981 and Convention 111 on September 11, 1961.

¹⁴³ Article 1(1) of Convention 111 reads, in part: "For the purpose of this Convention the term 'discrimination' includes—a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;"

Article 1(3) goes on to say: "For the purpose of this Convention the terms 'employment' and 'occupation' include access to

vocational training, access to employment and to particular occupations, and terms and conditions of employment."

¹⁴⁴ *Conditions of Work Digest*, Volume 13, 1994. (Geneva: International Labor Office, 1994), p. 24.

To our knowledge, there is as yet no jurisprudence in the Americas that flows from ILO Convention 111, but in Europe, a 1991 case illustrated how this standard can be invoked. The European Court of Justice (ECJ) ruled that pregnancy-based discrimination constitutes impermissible sex discrimination. Although the findings of the ECJ are not binding on the Americas, the court's holding does provide a persuasive interpretation of pregnancy-based discrimination as a form of sex discrimination and recognizes it as obstructing women's equal access to employment opportunities. In the 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 a refusal therefore constitutes direct discrimination on the grounds of sex."¹⁴⁵ 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 on the basis of pregnancy, confinement and related medical conditions."¹⁴⁶

CEDAW also provides standards for governments on meeting their obligation to eliminate all forms of discrimination against women. It contains the most authoritative and explicit protections against sex discrimination in every aspect of women's lives, including pregnancy. CEDAW explicitly prohibits pregnancy-based employment discrimination.¹⁴⁷ Article 11(1)(b) of CEDAW calls on state parties to ensure that women have "the right to the same employment opportunities, including the application of the same criteria for selection for matters of employment."¹⁴⁸ CEDAW further calls on governments to take appropriate measures to "prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave . . ."¹⁴⁹ Further, in order to ensure that the human rights of people within its jurisdiction are protected, CEDAW obliges the Mexican government to set up effective mechanisms to remedy the abuse as well as enforce the remedy.

ILO standards for protecting pregnant women and new mothers from engaging in strenuous work and exposing themselves to harmful chemicals in no way allow for the forced resignation of women from their jobs and in fact, specifically prohibit termination of employment due to pregnancy.¹⁵⁰ An employer's concern for pregnant women workers' health should result in accommodating them in their pregnancy, not forcing them to resign.¹⁵¹ Recommendation 95 Concerning Maternity Protection states: "A woman ordinarily employed at work defined as prejudicial to health by the competent authority should be entitled without loss of wages to a transfer to another kind of

¹⁴⁵ 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 which 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.

¹⁴⁶ *Conditions of Work Digest*, p. 24.

¹⁴⁷ Ratified by Mexico on March 23, 1981.

¹⁴⁸ CEDAW, Article 11(1)(b).

¹⁴⁹ CEDAW, Article 11(2)(a). Also, in Article 11(1) CEDAW obliges governments to "eliminate discrimination against women in the field of employment . . ."

¹⁵⁰ Article 5 of Convention 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; . . . " Mexico has yet to ratify this convention.

¹⁵¹ See Convention 103 Concerning Maternity Protection (revised 1952) and Recommendation 95 Concerning Maternity Protection.

work not harmful to her health. Such a right to transfer should be given for reasons of maternity in individual cases to any woman who presents a medical certificate stating that a change in the nature of her work is necessary in the interest of her health and that of her child."¹⁵²

¹⁵² Recommendation 95 Concerning Maternity Protection, Section V, paragraphs 4 and 5.

Moreover, ILO standards that allow exceptions to the general prohibition on discrimination do so only where the exception relates to the inherent requirement of a job.¹⁵³ Elaborating on this standard, the ILO has articulated its concern that this exception not undermine the intent of Convention 111 to protect people from discrimination in the labor force, and urged that any exception be interpreted strictly so as not to result in the ". . . undue limitation of the protection which the Convention [111] is intended to provide."¹⁵⁴

An ILO Committee of Experts (COE)¹⁵⁵ goes on further to say that regarding *bona fide* or legitimate grounds to justify an exception to the principle of equality, "[a]s a general rule, the employer is required to prove that the special treatment is justified by objective reasons unrelated to a discriminatory criterion, or that this criterion constitutes an essential requirement for the work involved."¹⁵⁶ The COE concludes: "The concept of reasonable accommodation is considered a fundamental principle of equality of access to employment, for it takes account of limitations and special needs which may lend themselves to unlawful distinctions . . . [T]he unjustified refusal to undertake such adaptations may in itself constitute an act of discrimination."¹⁵⁷

While some maquiladora operators and owners may attempt to characterize their discrimination against women as being a protective measure, interviews with women workers, labor rights activists, and maquiladora personnel belie such claims. Our interviews indicate that the primary motivation behind such discrimination is an attempt to keep operating costs low, not concern for the reproductive health of women. In fact, maquiladora operators such as Zenith have admitted to screening out pregnant women applicants in an effort to avoid substantial financial liabilities associated with paying for maternity leave.¹⁵⁸ Moreover, women ultimately have the right and the responsibility to decide for themselves what conditions they are willing to tolerate in the work place and not have that decision made for them.

In the cases of pregnancy-based sex discrimination we documented in Mexico's maquiladora sector, employers fail to meet these conditions and the Mexican government fails to enforce them. Women workers we interviewed explained that, whether they were sewing garments together, welding television circuit boards, arranging dialysis kits, soldering, or packing hangers, they would have been able to do the work, for the most part, until the final stages of their pregnancies, before commencement of maternity leave at seven and a half months pregnancy. Furthermore, the women workers pointed out that in almost every instance there was a way for the maquiladora managers to reassign them to lighter, less taxing work, had they wanted to. The women felt that in instances where they normally spent their work days standing, they could have done the work equally well seated, or they could have been reassigned to lighter work.

We think that providing pregnant women with seated work and with breaks, or reassigning them to less physically taxing duties, are not unreasonable accommodations, given that in few instances will these accommodations have to be made from the beginning of a pregnancy, and in most instances such accommodations may have to be made

¹⁵³ Convention 111, Article 1, paragraph 2 reads: "Any distinction, exclusion or preference in respect to a particular job based on inherent requirements thereof shall not be deemed to be discrimination."

¹⁵⁴ *Equality in Employment and Occupation, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 75th. Session, 1988, Report III (Part 4B)*, (Geneva: International Labor Office, 1996), p. 138.

¹⁵⁵ The Committee of Experts is an authoritative body charged with elaborating on and clarifying the scope and application of ILO standards.

¹⁵⁶ *Ibid.*, p. 141.

¹⁵⁷ *Ibid.*, p. 146.

¹⁵⁸ See letter from Zenith to Human Rights Watch in Appendix B.

only during a woman's final stage of pregnancy. Furthermore, the reasonableness of such accommodations has already been contemplated and outlined by the ILO, including the right to transfer, as discussed above.

Right to Privacy

The Mexican government's failure effectively to remedy pregnancy-based sex discrimination violates women workers' equal protection rights; and denies them their right to privacy, as guaranteed under international law. Information related to prospective workers' pregnancy status, their contraceptive use, or their menses schedule is irrelevant to their employment, and obliging disclosure of such information, as a condition of employment, invades women's privacy. The International Covenant on Civil and Political Rights (ICCPR),¹⁵⁹ the Universal Declaration of Human Rights,¹⁶⁰ and the American Convention on Human Rights¹⁶¹ 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 right."¹⁶² 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."¹⁶³

As the right to privacy has been interpreted by the HRC, the state has a duty not only to refrain from violating the privacy of those under its jurisdiction, but also a duty to prohibit and remedy such invasions by private actors. Derogation from this duty can only occur in accordance with "the aims and objectives of the Covenant (ICCPR) and should be reasonable in the particular circumstances."¹⁶⁴ Questions about sexual activity, menses schedule, etc., are in no way relevant to job qualifications and rather introduce impermissible criteria into the employment decision. The potential costs to employers of pregnant employees do not amount to "reasonable" justification, especially given that Mexican law itself requires employers to incur these costs, as discussed below. The Mexican government has a duty to protect its citizens from invasions of their privacy by such private actors as maquiladora personnel.

Right to Decide Freely and Responsibly on the Number and Spacing of Children

CEDAW obliges states "to take all appropriate measures to eliminate discrimination against women in all matters related to family and family relations."¹⁶⁵ To meet this obligation, CEDAW requires states to ensure for women, on a basis of equality with men, "[t]he same rights to decide freely and responsibly on the number and spacing of their children"¹⁶⁶

¹⁵⁹ Article 17 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."

¹⁶⁰ Article 12 states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. . . ."

¹⁶¹ Article 11 of the American Convention on Human Rights reads: "(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."

¹⁶² "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies," General Comment 16 to Article 17, U.N. Document HRI/GEN/1/Rev.1, July 29, 1994, p. 21.

¹⁶³ Ibid., p. 23.

¹⁶⁴ Ibid., p. 21.

¹⁶⁵ CEDAW, Article 16(1).

¹⁶⁶ CEDAW, Article 16 (1)(e); Mexican Constitution, Article 4.

Mexico has failed fully to ensure that women enjoy their right to decide freely and responsibly the number and spacing of their children free from discrimination. Women who seek work in the maquiladora sector have been denied work because they are pregnant—an obvious manifestation of their decision to have children. Other women are forced out of their jobs when maquiladora personnel discover their pregnancies. Women workers we interviewed worried about getting pregnant because they thought they might lose their jobs in the maquiladoras. After María Elena Corona Caldero miscarried at the Plásticos Bajacal plant in Tijuana, she underwent a tubal ligation, wanting to avoid "future problems like this one."¹⁶⁷ Male applicants for maquiladora jobs are not screened for their potential fatherhood. Nor do they face the prospect of losing their jobs when they become prospective parents.

Although women and men experience different consequences to their decisions to have children, international standards establish that this difference is not an acceptable basis for penalizing women for the decision to reproduce. Such penalization inherently infringes on women's ability to exercise that right freely. The Mexican government, by allowing to develop unchecked a situation in which women may be denied or lose work as a consequence of their decision to become pregnant and have children, is permitting women to be treated differently than men for their decision to reproduce. This is a clear violation of Mexico's nondiscrimination obligation under CEDAW.¹⁶⁸

As a consequence of this unremedied discrimination, women concealed their pregnancies in an effort to avoid being fired and avoided seeking prenatal care so that they would not have to miss any time off from work. While the full extent of the effect of such pregnancy-based discrimination on women's reproductive decisions is unknown, we are sufficiently concerned to call upon the Mexican government to investigate a potentially disturbing consequence of its failure to remedy pregnancy-based sex discrimination.

Ensuring Respect for All Human Rights

The Mexican government is obligated to ensure for the people under its jurisdiction the full exercise and enjoyment of their human rights. This includes ensuring that women do not suffer sex discrimination in the workplace and remedying such discrimination whenever and wherever it occurs. Assuring full exercise of those human rights entails, at a minimum, promulgating and enforcing statutes that prohibit discrimination by actively investigating the hiring processes of maquiladoras to ensure that these processes are in conformity with international standards and Mexican labor codes and therefore free from discrimination. Assuring freedom from discrimination also entails establishing effective mechanisms to remedy such discrimination.

¹⁶⁷ Human Rights Watch interview, María Elena Corona Caldero, Tijuana, March 1, 1995.

¹⁶⁸ It also violates the principle set forth at the 1995 United Nations Fourth World Conference on Women, which states in paragraph 96 of the *Platform for Action* that the human rights of women include "the right to make decisions concerning reproduction free of discrimination, coercion and violence . . ."

The ICCPR¹⁶⁹ and the American Convention¹⁷⁰ on Human Rights explicitly set out the positive duties of the state to ensure that those under its jurisdiction are protected from violations of their human rights. The concept of state responsibility to ensure protection from human rights violations has evolved to recognize that states, in ensuring the rights of those under their jurisdiction, exercise good faith in investigating and prosecuting human rights violations. Human Rights Watch believes, on the basis of our research in Tijuana, Chihuahua, Reynosa, Río Bravo, and Matamoros, that Mexico should be held accountable for a failure to ensure the human rights of women under its jurisdiction. While Mexico's domestic laws explicitly prohibit discrimination based on sex, in practice, pregnancy testing by maquiladora companies in the private sector is widespread. Mexico is persistently failing to take reasonable measures to prevent, investigate, prosecute or punish such discrimination, when committed by private actors. Thus the Mexican government, through inaction or omission, is responsible for failing to guarantee the right of its female citizens to nondiscrimination.

Mexico's failure to address and remedy pregnancy-based sex discrimination calls into question not only its commitment to honor its international and domestic legal obligations, but its commitment to uphold its obligations under the North American Agreement on Labor Cooperation Supplemental Agreement (NAACL) to the North American Free Trade Agreement (NAFTA), now in its second year, which, among other things, calls on the U.S., Mexico, and Canada to "promote, in accordance with their respective laws, high-skill, high-productivity economic development in North America by . . . encouraging employers and employees in each country to comply with labor laws and to work together in maintaining a progressive, fair, safe and healthy working environment . . ." ¹⁷¹ The NAACL goes on to mandate accessible tribunals to enforce domestic labor law, stating: "Each party shall ensure that persons with a legally recognizable interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law." ¹⁷²

Domestic Prohibitions

Mexico's domestic law guarantees equality between men and women, prohibits sex discrimination, protects women workers during pregnancy, and guarantees the right to decide freely and responsibly on the number and spacing of one's children. Article 4 of the Mexican Constitution reads, in part: "[M]en and women are equal before the law." Article 3 of the Mexican federal labor code reads, in part: "There shall not be established distinctions among workers for motives of race, sex, age, religious creed, political doctrine or social condition." Article 133 (I) of the federal labor code provides that employers are prohibited from "refusing to accept a worker for reason of age or sex;" Article 164 of the federal labor code reads: "Women enjoy the same rights and have the same obligations as men." Article 170(1) of the federal labor code states: "During the period of pregnancy, [a woman worker] will not perform work that requires considerable force and signifies a danger for her health in relation to gestation, . . ." Article 4 of the Constitution also

¹⁶⁹ Article 26 reads: "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 on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 2(1) reads, "Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

¹⁷⁰ Article 1(1) reads: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any distinction for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or other social condition."

¹⁷¹ North American Agreement on Labor Cooperation Supplemental Agreement to the NAFTA, preamble, p. 1.

¹⁷² *Ibid.*, p. 3.

protects the "organization" and "development" of the family, including the fact that "[e]very person has the right to decide in a free, responsible and informed way on the number and spacing of [her] children."

Government Labor Rights Protection Mechanisms

With respect to discrimination in the hiring process against women, no effective domestic protection of any sort exists, because none of the available state-established dispute mechanisms is accessible to people who have not established a labor relationship with a company.¹⁷³ Therefore, to seek a remedy, a woman would have to hire a private attorney to sue a company, the cost of which could render this option inaccessible. Moreover, we are concerned that in the areas we visited official mechanisms empowered to enforce prohibitions against post-hire discrimination do not consistently perform this function. Three government-run mechanisms investigate and resolve cases of private sector labor disputes, which include disputes within the maquiladora sector: the Office of the Inspector of Labor (Inspección de Trabajo); the Office of the Labor Rights Ombudsman (Procuraduría de la Defensa del Trabajo); and the Conciliation and Arbitration Board (Junta Local de Conciliación y Arbitraje). All are empowered to enforce the federal labor code.

Human Rights Watch is concerned that in the areas we visited none may function effectively for women victims of pregnancy-based sex discrimination and its related abuses.¹⁷⁴

In theory, workers may rely on, where available, their local unions to resolve or intervene in labor disputes. However, our interviews with women workers and labor activists show that many women working in the maquiladoras do not trust the unions.¹⁷⁵ Women workers expressed incredulity regarding the unions' ability to bargain fairly for their rights, much less understand and intervene in instances of gender-based discrimination. Analyses of the unionization of Mexico's maquiladora sector suggest that this stark reality is unlikely to change:

The most dynamic manufacturing activity during most of the 1980s and early 1990s was the in-bond processing (maquiladora) industry. . . . [E]mployment conditions including high rates of worker turnover and frequent plant closings, labor force characteristics (a large portion of the labor force consists of young workers without much union experience), and a long history of collaboration between company managers and state labor officials have all made the industry notoriously hostile to effective union action These conditions will, at best, change slowly.¹⁷⁶

Inspector of Labor and Labor Rights Ombudsman

¹⁷³ Based on Human Rights Watch interviews with José Mandujano Alvarez, president of the CAB in Tijuana; Luis A. Alonso Siqueiros P., president of the CAB in Chihuahua; Carlos Francisco Martínez de Leon, president of the CAB in Reynosa; Eduardo Chávez Uresti, inspector of labor in Reynosa; Jesus Terán Martínez, president of the CAB in Matamoros; and C. Gustavo Belmares Rodríguez, inspector of labor in Matamoros, March 1995.

¹⁷⁴ Human Rights Watch interviewed the following government officials: José Mandujano Alvarez, president of the CAB in Tijuana; Luis A. Alonso Siqueiros P., president of the CAB in Chihuahua; Carlos Francisco Martínez de Leon, president of the CAB in Reynosa; Eduardo Chávez Uresti, inspector of labor in Reynosa; Jesus Terán Martínez, president of the CAB in Matamoros; and C. Gustavo Belmares Rodríguez, inspector of labor in Matamoros in March 1995.

¹⁷⁵ Union representation varied from maquiladora to maquiladora. The maquiladoras in Matamoros were the most unionized. The ones in Tijuana were the least unionized.

Human Rights Watch interviews with maquiladora workers and activists revealed that unions were often unhelpful, and, in some cases, obstructive to workers' exercising their labor rights. Unions were seen not just as being in league with management to deny workers their rights, but as being too closely aligned with Mexico's official party, the Institutional Revolutionary Party. Many workers' rights activists complained that many maquiladoras were not unionized; some were unionized on paper only; unions did not operate in a transparent and fair way and therefore were not truly participatory or representative; and because of this, relying on existing unions to bargain for workers' rights was inconceivable. Labor activists seek to change the nature of the unions by transforming them from within.

Some labor rights activists are encouraging workers to form independent unions or to attempt to reform the existing unions from within.

¹⁷⁶ Kevin J. Middlebrook, *The Paradox of Revolution* (Baltimore: The Johns Hopkins University Press, 1995), p. 320.
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As they are chartered, both the Office of the Inspector of Labor and the CAB are impartial, investigative bodies and act under the authority of the Secretary of Labor and Social Security. The Office of the Labor Rights Ombudsman is intended to act as a worker's advocate, using federal labor codes as guidance in advising workers of their rights. The Office of the Inspector of Labor is charged generally with ensuring that companies are in compliance with Mexican federal labor law and investigating allegations of non-compliance with the federal labor statutes.¹⁷⁷ According to the inspector of labor in Reynosa, his office resolves disputes " . . . according to who is right. Sometimes it is the factory; sometimes it is the employee."¹⁷⁸ The CAB is discussed in more detail below.

The Office of the Labor Rights Ombudsman is obliged, among other things, to "represent workers or unions, whenever they are solicited, before any authority on issues which relate to the application of labor law."¹⁷⁹ The labor rights ombudsman is responsible, in principle, for offering workers whatever legal advice is necessary to resolve a labor dispute, without any financial cost to the worker. If this office cannot resolve the dispute or the worker wants to go before the CAB, the office is obliged to help workers prepare and present their cases before that board.

Human Rights Watch interviews with inspectors of labor and labor rights ombudsmen in Reynosa and Matamoros revealed a labor dispute resolution system that is not only unresponsive and indifferent to the complaints of pregnancy-based sex discrimination that women workers from the maquiladora sector might lodge, but also is unequipped both legally and materially to pursue such problems. Legally, these offices are restricted to addressing post-hire labor disputes. Materially, even in cases where these dispute mechanisms might try to investigate and remedy post-hire pregnancy-based discrimination, staff unfamiliarity with the work of the office and lack of material resources profoundly limit their capacity to do so.¹⁸⁰

Eduardo Chávez Uresti, inspector of labor for Reynosa and Río Bravo, told us that, technically speaking, his office could investigate a company for post-hire pregnancy-based sex discrimination, under the Mexican federal labor code's anti-discrimination article. Chávez Uresti emphasized, "Mexico's labor laws are light years ahead of U.S. laws, but in terms of interpretation and enforcement, we are centuries behind."¹⁸¹ He further stated that he could try to make a formal inquiry on a woman complainant's behalf to discover why the maquiladora did not hire her but that such an inquiry would be outside his mandate, since no labor relationship had been established. He painted his office as being:

¹⁷⁷ The office is charged with "monitoring the fulfillment of work norms; facilitating technical information and advising workers and patrons about the most effective manner of fulfilling work norms; making known to authorities the deficiencies and violations of work norms that he/she observes in companies and establishments; carrying out studies and gathering data that authorities solicit and consider useful in order to procure harmony of the relations between worker and patron . . ." from Bastar Cavazos Flores, *Las 500 Preguntas Más Usuales sobre Temas Laborales (500 of the Most Usual Questions about Labor Themes)*, (Mexico City, Trillas, 1984 (reimp. 1994)), p. 244.

¹⁷⁸ Human Rights Watch interview, Eduardo Chávez Uresti, inspector of work, Reynosa, March 20, 1995. She or he does this by visiting the workplace where the violation is alleged to have taken place. The inspector usually contacts the company and informs its officials that a worker has complained about the violation of one or many of her labor rights, and that he will followup with a visit. The inspector may also visit a company to verify compliance with the law at the instigation of anonymous complaints.

¹⁷⁹ Paul A. Curtis and Alfredo Gutierrez Kirchner, *Questions on Labor Law Enforcement in Mexico and the Role of the Federal and State Conciliation and Arbitration Boards* (Washington, D.C.: U.S. Department of Labor National Administrative Office, 1994) p. 27.

¹⁸⁰ Human Rights Watch does not mean to suggest that a lack of material resources is an excuse not to enforce labor rights. A dearth of material resources further complicates an already difficult mission.

¹⁸¹ Human Rights Watch interview, Eduardo Chávez Uresti, inspector of labor, Reynosa, March 20, 1995.

... an authority without a body and without hands. We have a head only. Only for show. If I request a company to come here for an official inquiry I have no way of obliging them to show up. Not realistically. We have the right to issue fines, but we rarely do.¹⁸²

The inspector of labor went on to say that he had inspected maquiladoras before, although there was substantial official resistance to his doing so. He told us:

¹⁸² Ibid.

... it was very difficult. I've gone to resolve issues such as unjustified firings or suspensions. I advise the companies that I am coming beforehand. If they do not want to meet with me, we do not meet. I cannot enlist the help of my superiors on this. I did not even let them know that I was doing this. Why? Because the authorities are prevented from applying the law to the maquiladoras. They provide 15,000 people with work each shift.¹⁸³ They are a source of employment and hard currency to be left alone. You can't touch manufacturing, and maquilas form a part of this. The state inspector tells me this is a federal issue and is none of my business. When there is not a complaint, we need an order from our superiors to inspect the maquiladoras. Otherwise, with one telephone call I would be out on the street.¹⁸⁴

The inspector of labor for Matamoros, C. Gustavo Belmares Rodríguez, also told us that pregnancy-based discrimination of any variety would be difficult to investigate, not because of the state's reluctance to sanction the maquiladoras, but because the federal labor code was simply unsuitable to address the problems pregnant women might face in the labor force. He noted that companies had a thirty-day window of opportunity to rescind a labor contract, and that this was the perfect pretext under which companies could dismiss women workers they discovered were pregnant.¹⁸⁵

Human Rights Watch questions the legitimacy of an employer letting a worker go for "whatever reason" within thirty days of hiring her. According to Article 46 of the federal labor code, either the employer or employee can rescind labor relations at any time for a justified cause, without incurring responsibility. It is important to keep in mind that the cause must be justified; otherwise, it would seem that in instances of an unjustified cause, an employee would have a right to challenge such a firing and the employer would incur legal responsibility. In instances where employers rescinded labor relations for unjustified causes, they would then owe the employee indemnization. Article 47 of the labor code goes on to list fifteen "justified causes," most having to do with deceiving an employer about one's work abilities; coming to work inebriated or otherwise under the influence of a foreign substance; violence against co-workers, etc. However, Article 47 (1) of the labor code clearly states that the employer can dismiss the employee without responsibility only if the employee (or her union) has misrepresented her abilities. Dismissal must take place within thirty days of hiring the person and must be strictly linked to her ability to do a job well.

It is clear that there is ample room in this law for an employer to use lack of ability as grounds on which to dismiss a worker, but it is also clear that the law does not permit a worker to be dismissed within that time, except for cause. Furthermore, Article 133(1) of the federal labor code explicitly prohibits employers from "[r]efusing to accept workers for reason of age or sex." The article effectively prohibits sex discrimination in hiring—and by extension from refusing to retain a woman worker because she is pregnant, which is sex discrimination.

While inspectors of labor Chávez and Belmares both agreed that investigating pregnancy-based sex discrimination would prove difficult, they cited distinct reasons that underscore the unsuitability of their offices to remedy pregnancy-based sex discrimination. The first inadequacy is purely a structural one, that of being legally unable to investigate instances of discrimination in the hiring process. The second difficulty has to do with the latitude within Mexico's federal labor codes to release a worker without having to give an explanation, before thirty days has passed. Such latitude facilitates pregnancy-based sex discrimination against women workers to the extent that it is coupled with Mexican labor officials' perceived difficulty of being able to prove that a woman worker was, in fact, dismissed for being pregnant.

¹⁸³ Tamaulipas, the Mexican state that contains the towns of Reynosa, Río Bravo, and Matamoros has 18.3 percent of Mexico's maquiladora workers, as reported by Tim Loughran, "Mexico's Maquiladora Industry Expands 10.5% Through November," *Bloomberg Business News* (New York City), February 2, 1996.

¹⁸⁴ Human Rights Watch interview, Eduardo Chávez Uresti, inspector of labor, Reynosa, March 20, 1995.

¹⁸⁵ Human Rights Watch interview, C. Gustavo Belmares Rodríguez, inspector of labor, Matamoros, March 15, 1995.
Human Rights Watch Women's Rights Project 46 August 1996, Vol. 8, No. 6 (B)

According to the inspector of labor in Matamoros, instances in which women workers are forced to resign would prove even more difficult to investigate. Once a woman worker has signed a resignation letter, as she often is required to do, there is little chance of her being returned to her position. He told us, "[R]egarding forced resignations, the worker would have to prove the pressure to resign. This is the problem many times. If the worker has signed the resignation letter, he [sic] has almost no case. It will be a very difficult case. Basically it will be the worker's word against the employer's."¹⁸⁶

According to some supervisors working within the maquiladora sector, even if the inspectors of labor do take up an investigation, they are inclined to pass over all but the most egregious violations. These supervisors complained that inspectors were unresponsive to complaints. For example, Dr. Adela Moreno told us that, when she worked at Matsushita-Panasonic in Tijuana, she tried to alert a visiting inspector of labor to some of the health hazards in the factory and to the fact that the factory was requiring women applicants to undergo pregnancy exams. Dr. Moreno told us that when the inspector visited the plant where she worked, she asked if it was in conformity with labor law to oblige women to take pregnancy exams before offering them work. The visiting inspector of labor responded 'no' and that this was a thing for companies to decide—implying that while such practices by employers contravened Mexico's federal labor law, inspectors such as herself would not intervene and it was the norm to let companies decide on such matters themselves. The inspector made no inquiry as to whether such a practice was taking place at Matsushita-Panasonic.¹⁸⁷

Workers may go directly to the local representative of the Office of the Labor Rights Ombudsman for assistance with labor disputes. Our interviews suggest that this official—at least in areas we visited—would be inaccessible to most women workers. Human Rights Watch had great difficulty tracking down the labor rights ombudsman responsible for Reynosa and Río Bravo: he had no known schedule for being in the office, and could rarely be found there. Even Human Rights Watch had difficulty in obtaining information about the identity and whereabouts of the labor rights ombudsman in Reynosa. First, the offices' secretary seemed unaware of where either he or the inspector of labor could be found and when they would be present in the office. Second, she incorrectly identified the labor rights ombudsman as someone who had actually left the position over six months previously.¹⁸⁸ Third, she was unable to describe to us the most basic function of the labor rights ombudsman.¹⁸⁹

Moreover, the labor rights ombudsman appeared to have a serious conflict of interest in acting as the workers' advocate because he himself was serving as head of an industrial association that represented companies. According to the inspector of labor in Reynosa, Eduardo Chávez Uresti:

¹⁸⁶ Ibid.

¹⁸⁷ Human Rights Watch telephone interview, Dr. Adela Moreno, Tijuana, January 4, 1996.

¹⁸⁸ The secretary told Human Rights Watch that the name of the labor rights ombudsman was Rafael Morales de la Cruz. However, this person had not been labor rights ombudsman since six months previously, according to our subsequent interview on March 3, 1995 with Eduardo Chávez Uresti, inspector of labor for Reynosa, who shares an office with Geraldo Dávila González, labor rights ombudsman. Dávila González left his position as labor rights ombudsman at the end of 1995. As of January 1996, the labor rights ombudsman was Juan Martín Silva Domínguez.

¹⁸⁹ Conversation, Blanca, secretary, Reynosa, March 20, 1995.

I handle complaints of all types. I sit down with the worker who has a complaint to see if his complaint is based in the law. I then talk with the owners. There is normally a conciliation. . . . When I can't resolve a dispute administratively, I turn it over to the labor rights ombudsman. But we do not have a chance here in Reynosa. The labor rights ombudsman is a businessman. He is leader of the Cámara Nacional de Industria y Transformación de Reynosa (National Chamber of Industry and of Transformation of Reynosa). They transform primary materials into final products. How can he, head of this industrial chamber, pretend to be interested in defending the rights of workers? Who would ever go to him? People know. We do not see him here. He became labor rights ombudsman six months ago, appointed by the governor of the state of Tamaulipas, and his check arrives here every two weeks.¹⁹⁰

The offices of the inspector of labor and the labor rights ombudsman are not only unable or unwilling to investigate pregnancy-based discrimination, but often lack the material resources to do so. Visits to these offices in Matamoros and Reynosa revealed that in both cities they lacked the most primary office equipment.¹⁹¹ The offices lacked technical and financial support, such as reliable telephone service or a government vehicle to conduct inspections.¹⁹² In failing to provide the most rudimentary services to these offices, the Mexican government has made it difficult for them to meet their obligations under Mexican federal labor law and provide workers with advice and protection.

Inadequate material resources and staff unfamiliarity with the functioning of the office may result in the effective limitation of workers' ability to seek and gain assistance with labor disputes. In Reynosa, the staff of the joint office of the inspector of labor and the labor rights ombudsman asked workers who came for help to come back or call later for an appointment with the inspector of labor.¹⁹³ Such behavior may act as an obstacle and cut off workers' only chance for assistance, because the labor rights ombudsman himself rarely was in the office and, as of March 1995, had no clients.

Thus, in the Reynosa-Río Bravo area, workers' only legal recourse in labor disputes is to turn to government employees who are unavailable and whose staff lack basic information about their duties.

Conciliation and Arbitration Board

¹⁹⁰ Human Rights Watch interview, Eduardo Chávez Uresti, inspector of labor, Reynosa, March 20, 1995.

¹⁹¹ There was no fax machine; no second telephone; no telephone with multiple lines; no photocopy machine; no file cabinets; and only two desks. In Reynosa, where the inspector and the labor rights ombudsman shared a secretary, in theory there should have been three desks. Instead there were only two. In addition, these were one-room cubicles with no facilities for maintaining and ensuring privacy, for example, in the event of a worker's seeking an interview. In both Matamoros and Reynosa the inspectors of labor and the labor rights ombudsmen shared an office.

¹⁹² Human Rights Watch interview, Eduardo Chávez Uresti, inspector of labor in Reynosa, March 20, 1995. Human Rights Watch tried reaching Mr. Uresti's office in July, October, and December, and the line had been disconnected. As of April 1996, the line had not been reconnected, and one had to reach his office through the telephone lines of the Conciliation and Arbitration Board of Reynosa, which is located one floor above the offices of the inspector and of the labor rights ombudsman.

¹⁹³ Human Rights Watch observed several workers with complaints who entered the office and were effectively turned away by the secretary—the only staff person present. In one instance, a worker explained that he had recently been fired by a maquiladora where he had worked for four years and they had not paid him his proper severance pay. He asked what the office could do to help him. Instead of making an appointment for this worker with either the inspector or the labor rights ombudsman, the secretary pulled a card from her desk, gave it to the worker and told him that he should consult this lawyer for help. She did not offer the services of the office for which she worked. Instead, she directed the worker to the office of an apparent private attorney. Minutes later, another worker entered and told the secretary that he had a labor dispute and wanted an appointment with the inspector to see what could be done. The secretary, rather than make an appointment right then, or invite the worker to wait until the inspector returned, told the worker that he could call back at 2:00 p.m. to make an appointment with the inspector. The worker left, agreeing to call back later.

Workers may go directly to the CAB to resolve a dispute, without first going to either the inspector of labor or the labor rights ombudsman. The CAB's decisions are binding, and it has the power to embargo the goods of a company (so long as the embargo does not interrupt the company's output) or fine the company to ensure compliance with its decisions.¹⁹⁴ The CAB comprises three adjudicators: one representing the interest of the workers; the second representing the interest of the employers; and the third representing the interest of the government.¹⁹⁵

There are three phases in the conciliation and arbitration process: First, there is conciliation, at which time a company can offer a worker a settlement that is not in conformity with Mexico's federal labor code (the CAB cannot approve this settlement). Parties to the complaint are to appear without their attorneys.¹⁹⁶ Second, there is offering of evidence, at which time the worker reaffirms her or his suit against the employer. Witnesses are presented by both sides of the dispute, and legally permissible evidence is introduced. Each side presents his or her case and rebuts accusations. Third, there is decision, at which time the CAB issues a binding decision resolving the dispute.

Several factors make the CAB process particularly ineffective for many women who suffer pregnancy-based sex discrimination in the maquiladoras. First, a woman needs to have an established labor relationship with an employer before she can take a case before the CAB. Second, even for women who have been hired, the CABs in the areas we visited¹⁹⁷ appear to have no consistent and clear official position regarding the illegality of pregnancy-based discrimination. Third, the CAB process is time-consuming, with individual cases taking anywhere from six months to one year to be resolved.¹⁹⁸ Finally, the CAB process is far from transparent, and the workers we spoke with have little faith in the system and opt not to use it.

The President of the CAB in Reynosa, Carlos Francisco Martínez de León, acknowledged that pregnancy exams violate the federal labor code. However, he noted, "There is no recourse [in this office] for a woman who thinks she was not hired because she was pregnant, because there is no established labor relationship."¹⁹⁹ Such women therefore can seek no assistance through his office. He did agree, however, that a pregnant woman worker who was fired because of her pregnancy—since she had already established a working relationship—could seek such help from his office on the grounds of having been fired unjustly.

Not all CAB presidents agree with this assessment. The president of the CAB in Tijuana did tell us, "Pregnant women had the same rights as any other worker."²⁰⁰ However, he went on to argue:

¹⁹⁴ Human Rights Watch interview, Carlos Francisco Martínez de León, president of the CAB, Reynosa, March 16, 1995.

¹⁹⁵ CABs exist at the state and federal levels. Federal-level CABs have jurisdiction over cases in twenty-five specific categories. Local conciliation and arbitration boards have jurisdiction over all other cases.

Representatives on the CABs are elected. The representative of the employees and his or her substitute are elected by a convention every six years; the representative of the employers and his substitute are elected by a local chamber of commerce; and the representative of the government and his or her substitute are appointed by the governor of the state.

¹⁹⁶ Human Rights Watch interview, Carlos Francisco Martínez de León, president of the CAB in Reynosa, March 16, 1995.

¹⁹⁷ Human Rights Watch interviewed the presidents of the CABs in Tijuana, Chihuahua, Matamoros, and Reynosa.

¹⁹⁸ Curtis and Gutiérrez Kirchner, *Questions on Labor Law Enforcement*, p. 44.

¹⁹⁹ Human Rights Watch interview, Carlos Francisco Martínez de León, president of the CAB Reynosa, Reynosa, March 16, 1995.

²⁰⁰ Human Rights Watch interview, José Mandujano Alvarez, president of the CAB in Tijuana, Tijuana, March 6, 1995.
Human Rights Watch Women's Rights Project 49 August 1996, Vol. 8, No. 6 (B)

The employer is not obliged to contract incapacitated prospective employees, according to Article 47 (1) of the federal labor code. This article allows the employer to fire an employee if she enters pregnant . . . a pregnant woman has a right to forty-two days of maternity leave before the birth and forty-two days after the birth. . . . the owner is right to try to avoid the cost Furthermore, Article 134 of the federal labor code would prevent a female applicant from refusing to take a pregnancy exam. . . . Some women look for work just when they are pregnant to avoid the costs. But just for that benefit. If the question were left open, women would just work and take advantage of the payments.²⁰¹

Mr. Mandujano's interpretation seems to be at odds with Article 47 (1) of Mexico's federal labor code, which specifies the causes for which an employer can rescind a labor contract, at any time, without incurring legal responsibility, as described above.²⁰² Pregnancy is not among them.

Mexican federal labor law does permit employers to subject workers to medical exams.²⁰³ However, the explicit intent of this statute is to ensure that workers do not suffer from some contagious or incurable incapacity or illness of work—in effect to prevent the spread of contagious diseases in the workplace by detecting them before an applicant begins to work, and to detect incurable diseases. The statute also requires the worker to make known to the employer any contagious illnesses from which he or she suffers.²⁰⁴ As pregnancy is neither contagious nor incurable, any reliance on this provision of the Mexican federal labor code to justify requiring pregnancy exams of women job seekers is indefensible. Furthermore, neither implicit nor explicit in this provision of the labor code is the right of the employer to fire a worker once the employer discovers the employee has a certain illness. Notwithstanding this provision of the labor code, as stated above, Article 133 of the labor code prohibits employers from refusing to accept workers for reason of age or sex. Given the information the federal labor code contains, as opposed to the manner in which Mr. Mandujano characterizes it, one can only conclude that it is he who sees pregnancy as an "incapacity" and pregnant women workers as a unjustified drain on a company's resources.

Even in instances where government labor mechanisms might be willing to adjudicate cases of pregnancy-based discrimination, Human Rights Watch interviews with women workers and government representatives indicate that workers would still have to overcome the difficulty of not knowing their rights; learning about and gaining access to the various labor-resolution mechanisms; and proving that the dismissal was pregnancy-based. These difficulties might ultimately prove to be a deterrent. Some of the adjudicators at the level of CAB seemed stymied by the prospect of having to prove that companies had dismissed women because of their pregnancies. The president of the CAB in Chihuahua, for example, told Human Rights Watch, "If a woman came in here and said that she was fired because she was pregnant, she would have a difficult time proving it. The company could always say that it was for other reasons such as qualifications or work performance."²⁰⁵ Yet, proving that a dismissal was pregnancy-based, and therefore

²⁰¹ Ibid.

²⁰² The conditions are: "If the worker deceives him [the employer] or in his place, the syndicate that had proposed or recommended him with false certificates or references in which he was attributed as having capacities, aptitudes or faculties that he lacks."

²⁰³ Human Rights Watch interview, Eduardo Chávez Uresti, inspector of labor, Reynosa, March 20, 1995, according to whom, Mexican labor codes were written in 1917 at a time when contagious disease was a serious public health concern.

²⁰⁴ Article 134 (X and XI) states that a worker is required to " . . . submit himself[sic] to medical examinations foreseen in the internal regulations and other observed norms of the company or establishment, in order to verify that he does not suffer from some incapacity or sickness of work, *contagious* (emphasis added) or *incurable* (emphasis added); Make cognizant to the employer *contagious sicknesses* (emphasis added) that are suffered from, as soon as he has knowledge of them; . . ."

²⁰⁵ Human Rights Watch interview, Luis A. Alonso Siqueiros P., president of the Chihuahua CAB, Chihuahua, March 9, 1995.

unjustified, cannot be any more difficult than proving that a worker was fired for any other reason. It is all very difficult work, yet labor officials seem to approach this gender-specific determination as something especially daunting.

There is much generalized disbelief in the CAB system on the part of women workers and labor rights activists. In fact, according to one former maquiladora manager in Chihuahua, the CAB has been "... hostile to the interest of maquiladora workers in particular because all the maquiladora unions are with the CTM,²⁰⁶ which is with the Institutional Revolutionary Party (PRI). All the groups work together to encourage foreign investment in Mexico. And they all work together to block the rights of the worker, instead of defend them, so that foreign investment will continue to come. So long as the Mexican economy is dependent on the dollar, you'll have this problem."²⁰⁷ This complaint was echoed by others working on labor issues in the maquiladoras, based primarily on their experiences with workers who had tried to use the CAB mechanism.

Many women workers do not realize that the pregnancy exams are illegal. The use of these exams is so ubiquitous and has for decades been so much an integral part of applying for and gaining a job in the maquiladora sector that, as heard from one women worker from a Johnson Controls-owned maquiladora, Controles de Reynosa, "I always thought that the pregnancy exams might be illegal, but every maquiladora does it. Refusing to take the pregnancy exam, or refusing to tell them you are pregnant, would be like refusing to put your name and address on an application. It would mean that you really did not want to work."²⁰⁸

Other women workers realized the pregnancy tests were illegal but were not aware of what their legal options were or did not know how to access them. Many women complained that although they had heard of different complaint and resolution mechanisms, they did not know where to go to get information about them or did not understand how they worked. The majority of the women workers we interviewed were completely unaware that there was a government mechanism to resolve their labor disputes and, in some cases, to act as their free advocate. For example, Nieves, who was forced to resign by MagneTek in Matamoros for becoming pregnant during her three-month probationary period, told us, "I knew about the office of conciliation and arbitration, but did not know where it was and did not understand exactly what it did. I do not have telephone, so I could not call. I tried asking some of the other women workers what to do, and all anyone recommended was that I just start looking for another job after the baby was born. I do not even know how to get around Matamoros, not to speak of finding this office."²⁰⁹

In general, women workers we interviewed, relying on past interactions with government agencies and stories they had heard from other workers who unsuccessfully filed complaints using the resolution structures, did not have any faith that the system could work for them. They were highly skeptical about the efficacy of the labor resolution structures. They believed that the CAB, for example, was biased against the worker, and that there were few possibilities for redress. They believed companies were able to influence the officials. One woman worker who feels her firing from a Zenith plant in Reynosa in 1992 was unjustified told Human Rights Watch, "I filed my claim in 1992, and it is still pending. How could anything take so long? Zenith finally agreed to pay me indemnization, including lost wages, but I haven't seen a penny yet. And look how long it took. I would have died by now if I were waiting on my severance pay."²¹⁰

²⁰⁶ The Confederation of Mexican Workers.

²⁰⁷ Human Rights Watch interview, Eréndira, Chihuahua, March 7, 1995.

²⁰⁸ Human Rights Watch interview, Elisabeta, Río Bravo, March 18, 1995.

²⁰⁹ Human Rights Watch interview, Nieves, Matamoros, March 19, 1995.

²¹⁰ Human Rights Watch interview, Lola, Reynosa, March 20, 1995.

Furthermore, many women felt that initiating any type of complaint against maquiladora procedures or management would cause them to lose the jobs that they so desperately needed.²¹¹ One women's rights activist told us, "You have to understand the problem here in Mexico. There has been much talk of the blacklisting trouble-making employees in the maquiladoras, and whether that happens or not, it acts as a deterrent to the worker who wants to file a complaint. Also, within this class of the working class, there is neither the tradition nor the know-how of filing a complaint. People are very easily dissuaded or intimidated. Apart from all this, people need to work and will not run the risk of being fired for launching a complaint that may take years to resolve."²¹²

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Human Rights Watch Women's Rights Project

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Cynthia Brown, program director; Holly J. Burkhalter, advocacy director; Barbara Guglielmo, finance and administration director; Robert Kimzey, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Juan Méndez, general counsel; Susan Osnos, communications director; Jemera Rone, counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Women's Rights Project was established in 1990 to monitor violence against women and gender discrimination throughout the world. Dorothy Q. Thomas is the director; Regan Ralph is the Washington office director; LaShawn Jefferson is the research associate; Robin Levi is the Orville Schell fellow; Sinsi Hernández-Cancio is the Women's Law and Public Policy Fellow; and Evelyn Miah and Kerry McArthur are the associates. Kathleen Peratis is chair of the advisory committee. Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

²¹¹ Fernández-Kelly, *For We Are Sold*, p. 68. In her study of women in Mexico's maquiladora sector, she found: "In cases of discontent or grievance women seem to prefer passive response (such as withdrawal) rather than direct confrontation with their employers. Also, women are likely to avoid arguments with their employers for fear that they will end up blacklisted and unable to find a job later on."

²¹² Human Rights Watch interview, Sonia Flores, director, Casa de la Mujer y Lugar de la Tijuana, Tijuana, March 1, 1995.

APPENDIX A: LETTER FROM HUMAN RIGHTS WATCH TO ZENITH

APPENDIX B: RESPONSES FROM CORPORATIONS

APPENDIX C: EXAMPLE OF JOB APPLICATION

