

MEXICO

**A JOB OR YOUR RIGHTS:
Continued Sex Discrimination in Mexico's Maquiladora Sector**

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SUMMARY

In August 1996 Human Rights Watch released a report on labor force sex discrimination in Mexico. The report, "No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector," showed that women applying for work in Mexico's export processing (*maquiladora*) sector along the U.S.-Mexico border were obliged to undergo mandatory, employment-related pregnancy testing as a condition for employment. The report also found that women who became pregnant soon after being hired risked mistreatment and forced resignation. "No Guarantees" condemned the government of Mexico for failing to protect female workers from these discriminatory practices and called on the government of Mexico to acknowledge and condemn pregnancy-based discrimination as discrimination based on sex; to uphold international human rights obligations to guarantee the rights to equality before the law and to nondiscrimination; and to investigate vigorously all allegations of sex-based discriminatory employment practices and punish those responsible. In the more than two years since our report's release, the Mexican government has yet to take any meaningful action to condemn, investigate, or punish this blatant sex discrimination. As a result, as this report documents, pregnancy-based sex discrimination persists both in places we had previously visited as well as in areas we had not visited before, like Ciudad Juárez, in the state of Chihuahua, across the border from El Paso, Texas.

Pregnancy as a condition is inextricably linked and specific to being female. Consequently, when women are treated in an adverse manner by their employers or potential employers because they are pregnant or because they may become pregnant, they are being subjected to a form of sex discrimination by targeting a condition only women experience. Pregnancy discrimination is not limited to the refusal to hire pregnant job applicants and the firing of pregnant workers but also includes any behavior or practice to determine pregnancy status, such as requiring information about women's sexual activity or contraceptive use.

During investigations conducted from May through November 1997, we found that in Tijuana, in the state of Baja California (south of San Diego, California); Reynosa and Río Bravo, in the state of Tamaulipas (opposite McAllen, Texas); and Ciudad Juárez (across the border from El Paso, Texas), corporations, the vast majority of which are U.S. owned, forced female applicants to undergo mandatory employment-related pregnancy testing in order to detect pregnancy and deny pregnant women work. In Ciudad Juárez, in particular, we also discovered disturbing means of implementing discriminatory policies: female employees are compelled to show their used sanitary napkins to verify nonpregnancy before they receive permanent contracts. In violation of Mexican federal labor law, maquiladora operators in Ciudad Juárez reportedly also refused to pay female employees their wages during maternity leave; threatened not to allow female employees to return to work after maternity leave; and, in one instance, retaliated against a woman who complained that pregnant co-workers were breathing in noxious fumes and fainting on the job by firing her.

Rather than condemn such practices, the Mexican government has taken every opportunity to interpret and apply labor law in a way that most favors the discriminatory practices of the corporations and affords women the least amount of protection. In fact, the government has even gone so far as to excuse publicly this discrimination. The Labor Department of the state of Baja California, which is charged with enforcing the federal labor code at the state level, issued a press release (*see* Appendix A for original press release in Spanish and an English translation) indicating that pregnancy testing in the hiring process was legal and was in fact a corporation's fulfillment of an authority granted to it by the labor law.

The Mexican government also initiated inspections of maquiladoras in response to our findings and convened a meeting between Mexican union representatives and the maquiladora trade association to discuss the findings of Human Rights Watch's report, encouraging them to investigate and change their practices regarding on-the-job pregnancy discrimination. However, since the Mexican government does not consider the determination and use of pregnancy status in the employment process to violate its federal labor code, the government in fact ignores the most pervasive and openly practiced type of sex discrimination that exists in that sector: hiring-process sex discrimination.

Female job seekers in Mexico cannot rely on the government for protection from discrimination in the workforce. They have few tenable options for legal redress. Several Mexican states have human rights commissions charged with

investigating human rights abuses involving public officials (by omission and by commission). However, private-sector labor issues are outside the legal purview of these human rights commissions. Other government mechanisms include the Inspector of Labor Office, which is responsible for ensuring businesses' compliance with federal labor law; the Labor Rights Ombudsman Office, which is responsible for offering workers free legal advice and assisting them in the resolution of labor disputes through the conciliation and arbitration process; and the local Conciliation and Arbitration Board (CAB), which adjudicates worker disputes and issues binding resolutions. However, these bodies maintain they are not legally empowered to address disputes involving job applicants, arguing that such individuals have not established a labor relationship with an employer. Female job applicants who are obliged to undergo pregnancy testing as a condition for employment fall within this category of people. Unless a victim files a complaint of on-the-job pregnancy-related sex discrimination, the CABs are not authorized to initiate investigations of these practices either. Furthermore, officials from Mexico's Ministry of Labor told us that in the absence of explicit prohibitions against pregnancy testing in the federal labor code as a type of sex discrimination, such treatment was in fact permissible under the law.

In response to the government's position, Human Rights Watch, along with the Asociación Nacional de Abogados Democráticos (National Association of Democratic Lawyers) (ANAD) and the International Labor Rights Fund (ILRF), moved to challenge Mexico's interpretation of legal provisions barring sex discrimination. In May 1997 the three organizations requested an examination of Mexico's failure to enforce antidiscrimination components of its labor law and its failure to establish accessible tribunals for the adjudication of these sex discrimination cases under the labor rights side agreement to the North American Free Trade Agreement (NAFTA). When we submitted the petition, the Mexican government requested that the U.S. National Administrative Office (U.S. NAO) refuse to investigate our claims on the grounds that the petitioners were questioning Mexican law, not its application. Mexico argued that the law protects the rights of women but does not prohibit pregnancy exams as a requirement for a job.

The Mexican government's argument contradicts the reality of its own law. Mexico's federal labor code accords women workers the same responsibilities and duties as men, and it guarantees equality between the sexes and therefore prohibits discrimination based on sex. Furthermore, the federal labor code prohibits specifically sex discrimination in the hiring process. The federal labor code also establishes protections for expectant and new mothers (such as the right to twelve weeks of paid maternity leave and the right to return to one's previous position).

As a result of the complaint Human Rights Watch and its two co-petitioners filed against Mexico, the U.S. Department of Labor, under the auspices of the labor rights side agreement to NAFTA, conducted its own investigation. In January 1998, the U.S. Department of Labor released its findings and affirmed that employers in Mexico's maquiladora sector oblige women applicants to undergo pregnancy screening as a condition for employment and that the Mexican government is aware of this practice. The investigation also found on-the-job mistreatment and firing of women workers to constitute sex discrimination, in violation of Mexico's labor law. The investigation found that there was a lack of consistency and clarity in Mexican law and its application regarding the illegality of hiring-process pregnancy screening. The report did not comment on whether job applicants were protected by Mexico's labor law and therefore could seek redress before adjudicative and investigative structures established by Mexico's Ministry of Labor.

The U.S. secretary of labor and her Mexican counterpart met in October to decide on the terms of the implementing agreement for the consultations. That agreement, signed by Mexico and the U.S. and endorsed by Canada on October 21, 1998, is questionable in its intent. The agreement has been expanded to include a review of relief offered for post-hire pregnancy discrimination in all three NAFTA signatories. The agreement establishes a nine month time frame during which the U.S. and Mexico will meet to confer on these issues but does not mention explicitly as an issue for review hiring-process pregnancy-based discrimination. The agreement is also unclear about whether the information to be disseminated and discussed at conferences and public meetings will have as its foundation respect for women's right to equality in the labor force, including in access to employment.

Pregnancy-based discrimination constitutes discrimination on the basis of sex, an invasion of a woman's privacy, and, in some instances, a limit on a woman's ability to decide freely and responsibly on the number and spacing of her

children. In fact, by failing to address and remedy these practices, the Mexican government not only violates its own domestic laws prohibiting discrimination and guaranteeing the protection of women's reproductive health, but also fails to fulfill its international human rights obligations to protect those under its jurisdiction from human rights abuses, to promote respect for human rights within its borders, to make tribunals available for the resolution of labor issues, and to 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 on the Elimination of All Forms of Discrimination Against Women (CEDAW), the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Labour Office (ILO) standards, and the North American Agreement on Labor Cooperation (NAALC).

While the Mexican government's position on sex discrimination in the maquiladoras remains unchanged, mandatory employment-related pregnancy testing and other pregnancy-based discrimination is rampant. Some private corporations cited in our previous report, most notably General Motors, have vowed to take steps to end pregnancy-based sex discrimination in its maquiladoras (*see* letter in Appendix B). While we commend General Motors for unilaterally changing this policy in the maquiladoras, our follow-up research indicates that, thus far, its efforts have been inadequate.

Others, most notably Zenith Corporation (*see* letter in Appendix C) and Tyco International (called Carlisle Plastics in "No Guarantees"), both identified in our previous report, continue, like the Mexican government, to defend these discriminatory practices as legal. Zenith argues that Mexico's federal labor code does not explicitly prohibit pregnancy testing. Tyco International has defended its practices as protective of women's reproductive health. They argue that they have a right to require a female worker to report her pregnancy status in order to assign the female worker to less physically taxing work and to protect themselves from liability. In Human Rights Watch's opinion, corporations' interest in protecting themselves from liability for on-the-job harm to pregnant workers or their fetus cannot be pursued at the expense of women's rights to privacy, to be free from degrading and humiliating treatment in the workplace, and above all to be free from discriminatory treatment by reason of their sex.

The need for government enforcement of existing law is urgent. The women affected by pregnancy discrimination in the maquiladora sector are among the poorest, least educated, and with the least formal work experience in the workforce. Screened out of the applicant pool and denied access to the only jobs available to them, these pregnant women are rendered virtually unemployable. Female workers make up more than 50 percent of the current maquiladora work force. 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 makes 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 in which 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.

This update report is based on new interviews with women's rights activists, maquiladora personnel, labor rights advocates, Mexican government officials, U.S. government officials, community organizers, and victims of sex-based employment discrimination in four cities: Ciudad Juárez, in Chihuahua state; Tijuana, in Baja California state; and Río Bravo and Reynosa, in Tamaulipas state. We interviewed fifty-four women (five of whom testified in a U.S. NAO public hearing on this issue in Brownsville, Texas, in November 1997) who now work or recently worked as line workers or assemblers and maquiladora administrators in fifty plants along the Mexico-U.S. border. All the names of women workers have been changed, at their request, to protect them from possible retaliation. In addition, identifying information has been omitted or changed.

We interviewed women workers from the following sixteen factories in Ciudad Juárez: Howe de México (Victoria, Australia-based Howe & Co.); Zenco de Chihuahua (Glenview, Illinois-based Zenith Electronics Corp.); Industrial Hase/a.k.a. Nuevo Hase (Waukegan, Illinois-based Cherry Electrical Products); Sensus de México (Union

Town, Pennsylvania-based Sensus Technologies Inc.); Itessa (Munich, Germany-based Siemens AG); Bell Eléctricos (Orange, Connecticut-based Hubbell Inc.); Río Bravo Eléctricos (Detroit, Michigan-based General Motors); NPC International (Louisville, Kentucky-based National Processing Co.); Favesa (Southfield, Michigan-based Lear Corp.); RCA Componentes (Boulogne, France-based Thomson Corporate Worldwide); Ansell Perry de México (Melbourne, Australia-based Pacific Dunlop); Berg Electric Intermex Manufactura/a.k.a. Emisiones Vacío (El Paso, Texas-based Intermex); Industrial Hase (parent company unknown); Siemens Sistemas Automotrices (Munich, Germany-based Siemens AG); Vestiduras Fronterizas (Detroit, Michigan-based General Motors—the worker applied for a position before General Motors announced its new policy); and Promédicos de Juárez (now closed; McGaw Park, Illinois-based Allegiance Health Care).

We interviewed women workers from the following twenty-one factories in Tijuana: Maquiladora California (San Diego, California-based Alpha Southwest); Silviana (parent company unknown); Douglas Furniture de México (Redondo Beach, California-based Douglas Furniture of California); Tijuana Industrial Arcos (San Ysidro, California-based Industrial Arcos); Grupo Verde (now closed; parent company unknown); Ensamblés Hyson (San Diego, California-based Rainbird); ComAir Rotron de México (San Ysidro, California-based ComAir Rotron Inc.); Tijuana Samsung Electro Mecánico (Seoul, South Korea-based Samsung Group); SAFT Componentes Técnicos (Romainville, France-based SAFT); BerthaMex (San Diego, California-based North American Communication); Microeléctrica de Tijuana (San Diego, California-based Vertek International Custom House); Marcos Calidad (San Diego, California-based American Frame Manufacturing Co.); Sanyo (Osaka, Japan-based Sanyo Electric Corp.); Tagit de México (Los Angeles, California-based Tagit Inc.); Confecciones Paolas (San Ysidro, California-based Confecciones Paolas); Matsushita-Panasonic (Osaka, Japan-based Matsushita Electric Corp.); Plásticos BajaCal (Exeter, New Hampshire-based Tyco International); Levimex de Baja California (Little Neck, New York-based Leviton Manufacturing Co.); Unisolar (Troy, Michigan-based United Solar Systems Co.); Industrias María de Tijuana (Klamath Falls, Oregon-based Jeld-Wen Inc.); and Industrias Ynos (Los Angeles, California-based Esselte Penvaflex Co.).

We interviewed women from the following six factories in Reynosa: Delnosa (Detroit, Michigan-based General Motors); Industrias Valino (Harlingen, Texas-based Magnolia International); P.C.M. de México (Rockwell, Texas-based Precision Cable Manufacturing Inc.); Controles de Reynosa (Milwaukee, Wisconsin-based Johnson Controls); Shin Etsu (Union City, California-based Shin-Etsu Polymer America); and Zenith (based in Glenview, Illinois—now majority owned by South Korea-based Goldstar).

We interviewed women from the following two factories in Río Bravo: Fabrica Duro (Ludlow, Kentucky-based Duro Bag Inc.) and Costuras de Río Bravo (Edcouch, Texas-based St. Mary's Sewing).

For the purposes of preparing for the U.S. NAO hearing held in Brownsville, Texas, in November 1997, we interviewed five women who worked in the following seven maquiladoras: Delnosa (Detroit, Michigan-based General Motors) in Reynosa; Panasonic (Osaka, Japan-based Matsushita Electric Corp.) in Reynosa; Landis and Staefa (formerly known as Landis and Gyr, owned by Zug, Switzerland-based Landis and Staefa Europe) in Reynosa; Lintel (parent company unknown) in Reynosa; Manufacturas Ilimitadas (parent company unknown); Sunbeam-Oster (Del Ray Beach, Florida-based Sunbeam-Oster) in Matamoros; and Controlam (Cleveland, Ohio-based Eaton Corporation) in Matamoros.

Human Rights Watch takes no position on maquiladoras as a vehicle of employment or as a means to stimulate economic growth and free trade. However, we believe that respect for human rights should be central to free trade and that human rights should not be compromised in pursuit of economic growth or recovery. Too often this is not the case. Nor do we take issue with the provision of reproductive and other health care by maquiladora clinics. However, provision of that care should be based on female workers' voluntary requests or the very strict health-related requirements of Mexican law. Reproductive health care in the maquiladoras should not entail women losing their jobs or being penalized in any other way for their reproductive choices.

To end the widespread discrimination against women in the maquiladora sector and the related denial of their rights 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, the European Union, corporations that operate maquiladoras, and corporations that use maquiladoras as subcontractors, to respond to the recommendations that follow:

RECOMMENDATIONS

It is disappointing to note that virtually all of the recommendations made by Human Rights Watch in its August 1996 report bear repeating now—more than two years after they were first written—because there has been no discernable change in the vast majority of the corporations' conduct or in that of the governments of Mexico or the United States.

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 clarifying 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;
- Under the authority of the Secretary of Labor and Social Security, ensure that existing labor offices at the state and local level exercise full powers to investigate and remedy discrimination in the hiring process, in compliance with Mexico's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- Require the Office of the Inspector of Labor, the Office of the Labor Rights Ombudsman, and the Conciliation and Arbitration Boards to maintain timely and accurate statistics on their investigations, case loads, and decisions disaggregated, where appropriate, by gender and the nature of claim filed;
- Establish and enforce penalties, including fines, to punish companies, foreign or domestic-owned, engaging in pregnancy-based hiring-process and on-the-job sex discrimination in accordance with CEDAW provisions;
- Initiate a thorough investigation into hiring-process and on-the-job pregnancy based-sex discrimination in the maquiladora sector;
- Investigate vigorously all complaints of sex-based discriminatory employment practices and punish those responsible; and
- 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.

In compliance with the International Labour 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 nondiscrimination; and
- Receive and examine complaints of violations of nondiscrimination 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 nondiscrimination, 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

- 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 workplace; and
- Investigate and report on government officials' failure to investigate and adjudicate cases of pregnancy-based sex discrimination.

Human Rights Watch urges the United States Government to

- In any interaction with the Mexican government, take up the case of pregnancy-based sex discrimination and encourage the Mexican government to take immediate steps to end it;
- Provide more thorough information on the respect for the right to equality in the hiring and retention processes in the labor force in the State Department's annual reports on human rights practices.
- 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;
- Use the NAFTA labor rights side agreement ministerial consultation process to promote equality for women in the workforce by opposing obligatory pre-hire pregnancy testing or any other practice to detect pregnancy status;
- Condemn U.S.-based corporations practicing sex discrimination in their facilities abroad; and
- Encourage U.S. corporations that own maquiladoras to practice and guarantee fair labor standards abroad, including the right to nondiscrimination.

Human Rights Watch urges the European Union to

- Urge Mexico to investigate, condemn, and punish those responsible for practicing pregnancy-based sex discrimination in their hiring and retention policies;
- Honor the human rights and democracy clause in the interim trade agreement between the E.U. and Mexico, which came into effect on July 1, 1998. In particular, the E.U. should, on a regular basis and as an integral part of its ongoing trade talks with Mexico, scrutinize the country's human rights record for how it seeks to prevent and remedy pregnancy-based sex discrimination in the labor force; and
- Use Joint Council meetings and further negotiations on a final trade agreement to request concrete information on the situation of human rights in Mexico, including information on available mechanisms to investigate and remedy hiring-process and on-the-job sex discrimination against women in Mexico, particularly in Mexico's maquiladora sector.

Human Rights Watch urges private corporations that own maquiladoras to

- End the practice of requiring women applicants to provide proof of pregnancy status or contraceptive use or information about sexual habits in order to be considered for, obtain, or retain employment in the maquiladoras;
- End the practice of denying pregnant women applicants work by screening them out of the applicant pool;

- Explicitly prohibit mandatory employment-related pregnancy exams for women applicants or any other measure 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;
- Introduce human rights auditing procedures, independent of local managers, that include unannounced inspections of maquiladora facilities to enforce policies barring sex discrimination.
- Take disciplinary action, including dismissal, against personnel officers and other maquiladora managers who continue to discriminate against women workers by testing their pregnancy status, by obliging them to provide proof of that status through the monthly showing of sanitary napkins, or any other means;
- Explicitly prohibit discrimination based on sex in all company information 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 and new mothers, as required by international standards and Mexican domestic law, by giving them seated work, allowing them to take maternity leave, allowing them temporary transfers to less physically taxing work, and allowing new mothers time off for breast feeding.

Human Rights Watch urges General Motors and other corporations committed to ending pregnancy-based sex discrimination to

- Communicate their decisions to stop testing female applicants for pregnancy status and to stop refusing to hire female applicants on those grounds to border area and other labor rights and women's rights NGOs;
- Introduce human rights auditing procedures, independent of local managers, that include unannounced inspections of maquiladora facilities to enforce policies barring sex discrimination.
- Put information in Spanish on all applications notifying the job applicant that pregnancy testing and any behavior to determine pregnancy status with discriminatory purposes is forbidden. This notice should guarantee the applicant's confidentiality and urge the applicant to report any violations of this policy and identify the means to do so;
- Appoint an individual in each maquiladora to receive and investigate complaints about hiring process or on-the-job pregnancy-related sex discrimination;
- Monitor on-site infirmaries for purchase of pregnancy tests as an indication of whether infirmary personnel continue to test job applicants;
- During training or orientation sessions for new workers, explain newly adopted antidiscrimination policies and confidential ways in which employees may report violations;
- Include information about new policy and ways to report violations in book of internal rules and regulations for new employees;
- Monitor new policy by interviewing employees, in a confidential manner, about the hiring and retention processes to determine whether pregnancy-based deleterious treatment is still being practiced;
- Establish transparent measures to investigate and discipline employees who violate this new policy;
- Include information in employee handbooks on the nondiscrimination policy, including information that urges women who are pregnant to report their status to someone in the personnel office who will ensure that changes are made to accommodate the worker's pregnancy status;
- Post notices in Spanish in the factory in a location where many women workers would see them, announcing the special provisions to which pregnant workers are entitled and urging such workers to report their condition to personnel to receive such accommodation; and
- As an example of the corporation's good faith effort to implement its nondiscrimination policy, and as a way to urge other pregnant workers to identify themselves so that they can be better accommodated, at a minimum, offer all pregnant workers seated work; additional breaks for the bathroom; additional rest breaks when they are experiencing fatigue or nausea; less physically taxing work; and time off from work for visits to the doctor.

Human Rights Watch urges corporations that use maquiladoras as subcontractors to

- Ensure that subcontracting factories are being operated free from sex 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 free from sex discrimination; establishing an independent, impartial group wholly

unconnected to the factory to monitor compliance; and periodically visiting the subcontractor plants to review the hiring and retention processes and solicit information from workers on the absence of discrimination.

BACKGROUND

U.S. corporations were originally drawn to Mexico's *maquiladora* (export processing)¹ sector because it was cheaper to manufacture in Mexico than to manufacture in the U.S. Mexican wages were low and independent unions were few. In fact, an abundant supply of labor, low wages, high productivity rates,² and reportedly weak federal labor law protection³ are still among the incentives the government still offers to multinational companies to move portions of their production to Mexico.⁴

¹ The maquiladora sector was originally created with government support in 1965 to stimulate investment, encourage industrial development at the Mexico-U.S. border, and create jobs for unemployed Mexicans affected by the termination of the *Bracero* (guest worker) program with the U.S. Maquiladoras fill a need: they employ hundreds of thousands of people who, for the most part, have few formal labor sector skills. These corporations import to Mexico, duty-free, parts to be assembled. The finished product is re-exported to the U.S. with a tax assessed on the value added. The value added is the labor of the worker used to assemble the product.

² Estimates of maquiladora worker productivity levels range from 80 to 100 percent of U.S. levels to 10 to 15 percent more productive than U.S. workers. From "Disparity Between Wages and Labor: Wages Aren't Commensurate with Productivity," *Multinational Monitor*, October 1993 and 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. 28.

³ After the worldwide recession of 1974-1975, when a third of the maquiladora work force was laid off and many maquiladora companies threatened to move to countries with lower labor costs, maquiladora corporations approached the Mexican government in search of incentives to keep doing business in Mexico. The government declined corporations' "suggestions" to give the maquiladora operators export subsidies and a reduction or abolition of sales and income taxes but reportedly acquiesced to corporations' suggestions to exempt the entire maquiladora sector from a number of worker protection laws. For example, allegedly companies were to be allowed to fire "inefficient" workers without severance pay, adjust the length of the workday and the size of the workforce "as needed," and to retain workers on "temporary status" for ninety-days. These changes led to a proliferation of maquiladora factories. From Susan Tiano, "Women's Work and Unemployment in Northern Mexico" in Vicki L. Ruiz and Susan Tiano, eds., *Women on the U.S.-Mexico Border: Responses to Change* (Winchester, Mass.: Allen & Unwin, Inc., 1987), pp. 21-22 and from Peter Baird and Ed McCaughan, *Beyond the Border: Mexico and the U.S. Today* (New York, NY: North American Congress on Latin America (NACLA), 1979), pp.145-146.

⁴ Jorge Bustamante, "Maquiladoras: A New Face of International Capitalism on Mexico's Northern Frontier," in María Patricia Fernández-Kelly and June Nash, eds., *Women, Men, and the International Division of Labor* (Albany: State University of New

Multinational corporations that practice pregnancy-based sex discrimination in Mexico's maquiladora sector are motivated not only by a desire to avoid having to absorb the costs of potential disruptions in production schedules due to maternity leave schedules or women workers' reduced capacity to meet physically demanding production quotas. According to the past admissions of some corporations, they are also motivated by a desire to avoid paying maternity leave costs.⁵ These corporations see hiring pregnant workers as a drain on their resources and as having a potentially detrimental effect on production. Therefore, they seek to avoid what they perceive as potentially unproductive workers and additional costs in the form of maternity payments⁶ by making female applicants' negative pregnancy status a condition of employment.

When female workers do become pregnant after being hired, their ability to remain on the job is almost wholly determined by their continued high productivity. The ability to produce at a high rate is linked to assessments of whether a pregnant worker is a "good worker," which additionally increases her possibility of maintaining her job in the maquiladora sector. Artemio Osano, a former line supervisor at Matsushita Electric Componentes de Baja California⁷ in Tijuana, explained how an emphasis on production is linked to the practice of pregnancy discrimination:

Pregnancy tests were given to all women workers. There was an infirmary which gave the pregnancy tests. Matsushita always gave pregnancy tests because they wanted to make sure workers would work for at least a year. I was not ever told when a worker was pregnant; I knew when it became physically evident. Workers who became pregnant would have their probationary contracts "cut" after the first one or two months. The company would use the pretext that the workers were "bad elements," or say they had bad work records. The truth is that companies discriminate against pregnant workers because of the potential or expected loss of production, not because of the cost of maternity leave, as some companies argue.⁸

⁵ See Zenith Corporation and General Motors letters in Appendices C and D, respectively. It should be noted, however, that when a female applicant applies for a job, her employer does not know whether she has accrued enough days in the social security system to limit the corporation's responsibility for contributions toward payment of a woman worker's maternity leave pay. Under Mexican law, depending on how much time the female worker has accrued in the social security system, either the government pays all her wages during maternity leave or the corporation pays some portion or all of it. Whatever the case, women are guaranteed six weeks of paid maternity leave pre-partum and six weeks of paid maternity leave post-partum.

General Motors, which later (March 1, 1997) adopted a policy of no longer requiring female applicants to undergo mandatory pregnancy testing as a condition for employment, earlier wrote, on August 14, 1996, "General Motors does, however, conduct preemployment pregnancy screening and will not hire female job applicants found to be pregnant . . . [This practice] stems from a Mexican law which guarantees financial and medical support to pregnant women . . . General Motors does not like the practice of pregnancy screening but is forced to do so in order to avoid the substantial financial liabilities imposed by the Mexican social security system."

Zenith Corporation wrote, on July 12, 1996, "Zenith does not approve of pregnancy screening. However, if it became the first company in these two employment markets [Matamoros and Reynosa] to end pregnancy screening, it would expose itself to substantial financial liabilities in the social security system for maternity benefits."

⁶ Mexico's federal labor code mandates twelve weeks of paid maternity leave for women workers, six weeks pre-partum and six weeks post-partum, as well as two additional breaks a day of one half hour each for nursing mothers. Unless otherwise noted, all translations from Spanish to English done by Human Rights Watch.

⁷ Owned by Matsushita-Panasonic of Osaka, Japan. Manufactures batteries and television components. Matsushita-Panasonic was cited in "No Guarantees" for instructing its on-site doctor to test all women applicants for pregnancy and to deny them work if they were pregnant.

⁸ Human Rights Watch interview, Artemio Osano, Tijuana, May 24, 1997.

An administrative office worker in BerthaMex⁹ in Tijuana echoed Osano's experience, explaining, "[h]uman resources decides who will stay and who will go. It all depends on how much and how well you produce. At times, the managers took the perspective that they must protect a pregnant worker, but only if she had a proven work record. Those pregnant women allowed to stay are accommodated by being changed to less strenuous work."¹⁰ Underscoring the emphasis on production as a barometer for whether a corporation allows a pregnant worker to remain, Maribel García, who works at Samsung, commented that in her factory, "If you get pregnant before you get a permanent contract, you make sure you produce."¹¹

Whether motivated primarily by the desire to avoid paying government-mandated maternity benefits or by the desire to avoid potential slow-downs in production, corporations openly and systematically discriminate against women. The Mexican government's failure to address pregnancy discrimination by U.S. and other corporations is in part driven by an unwillingness to challenge a maquiladora sector that is a critical source of both employment and foreign exchange.¹² Currently, a total of 2,600 maquiladora factories employ 873,748 Mexican workers.¹³ At least 450,000 are women. While most of the maquiladoras are owned by U.S. corporations, investments from Asian and European¹⁴ companies are increasing at a rate of 7 percent a year.¹⁵ These maquiladoras manufacture athletic wear, televisions, computer keyboards, cellular telephones, venetian blinds, furniture, toys, baby clothes, and Christmas ornaments, among many other products.

Maquiladoras remain the fastest growing industrial sector in Mexico, and a 1997 *Business Week* article noted that, "Soaring exports from these plants [maquiladoras] are helping Mexico pull out of its worst recession in sixty years."¹⁶ Indeed, with inflation at 30 percent (down from a high of 52.2 percent in 1995),¹⁷ more than a million jobs lost in 1996,¹⁸ and the need to create jobs for the one million people who enter the labor force each year,¹⁹ the Mexican government views the maquiladora sector as a prized engine for economic growth. One women's rights activist observed: "To protect the maquiladoras is of paramount importance to the government. There are three untouchables in Mexico: the Virgin of Guadalupe, the president, and the maquiladoras."²⁰

According to U.S. Embassy officials in Mexico City, the Mexican government has a great desire to attract and keep foreign investment, and this desire prevents Mexico from pushing corporations regarding labor standards. John A. Ritchie, the labor attaché to the U.S. Embassy in Mexico City, explained to Human Rights Watch that providing jobs is a higher priority for the Mexican government than pressing multinational corporations on labor rights abuses. He told us, "The government is aware of the pregnancy testing issue. But municipal officials say 'jobs, jobs, jobs.' Money is generated by the maquiladoras for public services."²¹ He explained that local and state government leaders along the

⁹ Owned by North American Communication of San Diego, California. Sews garments and processes bank promotions.

¹⁰ Human Rights Watch interview, Julia Muñoz, Tijuana, May 22, 1997.

¹¹ Human Rights Watch interview, Maribel Garcia, Tijuana, May 22, 1997.

¹² Fernández-Kelly and Nash, *Women, Men and the International Division of Labor*, p. 210.

¹³ This number includes laborers, technicians, and administrative workers. From Instituto Nacional de Estadística, Geografía e Informática (INEGI) (National Institute of Statistics, Geography and Information), June 26, 1997.

¹⁴ While Mexico's strongest trade relationship is with the United States, over the past several years it has broadened its trade alliances to include Europe. In July 1998 Mexico entered into an interim political, cooperation, and trade agreement with the European Union. This trade agreement contains a human rights and democracy clause which will allow the European Union greater authority to hold Mexico accountable for its human rights practices, especially in the consideration of continued or increased trade relations.

¹⁵ Geri Smith and Elisabeth Malkin, "The Border: A Special Report," *Business Week*, May 12, 1997, p. 64.

¹⁶ *Ibid.*, p. 65.

¹⁷ United States Department of State, *1996 Country Reports on Economic Policy and Trade Practices*, January 1997.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Human Rights Watch interview, Graciela de la Rosa, Federation Mexicana de Asociaciones Privadas de Salud y Desarrollo Comunitario, FEMAP (Mexican Federation of Health and Community Development Associations), Ciudad Juárez, May 18, 1997.

²¹ Human Rights Watch interview, John A. Ritchie and Joe Manso, U.S. Embassy, Mexico City, May 27, 1997.

U.S.-Mexico border also fear that if they push the maquiladora sector too hard on rights issues, that multinational corporations will move to other Mexican states or to Asia.²²

Local government officials in Tijuana and Ciudad Juárez share the federal government's enthusiasm for the sector, and the maquiladoras have buoyed border economies. Some 510,000 workers are employed in factories at the Mexico-U.S. border, where 70 percent of the industry is located.²³ Tijuana and Ciudad Juárez have the greatest number of plants, with 567 and 278 factories respectively,²⁴ although the maquiladora sector in Ciudad Juárez actually employs more workers than that of Tijuana.²⁵

At present, women constitute more than half of the maquiladora sector's employees, a percentage that has dropped over the past several years as the maquiladoras transform from low tech, low skilled assembly operations to higher skilled and higher technology operations.²⁶ The maquiladora sector is replacing more light, low-tech electronic assembly with higher-skilled auto parts and heavy machinery factories. In 1975 women constituted 78 percent of the maquiladora workforce. By 1993 the number of women workers in the maquiladora sector had fallen to 59 percent.²⁷ Of the 711,392 laborers currently employed throughout the sector, 42.6 percent are men and 57.37 percent are women.²⁸

The long-standing predominance of women workers on the assembly lines in Mexico's maquiladoras is no accident. Maquiladora managers have traditionally recruited women on the basis of perceived or imputed characteristics of women as being more docile, better workers, more reliable, and better at executing repetitive assembly work. According to an anthropologist who studied women in the maquiladora sector in the late 1970s, maquiladora managers and promoters explained their preference for women workers as based on women's ". . . putative higher levels of skill and performance . . . the quality of their handwork . . . their willingness to comply with monotonous, repetitive and highly exhausting work assignments; and . . . their docility which discourages organizing efforts by union leaders."²⁹ Two decades later, according to women's rights and labor activists, as well as the women workers themselves, little has changed about managers' motivation for hiring female workers.

²³ U.S.-Mexico Chamber of Commerce, *Border Region*, <http://www.usmcc.org/border1.html>.

²⁴ "Reportan un aumento de 21% en maquilas" (An Increase of 21% is Reported in Maquiladoras), *Reforma*, June 2, 1997, from Resource Center of the Americas, *Connection to the Americas*, <http://www.americas.org/rcta/>.

²⁵ Smith and Malkin, "The Border," p.74.

²⁶ Instituto Nacional de Estadística, Geografía e Informática (INEGI) (National Institute of Statistics, Geography and Information), June 26, 1997.

²⁷ Augusta Dwyer, *On the Line: Life on the U.S.-Mexico Border* (London: Latin American Bureau, 1994), p. 18.

²⁸ Instituto Nacional de Estadística, Geografía e Informática (INEGI) (National Institute of Statistics, Geography and Information), June 26, 1997.

²⁹ Human Rights Watch, "Mexican Border Industrialization," p.149.

While maquiladoras have always sought to recruit women workers, they have been most interested in those who were not pregnant and who then, in their perceptions, would not affect adversely their economic interest and competitiveness. These attitudes toward women workers have contributed directly to pregnancy-based sex discrimination.³⁰ A 1987 book exploring the lives of women on the U.S.-Mexico border cities interviews with several maquiladora managers in Mexicali (the capital of the state of Baja California) who maintained that "... single, childless women make better employees than married mothers. Domestic and child rearing responsibilities, employers believe, often interfere with optimal on-the-job performance. Lack of concentration, absenteeism, and frequent resignations ... are common among wives and mothers, who put their family's welfare above their job-related responsibilities."³¹ Thus, while maquiladoras have deliberately recruited women, and there has been a deliberate attempt by the maquiladoras to attract females to these positions, these same women are directly penalized for their reproductive choice and subsequent child care responsibilities.

Women working in the maquiladora sector have been slow to challenge directly the discrimination, in no small part because of the severe economic consequences of job loss (or of not being hired); lack of knowledge about labor rights and how to use the conciliation and arbitration system;³² and fear of retaliation. The labor force at the border contains a larger proportion of single women than the Mexican average,³³ and their income is essential to their own and their children's support. The majority of the women Human Rights Watch interviewed had children, were single, and were economic heads of household.

Moreover, female maquiladora workers have few labor skills that would help them find comparably paid work elsewhere in Mexico.³⁴ According to an essay that explored women's work and unemployment in northern Mexico, there are few viable alternatives for employment for women at the Mexico-U.S. border outside of the maquiladora sector:

For the woman who must support herself and perhaps other family members, maquiladora employment is preferable to domestic service, prostitution or petty sales, which may be her only options. Because gender-typed definitions of "appropriate" roles for women tend to exclude them from many occupations, and because few women have the necessary training for better female jobs such as nursing or teaching, many women have few alternatives to maquiladora employment.³⁵

Human Rights Watch interviews confirmed women's dependence on the maquiladora sector for work. The vast majority of the women we interviewed had formal work experience only in the maquiladora sector. In instances in which women quit or lost their jobs, when they looked for work again, it was invariably in the maquiladora sector. With few exceptions, most of the women thought they would spend all their working lives working in one maquiladora or another.

Interviews by Human Rights Watch with women workers, women's rights activists, and labor and human rights organizers underscored the connection between women's dire economic situation and their disinclination to protest

³⁰ Pregnancy discrimination is not practiced only by the maquiladoras. Women who work in the public and private sectors have complained about pregnancy discrimination for years. As a result, in October 1998 a coalition of five Mexico City-based women's rights groups launched a national campaign to end pregnancy exams and firings because of pregnancy. Components of this campaign include broader dissemination of information on worker rights and legislative reform.

³¹ Susan Tiano, "Maquiladoras in Mexicali: Integration or Exploitation," *Women on the U.S.-Mexico Border*, p.84.

³² According to the president of the CAB in Tijuana, cases take on average four to six months to resolve. Human Rights Watch interview, Antonio Ortiz Gutierrez, president, CAB, Tijuana, May 23, 1997.

³³ Susan Tiano, "Women's Work and Unemployment in Northern Mexico," *Women on the U.S.-Mexico Border*, p. 29.

³⁴ One study of undocumented immigrant women in the United States revealed that of ninety-two women who had held formal sector jobs in Mexico before coming to the United States, sixty-five percent had worked in the maquiladora sector. According to this study, the first job women hold once in the United States is in domestic services. From Rosalilia Solórzano-Torres, "Female Mexican Immigrants in San Diego County," *Women on the U.S.-Mexico Border*, pp. 54-55.

³⁵ Tiano, "Women's Work and Unemployment . . ." *Women on the U.S.-Mexico Border*, p. 36.

pregnancy discrimination. Lucy Unamuno Rivera, a maquiladora worker employed at Howe de México³⁶ in Ciudad Juárez told Human Rights Watch, "Women, even pregnant women, have to be able to find work."³⁷ A woman employed at the NPC³⁸ factory in Ciudad Juárez added, "You fight to get a job. If you get it, you keep it and do whatever you have to do to keep it."³⁹

Fearing the loss of foreign investment, the government of Mexico has abdicated its responsibility to protect women from sex discrimination in the maquiladora work force. Instead, by refusing to take substantive investigative and punitive action, the government of Mexico fails to fulfill its obligations to protect women from labor force sex discrimination, and therefore bears direct responsibility for this persistent pattern of sex discrimination in the maquiladora sector, which we document below.

³⁶ Owned by Howe & Co. of Victoria, Australia.

³⁷ Human Rights Watch interview, Lucy Unamuno Rivera, Ciudad Juárez, May 17, 1997.

³⁸ Owned by Louisville, Kentucky-based National Processing Co.

³⁹ Human Rights Watch interview, Anna-Patricia Santos Arce Gendáriz, Ciudad Juárez, December 1998, Vol. 10, No. 1(B)

DISCRIMINATION AGAINST AND MISTREATMENT OF WOMEN WORKERS⁴⁰

Discrimination in the Hiring Process

Our August 1996 report, "No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector,"⁴¹ documented widespread pregnancy-based sex discrimination in five cities in Mexico: Tijuana, in Baja California state; Chihuahua, in Chihuahua state; and Matamoros, Reynosa, and Río Bravo, in Tamaulipas state. A follow-up investigation conducted from May through November 1997 revealed that unfettered, widespread, blatant pregnancy-based sex discrimination persists in Tijuana, Reynosa, and Río Bravo. Moreover, in Ciudad Juárez, an area not covered in the previous report, we found that pregnancy-based discrimination is also rampant. In all four cities, female job applicants routinely undergo various forms of pregnancy screening as a precondition for employment and, once hired, those who became pregnant face the prospect of being forced to resign because of their pregnancy. Where parent company information could be found,⁴² Human Rights Watch wrote to corporations to alert them of our findings; to urge them to stop reported discrimination against female workers and female job seekers; and to invite them to join us in our efforts to guarantee women's equality in the work force (*see* Appendix E for a list of corporations and their responses).

Pregnancy testing is conducted in several ways, most commonly through urine samples—often obtained in the course of legal pre-hire medical exams given to job applicants.⁴³ Maquiladora personnel also request information from women applicants about their menses schedule, sexual activity, and use of contraceptives. Pregnant applicants are not hired. In some cases, recently hired women workers are again required to provide proof of pregnancy status by submitting to additional pregnancy tests, often in the form of urine samples or medical exams. Those found to be pregnant are routinely forced to resign. We also found evidence of a particularly disturbing practice, notably that some companies used mandatory sanitary napkin checks to verify their employees' non-pregnant status.

Human Rights Watch is also concerned that some maquiladoras may be adopting new and pernicious on-the-job discriminatory practices. Several workers reported knowing of cases in which factories refused to pay women workers required wages during maternity leave, as a condition for the women being allowed to continue working; and others reportedly threatened to refuse to allow women to return to work after maternity leave. We believe the seriousness of these allegations warrants further investigation and attention.

Who Conducts the Exams

Doctors, nurses, and other medical personnel in the employ of the maquiladoras directly participate in these exams. Our previous investigation found that maquiladoras used their own medical personnel to examine women applicants or sent women applicants to outside medical facilities for pregnancy and other pre-hire medical examinations. Our most recent research indicates that almost all factories now have on-site clinics, where pregnancy and other examinations are performed. Human Rights Watch recognizes that women workers may sometimes rely on maquiladora infirmaries for reproductive health care information and services. We do not object to the provision of these services, including meeting women workers' request for pregnancy tests, *per se*, so long as such tests are not mandatory and so long as the results are not used to fire or force pregnant workers to resign.

Pregnancy tests and other types of exams are incorporated into the routine medical exams which company-employed doctors and nurses perform on women in the course of the application and hiring processes. Typically, the medical exams, which in one form or another are administered to all job applicants, include vision and blood pressure tests and oral questions posed by medical staff to women as part of establishing their medical history. They include

⁴⁰ Unless otherwise noted, all names of women workers have been changed, at their request, to protect them from possible retaliation. In addition, identifying information has been omitted or changed.

⁴¹ See Human Rights Watch Women's Rights Project, "No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector," *Human Rights Watch Short Report*, vol. 8., no. 6 (B), August 1996.

⁴² Human Rights Watch was unable to match all maquiladoras with a parent company.

⁴³ Article 134 (X) of the federal labor code states that a worker is required to ". . . submit 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 disability or workplace illness, contagious or incurable; (XI) Make cognizant to the employer contagious sickness that are Human Rights Watch as he has knowledge of them (emphasis added) . . . " December 1998, Vol. 10, No. 1(B)

questions about the number of children a woman has; her plans to have more children; whether she has had a miscarriage or abortion; whether she is sexually active or uses birth control; the date she last menstruated; and whether she is pregnant.

Urine specimens are collected from women during the medical exam to test for pregnancy.⁴⁴ The results of pregnancy tests are usually forwarded to personnel or human resources offices for review by those who make hiring decisions. Many women workers told Human Rights Watch that they were explicitly informed in the course of their medical exam that if their pregnancy test was positive they would not be hired.

In other instances, applicants were required to sign a separate piece of paper stating they were not pregnant, or to sign their names next to their answer to the "Are you pregnant?" question on the application. Also, human resources personnel, in a nonmedical context, simply asked applicants whether they were pregnant and about their menses schedule, sexual activity, and birth control use. Others asked intrusive questions about the applicant's sexual activity, birth control use, and most recent date of menstruation.

Cases of Hiring Process Sex Discrimination

The following cases document the widespread use of a variety of techniques, from direct pregnancy testing and physical exams to intrusive personal questions, to determine whether women job applicants were pregnant. In the cases below, in instances in which the medical personnel did not explicitly inform female job applicants that they had to undergo pregnancy exams, the women applicants, without exception, believed that the urine specimens required were primarily for pregnancy analysis:

- Alisa González is eighteen years old. From June to December 1996 she assembled venetian blinds at Grupo Verde⁴⁵ in Tijuana. Grupo Verde's job application form asked about pregnancy status. It also inquired about whether female applicants had permission from their husbands to work. Her interviewer from the personnel office asked her how soon she was planning to have more children. González worked for Ensamblados Hyson⁴⁶ in Tijuana from June 1992 to July 1994. Someone from the personnel office asked her during her interview if she was pregnant or planning to have children anytime soon.⁴⁷

⁴⁴ Apart from requiring a urine sample, doctors occasionally conduct other physical exams to try to determine pregnancy status, including poking women in the stomach and feeling their abdomens to check for swelling. Depending on the factory, blood tests (normally a prick on the finger) for illnesses such as anemia or diabetes may also be performed, as well as lung x-rays. Urine samples may also be used to test for kidney-related disease.

⁴⁵ Now closed.

⁴⁶ Owned by Rainbird of San Diego, California. Manufactures sprinkler accessories.

⁴⁷ Human Rights Watch interview, Alisa González, Tijuana, May 22, 1997.

- Rafaela Rojas Cruz, twenty-three years old, started working at a Sunbeam-Oster maquiladora in Matamoros in July 1997. She had been working under a three-month probationary contract when her supervisor realized she was pregnant because she was often nauseous. Cruz' supervisor asked her whether she was pregnant, and Cruz responded that she thought she was. Cruz' supervisor then informed her that at the end of her probationary contract she would not be given another contract. Cruz went to a local union in Matamoros to complain about her firing and to be sent on another assignment at a maquiladora.⁴⁸ The union⁴⁹ delegate said that she could not do anything to help Cruz and refused to send Cruz on assignment because she was pregnant. Cruz said that it was normal practice for the union to refuse to send a pregnant woman to apply for a job. In early November, Cruz then went to another local union⁵⁰ where they did not know her. She did not tell them she was pregnant. They sent her to apply for a position at the Controlam⁵¹ plant in Matamoros, where they make electrical parts for washing machines and for cars. Cruz passed all the pre-hire exams at Controlam except for the pregnancy exam. The nurse there told her that they could not hire her because she was pregnant. Cruz is unemployed and pregnant. She believes that given that both local unions now know she is pregnant she will not be able to find work in the maquiladora sector.⁵²
- Marcela Gallego, thirty-eight years old, assembles telephone batteries for Panasonic in Tijuana.⁵³ When she applied for her job in October 1995, a company nurse gave her a pregnancy exam in the form of a urine sample, even though she informed her that she had been sterilized. A person from personnel interviewed Gallego, asking her if she used birth control, had ever suffered a miscarriage, or was sexually active. The interviewer told her they needed to know if she was pregnant because she would be working with electricity.⁵⁴
- Ana Rosa Rodríguez, thirty-seven years old, applied for work at a Panasonic factory in Reynosa at the end of October 1997. She was not hired because Panasonic told her that they did not accept women workers who were older than thirty years old (and men who were older than thirty-five years old). On Panasonic's application was the question, "Are you pregnant?" Once Panasonic realized Rodríguez' age, they did not allow her to proceed in the hiring process.⁵⁵
- María Guadalupe Tello, eighteen years old, has packed folders into boxes at Industrias Ynos⁵⁶ plant number twelve in Tijuana since September 1996. One of the questions on the application form was "Are you pregnant?" An interviewer from personnel also asked Tello if she was pregnant or sexually active.⁵⁷
- Ana-Patricia Santos Armendáriz, twenty-six years old, processes airline tickets at NPC International⁵⁸ in Ciudad Juárez. A nurse administered a pregnancy test to Santos Armendáriz as part of a medical exam she underwent

⁴⁸ Almost all maquiladoras in Matamoros are unionized. Typically, a workers goes to a union to find out about job availability. Matamoros maquiladoras inform local unions of their job vacancies. The unions send groups of individuals to apply for jobs in response to vacancies they receive. For the most part, maquiladoras in Matamoros do not accept applications from workers who are not sent by unions.

⁴⁹ Sindicato de Jornaleros y Obreros Industriales de Matamoros (Union of Day Laborers and Industrial Workers of Matamoros).

⁵⁰ Sindicato de Leocadio Mendoza Reyes.

⁵¹ Owned by Cleveland, Ohio-based Eaton Corp. Manufactures electrical parts for autos and for washing machines.

⁵² Human Rights Watch interview, Rafaela Rojas Cruz, Matamoros, November 8, 1997. Cruz was one of five women workers who testified at the U.S. NAO hearing against Mexico in Brownsville, Texas, on November 19, 1997.

⁵³ Owned by Japan-based Matsushita Electric Corp. Manufactures batteries and television components.

⁵⁴ Human Rights Watch interview, Marcela Gallego, Tijuana, May 24, 1997.

⁵⁵ Human Rights Watch interview, Ana Rosa Rodríguez, Reynosa, November 5, 1997. Article 133(I) of the federal labor code prohibits age discrimination in the hiring process. Rodríguez was one of five women workers who testified at the U.S. NAO hearing against Mexico on November 19, 1997, in Brownsville, Texas.

⁵⁶ Owned by Los Angeles, California-based Esselte Pemvaflex Co. Manufactures cardboard and paper folders.

⁵⁷ Human Rights Watch interview, María Guadalupe Tello, Tijuana, May 21, 1997.

⁵⁸ Owned by National Processing Company of Louisville, Kentucky. Processes airline tickets.

during her application process. The nurse also asked if she was sexually active, had experienced a miscarriage, and whether she used birth control.⁵⁹

- María López Márquez, nineteen years old, began working at Siemens Sistemas Automotrices⁶⁰ in Ciudad Juárez in February 1996. She makes parts for car motors. As a part of the hiring process, a company nurse asked López Márquez to submit to a pregnancy test in the form of a urine sample. She was also asked the date of her last menstruation. López Márquez was hired by Sensus de México⁶¹ in Ciudad Juárez in May 1993 to assemble water gauges. She was fifteen years old at the time. During her application process, a company nurse gave her a medical exam that included tests for vision, blood pressure, and pregnancy. The nurse told her that pregnancy tests were given so the company could identify pregnant women and not hire them.⁶²
- Silvia Rodríguez Guereca, eighteen years old, was required to undergo a medical exam that consisted of a pregnancy test before being hired at Siemens Sistemas Automotrices⁶³ in Ciudad Juárez, where she makes parts for car motors. She has worked there since June 1995. The nurse told her they needed her urine for a pregnancy test, and the company doctor conducted the medical exam and the pregnancy test. According to Rodríguez Guereca, approximately ten other women went through the same process that day. Rodríguez Guereca's mother also worked at Siemens Sistemas Automotrices for a year and a half, until January 1997. She, too, was expected to take a pregnancy test when she applied, but the company did not insist when she explained that she had undergone a tubal ligation.⁶⁴
- Angela Torres Rey is twenty-eight years old and works at Silviana⁶⁵ in Tijuana sewing computer covers, baby clothes, and camping tents. Before she was hired by Silviana in May 1997, she filled out an application form that inquired, "Are you pregnant?" In addition to signing this form, she was required to sign a second form attesting that she was not pregnant. Torres Rey assembled suitcases at Maquiladora California⁶⁶ in Tijuana from December 1996 to February 1997. In addition to filling out the application form, she had to sign a separate section stating that she was not pregnant. She resigned in February because she was sick. She was pregnant and did not realize it until after she had resigned.⁶⁷
- Aurora Rojas Castaña, twenty-eight years old, worked from June to November 1996 making knapsacks at Tijuana Industrial Arcos⁶⁸ in Tijuana. When she applied, she was not given a pregnancy test, but was required to sign a form stating that she was not pregnant. The company did not explain why women applicants had to sign such a form. Rojas Castaña worked at Douglas Furniture de México⁶⁹ factory in Tijuana from 1985 to 1989. Before she was hired, a company doctor gave her a medical exam that included checking her vision, blood pressure, and pregnancy status from a urine sample.⁷⁰

⁶⁰ Owned by Munich, Germany-based Siemens AG. Manufactures automotive parts.

⁶¹ Owned by Sensus Technologies Inc. of Union Town, Pennsylvania. Manufactures water meters.

⁶² Human Rights Watch interview, María López Márquez, Ciudad Juárez, May 17, 1997.

⁶³ Owned by Munich, Germany-based Siemens AG. Manufactures automotive parts.

⁶⁴ Human Rights Watch interview, Silvia Rodríguez Guereca, Ciudad Juárez, May 17, 1997.

⁶⁵ Ownership unknown.

⁶⁶ Owned by Alpha Southwest of San Diego, California. Manufactures suitcases.

⁶⁷ Human Rights Watch interview, Angela Torres Rey, Tijuana, May 21, 1997.

⁶⁸ Owned by Industrial Arcos of San Ysidro, California. Sews knapsacks.

⁶⁹ Owned by Redondo Beach, California-based Douglas Furniture of California. Manufactures sofas and other furniture.

⁷⁰ Human Rights Watch interview, Aurora Rojas Castaña, Tijuana, May 21, 1997. December 1998, Vol. 10, No. 1(B)

- Manuela Barca Zapata, thirty-six years old, worked at Bell Eléctricos⁷¹ in Ciudad Juárez in April 1997. When she applied, a company nurse gave her a medical exam to check her weight, vision, and blood pressure. The exam included a pregnancy test. To ensure that she did not "cheat," Barca Zapata was made to urinate into a cup with the bathroom door open while the female nurse stood outside the door. The doctor asked Barca Zapata about her use of birth control, her last date of menstruation, and if she had ever miscarried or had an abortion. Barca Zapata began working at Berg Electric Intermex Manufactura⁷² in Ciudad Juárez in March 1997. She assembled parts for telephones, cables, and connectors. When she applied for work she was given a medical exam. The male doctor and his male assistant asked how many children she had, whether she had ever miscarried or aborted, how she "took care of herself" to prevent additional pregnancies, and the date of her last menstruation. They also administered a pregnancy test in the form of a urine exam. The doctor gave the results of the test to the personnel office, and Barca Zapata was given an appointment to be trained. The company clinic in Berg Electric Intermex Manufactura distributes free condoms and birth control pills to workers. Barca Zapata received contraceptive injections from the company nurse upon request. Barca Zapata made harnesses for cars at Río Bravo Eléctricos⁷³ in Ciudad Juárez from August 1996 to January 1997. A company doctor tested her pregnancy from a urine sample as part of her application process.⁷⁴
- María Elena Gómez, twenty-three years old, began working at Favesa⁷⁵ in Ciudad Juárez in April 1997. When she first applied, she informed the interviewer in the personnel office that she had a six-month-old baby. The interviewer refused to hire her, explaining that it was because of her baby. Fifteen days later Gómez returned in the evening and applied again. This time, she had an interview with a different person, and although Gómez made note of her baby on the application form, the interviewer did not comment on this fact. During the hiring process a doctor gave her a medical exam during which he examined her abdomen to determine if she was pregnant. Later a personnel officer asked her during the interview whether she was married, had children, and was sexually active. Gómez made car covers at Vestiduras Fronterizas (Vevsa)⁷⁶ in Ciudad Juárez from January 1996 to February 1997. The hiring process included a medical exam. During the exam, the company doctor asked her the last date she had had sexual relations with her husband. He also asked her to write down the date of her most recent menstruation. The exam also consisted of a urine test for pregnancy and an eye exam.⁷⁷
- Rigoberta Flores Paloma works in an administrative capacity at Ansell Perry de México⁷⁸ in Ciudad Juárez. She told us that Ansell Perry de México has a policy that all women applicants for assembly work must undergo a pregnancy exam in the form of a urine sample as a condition for work. Pregnant women are not hired. She has worked at Ansell Perry de México for several years, and to her knowledge, this has always been the practice.⁷⁹

⁷¹ Owned by Hubbell Inc. of Orange, Connecticut. Manufactures industrial lamps.

⁷² Owned by Intermex in El Paso, Texas.

⁷³ Owned by General Motors of Detroit, Michigan. Manufactures car harnesses.

⁷⁴ Human Rights Watch interview, Manuela Barca Zapata, Ciudad Juárez, May 18, 1997. Barca Zapata applied for work at this General Motors-owned facility before General Motors announced its new policy on March 1, 1997.

Human Rights Watch does not oppose the responsible dissemination of reproductive health information by maquiladora health clinics, or the dispensing of services. For many women it is their only access to reproductive care and supplies. We do, however, oppose the coercive use of contraceptives as a direct violation of women's right to decide freely and responsibly the number and spacing of their children.

⁷⁵ Owned by Lear Corp. of Southfield, Michigan. Manufactures seat covers for cars.

⁷⁶ Owned by General Motors of Detroit, Michigan. Manufactures covers for car seats.

⁷⁷ Human Rights Watch interview, María Elena Gómez, Ciudad Juárez, May 17, 1997. Gómez began and ended working at this General Motors-owned plant before their policy of March 1, 1997 took effect.

⁷⁸ Owned by Melbourne, Australia-based Pacific Dunlop Group.

⁷⁹ Human Rights Watch interview, Rigoberta Flores Paloma, Ciudad Juárez, May 18, 1997. Human Rights Watch, *Human Rights Watch* interview, Rigoberta Flores Paloma, Ciudad Juárez, May 18, 1997, *Human Rights Watch*, December 1998, Vol. 10, No. 1(B).

- Gloria Ibáñez Pérez, twenty-three years old, assembles batteries in the batteries division of Sanyo⁸⁰ in Tijuana. She has worked there since February 1997. During the interview, a person from personnel asked her if she was pregnant. She answered that she used birth control. A nurse in the company infirmary gave her a medical exam that consisted of a pregnancy test from a urine sample. According to Ibáñez Pérez, about ten other women applied for work with her that day. Ibáñez Pérez worked at Tagit de México⁸¹ in Tijuana from November 1996 to January 1997 packing boxes of paper bags. The only question the interviewer from personnel asked was whether or not she was pregnant.⁸²
- Rosaria Castillo Paco, thirty years old, has worked at Favesa⁸³ in Ciudad Juárez since August 1996. When she applied for her job, the company doctor administered a pregnancy test in the form of a urine sample, physically examined her abdomen for signs of pregnancy, and inquired about her use of birth control. He did not explain why he asked these questions.⁸⁴
- Joselyn Cáceres Indayé is nineteen years old. She has been working at SAFT Componentes Técnicos⁸⁵ in Tijuana assembling material for cellular phones since 1992. Cáceres Indayé was given a pregnancy test in the form of a urine sample before she was hired. Cáceres Indayé stated that all women who apply for work at SAFT must take pregnancy exams. There are no exceptions.⁸⁶
- In 1996 Rosario de Leon, twenty-four years old, worked sewing clothes at Costuras de Río Bravo.⁸⁷ A woman doctor there asked her whether she was pregnant during the pre-hire medical exam.⁸⁸
- Erica Bibiano, twenty-two years old, currently sews clothes in her home in Tijuana. She applied for work at Unisolar⁸⁹ in December 1996, when she was two months pregnant. A friend advised her that if she answered "yes" to the question, "Are you pregnant?" on the application form, she would not be hired. Bibiano answered "no," but a company nurse still gave her a pregnancy test in the form of a urine sample. The personnel office instructed her to return the next day. When she did, he told her she tested positive for pregnancy and would not be hired. The personnel officer also told her that the company only needed male workers, although Bibiano had seen women hired the previous day. Bibiano did not seek work after this because she feared that she would be given another pregnancy exam. She plans to wait until she has given birth to look again for a job.⁹⁰
- Laura Yáñez Goya is twenty-nine years old. In May 1997 she began working for Marcos Calidad⁹¹ in Tijuana assembling picture frames. When she applied for her job, the secretary in the personnel office asked her whether she was pregnant and told her they did not hire pregnant women. From February to May 1997, Yáñez Goya worked at Microeléctrica de Tijuana⁹² in Tijuana where she assembled components for computers and televisions. The application process included a medical exam and the company nurse asked if she was pregnant. The secretary in the personnel office and the head of production also asked her if she was pregnant.⁹³

⁸⁰ Owned by Sanyo Electric Corp. of Osaka, Japan.

⁸¹ Owned by Tagit Inc. of Los Angeles, California. Manufactures seasonal and department store-specific bags.

⁸² Human Rights Watch interview, Gloria Ibáñez Pérez, Tijuana, May 24, 1997.

⁸³ Owned by Lear Corp. of Southfield, Michigan. Manufactures seat covers for cars.

⁸⁴ Human Rights Watch interview, Rosaria Castillo Paco, Ciudad Juárez, May 17, 1997.

⁸⁵ Owned by Romainville, France-based SAFT. Manufactures cellular telephone parts.

⁸⁶ Human Rights Watch interview, Joselyn Cáceres Indayé, Tijuana, May 21, 1997.

⁸⁷ Owned by St. Mary's Sewing of Edcouch, Texas.

⁸⁸ Human Rights Watch interview, Rosario de Leon, Río Bravo, October 9, 1997.

⁸⁹ Owned by United Solar Systems Co. of Troy, Michigan. Manufactures light switches.

⁹⁰ Human Rights Watch interview, Erica Bibiano, Tijuana, May 24, 1997.

⁹¹ Owned by American Frame Manufacturing Co. of San Diego, California. Manufactures picture frames.

⁹² Owned by Vertek International Custom House of San Diego, California. Manufactures machine interfaces, including components for televisions and computers.

⁹³ Human Rights Watch interview, Laura Yáñez Goya, Tijuana, May 22, 1997.

- Rosa Adolfo Suárez is twenty-two years old. Since March 1997 she has worked at Industrial Hase⁹⁴ in Ciudad Juárez assembling men's clothes. Adolfo Suárez was six months pregnant when she applied for her job. She intentionally looked for work in a maquiladora that did not have an infirmary, believing that maquiladoras without an infirmary would not have the means to test for pregnancy. Although it was very difficult to find such a factory, she did. At Industrial Hase, her interviewer from the personnel office and the application form both asked whether she was pregnant, but she answered no, because she feared they would not hire her. Industrial Hase did not administer a pregnancy exam, and Adolfo Suárez got the job.⁹⁵
- Ruth Cisneros is twenty years old. She has been working at Panasonic's⁹⁶ battery division in Tijuana since January 1995. When she applied, she filled out an application form that asked, "Are you pregnant?"⁹⁷
- Elizabet Gonzalo Greco is eighteen years old. She works at Samsung⁹⁸ in Tijuana where, since November 1996, her job has been to attach screens to televisions. Five other applicants went through the hiring process the day she applied for work at Samsung. During the interview, each was asked about her pregnancy status, sexual activity, and contraceptive use. Gonzalo Greco explained that although medical exams are usually given to applicants, she did not have one because the doctor was not there the day she was hired. Gonzalo Greco worked at ComAir Rotron de México⁹⁹ in Tijuana from August to October 1996. Her hiring process included an interview with a personnel officer in which she was asked about use of birth control and sexual activity. A company doctor gave her a medical exam that included a pregnancy test in the form of a urine test and a physical examination to check for signs of pregnancy. The doctor asked her when she had last menstruated, if she was sexually active, and whether she used contraception.¹⁰⁰
- Metsí Basques, twenty-six years old, has been a materials packer at the Levimex de Baja California¹⁰¹ light switch factory in Tijuana since September 1994. Before she was hired, she filled out an application form that included a question about pregnancy status. A company nurse gave her a medical exam that included a test for pregnancy in the form of a urine sample. Basques says she knew it was a pregnancy test because "everyone knows they [maquiladoras] test for pregnancy."¹⁰²
- Adriana Salas is forty-one years old. Salas assembled batteries at Sanyo Batteries¹⁰³ in Tijuana for one month in April 1997. Before she was hired, she filled out an application form that included a question about her pregnancy status. A female nurse administered a pregnancy test in the form of a urine sample. A doctor asked her when she last menstruated, if she was sexually active, and if she used birth control. Salas worked at Tagit de México¹⁰⁴ in Tijuana from November 1995 to February 1996 packing bags. The hiring process included a pregnancy test in the form of a urine sample, which personnel officials sent out to an independent lab because there was no doctor on site.¹⁰⁵

⁹⁴ Parent company unknown. Manufactures men's clothes under the labels Bugle Boy, Canyon River Blues, Northwest Blue, Built for Comfort, and the London Jean. This company is unrelated to the company of the same name that manufactures sprinklers.

⁹⁵ Human Rights Watch interview, Rosa Adolfo Suárez, Ciudad Juárez, May 18, 1997.

⁹⁶ Owned by Matsushita Electric Corp. of Japan. Manufactures batteries.

⁹⁷ Human Rights Watch interview, Ruth Cisneros, Tijuana, May 24, 1997.

⁹⁸ Owned by Samsung Group of Seoul, South Korea. Manufactures computer monitors and televisions.

⁹⁹ Owned by ComAir Rotron Inc. of San Ysidro, California. Manufactures air conditioning components.

¹⁰⁰ Human Rights Watch interview, Elizabet Gonzalo Greco, Tijuana, May 22, 1997.

¹⁰¹ Owned by Leviton Manufacturing Co. of Little Neck, New York. Manufactures light switches.

¹⁰² Human Rights Watch interview, Metsí Basques, Tijuana, May 24, 1997.

¹⁰³ Owned by Sanyo Electric Corp. of Osaka, Japan. Manufactures batteries.

¹⁰⁴ Owned by Tagit Inc. of Los Angeles, California. Manufactures seasonal and department store-specific bags.

¹⁰⁵ Human Rights Watch interview, Adriana Salas, Tijuana, May 24, 1997.

- Teresa Hernández, forty years old, has worked in the batteries division of Sanyo¹⁰⁶ in Tijuana since July 1996 assembling cellular phones and batteries. Her hiring process included a question on the application form about pregnancy. She answered that she had had a hysterectomy. She also had an interview in which she was asked about her pregnancy status. She again explained that she had had an operation.¹⁰⁷
- Mariana Vargas is seventeen years old. Vargas began working at Matsushita-Panasonic¹⁰⁸ in Tijuana in May 1997. She assembles television controls. She had to undergo a pregnancy test in the form of a urine sample as a condition of employment. A nurse administered the test but did not explain why. One week later, she had an interview with the doctor. Among other questions, he asked her whether she was married, what type of birth control she used, and whether she'd ever had a spontaneous or deliberate abortion. Previously in March 1997 she worked for two months cleaning the threads off of clothes at Confecciones Paolas¹⁰⁹ in Tijuana. She had been hired to sew, but no sewing positions were immediately available. It was a small factory and there was no pregnancy test, but the woman who interviewed Vargas repeatedly asked her whether she was pregnant, explaining that the company had recently hired a woman who was pregnant even though she said she was not, and that they had "let her go." From Confecciones Paolas the clothes were taken to San Diego and Los Angeles, labeled with such brands as Caroline and iLu. Vargas said she resigned because workers were paid according to the pieces they inspected, and often the owners "paid less" than the workers thought they had earned.¹¹⁰
- Lucy Unamuno Rivera is twenty-five years old and has cut pieces for car seats at Howe de México¹¹¹ in Ciudad Juárez since October 1996. During the hiring process the company nurse asked her if she was pregnant and when she had last menstruated. Unamuno Rivera worked at Zenco de Chihuahua¹¹² in Ciudad Juárez from 1993 to 1995. She made cabinets for Zenith¹¹³ televisions. She was given a pregnancy test in the form of a urine sample when she applied. From 1988 to 1991 Unamuno Rivera made hospital gloves at Promédicos de Juárez¹¹⁴ in Ciudad Juárez. When she applied, she was asked to provide a urine sample for a pregnancy test. Unamuno Rivera began working at RCA Componentes¹¹⁵ in Ciudad Juárez, assembling television components from 1986 to 1988. As a part of the hiring process, a company doctor gave her a medical exam that included a pregnancy test in the form of a urine sample.¹¹⁶
- Liliana Neri, seventeen years old, worked sewing exercise clothes at Industrias Valino¹¹⁷ in Reynosa from January to September 1997. When she applied for work, there was no medical exam, but the factory's nurse asked her whether she was pregnant and when her last period was.¹¹⁸

¹⁰⁶ Owned by Sanyo Electric Corp. of Osaka, Japan.

¹⁰⁷ Human Rights Watch interview, Teresa Hernández, Tijuana, May 24, 1997.

¹⁰⁸ Owned by Matsushita Electric Corp. of Osaka, Japan. Manufactures batteries and television components.

¹⁰⁹ Owned by Confecciones Paolas of San Ysidro, California. Sews clothes.

¹¹⁰ Human Rights Watch interview, Mariana Vargas, Tijuana, May 24, 1997.

¹¹¹ Owned by Victoria, Australia-based Howe & Co.

¹¹² Owned by Zenith Electronics Corporation of Glenview, Illinois. Manufactures cabinets for televisions.

¹¹³ In Human Rights Watch's first report on discrimination in Mexico's maquiladora sector in August 1996, Zenith factories in Reynosa, in the state of Tamaulipas, were cited for obliging women applicants to undergo pregnancy testing as a condition for employment and for firing pregnant workers. Zenith admitted to the practice, has refused to change its hiring policy, and has disavowed any post-hire pregnancy-based sex discrimination. For a detailed explanation of Zenith's response to allegation of sex discrimination, see Appendix A of "No Guarantees."

¹¹⁴ Was owned by Allegiance Health Care of McGaw Park, Illinois. Manufactured hospital gloves (maquiladora has closed).

¹¹⁵ Owned by Thomson Corporate Worldwide of Boulogne, France. Manufactures parts for televisions.

¹¹⁶ Human Rights Watch interview, Lucy Unamuno Rivera, Ciudad Juárez, May 17, 1997.

¹¹⁷ Owned by Magnolia International of Harlingen, Texas. Manufactures exercise and sportswear clothing brand named BIKE.

¹¹⁸ Human Rights Watch interview, Liliana Neri, Río Bravo, October 9, 1997. December 1998, Vol. 10, No. 1(B)

- Rosa-María Galván, twenty-seven years old, started working at Fabrica Duro¹¹⁹ in Río Bravo in the early 1990s. They assemble decorative shopping and gift bags. When she applied for work there, the company nurse asked her whether she was pregnant, when her last date of menstruation was, and whether she was sexually active.¹²⁰
- Beatriz Ortiz González, seventeen, started working for Zenith¹²¹ in Reynosa assembling television parts on June 18, 1997. The nurse at the factory asked her whether she was sexually active and when she last menstruated. Later, during an interview with someone from personnel, González was told that she should not get pregnant because the company did not want pregnant workers.¹²²
- Marcela Rodríguez, thirty years old, worked at P.C.M. México¹²³ in Reynosa from November 1996 until May 1997, assembling harnesses for cars. A doctor there asked her for a urine sample so that he could find out whether she was pregnant. She informed the doctor that she had undergone a tubal ligation. He required the sample anyway.¹²⁴
- Sara Ramírez Lobo, eighteen years old, began working at Controles de Reynosa¹²⁵ in January 1996. She assembles thermostats for air conditioners. The doctor at the factory told her they needed a urine sample in order to do a pregnancy exam. The doctor explained that hiring pregnant workers contravened the internal regulations of the plant.¹²⁶
- Yaneth García Esperanza, nineteen years old, started working on August 11, 1997, assembling keyboard pads for cellular telephones and computer key boards at Shin Etsu¹²⁷ maquiladora in Reynosa. A company doctor required her to provide a urine sample as a part of the pre-hire medical examination, as well as to answer questions about her menstrual cycle, sexual activity, and birth control use.¹²⁸
- Maribel García, twenty-four years old, has worked at Samsung Electro Mecánico¹²⁹ in Tijuana since October 1996. Before she was hired, a nurse gave her a medical exam in the company infirmary. The medical exam included a pregnancy test in the form of a urine sample. During the interview, a personnel officer asked García how many children she had, who would take care of them while she worked, and whether she used birth control or had ever had a miscarriage or abortion. She was required to provide the date of her last menstruation. The interviewer explained that it was inconvenient for the company to hire pregnant women and to have to pay their maternity leave wages and that pregnant women slowed down the production process.¹³⁰

A Questionable Change in General Motors' Policy

¹¹⁹ Owned by Duro Bag Inc. of Ludlow, Kentucky.

¹²⁰ Human Rights Watch interview, Rosa-María Galván, Río Bravo, October 9, 1997.

¹²¹ Owned by Zenith Electronics Corporation of Glenview, Illinois. Manufactures cabinets for televisions.

¹²² Human Rights Watch interview, Beatriz Ortiz González, Reynosa, October 12, 1997.

¹²³ Owned by Precision Cable Manufacturing Inc. of Rockwell, Texas.

¹²⁴ Human Rights Watch interview, Marcela Rodríguez, Reynosa, October 10, 1997.

¹²⁵ Owned by Milwaukee, Wisconsin-based Johnson Controls.

¹²⁶ Human Rights Watch interview, Sara Ramírez, Reynosa, October 10, 1997.

¹²⁷ Owned by Union City, California-based Shin-Etsu Polymer America. Manufactures for Panasonic.

¹²⁸ Human Rights Watch interview, Yaneth García Esperanza, Reynosa, October 11, 1997.

¹²⁹ Owned by Samsung Group of Seoul, South Korea. Manufactures computer monitors and televisions.

¹³⁰ Human Rights Watch interview, Maribel García, Tijuana, May 24, 1997.

Even in instances where corporations pledged to change their discriminatory hiring policies, evidence abounds of apparent violations of that policy. After Human Rights Watch first reported pregnancy-based sex discrimination in its factories, General Motors pledged to stop conducting mandatory employment-related pregnancy testing in its maquiladoras.¹³¹ As its reason for the policy change, General Motors cited its corporate principles but did not admit that this practice was in violation of the Mexican federal labor code. In an April 1997 interview with Human Rights Watch, General Motors officials indicated that their new policy had been fully implemented in all their Mexican maquiladoras as of March 1, 1997. However, in an October 1997 research trip to Reynosa and Río Bravo, in the state of Tamaulipas,¹³² Human Rights Watch easily found almost a dozen General Motors workers hired well after March 1, 1997, who had to produce urine samples for what the women job applicants believed was a pregnancy exam and who also in this context had to answer invasive questions about sexual activity, contraceptive use, and menses schedule as a part of the employment process. We were able to find ten¹³³ cases that appear to violate the new policy. The women ranged in age between eighteen and twenty-nine years old. All worked as assemblers. They began working at General Motors-owned maquiladora Delnosa in Reynosa between April and September 1997. In each case, as a part of the pre-hire medical examination, the company doctor asked the woman applicant when she last menstruated, whether she was sexually active, and whether she was using birth control. The doctor also required a urine sample of each applicant.¹³⁴

General Motors' commitment to stopping pregnancy discrimination in its Mexican plants can be best judged by the measures it has taken to ensure compliance. To date, those measures appear to fall far short of effective. When we met with General Motors in April 1997, they had no concrete plan to monitor compliance with the new policy. At that meeting, General Motors officials indicated that they had held meetings with their personnel heads all over Mexico in January 1997 and that those personnel administrators understood that such discriminatory practices violated General Motors' commitment to fairness in the workplace. General Motors officials also indicated that they thought compliance would be very high, given that the personnel managers largely supported the policy change.¹³⁵

General Motors' plan for ensuring compliance with its new policy seemed ad hoc, consisting of announcing it in their plant magazine and setting up a toll free telephone number to receive complaints about plant practices. To assure real compliance, General Motors would have needed to devise a long-term, well-publicized plan based on input from a variety of sources, including the women workers themselves, border area NGOs, and General Motors managers, on what measures needed to be taken to implement effectively the new policy.

Human Rights Watch urged General Motors to adopt a more transparent and monitorable policy that might include, among other things, communicating their policy change to local NGOs so that local NGOs could keep them apprised of apparent violations; posting signs in their personnel offices (or wherever applicants pick up applications) announcing that pregnancy testing or refusal to hire applicants based on pregnancy status was prohibited; at some reasonable interval after the date by which the policy should have been fully implemented, interviewing personnel directors and review hiring files to determine whether the policy was being respected; posting notices guaranteeing

¹³¹ General Motors announced this policy change in a March 7, 1997 letter to Human Rights Watch.

¹³² Human Rights Watch spent five days in this area attempting to verify General Motors' new policy by locating women who had begun to work at General Motors-owned maquiladoras after March 1, 1997. These were the only women we were able to locate in the amount of time available.

¹³³ One additional case appears later in the section on post-hire pregnancy-based sex discrimination, making the total number of cases eleven.

¹³⁴ Human Rights Watch interviews, Sonia Gordillo García, twenty-three years old, Reynosa, October 11, 1997; Hilda Ramírez, twenty-five years old, Reynosa, October 12, 1997; Graciela Duque, twenty-seven years old, Reynosa, October 12, 1997; Beatriz Salas Figuera, twenty-three years old, Reynosa, October 11, 1997; Adriana Martínez, twenty-two years old, Reynosa, October 11, 1997; Ana Larcera Hernández, twenty-one years old, Reynosa, October 12, 1997; Melisa Rangel, eighteen years old, Reynosa, October 11, 1997; Melina González, twenty-two years old, Reynosa, October 11, 1997; Virginia Castillo, twenty-six years old, Reynosa, October 10, 1997 (Castillo was one of five women workers who gave testimony at the U.S. NAO hearing against Mexico in Brownsville, Texas, on November 19, 1997. Castillo gave testimony under the pseudonym María Vásquez Pérez); and Dulce María Sanchez, twenty-nine years old, Reynosa, October 12, 1997.

¹³⁵ Human Rights Watch interview, Gregory E. Lau, executive director, Worldwide Executive Compensation and Corporate Governance; Walter S. Ralph, manager, International Benefits; and Elizabeth A. Lowery, attorney, Detroit, Michigan, April 10,

confidentiality and encouraging workers (and job seekers) to report violations of the new policy; and designating and training a person in each personnel office to receive and investigate complaints about violations of the new policy effective.

Interviews with General Motors workers in Reynosa and Río Bravo in October 1997 and in Matamoros in November 1997 suggest that General Motors has taken some initial steps to inform women workers that their employment status would not be adversely affected if they became pregnant after being hired. Some women we interviewed had seen signs posted in bathrooms and an article in a magazine published by General Motors-owned maquiladoras indicating that women should not fear becoming pregnant. In June 1997 a toll free number had been set up to receive work-related complaints of all variety.¹³⁶ Nevertheless, few of Human Rights Watch's recommendations have been implemented. For example, General Motors has yet to announce its policy change publicly. The result is that only those working within General Motors (and as of February 1998, job applicants) know of the policy change. No specific person in each plant has been designated to receive and investigate complaints about violations of the new policy. There is no systematic spot checking of the hiring process. There is, apparently, no monitoring of the number of pregnancy exams ordered by maquiladora infirmaries.

Based on the eleven interviews we conducted, we have serious concerns that General Motors' new policy is being ignored at least in the areas we visited, although we found no woman who was denied work at General Motors because she was pregnant.¹³⁷ According to one of the women workers we interviewed, a nurse at a General Motors plant unwittingly admitted that all female applicants were still routinely tested for pregnancy. At the end of September 1997, Virginia Castillo, a General Motors worker in Reynosa, in the state of Tamaulipas, had a colleague who thought she was pregnant. Castillo telephoned the nurse for the evening shift to ask whether her colleague could come in for a pregnancy exam. The nurse reportedly told Castillo that she did not have access to the pregnancy exams because they used them only in the morning for the women applicants and that she could leave a note for the morning nurse to leave a pregnancy exam kit out.¹³⁸ In addition, General Motors has been made aware, on at least one occasion, of reports that its new policy was being violated quite openly. On May 23, 1997, at a General Motors shareholders meeting in Wilmington, Delaware, a worker from the General Motors-owned maquiladora in Reynosa told General Motors executives that newly-hired women workers where she worked were still being required to give urine samples for pregnancy testing as a condition for employment. Jack Smith, C.E.O. of General Motors and Walter S. Ralph, manager, International Benefits, both attended this meeting and promised to look into the matter.¹³⁹

¹³⁶ This toll free line is staffed by an independent company based in Miami. When workers call to lodge complaints, they are given a case number and urged to call back to discover how the case is proceeding. According to Walter S. Ralph, manager, International Benefits, what happens to the complaint called in depends on the nature of the complaint. To his knowledge, no complaints had been received about pre-hire or on-the job pregnancy-based sex discrimination. Human Rights Watch telephone interview, Walter S. Ralph, manager, International Benefits, June 1, 1998.

¹³⁷ At the same time, Human Rights Watch did not find any women who applied for work at General Motors while pregnant.

¹³⁸ Human Rights Watch interview, Virginia Castillo, Reynosa, October 10, 1997.

¹³⁹ Human Rights Watch interview, Lolita Obregón Nieves, Río Bravo, October 9, 1997. December 1998, Vol. 10, No. 1(B)

In a January 1998 letter to Human Rights Watch, General Motors affirmed its pledge to stop using pregnancy screening as a condition for employment without exception. General Motors denied that urine samples are used for pregnancy tests and claimed that the samples instead were requested for drug testing (*see* Appendix G for General Motors letter).¹⁴⁰ General Motors added that even in instances in which women applicants' pregnancy status is inadvertently discovered, "Hiring decisions continue to be based solely on the applicant's ability to do the job." General Motors also indicated that it had begun to attach notifications to all applications indicating that requesting pregnancy information was prohibited.¹⁴¹ A subsequent telephone interview with Walter S. Ralph, manager, International Benefits, revealed that General Motors made the decision to attach such notifications to all applications in December 1997 and the policy was implemented in February 1998. Ralph indicated that he knew that the policy was working from observation: he observes pregnant workers in the factory.¹⁴²

Human Rights Watch remains concerned that General Motors-owned maquiladoras may continue to subject female job applicants to pregnancy tests in the hiring process. Despite General Motors' protests to the contrary, Human Rights Watch has gathered evidence that at a minimum calls into question this policy's full implementation. As noted, a General Motors worker described in detail a conversation with a factory nurse that tended to corroborate workers' beliefs that the company still conducted pregnancy tests on female job applicants. At the same time, the present application process for women job applicants, as described by recent applicants, is remarkably similar to the process before General Motors' adoption of a new policy: by their accounts, women applicants are still required to provide urine samples (although General Motors claims this is for drug analysis); and women are still asked for information that could be used to determine pregnancy status, such as whether they are sexually active and whether they use contraceptives.¹⁴³

This information raises serious doubts about compliance. At a minimum, General Motors has failed to communicate to us any information to suggest that they sought to confirm through means unconnected with their managers in Mexico that the pregnancy exams have ceased, even by monitoring the numbers of pregnancy tests their infirmaries ordered.

Post-Hire Pregnancy-Based Sex Discrimination

Post-hire sex discrimination persists in maquiladoras along the U.S.-Mexico border. The purpose of post-hire pregnancy discrimination is to identify pregnant workers in the early stages of their employment with a view to discontinuing that employment. Thus, in most of the cases documented below, pregnancy testing or mistreatment of pregnant workers was motivated by a desire to force women out of their jobs. However, some corporations, most notably Tyco International, argue that such post-hire discrimination is actually a "protective" measure, designed to assure that women are given less strenuous work and can avoid physically-demanding work that might cause a miscarriage. Tyco's argument is undercut by at least three points: first, the pregnancy exams are given in a pre-hire context; second, protection needs which may be met by reasonable gender distinction cannot be achieved through adverse discrimination; and third, women applicants do not consider these exams either voluntary or health-care related. Moreover, our documentation shows that post-hire positive pregnancy status typically results in the worker being fired, although we found no evidence that Tyco International fired women workers discovered to be pregnant. In our view, the potential for abuse through such practices outweighs any alleged protective value.

Most important, women applicants and workers themselves should make these decisions and not have them made for them. While corporations may have an interest in knowing the pregnancy status of its female workers in order to discharge adequately its labor code-mandated duty to accommodate them, given the pervasiveness of pregnancy-based sex discrimination in Mexico, this duty should not be met by asking female applicants or workers about their pregnancy status. Instead, corporations should take proactive measures to encourage pregnant workers to come forward, such as

¹⁴⁰ Border-area labor rights activists say that General Motors does request urine samples of its male job applicants, too, reportedly to test for illicit drug use. This, of course, does not mean that female job applicants' urine is not also tested for pregnancy.

¹⁴¹ General Motors letter to Human Rights Watch, p. 1.

¹⁴² Human Rights Watch telephone interview, Walter S. Ralph, manager, International Benefits, June 1, 1998.

¹⁴³ A General Motors executive, Walter S. Ralph, expressed surprise that such questions were still being asked during the pre-hire medical exams. He added that if he were a woman applying for a job and was asked such questions he would think that his potential employer was trying to determine pregnancy status. Human Rights Watch telephone interview, Walter S. Ralph, manager,

posting notices about the special provisions to which they are entitled by law. The factory's role is to provide all workers with complete and timely information about the effects of certain types of work on workers' reproductive and other health. Those corporations claiming to test for pregnancy as a measure to protect those tested should be challenged to produce records of such testing and of the employment histories of women found to be pregnant, as well as the corresponding special accommodations made for them.

Post-hire pregnancy-based sex discrimination involves various forms of monitoring female workers: women are required to provide additional urine samples for pregnancy testing or are required to provide proof of continued menstruation, in the form of showing used sanitary napkins to company medical personnel. Post-hire discrimination also involves retaliatory actions on the part of corporations once they discover women workers are pregnant. Maquiladora managers reportedly threaten women with firing, with a loss of their right to return to work after maternity leave, and with nonpayment of Labor Ministry-mandated wages during maternity leave.

Women suffer under the stress and fear of becoming pregnant in the first months after they obtain jobs. A worker at NPC International¹⁴⁴ in Ciudad Juárez told Human Rights Watch, "Everyone tells me that after they sign a six-month contract they can get pregnant and they aren't going to get fired. Before six months, everyone knows they are going to be fired if they become pregnant. So they say, 'I'm not going to become pregnant.' Workers wait to get pregnant. After six months, if they don't have a contract, they ask for it. They get their contract as a type of protection."¹⁴⁵

One factor that helped determine whether women workers would be harassed during their pregnancies or allowed to continue to work was the duration of time they had spent working at a factory. For example, Adriana Salas, a worker at Tagit de México¹⁴⁶ in Tijuana, explained that although there were pregnant workers at her factory, "If a woman had worked there for three or four months and she became pregnant, she could stay. If she had not been there for enough time, she would be fired."¹⁴⁷ A worker from Berg Electric Intermex Manufactura,¹⁴⁸ explained that women at Berg Electric Intermex Manufactura who get pregnant while still on temporary contracts are fired: "Pregnant workers who have been employed for a long time are treated well, but if they get pregnant in the first three months, they are fired."¹⁴⁹

A worker from NPC International¹⁵⁰ in Ciudad Juárez underscored the fear new female hires must endure: "Workers at my factory will get fired if they become pregnant at the two month pregnancy testing time. After you've worked there for six months, it's not a problem if you become pregnant, but women are afraid to get pregnant because they will lose their jobs."¹⁵¹

Arbitrary Use of Probationary Contracts

¹⁴⁴ Processes airline tickets. Owned by National Processing Company of Louisville, Kentucky.

¹⁴⁵ Human Rights Watch interview, Ana-Patricia Santos Armendáriz, Ciudad Juárez, May 19, 1997.

¹⁴⁶ Owned by Tagit Inc. of Los Angeles, California.

¹⁴⁷ Human Rights Watch interview, Adriana Salas, Tijuana, May 24, 1997.

¹⁴⁸ Owned by Intermex of El Paso, Texas. Assembles parts for telephones, cables and connectors.

¹⁴⁹ Human Rights Watch interview, Manuela Barca Zapata, Ciudad Juárez, May 18, 1997.

¹⁵⁰ Owned by National Processing Company of Louisville, Kentucky. Processes airline tickets.

Post-hire pregnancy-based discrimination is facilitated by the widespread use of thirty to ninety day probationary contracts in Mexico's maquiladora sector.¹⁵² Maquiladora employers use such probationary contracts, which themselves are not contemplated in Mexico's federal labor code, as a means to refuse permanent employment to women who become pregnant soon after being hired. Women are hired under a three-month (or shorter) probationary contract. In the cases we documented, women who become pregnant within the probationary period and whose pregnancy was noted by their employer were not offered a permanent contract at the end of the probationary period. Factories typically let these women go without paying them indemnization, to which the women would be legally entitled, since they would have been fired for an "unjustified" cause. By firing workers for an unjustified cause, employers incur a financial liability. The maquiladoras use probationary contracts to deny workers indemnity pay. The firing would be legal so long as the workers were paid.

Workers from Industrias Ynos in Tijuana,¹⁵³ Howe de México in Ciudad Juárez,¹⁵⁴ Favesa in Ciudad Juárez,¹⁵⁵ Samsung in Tijuana,¹⁵⁶ Tagit de México in Tijuana,¹⁵⁷ Berg Electric Intermex Manufactura in Ciudad Juárez,¹⁵⁸ Ansell Perry de México in Ciudad Juárez,¹⁵⁹ Río Bravo Eléctricos in Ciudad Juárez,¹⁶⁰ and NPC International in Ciudad Juárez¹⁶¹ told us that their factories used probationary contracts to force out women who became pregnant within the first several months after being hired.

The following cases illustrate a variety of post-hire discriminatory practices that are committed against women workers in Tijuana, Ciudad Juárez, Reynosa, and Río Bravo.

Post-Hire Medical Exams or Questioning

¹⁵² Temporary, provisional, or probationary contracts are used by companies to convince the worker that she or he is working on a trial basis and therefore has no legal right to contest a subsequent firing and no legal right to her full severance pay. These contracts are used to hire workers on a probationary basis and then allow managers to fire them at will, although Mexican law does not explicitly provide for such probationary periods.

Under Article 47 of the Mexican federal labor code, an employer can rescind the labor relationship for justified causes at any time without incurring responsibility for severance pay. There are fifteen justifiable reasons listed for which an employer can rescind the labor relationship: among them are 1) a misrepresentation by the worker or his union of references or false qualification certificates of the worker (in this specific case the rescision must be done within thirty days of the working relationship); 2) destruction of company property, injury of co-workers; 3) physical aggression toward the employer's family; 4) more than three unexcused absences in a period of thirty days; 5) coming to work inebriated or drugged; etc. None of the fifteen justified reasons specified in the Federal Labor Code has to do with pregnancy status. Furthermore, even though a labor relationship may be rescinded by the employer or the employee, the nature of the labor relationship is never probationary in a way that would exclude payment of severance pay.

Article 51 of the federal labor code lists the acceptable reasons for which an employee may withdraw from a labor relationship without any responsibility. Among them are 1) The worker was deceived about the nature or conditions of work (if this is the cause of the rescision, the worker must do so within thirty days of starting his employment); 2) the employer mistreats the worker; 3) the employer reduces the salary of the employee; etc.

A company can issue a short-term contract only when the work itself will conclude after a specific 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 completed in a specified span of time. Since maquiladoras have on-going contracts for work, it stands to reason that they are prohibited by law from obliging workers to accept provisional contracts.

¹⁵³ Human Rights Watch interview, Claudia Pacheco, Tijuana, May 21, 1997.

¹⁵⁴ Human Rights Watch interview, Lucy Unamuno Rivera, Ciudad Juárez, May 17, 1997.

¹⁵⁵ Human Rights Watch interview, María Elena Gómez, Ciudad Juárez, May 17, 1997.

¹⁵⁶ Human Rights Watch interview, Maribel García, Tijuana, May 22, 1997.

¹⁵⁷ Human Rights Watch interview, Gloria Ibáñez Pérez, Tijuana, May 24, 1997.

¹⁵⁸ Human Rights Watch interview, Manuela Barca Zapata, Ciudad Juárez, May 18, 1997.

¹⁵⁹ Human Rights Watch interview, Rigoberta Flores Paloma, Ciudad Juárez, May 18, 1997.

¹⁶⁰ Human Rights Watch interview, Manuela Barca Zapata, Ciudad Juárez, May 18, 1997.

¹⁶¹ Human Rights Watch interview, Perla Martínez, Ciudad Juárez, May 19, 1997. December 1998, Vol. 10, No. 1(B)

Plásticos BajaCal¹⁶² in Tijuana told us that it has a policy of asking all assembly line women workers about pregnancy status after they are hired. Plásticos BajaCal, which manufactures and assembles plastic hangers, was originally cited in "No Guarantees" for failing to allow a sick pregnant worker to leave her shift to go to the doctor.¹⁶³ In an interview at the Plásticos BajaCal plant in Tijuana in May 1997, officials vehemently denied that they test applicants for pregnancy in order to deny them work. They argued that they tested workers only after they were already hired and then argued that Tyco International has a legal and moral obligation to know whether the workers it hires are pregnant so it can protect them in accordance with Mexican law by assigning them to less physically demanding work.

Mexican law's prohibition of sex discrimination, including discrimination based on pregnancy, should not pose an obstacle to corporations' meeting their obligations to accommodate pregnant women or to protect themselves from liability for workplace harm to a pregnant woman's fetus or to the pregnant woman herself. While no provision of Mexican federal labor code requires companies to determine whether entering employees are pregnant, neither for insurance or safety purposes, and while the federal labor code does not make mandatory worker provision of such information to employers when they become pregnant, employers have a clear obligation to provide special provisions to pregnant workers and a desire to protect themselves from liability.

According to Marta Harmon, general manager of Plásticos BajaCal in Tijuana, testing for pregnancy is voluntary; women workers can always opt not to take the test. Harmon explained:

Every employee undergoes a physical. This is a practice in every Mexican company. In our company, workers undergo a physical exam right after they are hired.¹⁶⁴ Our female doctor asks if they are pregnant. She does not ask about pregnancy as a condition of employment. In our case, the question is asked as a part of a full physical exam, not as a condition for employment, nor as a separate question, except to protect women.¹⁶⁵

A June 5, 1998, letter (*see* Appendix I) from Plásticos BajaCal's parent company, Tyco International, contradicts the information we were given by Plástico's BajaCal officials. In that letter, Tyco International denies that Plásticos BajaCal officials conduct any ". . . pregnancy tests (pre or post employment), ask for proof of pregnancy status of contraceptive use." Moreover, Human Right Watch interviews with former and current Plásticos BajaCal workers flatly contradicted the denial of pre-hire testing and the claim that testing was voluntary and health related. The claim by Plásticos BajaCal officials that pre-hire pregnancy testing was not done was contradicted, as the cases below of testing between June 1994 and May 1997 demonstrate:

- Ruth Cisneros, twenty years old, worked at Plásticos BajaCal for two months in June 1994, putting hooks on hangers. Plásticos BajaCal did not give her a permanent contract, and she was laid off¹⁶⁶ when there was a decrease in orders. A company doctor gave her a pregnancy test in the form of a urine sample during the hiring process but before she signed a provisional contract.¹⁶⁷
- Fernanda Octavia Paz, forty-five years old, has worked packing hangers at Plásticos BajaCal since May 1996. She was not given a pregnancy test during the hiring process, but the company doctor asked her if she was pregnant.

¹⁶² Owned by Tyco International of Exeter, New Hampshire. Manufactures plastic hangers.

¹⁶³ "No Guarantees," p.2. The worker subsequently miscarried that morning.

¹⁶⁴ The vast majority of the maquiladoras perform medical exams in a pre-hire context, as is permissible under Article 134 of Mexico's federal labor code. While some maquiladoras do conduct post-hire medical exams, post-hire medical exams are typically done when an on-site clinic was not previously available. Our research indicates that these post-hire exams are used, among other things, to detect pregnancy and to force pregnant women out of their jobs.

¹⁶⁵ Human Rights Watch interview, Marta Harmon, general manager, Plásticos BajaCal, Tijuana, May 21, 1997.

¹⁶⁶ She was not paid any indemnity.

¹⁶⁷ Human Rights Watch interview, Ruth Cisneros, Tijuana, May 24, 1997.

She considered answering this question to be obligatory. The doctor did not explain why she wanted this information.¹⁶⁸

- Violeta Bermúdez, thirty-one years old, has been working packing hangers at Plásticos BajaCal since May 1996. As a part of a pre-hire medical exam the doctor asked her to provide a urine sample for a pregnancy test.¹⁶⁹

¹⁶⁸ Human Rights Watch interview, Fernanda Octavia Paz, Tijuana, May 23, 1997.

¹⁶⁹ Human Rights Watch interview, Violeta Bermúdez, Tijuana, May 23, 1997. December 1998, Vol. 10, No. 1(B)

- Flora Ana Caballo, forty-five years old, has been working as an assembler at Plásticos BajaCal since May 1996. The doctor at the factory asked her if she was pregnant during her pre-hire medical exam. Caballo said that she considered answering that question to be obligatory.¹⁷⁰
- Soledad Largo, sixteen years old, has worked at Plásticos BajaCal as an assembler since April 1997. The company doctor not only asked her whether she was pregnant but also examined her abdominal area. Largo believed that Plásticos BajaCal wanted to know her pregnancy status in order to deny her work if she was pregnant.¹⁷¹
- Paula Serrano, sixteen years old, has worked at Plásticos BajaCal as an assembler since April 1997. The company doctor asked her whether she was pregnant and examined her abdomen.¹⁷²

The women workers we interviewed from Plásticos BajaCal all believed that the pregnancy exams were done in an effort to screen out pregnant women, and they did not consider such exams optional or voluntary. All felt, based on their previous maquiladora experience, that if they had not agreed to take the pregnancy exam or answer questions about pregnancy status, they would not have been hired.

Human Rights Watch researchers asked Harmon why Plásticos BajaCal does not simply inform women workers that it does not discriminate against pregnant workers and provide information about workplace health hazards so that workers who become pregnant can make informed decisions about whether and when to request special accommodation. Harmon replied:

We could do that, but half of them will not understand what we have said. They will not go to the doctor to find out if they are pregnant. They will hear the message, 'they want me to go to the doctor.' They will panic. Part of the questioning by the doctor during the medical exam is to reassure them that they will not be fired if they are pregnant. However, if a worker is pregnant, she is not going to be put on a molding machine. We ask about pregnancy to protect women. We have a legal and moral obligation to do this. Workers are not given pregnancy tests. They are only asked if they are pregnant. If their answer is that they are not sure if they are pregnant, we ask them if they want to know. If they say yes, they get a test. Most women say yes. But only if the woman wants it. If a woman says she is not pregnant, we do not ask anything further. If she does not want the exam, she does not want the exam. The doctor does a report on every woman she examines. There is a file on every one of the our employees.¹⁷³

Plásticos BajaCal officials acknowledged to us that they operate in a context in which almost all other maquiladoras use pregnancy testing in a pre-hire context to deny women job applicants work, even though they did not. We believe that Plásticos BajaCal ignores how women's previous hiring experiences (or knowledge of the maquiladora hiring process) directly diminishes or eliminates their ability to refuse to answer a question about pregnancy status or refuse to take a pregnancy exam when they are in doubt about that status. Most women's previous work experiences will make them see those options as compulsory. Contrary to their assertions that only post-hire testing is conducted by Plásticos BajaCal, and that this is voluntary and geared for worker welfare, Human Rights Watch interviews with women who presently work or have worked in the recent past at the Plásticos BajaCal maquiladora indicate that questions about and exams to confirm pregnancy status are performed in a pre-hire context and are involuntary. None of the women workers Human Rights Watch interviewed had to undergo a post-hire pregnancy exam. Nor did they know of others with whom they worked at Plásticos BajaCal who had to undergo a post-hire pregnancy exam.

While our research indicated that Plásticos BajaCal used pregnancy testing and questioning in a pre-hire context, many other maquiladoras use post-hire medical exams or questioning to determine worker's pregnancy status, as described below.

¹⁷⁰ Human Rights Watch interview, Flora Ana Caballo, Tijuana, May 23, 1997.

¹⁷¹ Human Rights Watch interview, Soledad Largo, Tijuana, May 23, 1997.

¹⁷² Human Rights Watch interview, Paula Serrano, Tijuana, May 23, 1997.

¹⁷³ Human Rights Watch interview, Marta Harmon, general manager, Plásticos BajaCal, December 1992, Vol. 1(B) Human Rights Watch.

- María Guadalupe Tello, eighteen years old, has packed folders into boxes at Industrias Ynos¹⁷⁴ plant number twelve in Tijuana since September 1996. Tello had worked for two weeks when her line supervisor told her to go to the company doctor for her medical exam. The doctor gave her a blood pressure and eye exam, and a cup in which to urinate, explaining that he was going to test for pregnancy. A nurse asked her if she was sexually active and the last date of her menstrual cycle. Tello saw approximately five other women waiting for medical exams that day.¹⁷⁵
- Ana Rosa Rodríguez, thirty-seven years old, works assembling light meters at Landis and Gyr¹⁷⁶ in Reynosa. She started working at Landis and Gyr in August 1997. When Rodríguez first started, they did not do medical exams. During this period, the company held lectures at the plant in the cafeteria about family planning, during which the company doctor told women workers that Landis and Gyr did not want pregnant women there and that women should not get pregnant and should plan on getting pregnant at some other time. In mid-November Landis and Gyr started testing the women who had been hired previously for pregnancy. Rodríguez had to go to the infirmary to give a urine sample for a pregnancy exam. A company doctor asked her whether she was sexually active, used birth control, and the date of her last menstruation.¹⁷⁷
- Dulce María González is eighteen years old. In August 1997 she applied for a practicum for high school in the accounting office of Lintel.¹⁷⁸ Lintel assembles telephones. They hired her and told her to come back the next day for a medical exam. The next day, at the infirmary a nurse weighed her and took a medical history, including asking her whether she was pregnant, sexually active, or using contraceptives. The nurse also presented her with a form that González had to sign that said if she got pregnant within three months of her start date she would be let go. González was not given a copy of this form. She resigned before her three month probationary period ended because her supervisor treated her badly.¹⁷⁹
- At the time of being hired, Anna-Patricia Santos Armendáriz, twenty-six years old and employed by NPC International¹⁸⁰ in Ciudad Juárez, was given a three-month probationary contract and told by supervisors that if she became pregnant within those months, she would not be offered a permanent contract. Two months later, she was given another pregnancy test, and the last day of her most recent menstruation was recorded. According to Santos Armendáriz, "If you get pregnant after two months, they dismiss you, but the company has no problem with women who become pregnant after the end of the initial three-month contract period."¹⁸¹

¹⁷⁴ Owned by Esselte Pemvaflex Co. of Los Angeles, California. Manufactures cardboard and paper folders.

¹⁷⁵ Human Rights Watch interview, María Guadalupe Tello, Tijuana, May 21, 1997.

¹⁷⁶ Now called Landis & Staefa. Owned by Zug, Switzerland-based Landis & Staefa, AG.

¹⁷⁷ Human Rights Watch interview, Ana Rosa Rodríguez, Reynosa, November 5, 1997. Rodríguez was one of five women who testified at the U.S. NAO hearing on Mexican labor practices on November 19, 1997, in Brownsville, Texas.

¹⁷⁸ Ownership unknown.

¹⁷⁹ Human Rights Watch interview, Dulce María González, Reynosa, November 5, 1997. González was one of five women workers who testified at the U.S. NAO hearing against Mexico on November 19, 1997, in Brownsville, Texas.

¹⁸⁰ Owned by National Processing Company of Louisville, Kentucky. Processes airline tickets.

¹⁸¹ Human Rights Watch interview, Anna-Patricia Santos Armendáriz, Ciudad Juárez, December 1998, Vol. 10, No. 1(B)

- Lucy Unamuno Rivera, twenty-five years old, who works at Howe de México¹⁸² in Ciudad Juárez, was given a pregnancy test without warning in January 1997. She was notified the day before that she was to have a medical exam and not to eat anything because a blood sample would be taken. She was given a blood test and a pregnancy test in the form of a urine sample, which was positive. Her supervisor upbraided her for keeping her pregnancy a secret and told her that she would have to sign a voluntary resignation letter. Unamuno Rivera replied that she didn't want to resign, but the personnel manager told her that if she did not sign she would be fired. From the moment she realized that Unamuno Rivera was pregnant, the personnel manager consistently harassed her and told her to resign. In March 1997 Unamuno Rivera fell at work and hurt her arm. Her supervisor told her that since she was going to receive maternity wages she should not file for occupational injury pay. Her supervisor continued to pressure her to resign and told her not to bother coming to work. Unamuno Rivera never missed a day of work during her pregnancy.¹⁸³
- Isabel Teresa Sánchez, nineteen years old, worked assembling Christmas lights and ornaments at Manufacturas Ilimitadas in Matamoros.¹⁸⁴ When she started to work there in August 1996, she was approximately two months pregnant. She did not tell them since no one there asked whether she was pregnant and since they told her the pre-hire pregnancy exam, in the form of a urine sample, came back negative. A co-worker who was in the restroom at the same time Sánchez was there realized she was pregnant and communicated it to the personnel supervisor. The personnel supervisor called Sánchez to her office and asked her whether she was pregnant. The supervisor then told her that she had to resign. Sánchez refused and talked to another supervisor who advised her to sign the letter of resignation. Sánchez was fired in October 1996, at which time she signed a letter saying that she was resigning for being distracted at work. Manufacturas Ilimitadas promised to continue her social security but did not.¹⁸⁵
- There was no nurse or doctor when she was hired, so Ruth Cisneros, twenty years old, who works at Panasonic's¹⁸⁶ battery division in Tijuana, was not given a medical exam until four months later. At that time, a nurse administered the pregnancy test and the doctor asked her if she was sexually active. Cisneros's line supervisor told her that pregnancy exams were obligatory. Cisneros commented that if she were pregnant, she never would have applied for work in a maquiladora. It would have been a waste of time. Now that she has a permanent contract, she does not worry.¹⁸⁷
- Claudia Pacheco, sixteen years old, has worked at Industrias Ynos¹⁸⁸ in Tijuana since August 1996. After she was hired, one of the secretaries asked her if she was pregnant but did not explain why.¹⁸⁹

¹⁸² Owned by Howe & Co. of Victoria, Australia. Manufactures leather seat covers.

¹⁸³ Human Rights Watch interview, Lucy Unamuno Rivera, Ciudad Juárez, May 17, 1997.

¹⁸⁴ Ownership unknown.

¹⁸⁵ Human Rights Watch interview, Isabel Teresa Sánchez, Matamoros, November 6, 1997. Sánchez was one of five women workers who testified at the U.S. NAO hearing on Mexican labor practices on November 19, 1997 in Brownsville, Texas.

¹⁸⁶ Owned by Matsushita Electric Corp. of Osaka, Japan. Manufactures batteries.

¹⁸⁷ Human Rights Watch interview, Ruth Cisneros, Tijuana, May 24, 1997.

¹⁸⁸ Owned by Esselte Pemvaflex Co. of Los Angeles, California. Manufactures cardboard and paper folders.

¹⁸⁹ Human Rights Watch interview, Claudia Pacheco, Tijuana, May 21, 1997

- Xochitl Alanís, twenty-nine years old, works assembling car parts in Delnosa¹⁹⁰ in Reynosa. She has been working at General Motors for several years and at the time of our interview, was on leave due to a workplace injury. When she was pregnant, her supervisor regularly upbraided her for leaving her work station to go to the rest room or for missing work to get pre-natal care. He told her she could only go to the restroom twice a day. Alanís sought assistance from the doctor in the maquiladora clinic, who sent her supervisor a note explaining that as a pregnant woman, Alanís needed to go to the bathroom often. The supervisor warned her that if she kept having to go to the bathroom and if she kept being late for or missing her shift, she would be fired and yelled at her, "Who told you to go out and get pregnant?" After Alanís went back to work from maternity leave, her supervisor yelled at her and threatened to fire her for taking too long in the rest room. She explained that she was pumping milk¹⁹¹ for her baby and that she could not do it any quicker.¹⁹²

Research for this update revealed two forms of post-hire pregnancy-based sex discrimination that we had not previously uncovered, one of which is particularly shocking and humiliating. The first is that companies further discriminate against women workers by compelling them to show used sanitary napkins or tampons as a condition for being offered permanent work. The second form of discrimination is the allegation that some maquiladora employers are allowing recently-hired pregnant workers to take maternity leave, but threatening to refuse to pay their maternity leave wages.

While Human Rights Watch has no information to suggest that these practices are de rigeur in the way that obliging women job applicants to provide information on pregnancy status in a hiring process context has become, we are greatly concerned that these practices be condemned and halted before they have a chance to proliferate.

Mandatory Menstruation Check

In some factories in Ciudad Juárez, during the first three months of employment, women workers are required to return to company medical clinics or infirmaries to show their used sanitary napkins or tampons to medical personnel to prove that they remain free of pregnancy. Others are required to return to infirmaries to submit again to pregnancy tests. Interviews with workers in Ciudad Juárez revealed that one reason maquiladora personnel inquire about a woman's most recent menstrual cycle when she applies is so clinic personnel can schedule her return trip to the infirmary to coincide with her anticipated date of menstruation.

In a number of cases, workers were told upon hire that they would need to show their used sanitary napkins within the first few months of work. In almost every case, workers interviewed by Human Rights Watch emphasized that they found this practice to be demeaning and embarrassing, but they felt obligated to comply with this policy in order to keep their jobs, as the cases below illustrate:

¹⁹⁰ Owned by Detroit, Michigan-based General Motors.

¹⁹¹ Article 170 (IV) of the federal labor code provides lactating mothers with two extra breaks a day of one-half hour each to feed one's child, "in an adequate and hygienic area designated by the corporation."

¹⁹² Human Rights Watch interview, Xochitl Alanís, Reynosa, October 12, 1997. December 1998, Vol. 10, No. 1(B)

- María López Márquez, nineteen years old, began work at Siemens Sistemas Automotrices¹⁹³ in Ciudad Juárez in February 1996. During the application process, she was given a urine test for pregnancy and asked the date of her last menstruation. The test came out negative. When she was hired, she was told that she would have to return to the infirmary for the next two months and show her sanitary napkin to prove that she was still menstruating and not pregnant. When she first worked at Siemens Sistemas Automotrices, she was on the day shift. Later she changed to the night shift when there was no doctor. In June 1996, López went to the infirmary because she did not feel well and was given a pregnancy test, which came out positive. A woman from the personnel office yelled at López Márquez, accusing her of lying about her pregnancy and of switching shifts to avoid showing her sanitary napkin, and tried to pressure her to resign. When López Márquez replied that the infirmary had never given her an appointment to confirm that she was menstruating, the woman told her she would see if López Márquez could keep her job, but that it would be better if she resigned. López Márquez went on maternity leave in March 1996. She needed extra time apart from the six-and-a-half-week post-partum allowed and decided not to return to work.¹⁹⁴ When her son was five months old, she returned to Siemens and applied for a job. The same personnel employee accused her of having lied about the dates of her period and told her there was no work for her. While she was on maternity leave López Márquez was paid her normal wages, in accordance with the labor law.¹⁹⁵
- Silvia Rodríguez Guereca, eighteen years old, works at Siemens Sistemas Automotrices¹⁹⁶ in Ciudad Juárez. When she was hired, she was told that she would have to continue to prove she was not pregnant during her first two months of work. During her initial medical exam, the nurse noted the dates of her last menstruation on a chart in the company infirmary. Rodríguez Guereca was first hired under a probationary one-month contract, which was subsequently extended to two additional months. During her first two months of work she was required to return to the plant's infirmary and sign a form stating that she continued to menstruate. She was also required to show her sanitary napkin to the female company nurse, who waited outside the door of the bathroom so Rodríguez Guereca could show her sanitary napkin. Since then, Rodríguez Guereca became pregnant and took maternity leave. She is planning to return to her job after her maternity leave is over.¹⁹⁷
- Manuela Barca Zapata, thirty-six years old, worked at Río Bravo Eléctricos¹⁹⁸ in Ciudad Juárez from August 1996 to January 1997. She was informed when she was hired that she would have to return to the company infirmary in a month to show her sanitary napkin. The nurse waited outside the door, and then Barca Zapata opened the door to show her sanitary napkin. Barca Zapata described this experience as very shameful.¹⁹⁹
- When María Elena Gómez, twenty-three years old, began working at Favesa²⁰⁰ in Ciudad Juárez in April 1997. She was told that they would need to check her sanitary napkin. She does not plan to go when they call her, because it's "a shaming and shameful practice." Since she has been at Favesa, she has not seen the pregnant women given any special accommodation, such as less difficult work, more comfortable chairs, or more breaks. According to her, the pregnant women "just endure" the working conditions.²⁰¹
- Perla Martínez is twenty-five years old. She sorted airplane tickets at NPC International²⁰² in Ciudad Juárez from June 1994 to March 1996. When she had worked for three months, she was made to show the company nurse her

¹⁹³ Owned by Munich, Germany-based Siemens AG. Manufactures engine parts.

¹⁹⁴ Article 170(VI) of the federal labor code guarantees that a woman can return to her previously-held position after maternity leave, so long as the woman returns to work before one year after the birth of the child has passed.

¹⁹⁵ Human Rights Watch interview, María López Márquez, Ciudad Juárez, May 17, 1997.

¹⁹⁶ Owned by Siemens AG of Munich, Germany. Manufactures engine parts.

¹⁹⁷ Human Rights Watch interview, Silvia Rodríguez Guereca, Ciudad Juárez, May 17, 1997.

¹⁹⁸ Owned by General Motors of Detroit, Michigan. Manufactures car harnesses.

¹⁹⁹ Human Rights Watch interview, Manuela Barca Zapata, Ciudad Juárez, May 18, 1997. Barca Zapata worked at General Motors before they announced their policy change in March 1997.

²⁰⁰ Owned by Lear Corp. of Southfield, Michigan. Manufactures seat covers.

²⁰¹ Human Rights Watch interview, María Elena Gómez, Ciudad Juárez, May 17, 1997.

²⁰² Owned by National Processing Company of Louisville, Kentucky. Processes airline tickets.

sanitary napkin. She went on her own initiative, preferring this to "being reminded." Martínez became pregnant while she worked at NPC International. She was verbally abused and accused of producing less. Her shift was also changed without her consent in a manner which she considered punitive.²⁰³

*Denial of Maternity Leave Wages*²⁰⁴

²⁰³ Human Rights Watch interview, Perla Martínez, Ciudad Juárez, May 19, 1997. Maquiladoras sometime change workers' shifts, knowing that different or special child-care and transportation accommodations may not be able to be made, as a way to force women workers to resign.

²⁰⁴ Luis Alfonso Siquieros P., president of the Conciliation and Arbitration Board (CAB) in Ciudad Juárez, told Human Rights Watch that his office had investigated a few cases of women workers' not being allowed to return to work after their maternity leave ended. He said the cases were decided in favor of the women and that they were paid an indemnity. Human Rights Watch was unable to verify this information and Siquieros P. could provide no corroborating data. Human Rights Watch interview, Luis Alfonso Siquieros P., Ciudad Juárez, May 19, 1997.

Under Mexican labor law, a worker on maternity leave is entitled to receive her full wages.²⁰⁵ Usually, payment of these wages is shared by the government, workers, and employers through contributions to the social security system, which is also known as the Instituto Mexicano de Seguridad Social (Mexican Institute of Social Security, IMSS). However, to be eligible for the IMSS-funded maternity leave wage subsidy, a worker must have contributed payments to IMSS for thirty weeks in the twelve month period prior to taking maternity leave. If not, her employer must pay 100 percent of her maternity leave wage benefit.²⁰⁶ Thus, not knowing whether women applicants have the requisite time vested in the social security system to require full government payment of maternity leave wage, maquiladoras are in part motivated by a desire to avoid paying pregnant workers' mandatory maternity leave wages. They avoid hiring pregnant women so as to avoid paying maternity wages. When a pregnant woman does slip by, maquiladoras sometimes force her to resign before she can begin her maternity leave, thereby avoiding any monetary responsibility. In rare but troubling instances, maquiladoras allow women workers to take maternity leave but refuse to pay them while they are on leave.

Human Rights Watch received information about three cases in which workers alleged that factories denied maternity leave wages to them or their colleagues. These women were faced with either being fired before they could even begin their maternity leave or accepting conditions for maternity leave that contravene Mexico's federal labor code and left them without wages during maternity leave.

- Rosa Adolfo Suárez, twenty-two years old, began working at Industrial Hase²⁰⁷ in Ciudad Juárez in March 1997. She was about six months pregnant. She wore tee-shirts to hide her pregnancy for as long as possible because she was afraid of what would happen when her pregnancy was discovered. When her pregnancy was discovered, Adolfo Suárez said her line supervisor informed her that she could take maternity leave, but Industrial Hase would not pay her maternity leave wages because she entered pregnant.²⁰⁸ Because of this, Adolfo Suárez plans to take only one week off after her baby is born. Adolfo Suárez never signed a permanent contract and worries that she will not be allowed to return to her job after she gives birth.²⁰⁹

Retaliation for Speaking Out

Human Rights Watch was told of a disturbing case in which a woman worker reportedly attempted to intervene to protect the health of her pregnant co-workers. According to her account, the maquiladora responded by firing her:

²⁰⁵ Mexican Constitution, Article 123(a)(V); federal labor code, Article 170 (I(II), (IV) (V).

²⁰⁶ Food bonuses, overtime, attendance and punctuality bonuses, and retirement savings are exempted from the wage amount, decreasing the normal weekly pay amount. In addition, employers often register workers with IMSS as earning only the legal minimum wage to keep their costs low. From Anna Torriente, "Minimum Employment Standards in Mexico," National Law Center for InterAmerican Free Trade, September 1995.

²⁰⁷ Parent company unknown. Sews men's clothes under the brands Bugle Boy; Canyon River Blues; Northwest Blue, Built for Comfort; and The London Jean Company.

²⁰⁸ Under Mexican law, depending on how much time the female worker has accrued in the social security system, either the government pays all her wages during maternity leave or the corporation pays some portion or all of it. Whatever the case, women are guaranteed six weeks of paid maternity leave pre-partum and six weeks of paid maternity leave post-partum.

²⁰⁹ Human Rights Watch interview, Rosa Adolfo Suárez, Ciudad Juárez, May 18, 1997. December 1998, Vol. 10, No. 1(B)

- Marcela Gallego, thirty-eight years old, made wood doors and windows for the Industrias María de Tijuana²¹⁰ factory in Tijuana from May to October 1995. According to her account, two pregnant workers at Industrias María de Tijuana sometimes fainted from exposure to the paint thinner with which they worked. Gallego protested and demanded that they receive some form of protection. Her supervisor responded by telling her that it was none of her business and that it was common for pregnant women to faint. Gallego was fired shortly thereafter. She was told they no longer needed so many workers, but she was the only one fired to her knowledge. She said she signed her "resignation" papers because she believed that if she argued, the company would make her life difficult and prevent her from obtaining a job at another factory.²¹¹

STATE AND CORPORATE RESPONSES

We accept and know that there is pregnancy testing, but there is no way to combat it.

—Carlos Martín Gutiérrez Ruiz, labor rights ombudsman, Tijuana, Mexico, May 23, 1997

Response of the Government of Mexico

²¹⁰ Owned by Jeld-Wen Inc. of Klamath Falls, Oregon. Manufactures wooden doors and windows.

²¹¹ Human Rights Watch interview, Marcela Gallego, Tijuana, May 24, 1997. Human Rights Watch wrote to Jeld-Wen Inc. in July 1998. Human Rights Watch informed our findings. At the time that this report went to press, we had received no response. Human Rights Watch, *Human Rights Watch Report*, Vol. 10, No. 1(B) (December 1998), p. 41.

Since the publication of our August 1996 report, "No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector," the Mexican government has taken no substantive and consistent action to investigate, condemn, and end pregnancy-based sex discrimination in the maquiladoras, despite having acknowledged since 1994 and as recently as January 1998 that women face such discriminatory treatment in the hiring process.²¹² In fact, Mexican authorities have done just the opposite. Soon after the publication of "No Guarantees," the state Labor Department in Baja California issued a press release (*see* Appendix A for original press release and an English translation) indicating that pregnancy testing in the employment process was not illegal, but was in fact a corporation's "fulfilment of an authority foreseen by the labor law."²¹³ The press release went on to say that if an employed woman was fired for being pregnant, she was perfectly protected by the federal labor code and only had to come forward to report the abuse. Both of these assertions are inaccurate. First, hiring-process pregnancy testing is clearly inconsistent with the federal labor code's guarantees of equality between men and women and its specific prohibition against sex discrimination in the hiring process.²¹⁴ Second, based on our information, the existing labor rights mechanisms are unwilling to hear complaints of pre-hire discrimination and rarely sanction employers for discrimination that occurs once a woman is employed.²¹⁵ Third, the Baja Californian government's press release is belied by the fact that corporations openly admit to subjecting women applicants to pregnancy tests in order to deny them work and thereby avoid paying legally-mandated maternity benefits. The Baja Californian government's short statement completely ignores corporations' admission of discriminatory motivation and intent.

Furthermore, in a July 1997 memo from the Mexican National Administrative Office (MNAO) to the U.S. National Administrative Office (U.S. NAO), the Mexican government sought to avoid responsibility for this issue first, by complaining that the petition Human Rights Watch and others filed against Mexico was without merit under the labor rights side agreement to NAFTA; second, by misinterpreting existing statutes in a way that would permit pre-hire pregnancy testing; third, by arguing that Human Rights Watch's documentation was insubstantial; and last, by failing to provide concrete information about the ways in which they seek to prevent and remedy sex discrimination in the workplace.²¹⁶

²¹² Secretaría de Gobernación (Government Ministry), *Alliance for Equality: National Program for Women, 1995-2000* (Mexico City: Secretaría de Gobernación, 1996). *Alliance for Equality* is a five-year policy guideline prepared by the Government Ministry in Mexico, a cabinet level government agency. *Alliance for Equality* reports, "Women workers often see themselves subjected to discriminatory practices, as much in terms of being contracted as from dismissal in the case of pregnancy or breast-feeding" (p.89).

In June 1995, the Commission for Human Rights of Mexico City (CDHDF) urged that several entities in the capital city—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 proof of pregnancy status for applicants. The commission concluded that to require that women provide such information is " . . . a sexist act that violates the principle of social and legal equality between a man and a woman." Carta del Presidente de la (CDHDF) al Jefe del Departamento del Distrito Federal (Letter from the President of the CDHDF [Human Rights Commission of the Federal District] to the Head of the Federal District), in *La Gaceta* (Mexico City), June 1995.

In addition, a 1994 National Commission for Human Rights (CNDH) study that focused on the human rights of women in Mexico generally and examined the impediments to women enjoying full exercise of their human rights noted that "[a] recurrent discrimination is the requirement made of women of certificates of nonpregnancy at the time of hiring." From "Los Derechos Humanos de las Mujeres en México" (The Human Rights of Women in Mexico), National Commission for Human Rights, Mexico City, Mexico, July 1994, p. 26.

²¹³ Boletín Informativo, Dirección de Comunicación Social, August 26, 1996, Tijuana, Comunicado No. 221 (Informative Bulletin, Direction of Social Communication).

²¹⁴ Article 133(I) of the federal labor code establishes that an employer cannot refuse to hire someone for reasons of either sex or age.

²¹⁵ None of the Ministry of Labor officials with whom we met was able to offer anything other than vague recollections about successful cases of women alleging on-the-job pregnancy discrimination.

²¹⁶ July 11, 1997 memo from the director of the Mexican National Administrative Office (MNAO) to the director of the U.S. National Administrative Office (U.S. NAO).

Mexico argued that our petition against them questioned Mexican law and was therefore not acceptable under the labor rights side agreement to NAFTA. The Mexican government stated in this memo, "Giving pregnancy tests as a prerequisite for giving work is not prohibited." However, our petition, which was accepted and investigated by the U.S. NAO, argued that Mexico was failing to enforce clear guarantees of equality and prohibitions against sex discrimination already contained in the Mexican federal labor code. In short, we argued that Mexico was not applying its labor laws.

Second, Mexico has interpreted a provision in its labor code that permits pre-hire medical exams as permitting pre-hire pregnancy exams. In the July 1997 memo, the MNAO asserts that the federal labor code assures that workplace standards be issued by employers regarding "the carrying out of prior and periodic medical exams." The MNAO implied that this statute gives employers the right to perform any type of medical test they wish to give to job applicants, including pregnancy tests to exclude pregnant job applicants. To make this argument, the MNAO cites Article 423 of the federal labor code regarding the content of workplace regulations. This article states that workplace regulations will contain the time and form in which workers should submit to prior [to hire] and periodic medical exams, and the protective measures ordered by authorities. However, the MNAO cites this article in isolation. This article cannot be read independent of other articles in the federal labor code, such as Article 134(X). The only reasons specified in an express manner for a worker to submit to medical examinations are those in Article 134(X). Article 134(X) states, in part, that a worker (job applicant) must submit to workplace regulations on medical exams to establish that they are not suffering from "some disability or workplace illness, contagious or incurable . . ." The MNAO selectively cites the portion of the federal labor code that makes it seem that employers are permitted to practice any tests they wish, which is misleading.

Third, the MNAO argued that Human Rights Watch's findings were not relevant because they covered only a small portion of all the maquiladoras. However, Human Rights Watch's documentation shows a clear pattern of discrimination and clear government negligence to remedy this sex discrimination. There was no need for Human Rights Watch to establish the practice in every maquiladora in Mexico for Mexico to be in violation of the NAFTA labor rights side agreement.

Last, the July 1997 memo relays information about the government's inspection of 30 percent of the maquiladora plants by mid-1997. The MNAO asserted that of the 138,712 women covered under their investigation, 3,414 women workers were pregnant and 484 were lactating. The memo also indicates that they found some violations, which were being remedied.

However, their statistics did not address workplace harassment based on pregnancy status or tell how many women were in fact fired or, more likely, forced to resign. Most important, these statistics do not tell how many women were not hired in the first instance. Furthermore, since the Mexican government holds that obligatory hiring-related pregnancy testing is not discrimination, nothing that it did with regard to informing women (and manufacturers) of government prohibitions against sex discrimination condemned mandatory pregnancy testing in the hiring process.

While the Mexican federal government has done little to remedy pregnancy-based sex discrimination in the maquiladoras, the Mexican Congress has turned its attention toward this problem. On June 23, 1997, a group of congresswomen from eight political parties in Mexico signed an agreement vowing to seek explicit federal regulations banning layoffs due to pregnancy and compulsory pregnancy tests. While this legislative clarification would be welcome, such practices already clearly contravene domestic and international law. This should in no way be understood to suggest that Mexico's existing law does not already prohibit such discriminatory practices. To our knowledge, at the date of publication of this report, no new legislation has been adopted in Mexico to remedy pregnancy-based sex discrimination.

Failure to Enforce Existing 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 4 of the constitution also 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." Article 3 of the 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 prohibits employers 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 18 of the federal labor code states, "In the interpretation of the norms of work one will take into consideration the purpose of Articles 2 and 3. In cases of doubt, the interpretation most favorable to the worker will prevail."²¹⁷

²¹⁷ Article 2 of the federal labor code states, "The norms of work tend to achieve equilibrium and social justice in relations between workers and patrons." Article 3 states "Work is a right and a social duty. It is not a commercial article, and requires respect for the liberties and dignity of the person who lends his services and it should be carried out in conditions that assure life, health and a decorous economic level for the worker and his family. Distinctions cannot be established between workers for motives of race, sex, age, religious creed, political doctrine, or social condition . . ." December 1998, Vol. 10, No. 1(B)

Despite these clear domestic prohibitions against sex discrimination, Mexican Ministry of Labor officials told us that practices to determine pregnancy status are perfectly legitimate because they are not explicitly prohibited under the labor code.²¹⁸ Even officials at the highest levels of the Ministry of Labor upheld this position. Under Secretary of Labor "A" Javier Moctezuma Barragán indicated that while post-hire pregnancy discrimination was very clearly prohibited by the law, there was no specific federal labor code provision that prohibited pregnancy testing in the hiring process.²¹⁹ This is also the point of view of others who work in the Ministry of Labor, including those in the inspectorate system who are charged with ensuring that companies are operating in accordance with the federal labor code. Isabel Wong, a labor inspector in Ciudad Juárez, told Human Rights Watch that pregnancy testing was not contemplated in the federal labor code and nowhere was it specified as being illegal.²²⁰ The labor rights ombudsman in Tijuana, who is responsible for giving workers free legal advice and, if requested by the worker, shepherding their cases through the Conciliation and Arbitration Board (CAB) process, agreed, telling us, "What is not explicitly prohibited in the law is permitted."²²¹

However, as argued, pregnancy testing intended to exclude women from the hiring process is already prohibited in the federal labor code under general guarantees of equality between men and women and under a specific prohibition against sex discrimination in the hiring process. The federal labor code explicitly states that an employer cannot refuse to hire someone for reasons of either sex or age.²²² Furthermore, pregnancy testing violates the spirit of the law. María Estela Ríos of the Asociación Nacional de Abogados Democráticos (ANAD) (National Association of Democratic Lawyers) has argued that pregnancy testing, although not expressly addressed, flatly contravenes the spirit of the labor law, which in part seeks to achieve social justice in relations between workers and employees.²²³ According to Ríos, labor law operates under the norms of public order, which means that one cannot commit acts that contravene the spirit or the letter of the law. Furthermore, Ríos argues, practices that are not expressly addressed within the federal labor code should be analyzed and decided on by analogy to determine prohibitions. One should look to the federal labor code for similarly situated people or situations for guidance.²²⁴ If there is a conflict on the law, the principle that most benefits the worker must prevail.

Given both the spirit and the letter of Mexico's federal labor code, obligatory hiring-related pregnancy testing contravenes the law. Mexican officials should act decisively to enforce these provisions of the law and guarantee women's right to nondiscrimination in the hiring process.

Failure to Make Available Mechanisms for Investigation or Adjudication

The government-run mechanisms that investigate and resolve cases of private sector labor disputes, which include disputes within the maquiladora sector, are 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.²²⁵ Human Rights

²¹⁸ Human Rights Watch interviews, Antonio Ortiz Gutierrez, president, CAB, Tijuana, May 23, 1997; Carlos Martín Gutiérrez Ruiz, labor rights ombudsman, Tijuana, May 23, 1997; and Isabel Wong, inspector of work, Ciudad Juárez, May 19, 1997.

²¹⁹ Human Rights Watch interview, Javier Moctezuma Barragán, under secretary "A," Mexican Ministry of Labor, Mexico City, May 27, 1997.

²²⁰ Human Rights Watch interview, Isabel Wong, inspector of labor, Ciudad Juárez, May 19, 1997.

²²¹ Human Rights Watch interview, Carlos Martín Gutiérrez Ruiz, labor rights ombudsman, Tijuana, May 23, 1997.

²²² Article 133(I).

²²³ See Article 2 of the federal labor code.

²²⁴ Human Rights Watch interview, María Estela Ríos, ANAD, Mexico City, May 27, 1997. ANAD is a co-sponsor with Human Rights Watch of the petition against Mexico to the U.S. NAO.

²²⁵ 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 noncompliance with the federal labor statutes.

The Office of the Labor Rights Ombudsman is obliged, among other things, to represent workers or unions, whenever they

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.²²⁶

are asked to do so, before any authority on issues which relate to the application of labor law. 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. See "No Guarantees" for a more detailed analysis of these offices.

²²⁶ Human Rights Watch interviewed the following Ministry of Labor officials: Luis A. Alonso Siqueiros Pérez, president of the CAB in Ciudad Juárez; Hugo Gamboa Amores, labor rights ombudsman in Ciudad Juárez; Isabel Wong, inspector of labor in Ciudad Juárez; Antonio Ortiz Gutierrez, president of the CAB in Tijuana; Carlos Martín Gutiérrez Ruiz, labor rights ombudsman in Tijuana; Javier Moctezuma Barragán, under secretary "A" at the Ministry of Labor in Mexico City; and Joaquin Blanes Casas, general director of the general division of the Federal Inspection of Work section of the Ministry of Labor in Mexico City, all in

According to Under Secretary "A" Javier Moctezuma Barragán at the Ministry of Labor, a woman alleging hiring process pregnancy-based sex discrimination would not be able to use these labor adjudicative structures because she had not established a labor relationship.²²⁷ No effective domestic protection of any sort exists for these women in Mexico. State-established dispute mechanisms disavow jurisdiction over such cases, although as the law is written, these cases fall within their scope. In practice, where individuals have not established a labor relationship, they cannot access such mechanisms for adjudication.²²⁸ Therefore, to seek a remedy for discrimination in the hiring process, a woman would have to hire a private attorney to sue a company, the cost of which would render this option inaccessible to the vast majority of those most affected.²²⁹

In practice, women alleging hiring process pregnancy-based sex discrimination have not been able to challenge such practices through the adjudicative structures established by the Mexican Ministry of Labor. Nor have the courts challenged the acquiescence of the executive in this area. These obstacles would not exist if the law were applied as written. Some relevant provisions of the federal labor code already address the period of negotiation to establish a labor relationship and indeed regulate the establishment of a labor relationship. Article 134(X and XI) establishes that employers have a right to subject workers to pre-hire medical exams to verify that the worker does not suffer from "some disability or workplace illness, contagious or incurable . . ." Article 133(I) establishes that an employer cannot refuse to hire someone for reasons of age or sex. This latter article enunciates and regulates a de jure prohibition against hiring-process sex and age discrimination derived from the constitution. Both these articles govern practices and conduct in a pre-hire situation and address protections for those who have yet to establish a labor relationship.

Mexico's federal labor code guarantees and establishes a right to redress for job aspirants in some instances.²³⁰ The federal labor code stipulates that even in a situation in which the individual has not established a labor relationship, that individual is entitled to access to labor tribunals and redress for violations of the code. The federal labor code sets out in Article 154 the conditions under which an employer is "obliged," where the job applicants have comparable qualifications, to prefer a "Mexican over a non-Mexican, those who have served satisfactorily for a great time, those having no other source of economic earnings and have in their charge a family and those who are unionized over those who are not . . ."²³¹ Article 157 gives individuals meeting the qualifications stipulated in Articles 154 and 156 (on the definition of a union) and who have not established a working relationship the right to present a case before the CAB for indemnization or reinstatement.

Similarly, women job applicants who are denied work because they are pregnant, like an individual having no other source of economic earnings and having in her charge a family, would expect that the government would remedy this breach of the federal labor code's guarantee of equality between men and women and prohibition against sex discrimination in the hiring decision. With the provisions of Articles 154, 156, and 157, the federal labor code already

²²⁷ Human Rights Watch interview, Javier Moctezuma Barragán, under secretary "A" at the Ministry of Labor, Mexico City, May 27, 1997. This practice was reaffirmed by the Mexican government itself in an October 14, 1997 memo from the Mexican National Administrative Office to the U.S. National Administrative Office, in which the Mexican government stated that there was "no legal mechanism by which a person may pursue a claim of preemployment gender discrimination prior to the establishment of the employment relationship" as stated in "Public Report of Review of NAO Submission No. 9701," January 12, 1998, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, p. 10.

²²⁸ Based on Human Rights Watch interviews with Luis A. Alonso Siqueiros Pérez, president of the CAB in Ciudad Juárez; Hugo Gamboa Amores, labor rights ombudsman in Ciudad Juárez; Isabel Wong, inspector of labor in Ciudad Juárez; Antonio Ortiz Gutierrez, president of the CAB in Tijuana; and Carlos Martín Gutiérrez Ruiz, labor rights ombudsman in Tijuana, May 1997.

²²⁹ In practice, recourse to the civil court system is not an effective remedy for people without economic resources. The government of Mexico itself recognizes that in practice there is no effective judicial remedy for hiring-process sex discrimination, as stated in "Public Report of Review of NAO Submission No. 9701," January 12, 1998, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, p. 10. October 14, 1997 memorandum from the Mexican National Administrative Office to the U.S. National Administrative Office.

²³⁰ ILO Convention 111 defines employment to include access to employment. Article 1(3) reads, "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 (emphasis added)."

²³¹ Human Rights Watch federal labor code.

contemplates that those who have not established a labor relationship will have access to adjudication and that those adjudicative structures will receive and investigate the allegations fully.

Clearly a lack of an established labor relationship in other instances, such as the one explained above, does not impede access to legal redress in Mexico. Mexico should equally enforce the law regarding sex discrimination and offer female job applicants the rights and protections the federal labor code affords them.

Mexican Ministry of Labor officials' failure to investigate and address pregnancy testing is a failure of political will, not of legal mandate. Pregnancy testing as practiced in the maquiladora context constitutes a form of sex discrimination and as such violates the federal labor code's guarantees of equal treatment and its prohibition against sex discrimination in the hiring decision. The labor code establishes rights and obligations during the formation of a labor relationship, so job seekers should expect to be protected by its terms. A component of that protection is access to labor adjudication mechanisms to remedy instances of sex discrimination against them, just as the federal labor code provides for those who have not established a labor relationship in other instances in which its terms are violated. The law itself creates the expectation that there will be a remedy.

International Human Rights Obligations²³²

Pregnancy as a condition is inextricably linked and specific to being female. Consequently, when women are treated adversely by their employers or potential employers because they are pregnant or because they may become pregnant, they are being discriminated against on the grounds of sex. Thus pregnancy-based treatment constitutes a form of sex discrimination: it targets a condition only women experience. Such treatment penalizes women exclusively.

²³²See "Human Rights Guarantees" for a more detailed analysis of Mexico's international human rights obligations, No. 1(B)

Pregnancy-based adverse treatment, including testing to determine pregnancy status, has both the intentional and unintentional consequence of discriminating against women. Sex discrimination is prohibited under the International Covenant on Civil and Political Rights (ICCPR),²³³ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),²³⁴ the American Convention on Human Rights,²³⁵ and the International Labour Office's (ILO) Convention 111 on Discrimination in Respect of Employment and Occupation,²³⁶ all of which Mexico has ratified.²³⁷

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. Nevertheless, passing legislation is not enough. A State's obligation to guarantee the rights of those within its jurisdiction also entails actively investigating the hiring processes of maquiladoras to ensure that these processes are in conformity with international standards and Mexico's labor code and therefore free from discrimination. Assuring freedom from discrimination also entails establishing effective mechanisms to enforce equality and to remedy sex discrimination when it occurs.

Failure to Guarantee

²³³ 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 . . ."

²³⁴ 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; (c) 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, "States 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; (c) The right to free choice of profession and employment . . ."

CEDAW prohibits intentional and unintentional sex discrimination.

Furthermore, the standard by which CEDAW measures and defines sex discrimination ". . . moves from a sex-neutral norm that requires the equal treatment of men and women by looking at measurements as between how men and women are treated to a specific recognition of the particular nature of discrimination against women, the particular obstacles that women face in trying to enjoy their rights on the same basis as men," Alice Miller, director, Women's Rights Advocacy Program of the International Human Rights Law Group, U.S. NAO testimony for public hearing regarding case No. 9701, Brownsville, Texas, November 19, 1997.

²³⁵ 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."

²³⁶ ILO Convention 111 in its entirety prohibits discrimination on several grounds and outlines government obligations to enforce this. 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 authoritative interpretation of conventions and recommendations.

²³⁷ Mexico acceded to both the ICCPR and the ICESCR on March 23, 1981, ratified CEDAW on March 23, 1981 and

Through its negligence, the Mexican government has failed to guarantee that female workers and job applicants do not face sex discrimination, in violation of Mexico's international human rights obligations. The ICCPR²³⁸ and the American Convention on Human Rights²³⁹ 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 has evolved to recognize that states are "obligated to investigate every situation involving a violation of the rights protected by [international law]."²⁴⁰ For example, the Inter-American Court of Human Rights in the late 1980s²⁴¹ offered commentary on the scope of states' duties "to ensure" the rights within the treaty to all persons within their jurisdiction.

The Court stated that a State "has failed to comply with [this] duty . . . when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."²⁴² Moreover, the Court required governments to "take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."²⁴³ This includes "ensur[ing] that any violations are considered and treated as illegal acts."²⁴⁴

Consistent with this reasoning, Human Rights Watch believes Mexico should be held accountable for persistent patterns of failure to guarantee equality before the law and protection against discrimination based on sex. If the state persistently fails to take reasonable measures to prevent, investigate, prosecute, or punish acts of discrimination, especially sex discrimination, when committed by private actors, this violates women's rights to nondiscrimination. Thus, what would otherwise be wholly private conduct is transformed into a constructive act of the state. "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or respond to it

²³⁸ 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."

²³⁹ 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."

Moreover, in its yearly review of the human rights situation in Mexico, the Inter-American Commission on Human Rights noted the pregnancy-based sex discrimination that maquiladora workers faced and urged the government of Mexico to "[e]nsure strict compliance by employers with national and international norms relating to employment in order to prevent the occurrence of discrimination against women in hiring and to promote a wholesome working environment which would provide greater safety for women and enhance their on-the-job performance." "Report on the Situation of Human Rights in Mexico," September 24, 1998, paragraph 640.

²⁴⁰ *Velásquez Rodríguez* (July 28, 1988), Inter-American Court of Human Rights (series C) No. 4, para. 176 (specifically discussing rights contained within the American Convention on Human Rights).

²⁴¹ *Ibid.* The Court offered this commentary in three cases decided in 1988-1989. The Tribunal found in these cases that the government of Honduras was responsible for a series of forced disappearances carried out between 1981 and 1984 by members of the Honduran military. It extended its commentary to cover the full scope of Article 1(1), which 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 discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

²⁴² *Velásquez Rodríguez*, para. 176 (referring to the American Convention on Human Rights).

²⁴³ *Ibid.*, para. 174.

²⁴⁴ *Ibid.*, para. 175.

as the [American Convention on Human Rights] requires."²⁴⁵ The government of Mexico first fails to enforce its law and second fails to make existing mechanisms available to remedy the sex discrimination.

Furthermore, in order to ensure that the human rights of people within a country's jurisdiction are protected, CEDAW obliges the Mexican government to set up effective mechanisms to remedy the abuse as well as enforce the remedy—which Mexico clearly has not done, given that women suffering preemployment sex discrimination, as the government admits, have nowhere to turn for legal redress.

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),²⁴⁶ the Universal Declaration of Human Rights,²⁴⁷ and the American Convention on Human Rights²⁴⁸ guarantee a right to privacy, which has been interpreted by the U.N. Human Rights Committee 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."²⁴⁹ The Human Rights Committee 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."²⁵⁰

As the right to privacy has been interpreted by the Human Rights Committee, 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."²⁵¹ 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.

U.S. NAO Process

This [sex discrimination in Mexico] is a serious issue, and we need to consult with Mexico as to the implementation of its employment discrimination laws. . . . This is exactly the kind of consideration that was intended in adoption of the NAFTA labor rights side agreement. The process is working and working well.

—U.S. Secretary of Labor Alexis Herman, January 12, 1998, Washington, D.C.

Apart from Mexico's international human rights and domestic obligations to investigate and remedy sex discrimination in the workplace, Mexico has obligations under the North American Agreement on Labor Cooperation Supplemental Agreement (NAALC) to the North American Free Trade Agreement (NAFTA). The NAALC calls on the U.S., Mexico, and Canada, among other things, 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 . . ."²⁵² The NAALC mandates accessible tribunals to enforce domestic labor law, stating, "Each party shall ensure that

²⁴⁶ 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."

²⁴⁷ 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. . . ."

²⁴⁸ 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."

²⁴⁹ "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.

²⁵⁰ *Ibid.*, p. 23.

²⁵¹ *Ibid.*, p. 21.

²⁵² North American Agreement on Labor Cooperation Supplemental Agreement to the NAFTA, preamble, p. 1.

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."²⁵³

On May 16, 1997, Human Rights Watch, the International Labor Rights Fund (ILRF),²⁵⁴ and the Asociación Nacional de Abogados Democráticos (ANAD) (National Association of Democratic Lawyers)²⁵⁵ submitted a complaint petition²⁵⁶ against Mexico that detailed widespread pregnancy-based sex discrimination in the maquiladora sector and alleged that the Mexican government was not enforcing its labor law to end these practices and had not established effective tribunals to remedy this discrimination, in violation of its NAALC obligations.

As a part of the U.S. National Administrative Office (U.S. NAO) fact-finding work, it held a public hearing in Brownsville, Texas (on the border with Matamoros, Mexico), on November 19, 1997,²⁵⁷ to gather information for its pending decision. During the hearing, women workers testified to the prevalence of pre- and post-hire pregnancy-based sex discrimination in companies along the border, including General Motors,²⁵⁸ Panasonic, and Landis & Gyr (now operating as Landis & Staefa). In addition, nongovernmental organization (NGO) experts from the U.S. and Mexico testified to the widespread and longstanding existence of pregnancy testing in the maquiladora sector and the failure of existing adjudicative structures to remedy it; Mexico's domestic prohibitions against sex discrimination; Mexico's obligations under international human rights law to remedy sex discrimination; and Mexico's obligations under the NAALC to end workplace sex discrimination and to establish effective tribunals to achieve this end.

To date, this U.S. NAO process has been limited by the government of Mexico's unwillingness to discuss enforcement of existing prohibitions against hiring-process pregnancy-based sex discrimination and insufficient political will on the part of the U.S. to be more demanding in its interaction with Mexico on this issue. As a result, both the findings of the U.S. NAO in response to our petition and the subsequent terms that were established to govern the consultation process are disappointing and inadequate to the task at hand. There is still no clear understanding regarding how Mexican enforcement of prohibitions against pregnancy-based sex discrimination, especially in the hiring process, will be achieved.

On January 12, 1998, the U.S. NAO issued a report of its findings on the petition. We welcome the report's affirmation that pre-hire pregnancy testing is widespread and its concurrence that discrimination on the basis of gender is illegal under the Mexican constitution and federal labor code. At the same time, the findings fell short by failing to recognize that the practice of mandatory pre-hire pregnancy testing is a contravention of Mexican law.

The U.S. NAO found

²⁵⁴ ILRF is a Washington, D.C.-based nonprofit nongovernmental organization representing human rights, labor, religious, consumer, academic, and business groups dedicated to ensuring that all workers labor under humane conditions with adequate protection of worker rights. It was founded in 1986 and concentrates heavily on issues of workers' rights and international trade.

²⁵⁵ ANAD is a network of legal professionals in Mexico committed to providing legal services, analysis, and litigation in the defense of democracy and human rights. Its approximately 230 members include some of the most prestigious human rights authorities in Mexico, including noted specialists in labor law, arbitration, and collective bargaining.

²⁵⁶ This petition was submitted for review on May 16, 1997, and accepted for review by the U.S. NAO on July 14, 1997. In a memo sent three days before the U.S. NAO accepted the petition from George Castañón Lara, director of the Mexican National Administrative Office (MNAO) to Irasema Garza, director of the U.S. National Administrative Office (U.S. NAO), Castañón Lara argues that the petition against Mexico submitted by Human Rights Watch et al. should not be accepted for review because the petition questions Mexican labor law and not its application, which goes beyond the realm of the North American Agreement on Labor Cooperation. In this memo, Castañón Lara pointed out that pregnancy exams for the concession of a job have not been prohibited by law. The memo acknowledges that the government of Mexico does not consider pregnancy testing in the hiring process to constitute a violation of its labor law.

The July 1997 memo from the MNAO misrepresents the basic facts of the petition Human Rights Watch and others submitted. Given the widespread nature of hiring-process and on-the-job pregnancy discrimination in the maquiladoras, Mexico is failing to enforce the anti-discrimination components of its federal labor code. Existing labor tribunals are not accessible to people who have not established a labor relationship (of which pregnant women, or any other woman, denied work because of actual or imputed pregnancy status fall) and the heads of these tribunals have displayed biased attitudes regarding post-hire pregnancy discrimination, that is adjudicable in these fora. Our petition finds that Mexico clearly fails to apply its own federal labor code.

²⁵⁷ This hearing was called at the request of the petitioners.

²⁵⁸ This worker began working at a General Motors-owned plant before their new nondiscrimination policy was announced in

- (1) The Mexican constitution and the federal labor code prohibit discrimination on the basis of gender.
- (2) Preemployment pregnancy screening is practiced in Mexico's maquiladora sector. There are differing opinions within the Government of Mexico on the constitutionality and the legality of the practice.
- (3) Post-hire pregnancy discrimination, in the form of unjustified dismissal for reason of pregnancy or pressure exerted on pregnant women to resign, violates Mexican law and may be challenged through the appropriate tribunals. In some cases it is apparent that relief has been obtained. However, it is also evident . . . that additional efforts need to be directed toward awareness programs for women workers, the protection they are afforded by the law, and the means and procedures by which they may seek redress.
- (4) ILO Convention 111, which has been ratified by Mexico, defines employment to include access to employment and has been interpreted to equate pregnancy discrimination with gender discrimination by the Committee of Experts. Pregnancy screening, however, has not been explicitly addressed by ILO authorities. CEDAW, similarly, has no explicit jurisprudence or interpretation on pregnancy screening.²⁵⁹

Unfortunately, the U.S. NAO review findings left several central points of our petition unanswered.

First, our petition argues that Mexico's labor code protects those who have not established a labor relationship, and therefore women who face hiring-process pregnancy-based discrimination should have access to adjudicative bodies for redress.

The U.S. NAO failed to issue any conclusions or findings regarding whether by law those who have not established a labor relationship are in fact protected by Mexico's federal labor code and therefore have a right to use adjudicative and administrative bodies established by Mexico's Ministry of Labor to resolve labor issues. Resolution of this question is essential to establishing the right to redress before administrative or adjudicative bodies for women discriminated against in the hiring process and to establish whether Mexico is meeting its obligations under the NAALC requiring access to tribunals for enforcing domestic law.²⁶⁰ Without this access, women are denied redress for sex discrimination in the hiring process.

As the Mexican government itself has admitted, there is no legal mechanism for women seeking recourse for preemployment gender discrimination.²⁶¹ This is because, according to the Mexican government, only individuals with an established labor relationship are protected by the labor code. Whether or not this category of people has the protection of the labor code is not based on the nature or merit of their claims but rather on whether the labor code protects job aspirants against discrimination for reasons of sex.

Second, the U.S. NAO overvalues Mexico's argument that what is not explicitly prohibited in the labor code is permissible. There are explicit guarantees of equality in Mexico's labor code. Moreover, the labor code clearly anticipates that situations will arise that are not explicitly treated therein. In this instance, the federal labor code offers clear instructions on what should happen in the absence of a specific prohibition: Article 17 of the federal labor code states, in part, that where there is not a specific prohibition against the practice being considered, "one will take into consideration measures that regulate similar cases, general principles from these ordinances (or regulations), the general principles of law, the general principles of social justice that derive from Article 123 of the constitution [enumerates categories over which the Mexican Congress should promulgate laws], jurisprudence, custom and *fairness* (emphasis added)." Article 18 of the federal labor code states, "In the interpretation of work norms one will take into consideration purposes signaled in Articles 2 [equilibrium and social justice between worker and employer] and 3 [work is a right and respect for the liberty and dignity of the person providing work is required]. In the case of doubt,

²⁵⁹ Public Report of Review of NAO Submission No. 9701, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, January 12, 1998, pp.43-44.

²⁶⁰ NAALC, Article 4(1).

²⁶¹ This practice was reaffirmed by the Mexican government itself in an October 14, 1997 memo from the Mexican National Administrative Office to the U.S. National Administrative Office, in which the Mexican government stated that there was "no legal mechanism by which a person may pursue a claim of pre-employment gender discrimination prior to the establishment of the employment relationship" as stated in "Public Report of Review of NAO Submission No. 9701," January 12, 1998, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, December 1998, Vol. 10, No. 1(B)

the interpretation most favorable to the worker will prevail (emphasis added)." The U.S. NAO report is silent on how Mexico interprets and applies these provisions of the labor code that could afford women greater protection against sex discrimination.

Third, we argue that Article 133(I) of Mexico's federal labor code explicitly prohibits sex discrimination in the hiring process. Article 133(I) forbids an employer from "refusing to accept a worker for reasons of either sex or age," explicitly applying to a pre-hire situation. The U.S. NAO failed to require Mexico to account for its interpretation and application of this critical statute.

Fourth, we argue in our petition that labor department officials at the CAB level in the areas we researched are biased and ill-informed about the illegality of post-hire pregnancy discrimination. One CAB official, in fact, argued that firing pregnant workers was legal. The U.S. NAO report concurred that post-hire pregnancy discrimination occurs and violates the law, but is subject to redress in the appropriate tribunals. However, the U.S. NAO report fails to comment on the quality of redress provided through these tribunals and to consider that bias in the resolution system and misinterpretation of the law may render this venue an ineffective avenue of redress for women victims of on-the-job pregnancy discrimination. Ignoring the bias of CAB officials, the U.S. NAO then fails to make recommendations to remedy it. Moreover, the U.S. NAO puts almost entirely on women workers the burden to know their rights and to exercise them, disregarding how a biased adjudicative process might in fact deter women from exercising their rights. On one hand, the findings urge the Mexican government to inform women of their rights with an information campaign. However, the findings do not acknowledge that those responsible for enforcing the labor law in Mexico do so inconsistently with regard to on-the-job sex discrimination and are themselves in need of explicit instructions from the federal government about what their duties and obligations are as officers of the state.

Human Rights Watch found cases of pregnant workers being targeted for mistreatment that was designed to force them to resign. Moreover, in investigations conducted in 1996 and 1997, we found ample evidence of inconsistency and bias in the adjudicative bodies that are charged with receiving complaints about on-the-job sex discrimination. Yet, to our knowledge, the U.S. NAO has requested from the Mexican government no proof of how it enforces its prohibitions of on-the-job sex discrimination and seems to think that existence of the prohibition is enough. The Mexican government claims that it investigated the maquiladora sector for post-hire pregnancy discrimination, found few violations, and corrected the violations it found.²⁶² The U.S. NAO accepts without further inquiry or comment the Mexican government's contention that it has conducted adequate inspections in the maquiladora sector for compliance with prohibitions against on-the-job sex discrimination, without requiring any substantive proof of the results (or the exact nature) of those investigations and how the violations were remedied.

Last, the U.S. NAO states that there is no clear prohibition under either CEDAW or the ILO regarding pregnancy *testing* specifically as a form of sex discrimination—as distinct from clear prohibitions against pregnancy discrimination (emphasis added). This is a false distinction.

²⁶² July 1997 memo from George Castañón Lara, director of the Mexican National Administrative Office (MNAO) to Irasema Garza, director of the U.S. National Administrative Office (U.S. NAO). This memo did not specify the nature of the violations Human Rights Watch the remedial measures taken.

In 1996 the ILO Committee of Experts clarified its understanding of the word "discrimination" indicating that it included treatment "based on marital status or, more specifically, family situation . . . as well as *pregnancy* and confinement (emphasis added)."²⁶³ It also characterized "indirect" discrimination as a practice that "refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics."²⁶⁴ With regard to work in the maquiladora sector, pregnancy status is irrelevant to the ability to perform the work. Further, the evidence is incontrovertible that pregnancy tests are used as a screening device and result in the denial of work opportunity for women. Mandatory pregnancy testing is a tool of sex discrimination.

The ILO's Convention 111 on Discrimination in Respect of Employment and Occupation²⁶⁵ does not refer to pregnancy testing, per se. Instead, it categorizes pregnancy discrimination as impermissible sex discrimination. Furthermore, on two separate occasions, the ILO Committee of Experts has indicated concern about pregnancy testing as a condition for employment by applauding countries' enactment of legislation prohibiting pregnancy testing as a condition for employment. In 1993 the committee noted with interest a Brazilian municipality's law that imposed sanctions on entities that required female applicants to provide proof of pregnancy status to obtain or retain work.²⁶⁶ In 1995 Colombia adopted a resolution that restricted the use of pregnancy tests as a condition of employment in both the public and the private sectors.²⁶⁷

Nevertheless, rather than list various potential forms of sex discrimination, Convention 111 defines sex discrimination as follows: "For the purpose of this Convention the term discrimination includes (1) *any distinction, exclusion or preference* made on the basis of race, colour, sex, religion . . . which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (emphasis added); . . ." Article 1(3) states, "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 (emphasis added)." The requirement that all women job applicants undergo procedures or reveal information to determine their pregnancy status is based on women's reproductive abilities. Pregnant women are then denied work based on their pregnancy status. On the most basic level, those reproductive abilities cannot be decoupled from being female. Only women can give birth. Therefore, such requirements are gender-based and have the effect of excluding women from job opportunities. In Mexico, pregnancy status, as determined through examination of the uterus, revelation of information about sexual activity, menses schedule, or birth control use, or testing of urine, functions as an abusive and arbitrary term or condition of employment.

The scope of Convention 111's Article 1(1) is to address conduct and practices that nullify or impair equality of opportunity or treatment in employment or occupation. Pregnancy screening is gender specific and hence a discriminatory hiring criteria. The express purpose of pregnancy testing of female job applicants is to detect pregnancy and deny women work on that basis. Using pregnancy tests as a condition for employment thus nullifies women's equal opportunity for employment.

While CEDAW makes no specific reference to pregnancy testing, its intent is to provide authoritative and comprehensive guidance on governments' obligations to remedy sex discrimination against women in all spheres of women's lives. CEDAW's definition of discrimination, like that of the ILO, is comprehensive:

²⁶³ International Labour Conference, 83rd Session, Report II (part B) Special Survey on Equality in Employment and Occupation in Respect of Convention No. 111 (Geneva: International Labour Office, 1996), p. 15.

²⁶⁴ Ibid, p. 13.

²⁶⁵ Ratified by Mexico on September 11, 1961.

²⁶⁶ International Labour Conference, 80th Session, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva: International Labour Office, 1995), pp. 321-322.

²⁶⁷ International Labour Conference, 82nd Session, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva: International Labour Office, 1995), p. 300. Colombia adopted a resolution in November 1994 which specified that "high risk" employment referred only to those occupations identified in 1998, V994 Doc. No. 1(B)

For the purposes of the present Convention, the term "discrimination against women" shall mean *any* distinction, exclusion or restriction made on the basis of sex which has the *effect* or *purpose* of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, *economic, social, cultural, civil* or any other field (emphasis added).²⁶⁸

CEDAW seeks to remedy practices and conduct that either intentionally or unintentionally result in women's exclusion or result in the impairment of women's ability because of their sex to enjoy all their human rights. All women who are required to undergo pregnancy screening as a condition for employment are being discriminated against since pregnancy is a condition specific to females and the fact of pregnancy is irrelevant to whether the female applicant can perform the job. Male applicants are not asked about their reproductive decisions, nor is work granted to them on that basis. Second, the express and intended function of such exams is to weed out pregnant workers, to exclude them on the basis of their positive pregnancy status. The pregnancy exams are the tools to facilitate pregnancy discrimination. They are inextricably linked to this purpose. Consequently, any distinction made between pregnancy testing and pregnancy discrimination is indefensible.

Furthermore, the CEDAW Committee has criticized countries for reports that women are expected to provide proof of pregnancy status as a condition for employment. The committee paid particular attention to Mexico's January 1998 CEDAW compliance report. The committee wanted to know how Mexican law sanctioned [prospective] employers who "condition women's hiring on their nonpregnancy or unmarried status." The Mexican government responded disingenuously that the law provided for sanctions against such violations.²⁶⁹ In its concluding observations about Mexico's 1998 periodic report, the CEDAW Committee suggested that ". . . action be taken against employers who discriminate against women on the grounds of pregnancy. The women concerned should be supported, and society sent a clear signal that such discrimination is not to be tolerated."²⁷⁰ Regarding Mexico, the CEDAW Committee expressed "concern over reports that pregnancy tests were being used as a prerequisite for employment" and called such practices "flagrant discrimination against women." The committee went on to say, "The economic progress of Mexico could not be bought at the expense of young and pregnant women."²⁷¹

As a next step, the U.S. NAO recommended the case for ministerial consultations between the heads of the labor departments in Mexico and the U.S.²⁷² The consultation process is meant to ". . . clarify the law and practice in Mexico on preemployment pregnancy screening and post-hire discrimination on the basis of pregnancy. The issues for consultation include the differing views of officials of the Mexican Government on the legality and extent of pregnancy screening and the extent of relief for post-hire pregnancy discrimination."²⁷³

On October 21, 1998, Mexico and the U.S. entered into an agreement (*see* Appendix J) that outlines the terms and conditions of the consultation process. This consultation process will last nine months, will include a public report on the conferences and outreach sessions, and has been endorsed by Canada. The implementing agreement, as it is written now, leaves very little hope that the consultations will result in sufficient action to end pregnancy-based sex discrimination in Mexico's maquiladora sector.

First, the process of consultation has been so broadened that it loses its focus. What began as a petition against Mexico and a review of how and whether Mexico meets its NAALC obligations through the enforcement of its labor law

²⁶⁸ CEDAW, Article 1.

²⁶⁹ "Answers of the Government of Mexico to the Consultation of the Committee on the Elimination of Discrimination Against Women" (CEDAW/1998/CRP.1/ADD.4), January 30, 1998, New York, New York, English version, p. 44.

²⁷⁰ Concluding observations of the Committee on the Elimination of Discrimination Against Women: Mexico. 14/05/98.A/53/38, paras. 354-427. (Concluding Observations/Comments, para 416.)

²⁷¹ United Nations Press Release, WOM/1020, 30 January 1998.

²⁷² Following the consultation process, should there be disagreement about the course of action needed, any party may request that an independent Committee of Experts be established to evaluate the record of the country making the request and that of the country that is the object of the request.

²⁷³ Public Report of Review of NAO Submission No. 9701. U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, January 12, 1998, p. iii. 58

and through making adjudicative bodies available to those whose labor rights have been violated has been turned into a general discussion about "(1) pregnancy discrimination in the workplace; (2) the extent for relief of post-hire pregnancy discrimination in Mexico, the United States, and Canada; (3) the legal mechanism by which laws against discrimination for reason of gender are enforced in the *three* countries; and (4) an exchange of views among the National Administrative Offices (NAOS) on the U.S. NAO Public Report of Review of Submission No. 9701 on which basis the United States sought ministerial level consultations (emphasis added)."

Second, preemployment pregnancy testing appears nowhere in the agreement as an explicit subject for consultation. While it is understood that the consultation process includes "the issues raised in Submission 9701," failure to include in a more specific manner the labor practice that affects the most women in Mexico and around which there is the most intransigence on the part of the government of Mexico does not facilitate achieving clarification on this issue. Leaving this practice out makes it appear that Mexico is not being scrutinized for its own enforcement failings. While the U.S. government may have some political rationale for this omission, this strategy threatens process transparency and increased accountability.

Third, whether the labor rights side agreement is ultimately a meaningful avenue for redress will be determined by its ability to respond swiftly to press offending parties to enforce local labor law. "Outreach sessions" and a "conference" are important vehicles for the dissemination of information on sex discrimination. However, the beginning point for these public fora must be respect for women's rights in the work force, including in access to employment. Equally important, these outreach sessions and conferences do not seem to allow for the direct participation of nongovernmental organizations, which might be offering opposing views to those of the government of Mexico.

It will be counterproductive ultimately to hold public meetings or conferences on this subject if there are no guarantees that the Mexican government is willing to change its position and begin to enforce its prohibitions against preemployment pregnancy-based discrimination. What must happen first is that Mexico changes its position and enforces its law. Otherwise, the U.S. government will facilitate Mexico's continued flouting of women's right to equality by appearing to be open to a reexamination and potential redefinition of behavior that constitutes sex discrimination. Human and labor rights standards and laws do not permit the Mexican government to redefine sex discrimination to escape its obligations. The U.S. government must not stand by idly while Mexico refuses to recognize and defend women's right to equality in the work force.

By failing to exercise greater leadership sooner through the U.S. NAO process, the U.S. government may have missed a historic opportunity to promote women's rights in the NAFTA context. Accepting this case for review, holding a public hearing, and corroborating the fact of pregnancy testing as a condition for employment were good initial steps. However, as they stand now, the plans for the consultation process seem unjustifiably limited. The results of the consultation process should not provide an opportunity only for conferences, tri-lateral meetings, exchange of technical information, or any other measures that do not begin from the premise that pregnancy testing is sex discrimination and illegal under Mexican law. The U.S. must use the consultation process to persuade Mexico to interpret and apply its domestic labor law in a nondiscriminatory manner.

The U.S. and Mexican governments are now involved in a consultation process that has no clear benchmarks for success and offers no real transparency on any issue except those of outreach sessions and conferences, the contents of which will be covered in a public report. The NAO is not a tribunal charged with rendering binding interpretations of Mexican law. However, to the extent that the U.S. NAO lays out a strong argument for why pregnancy testing should be considered illegal and discriminatory, even as it recognizes the Mexican government's assertions to the contrary, the better positioned the entity will be to urge the government of Mexico to remedy the problem during ministerial consultations. The results of the consultation process should be a clear and public commitment by Mexico to start enforcing the antidiscrimination provisions of its labor code in a way that remedies one of the most flagrant types of sex discrimination being practiced in Mexico today: pregnancy discrimination.

U.S. Government Response

In the past, the State Department's *Country Reports on Human Rights Practices* noted that pregnancy-based sex discrimination was a problem in Mexico's public sector and that nongovernmental organizations (NGOs) had investigated and complained about pervasive pregnancy-based sex discrimination in Mexico's private maquiladora sector. Nevertheless, the U.S. government has failed to condemn these practices vigorously or to take significant steps to hold U.S. corporations accountable for practicing sex discrimination abroad.

Separate from the U.S. NAO process, the U.S. government has refused to exert any pressure on the Mexican government to end its tolerance of widespread sex discrimination in Mexico. In fact, the U.S. government passed up a key opportunity to press for better labor rights protection at an April 1997 meeting on women and work hosted by the Mexican government for all signatories to NAFTA. In this venue, the U.S. government failed to speak out against or even to mention pervasive pregnancy-based sex discrimination in Mexico's private sector.

Not until a full year and one-half after the release of our first report did the U.S. raise this with the Mexican government. In August 1997, Deputy Assistant Secretary Steven J. Coffey, of the Department of State's Bureau of Democracy, Human Rights, and Labor, raised the issue of widespread pregnancy testing along the border in meetings with Mexican government officials, including the foreign minister and the head of Mexico's office on women's affairs. The Mexican government acknowledged the practice but promised only to look into setting up a study of the problem.²⁷⁴ To our knowledge, no such study has yet been initiated.²⁷⁵

Response of Corporations

Most maquiladora corporations in Mexico have not changed their policy with regard to this discrimination. Based on the evidence Human Rights Watch has documented, General Motors, which did pledge to discontinue testing women applicants for pregnancy and denying them work based on that status, seems not to have thoroughly implemented its policies. When contacted by Human Rights Watch about information found for this report, the vast majority of the corporations implicated in this report did not respond. The few that did respond either denied using pregnancy exams as a condition for employment, maintained that the use of mandatory pregnancy exams as a part of the hiring criteria and the denial of work based on that status was not illegal under Mexican law, or promised to investigate (*see* sample letter from Human Rights Watch in Appendix H and a sample response from a corporation in Appendix I).

²⁷⁴ Department of State NGO briefing, Steven J. Coffey, Principal Deputy Assistant Secretary, Bureau for Democracy, Human Rights, and Labor, Washington, DC, August 27, 1997.

²⁷⁵ Human Rights Watch wrote to and telephoned Steven Coffey's office in January 1998 to try to determine what actions the Mexican government had taken and how the U.S. government had followed up since his August 1997 visit to Mexico but was never able to reach Coffey. Human Rights Watch tried reaching Coffey's office again in mid-June to find out details, with little success. In August 1998, Coffey's office responded to our inquiries with a letter informing us of Labor Secretary Herman's request for ministerial consultations on this issue with her counterpart in Mexico. His letter referred additional queries to the U.S.

The background section of this report discussed the way in which pregnancy-based sex discrimination is fueled in part by corporations' desire to avoid paying the costs associated with complying with the Mexican Social Security law mandating maternity leave and maternity leave wages for pregnant workers²⁷⁶ and as a way to ensure that women workers will physically be able to meet high-pressure production goals. This was confirmed by the women workers themselves. Julia Muñoz, who works in the administration at BerthaMex²⁷⁷ in Tijuana, told Human Rights Watch that only women applicants for assembly line work are required to take pregnancy tests and that pregnancy discrimination is linked to high production demands: "Pregnant women are not contracted because they will ask for time off from work, either for visits to the doctor [for prenatal care] or for maternity leave. It is all about meeting production. In this factory, they calculate how many workers and how many hours it will take to complete a certain job. Each line worker has a certain amount that she must produce. Pregnant women cannot work when the quota is too high. There is no room for people to miss work, or not work to their fullest capacity."²⁷⁸

However, in the wake of our previous report, another rationale has emerged. As discussed in the section above on discriminatory practices, some corporations, such as Plásticos BajaCal in Tijuana,²⁷⁹ argued that pregnancy testing is necessary to comply with Mexican labor law mandating special protections for pregnant workers and their fetuses. They argued that in order to give pregnant workers physically less demanding or seated work, as is contemplated in Mexico's federal labor code, they had to know whether the worker was pregnant. Again, if corporations want to protect women workers, they should provide them with safe working environments and complete information on possible harm to their or their fetus's health and on the availability of work more suitable for pregnant women. This will create a work environment in which women will be able to decide when and if to reveal information about her reproductive status, without fear that revelation of such information will lead to their dismissal or other retaliation.

Notwithstanding corporations' arguments, workers' experiences also appear to contradict claims that corporations test women workers for pregnancy so they can be protected. A former line supervisor at Matsushita Electric Componentes de Baja California²⁸⁰ in Tijuana explained corporations' haphazard approach to safety:

There was a health and safety program at the factory. The company wanted to appear to be complying with the law. The company made no special provisions for pregnant women. As a supervisor, it was up to me to provide protection for pregnant workers. The supervisors were the ones who were responsible for protection policies, and policies concerning personnel issues, and this was a very individual thing. Some supervisors cared; other did not. No one ever monitored us for what were doing.²⁸¹

Maquiladora worker activists whom Human Rights Watch researchers interviewed also discounted corporate arguments that compliance with Mexican labor law justified pregnancy testing. Gloria Tello, a labor and women's rights activist in Mexico City expressed her skepticism: "Pregnancy testing after employment to protect workers? That's not what it's for—it's just for discrimination."²⁸²

²⁷⁶ Also see Appendix B: Responses from Corporations in "No Guarantees."

²⁷⁷ Owned by North American Communication of San Diego, California. This factory is divided into two sections. One section sews garments and the other folds and organizes promotions from banks.

²⁷⁸ Human Rights Watch interview, Julia Muñoz, Tijuana, May 22, 1997.

²⁷⁹ Human Rights Watch interview, Martha Harmon, general manager of Plásticos BajaCal, Tijuana, May 21, 1997.

²⁸⁰ Owned by Matsushita Electric Corp. of Osaka, Japan. Manufactures batteries and television components.

²⁸¹ Human Rights Watch interview, Artemio Osano, Tijuana, May 24, 1997.

²⁸² Human Rights Watch interview, Gloria Tello, director, Women's Project, Servicio, Desarrollo y Paz (SEDEPAC) (Service, Development and Peace), Mexico City, May 26, 1997.

APPENDIX A: BAJA CALIFORNIA PRESS RELEASE AND ENGLISH TRANSLATION

PREGNANCY TESTS FOR JOB APPLICANTS ARE LEGAL

*** The DTSP clarifies the news published in the international media.

*** The test is carried out for the women's own safety.

August 26, 1996

TIJUANA.—Responding to the news published by several sources in the national and international media concerning the illegality of carrying out pregnancy tests on women applying for jobs, the Ministerial Department of Labor and Social Security (DTSP) clarified that this practice is not illegal. It is a fulfillment of the authority granted by labor laws.

This was stated by the subdirector of that entity, Lic. Carlos Martín Gutiérrez. He specified that the purpose of this action is to ensure that once women are incorporated into their specific job tasks, none of their rights are violated. This could happen if a lack of awareness of their pregnancy put at risk the life and physical and mental health of the pregnant woman or her child.

He pointed out that the Mexican labor code, which is enforced throughout the country, addresses the norms in Title V, from Article 164 to Article 172, aimed at protecting women workers and maternity.

"Just the fact that the employer registers the women under the obligatory regime of the Mexican Social Security Institute fulfills the precepts which protect pregnant women. In that institution the employers are subject to the obligations issued in the Labor Law," he commented.

He said that the published news, "in a superficial way and without going into depth concerning the scope of our laws," tries to give the impression that the maquiladoras, which are certainly subject to the jurisdiction of Mexican law, are violating general principles and the human and labor rights of women. This is false.

"Another mistaken notion in the news articles is the idea that women are working at their jobs, become pregnant, and for that reason alone are fired. If this were to occur, the workers in this situation are completely protected by the Law and all they have to do is put in a claim and the labor authorities will intervene to assist them," he explained.

ORIGINAL BAJA CALIFORNIA PRESS RELEASE

APPENDIX B: GENERAL MOTORS' LETTER ANNOUNCING NEW POLICY

APPENDIX C: ZENITH CORPORATION LETTER

APPENDIX D: INITIAL GENERAL MOTORS LETTER DEFENDING PREGNANCY EXAMS

APPENDIX E: LIST OF CORPORATIONS AND THEIR RESPONSES²⁸³

CORPORATION	DATE LETTER FAXED AND MAILED	RESPONSE
CIUDAD JUÁREZ		
Howe & Co.	January 1998	Claims it did not deny pregnant women applicants work. Letter did not address whether women applying for work had to undergo pregnancy exams as a condition for employment.
Zenith Electronics Corp.	May 1998	NONE
Sensus Technologies Inc.	January 1998	NONE
Siemens Aktiengesellschaft	May 1998	Assures Human Rights Watch that all practices were in conformity with Mexican federal labor law. Promised thorough investigation.
Hubbel Inc.	January 1998	NONE
General Motors Corp.	January 1998	Reaffirms its commitment to equality in the hiring process. Denied lapse in policy. Said that urine samples from women applicants were used for drug testing
National Processing Corp.	January 1998	Denies pre- and post-hire pregnancy testing, including requiring women to show used sanitary napkins in order to retain positions.
Lear Corp.	January 1998	Denies pre-hire urine tests and post-hire sanitary napkin check as ever being practiced. Alludes to one or two policy adjustments which were not identified.
Thomson Consumer Electronics	January 1998	NONE
Pacific Dunlop (Ansell Perry)	July 1998	Argues that all practices with respect to employment of females are in full compliance with Mexican law. Argues that preemployment testing is permissible in Mexico. Admits to conducting such tests, but argues it is to protect pregnant workers, not to deny them work.
Intermex	May 1998	NONE
TIJUANA		
Alpha Southwest	January 1998	NONE

²⁸³ Letters were not sent to parent companies where 1) parent company was unknown; 2) maquiladora plant had closed; Human Rights Watch from U.S. NAO hearing in Brownsville, Texas, unless corporation appeared elsewhere in report (B)

Douglas Furniture of California	January 1998	Claims that it was not in violation of any law.
Industrial Arcos	May 1998	NONE
Rainbird	January 1998	NONE
ComAir Rotron Inc.	January 1998	NONE
Samsung Group	January 1998	Claims all practices are in conformity with local law. Denies asking women applicants whether they are pregnant, either in a pre-hire medical interview or during personnel interviews.
SAFT	July 1998	NONE
North American Communication	January 1998	NONE
Vertek International Custom House	January 1998	NONE
American Frame Manufacturing	January 1998	NONE
Sanyo Electric Co.	January 1998	NONE
Tagit Inc.	January 1998	NONE
Confecciones Paolas	January 1998	NONE
Matsushita Electric Corp.	January 1998	NONE
Tyco International	May 1998	In contradiction of information provided to Human Rights Watch in an interview with Tyco International's maquiladora Plásticos BajaCal officials on May 21, 1997, Tyco International denies that it conducts pregnancy tests, pre- or post-hire pregnancy exams.
Leviton Manufacturing	January 1998	NONE
United Solar Systems Co.	January 1998	Promises to discontinue discriminatory practices we outlined in our letter (pre-hire pregnancy testing; denial of work to pregnant applicants; asking women applicants whether they are pregnant on application forms).
Jeld-Wen Inc.	July 1998	NONE
Esselte Pemvaflex Co.	January 1998	NONE

REYNOSA

Magnolia International	May 1998	NONE
Precision Cable Manufacturing	May 1998	NONE
Johnson Controls	May 1998	NONE
Shin-Etsu Polymer America	May 1998	Admits that it tests female applicants for pregnancy but claims it is to give them accommodating work. Claims that it does not deny female applicants work because of pregnancy.
Zenith Corp.	May 1998	NONE
St. Mary's Sewing	May 1998	NONE
Duro Bag Inc.	July 1998	NONE

APPENDIX F: CORPORATIONS AND THEIR REPORTED PRACTICES

Required Urine Samples for Pregnancy Testing from Female Applicants

- In Ciudad Juárez, the following eleven factories: Zenco de Chihuahua (Glenview, Illinois-based Zenith Electronics Corp.), Sensus de México (Union Town, Pennsylvania-based Sensus Technologies Inc.), Bell Eléctricos (Orange, Connecticut-based Hubbell Inc.), NPC International (Louisville, Kentucky-based National Processing Co.), Favasa (Southfield, Michigan-based Lear Corp.), RCA Componentes (Boulogne, France-based Thomson Corporate Worldwide), Ansell Perry de México (Melbourne, Australia-based Pacific Dunlop Group), Berg Electric Intermex Manufactura (El Paso, Texas-based Intermex), Siemens Sistemas Automotrices (Munich, Germany-based Siemens AG), Vestiduras Fronterizas (Detroit, Michigan-based General Motors),²⁸⁴ and Promédicos de Juárez (Mexican factory now closed. Was owned by McGaw Park, Illinois-based Allegiance Health Care).
- In Tijuana, the following twelve factories: Douglas Furniture de México (Redondo Beach, California-based Douglas Furniture of California), Tijuana Industrial Arcos (San Ysidro, California-based Industrial Arcos), ComAir Rotron de México (San Ysidro, CA-based ComAir Rotron Inc.), Tijuana Samsung Electro-Mecánico (Seoul, South Korea-based Samsung Group), SAFT Componentes Técnicos (Romainville, France-based SAFT), BerthaMex (San Diego, California-based North American Communication), Sanyo Batteries (Osaka, Japan-based Sanyo Electric Corp.), Tagit de México (Los Angeles, California-based Tagit Inc.), Matsushita-Panasonic de Baja California (Osaka, Japan-based Matsushita Electric Corp.), Plásticos BajaCal (Exeter, New Hampshire- based Tyco International), Levimex de Baja California (Little Neck, New York-based Leviton Manufacturing Co.), and Unisolar (Troy, Michigan-based United Solar Systems Co.).
- In Reynosa, the following three factories: P.C.M. de México (Rockwell, Texas-based Precision Cable Manufacturing), Controles de Reynosa (Milwaukee, Wisconsin-based Johnson Controls), and Shin Etsu (Union City, California-based Shin Etsu Polymer America).

Examined Women Applicants' Abdomen to Determine whether Pregnant

- In Ciudad Juárez: Favasa (Southfield, Michigan-based Lear Corp.).
- In Tijuana: ComAir Rotron de México (San Ysidro, California-based ComAir Rotron Inc.).
- In Río Bravo: Fabrica Duro (Ludlow, Kentucky-based Duro Bag Inc.).

Factories also required women job applicants to answer questions about pregnancy status on application forms, during interviews with maquiladora personnel, during interviews with medical personnel, or sign forms indicating that they were not pregnant.

Required Women Job Applicants to Answer Questions About Pregnancy Status on Application Forms

- In Ciudad Juárez: Industrial Hase (parent company unknown).

²⁸⁴ General Motors has publicly declared that it unilaterally decided to stop inquiring about and refusing to hire women applicants based on their pregnancy status. General Motors' new policy was to be in full effect on March 1, 1997. The worker for the case that accompanies this reference started working at this General Motors-owned facility before implementation of the new

- In Tijuana, the following ten factories: Maquiladora California (San Diego, California-based Alpha Southwest), Silviana (parent company unknown), Tijuana Industrial Arcos (San Ysidro, California-based Industrial Arcos), Grupo Verde (now closed), Tijuana Samsung Electro-Mecánico (Seoul, South Korea-based Samsung Group.), Sanyo Batteries (Osaka, Japan-based Sanyo Electric Corp.), Matsushita Electric Corp. (Osaka, Japan-based Matsushita Electric Corp.), Levimex de Baja California (Little Neck, New York-based Leviton Manufacturing Co.), Unisolar (Troy, Michigan-based United Solar Systems Co.), and Industrias Ynos (Los Angeles, California-based Esselte Pemvaflex Co.).

Required Women Job Applicants to Answer Questions about Pregnancy Status during

Interviews with Maquiladora Personnel

- In Ciudad Juárez: Howe de México (Victoria, Australia-based Howe & Co.).
- In Tijuana, the following nine factories: Silviana (parent company unknown), Grupo Verde (now closed), Ensamblados Hyson (San Diego, California-based Rainbird), Tijuana Samsung Electro-Mecánico (Seoul, South Korea-based Samsung Group), Marcos Calidad (San Diego, California-based American Frame Manufacturing Co.), Sanyo Batteries (Osaka, Japan-based Sanyo Electric Corp.), Tagit de México (Los Angeles, California-based Tagit Inc.), Confecciones Paolas (San Ysidro, California-based Confecciones Paolas), and Industrias Ynos (Los Angeles, California-based Esselte Pemvaflex Co.).

Required Women Job Applicants to Sign Forms Indicating that they were not Pregnant

- In Tijuana, the following three factories: Maquiladora California (San Diego, California-based Alpha Southwest), Silviana (parent company unknown), and Tijuana Industrial Arcos (San Ysidro, California-based Industrial Arcos).

Applicants Had to Answer Questions during Medical Exam about Pregnancy Status

- In Tijuana, the following two factories: Microeléctrica de Tijuana (San Diego, California-based Vertek International Custom House) and Plásticos BajaCal (Exeter, New Hampshire-based Tyco International).
- In Reynosa: Industrias Valino (Harlingen, Texas-based Magnolia International).
- In Río Bravo: Costuras de Río Bravo (Edcouch, Texas-based St. Mary's Sewing).

During Personnel Interview, Applicants were Warned not to Become Pregnant

- In Reynosa: Zenith (Glenview, Illinois-based Zenith Corp.).

We found evidence of post-hire pregnancy-based sex discrimination in the form of questioning women workers about their pregnancy status, obliging them to undergo urine analysis to determine pregnancy as a condition for maintaining their jobs, obliging them to show their used sanitary napkins as proof of continued menstruation and non-pregnant status, or reports of harassment of pregnant workers:

Maquiladora Personnel Required to Determine Whether to Undergo Post-Hire Urine Analysis

- In Ciudad Juárez: Howe de México (Victoria, Australia-based Howe & Co.) and NPC International (Louisville, Kentucky-based National Processing Company).
- In Tijuana: Panasonic Batteries (Osaka-Japan-based Matsushita Electric Corp.) and Industrias Ynos (Los Angeles, California-based Esselte Pemvaflex Co.)

Maquiladora Personnel Required Female Workers to Undergo Inspection of Sanitary Napkins

as Proof of Nonpregnancy in order to Retain Work

- In Ciudad Juárez, the following four factories: Río Bravo Eléctricos (Detroit, Michigan-based General Motors),²⁸⁵ NPC International (Louisville, Kentucky-based National Processing Company), Favesa (Southfield, Michigan-based Lear Corp.), and Siemens Sistemas Automotrices (Munich, Germany-based Siemens AG).

Maquiladora Personnel Threatened to Refuse to Pay Maternity Leave Wages

- In Ciudad Juárez: Industrial Hase (parent company unknown).

Maquiladora Personnel Required Women Workers to Return on a Periodic Basis to Sign a Form

Indicating that they were Menstruating and not Pregnant

Medical or Other Maquiladora Personnel Asked Women Workers Whether They Were Pregnant

- In Ciudad Juárez: Siemens Sistemas Automotrices (Munich, Germany-based Siemens AG).
- In Tijuana, the following three factories: Panasonic Battery (Osaka, Japan-based Matsushita Electric Corp.), Plásticos BajaCal (Exeter, New Hampshire-based Tyco International), and Industrial Ynos (Los Angeles, California-based Esselte Pemvaflex Co.).

Fired Worker for Protesting the Conditions in which Pregnant Women Worked

- In Tijuana: Industrias María de Tijuana (Klamath Falls, Oregon-based Jeld-Wen Inc.).

²⁸⁵ In a March 1, 1997 letter to Human Rights Watch, General Motors committed to stop testing or inquiring about female applicants' pregnancy status and denying them employment on those grounds. The General Motors worker with whom Human Rights Watch spoke who had to show her used sanitary napkin to verify her pregnancy status testified that this incident occurred

Publicly Upbraided Women Workers for Becoming Pregnant

- In Ciudad Juárez: Siemens Sistemas Automotrices (Munich, Germany-based Siemens AG) and NPC International (Louisville, Kentucky-based National Processing Co.).
- In Reynosa, the following factory: Delnosa (Detroit, Michigan-based General Motors).

Publicly Upbraided Pregnant Women Workers for Producing Less

- In Ciudad Juárez: Siemens Sistemas Automotrices (Munich, Germany-based Siemens AG) and NPC International

Publicly Upbraided Worker for Becoming Pregnant and Refused to Let

Pregnant Worker Take Appropriate Bathroom Break

- (Louisville, Kentucky-based National Processing Co.).
- In Reynosa: Delnosa (Detroit, Michigan-based General Motors).

Discrimination Reported in the U.S. NAO Hearing:

Women testified about preemployment or on-the-job pregnancy-based sex discrimination in the following seven factories during the U.S. NAO hearing in Brownsville, Texas, on November 19, 1997:

Hiring-Process Discrimination:

In Reynosa: Delnosa (Detroit, Michigan-based General Motors): hiring-process pregnancy testing through urine samples²⁸⁶ and Panasonic (Osaka, Japan-based Matsushita Electric Corp.): required women applicants to answer question about pregnancy status on application.

In Matamoros: Controlam (Cleveland, Ohio-based Eaton Corp.): female applicant was not hired after her pregnancy exam came back positive.

On-The-Job Pregnancy Testing:

In Reynosa: Landis & Staefa (was previously operated as Landis & Gyr, owned by Zug, Switzerland-based Landis & Staefa AG): lectured newly hired women workers on the undesirability of pregnant workers; once infirmary opened, tested all previously-hired women for pregnancy; Lintel (ownership unknown): woman worker had to sign form saying that if she became pregnant during first three months of employment she would not be offered a permanent contract; Manufacturas Ilimitadas (ownership unknown): Woman worker forced to resign when she became pregnant.

In Matamoros: Sunbeam-Oster (Del Ray Beach, Florida-based Sunbeam-Oster): woman worker's contract was not renewed when managers discovered she was pregnant.

²⁸⁶ This woman worker began working at the General Motors-owned factory before General Motors announced its plan to stop Human Rights Watch applicants for pregnancy and denying them work on that basis. December 1998, Vol. 10, No. 1(B)

Among the fifty factories from which we interviewed women workers, we were unable to document the use of pregnancy status as a condition for employment in just one: Industrial Hase/a.k.a. Nuevo Hase (Waukegan, Illinois-based Cherry Electrical Product) in Ciudad Juárez.

APPENDIX G: GENERAL MOTORS LETTER EXPLAINING TESTS

APPENDIX H: SAMPLE LETTER TO CORPORATION

APPENDIX I: SAMPLE LETTERS FROM CORPORATIONS

APPENDIX J: U.S. NAO MINISTERIAL CONSULTATION IMPLEMENTING AGREEMENT
U.S. NAO SUBMISSION NO. 9701²⁸⁷

MINISTERIAL CONSULTATIONS IMPLEMENTATION AGREEMENT

The Secretary of Labor of the United States of America and the Secretary of Labor and Social Welfare of Mexico, in accordance with the provisions of the North American Agreement on Labor Cooperation (NAALC), agree to carry out consultations on labor law dealing with women in the workplace, in the United States, Canada, and Mexico. With full respect for the sovereignty of the Parties and in the broad spirit of cooperation, the Parties agree to the following:

1. The Secretaries of Labor of the United States and Mexico and the Minister of Labour of Canada will designate officials to meet and confer on the issues raised in Submission No. 9701, including, (1) pregnancy discrimination in the workplace; (2) the extent of relief for post-hire pregnancy discrimination in Mexico, the United States, and Canada; (3) the legal mechanisms by which laws against discrimination for reason of gender are enforced in the three countries; and (4) an exchange of views among the National Administrative Offices (NAOs) on the U.S. NAO Public Report of Review of Submission No. 9701 on which basis the United States sought ministerial level consultations.
2. Mexico and the United States will each conduct information and outreach sessions at locations close to the U.S.-Mexico border for the purpose of disseminating information to workers, employers, government representatives and non-governmental organizations of both countries on the rights and protections afforded women workers of both countries. The speakers at the seminars will consist of representatives of those government agencies responsible for the enforcement of the relevant laws and other appropriate interested parties.
3. The Secretaries of Labor of the United States and Mexico and the Minister of Labour of Canada will instruct their respective NAOs to plan and conduct a conference, open to the public, at a location accessible to the citizens from the three Parties, on government mechanisms in each country that guarantee the respect and protection of the labor rights of working women and plans to ensure compliance with the laws that protect against employment discrimination. The conference will include the participation of government agencies responsible for enforcement of employment discrimination laws.
4. The Secretariat will complete a public report for the Ministers that reflects the issues considered in the sessions and conference referenced in paragraphs 2 and 3.
5. All of the above actions will be completed within nine months from the date of this agreement.

The signatories approve and adopt this agreement this 21 day of October 1998.

Alexis M. Herman
Secretary of Labor
United States of America

José Antonio González Fernández
Secretario del Trabajo y Previsión Social
México

The Government of Canada endorses this agreement and agrees to participate in the program of consultations agreed to by the United States and Mexico.

Lawrence A. MacAulay
Minister of Labour
Canada

ACKNOWLEDGMENTS

This report is dedicated to women maquiladora workers who, although they may not always win the fight against sex discrimination, never fail to see its injustice and to hope for a better future.

This report was written by LaShawn R. Jefferson and Phoebe McKinney. It was edited by Regan Ralph, executive director of the women's rights division, and Dorothy Q. Thomas, founding executive director of the women's rights division. Kerry McArthur and Laura Rusu, associates with the women's rights division, provided invaluable production assistance. Production assistance also provided by Patrick Minges.

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None of this work would have been possible without the commitment of border-area activists who every day fight for peace and justice by promoting respect for labor rights in Mexico.

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Human Rights Watch Women's Rights Division

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Patrick Mingos, publications director; Susan Osnos, associate director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

Its Women's Rights Division was established in 1990 to monitor violence against women and gender discrimination throughout the world. Regan E. Ralph is the executive director; LaShawn R. Jefferson is the deputy director; Samya Burney, Chirumbidzo Mabuwa, and Martina Vandenberg are research associates; Kerry McArthur and Laura Rusu are the associates; and A. Widney Brown and Roya Boroumand are consultants. Kathleen Peratis is chair of the advisory committee and Nahid Toubia is the vice chair.

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