

SEXUAL HARASSMENT: A MAQUILA REALITY

By: Colectiva Feminista Binacional,
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A Project of the International Labor Rights Forum (ILRF)

English version published May 2007

English translation by ILRF

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1. Introduction

This study was carried out in the Mexican cities of Tijuana, Ciudad Juárez and Torreón. The objective was to detect shortcomings in state, national, and international laws regarding the human, labor, sexual, and reproductive rights of maquila workers.

The organizations that participated in this study have over ten years of experience working on issues related to the maquila sector and the problems faced by workers.

We have found that maquila workers suffer daily from negative impacts on their health, exhausting and inhumane working hours, a deteriorating quality of life, and violence and sexual harassment in the workplace. Many maquila workers have experienced negative transformations in their family relationships and in the few ties that they have to their communities. These are the real effects of labor-economic policies derived from the internationalization of capital and the diminishing role of the state.

Two of the problems most frequently suffered by women in the workplace are discrimination and violence. These are not new problems, and are experienced by women from all walks of life, but have only recently been put on the political and labor agendas. The recent focus on workplace discrimination has been possible due to awareness-raising and training programs that have exposed the experiences of workers and motivated them to confront the problems of social and labor violence.

Beginning with an awakened conscience, many women have moved to denouncing such problems. Women are now beginning to understand that violence is a form of power exercised by men to prevent women from thinking and acting independently, so they feel less guilty and ashamed when they are harassed. As a result, some women have begun filing complaints regarding sexual harassment, firings based on pregnancy, and forced pregnancy testing.

When we presented complaints before the labor authorities, we experienced firsthand the shortcomings in Mexican laws such as the Constitution and the Federal Labor Law. Despite the fact that the Mexican government has ratified international conventions and treaties that promote the rights of women, these agreements are often ignored and overlooked due to prejudices, corrupt behavior, and the patriarchal conduct of supposed law-enforcement authorities.

The work done by the Comité de Obreras y Obreros en Lucha in Ciudad Juárez, Chihuahua, the team of Servicio Desarrollo y Paz in Coahuila, and the Colectiva Feminista Binacional in Tijuana, Baja California, constitutes a valiant effort to better understand the problem of sexual harassment in the workplace and relevant Mexican laws. This work was supported by the Coalición Pro Justicia en la Maquila and the Red de Mujeres Sindicalistas. The International Labor Rights Forum (ILRF) and General Service Foundation also supported the study through their solidarity and support with much-needed funds.

This report includes an analysis of the context and development of the maquila export industry in each region, the substantial changes in the composition of capital and in the gender division of labor, and the changes in investment in new branches of production.

In Torreón, workers' struggles reflect the historic labor tradition inherited from the campesino struggles of the 1950s. In Ciudad Juárez and Tijuana, in contrast, the labor conflict is manifested in a more spontaneous manner, evident in the demands for independent and democratic unions in struggles against company unions. There is also growing exposure of the omissive acts of the transnationals that are regulated by their own internal company codes of conduct and violate Mexican labor laws.

The lessons learned through strikes, work stoppages, mobilizations, in the organization and solidarity of families and the community to confront aggressions, and the support of national and international social organizations, constitute a real "school of struggle and organization" that has trained several generations of men and women as activists and social leaders. Currently, many of these leaders are working in new organizations participating in this great effort to promote labor justice and decent work.

As we studied the laws that regulate the employer-employee relationship, we found significant shortcomings in the laws, which make it possible for judges to act corruptly and rule in favor of employers and yellow unions.

One example of the ineffectiveness of Mexican law can be seen when women workers file complaints and seek justice in cases of firings due to pregnancy or sexual harassment in the workplace, because the Criminal Code prohibits sexual harassment, whereas the Labor Code does not.

Upon conclusion of this study, the three participating organizations came up with the following conclusions and proposals:

- In Ciudad Juárez and Tijuana, the Criminal Code should be modified in order to clarify the definition of sexual harassment and the type of punishment for aggressors.
- In Coahuila, the concept of harassment must be incorporated into the Criminal Code.
- Carry out a campaign, with trainings, forums, and seminars, to help women workers better understand their rights in this area.
- Seek alliances with feminist, human rights, academic, and research organizations that support these activities, to create support networks for these struggles.
- Form partnerships with legislators to help gain support for legislative initiatives addressing sexual harassment and sexual violence in the workplace.

Finally, we hope that the publication of this study contributes to and guides maquila workers and organizations that are demanding compliance with human rights and the elimination of discrimination and sexual violence in the workplace, so that they may improve their advocacy work and find more resources and solid arguments.

2. The Concept of Sexual Harassment

2.1 Definition

In this report, the term **sexual harassment** refers to any unwanted verbal, non-verbal, or physical sexual behavior with the intent or effect of hurting a person's dignity, particularly when it creates an intimidating, hostile, degrading, humiliating, or offensive environment.¹

There is a broad range of behavior that may be considered sexual harassment, and it becomes unacceptable if the conduct is unwanted or offensive to the targeted person. It is up to each individual to determine what he or she considers offensive. Sexual attention becomes sexual harassment once the target of this behavior has clearly indicated that she considers it offensive. At the same time, a single incident may constitute sexual harassment if it is serious enough. What distinguishes sexual harassment from friendly behavior is that the first is unwanted and the second is accepted and mutual.

Sexual harassment generally includes obscenities, gross jokes, and vulgar comments disguised as compliments or invitations. There may also be lascivious or aggressive glances, or touching. Sexual harassment can range from gestures, words, proposals, demands, and touching, to rape. Many people don't realize how offensive sexual harassment can be, and some even believe that their victims want to be harassed, or that they lack a sense of humor.

For centuries, sexual harassment was considered perfectly normal behavior. Most people believed that the target of harassment should not protest but rather feel flattered. This is the first fallacy that needs to be addressed.

Discrimination and gender violence are structural problems because they form part of the social system, and are generally invisible and accepted. They constitute the root of injustice and oppression and are expressed in the unfair division of labor and wealth, and in the abuses of power in relations between the sexes. Among the factors that maintain and reproduce discrimination and gender violence are the following:

- Women's lack of awareness about their rights and obligations and the legal mechanisms that protect them from discrimination and violence.
- Cultural traditions that maintain women in positions of subordination.
- Violations of the law, and a lack of enforcement mechanisms and institutions to protect victims.
- Society's acceptance of the responses of the authorities and of the power exercised by men to control women.²

¹ Guía sindical para abordar el acoso sexual en el trabajo, Secretaría Confederal de la Mujer (CC.OO.).

² Marco conceptual de la estrategia educativa de la Comisión de Derechos Humanos del Distrito Federal, México, 2005.

The consequences of discrimination and gender violence are only recently becoming known. In the workplace, at home, and in society, the list of damages is long: people submitted to chronic violence in the home show a weakening of their physical and psychological defenses, which translates into an increase in health problems. Victims of gender violence may suffer heart problems, gastrointestinal diseases, and respiratory problems, in addition to the traumas, wounds and lesions caused by physical violence.³

2.2 Sexual Harassment in the Workplace

One result of repeated sexual harassment is the transformation of the workplace into a damaging, unhealthy environment. Sexual harassment also lowers the victim's self-esteem and makes her feel insecure, humiliated, indignant, and helpless. This affects the worker's productivity and increases vulnerability to workplace risks.

Often, women workers say that they have not experienced sexual harassment, but it is important to note that this often means that they have learned to view such situations as natural and inevitable. For more than four decades, the women's movement and the feminist movement have tried to expose such problems. These movements have worked to raise awareness among women in the maquilas and teach them about their rights, in the hope that the workers may eventually stand up for themselves.

In the workplace, the rejection of or submission to sexual harassment is often explicitly or implicitly used as the basis for a decision that affects the victim's access to professional training, a job, a promotion, or a salary level.

According to data from the labor authorities, three of every four working women are harassed, one in every four of these victims is fired, and four in every ten victims quit as a result. While men may also be the targets of harassment, the vast majority of victims are women.

Although the Mexican Constitution establishes the equality of men and women before the law, sexual harassment is an unacknowledged form of conduct that in practice nullifies that constitutional equality.

According to Carol Wall, referring to the case of Canada, the term 'sexual harassment' was coined in 1975 – this is not to say that sexual harassment didn't exist before the 1970's; it had simply never been identified as a problem. If a problem is never addressed, it is hard to find a solution. The first harassment case was presented before the Canadian Human Rights Commission. It was considered to be a form of sexual discrimination and therefore illegal. Around 1987 the Supreme Court of Canada made it law that employers

³ Lozano, Itziar, La violencia de género y las políticas públicas en el municipio, *Modem-mujer*, Oct. 2003.

are responsible for ensuring a health working environment, free from discriminatory practices, including sexual harassment.⁴

Sexual harassment and violence become a form of control and an attempt to devalue women's work and dignity. In companies, factories, and unions, where the organizational structure is vertical and hierarchical, and where decisionmakers and managers are usually men, sexual harassment towards women becomes a manifestation of power. It is a discriminatory practice, characterized by the ability of others to make decisions regarding women's labor rights.

Researcher Mercedes Zúñiga argues that violence against women starts with control over their bodies: in the workplace, this may mean prohibiting them from moving from their work station, sitting down, getting thirsty, going to the bathroom, and talking. Control over the female body is also expressed in the violence linked to physical appearance, such as jokes and humiliations related to a woman's body.⁵ From the moment that women are hired, they are submitted to bodily inspections. They are questioned about their hormonal cycles and sexual practices. Their private lives must be shared with their employers, and their changing moods and emotions are pointed at with an accusing finger. A change in civil status can change a woman's employment options.

On more than a few occasions, women workers have felt forced to choose between submitting to sexual requests or losing some sort of benefit in the workplace. This kind of pressure and blackmail is generally carried out by supervisors or managers who take advantage of the power that they are given within the company hierarchy.⁶ Ultimately, labor relations and productivity are affected. Thus, sexual harassment is a labor problem, where not only the women workers, but also the company and the union suffer the consequences.

Little by little, women workers in the maquilas are starting to become more aware of the problem, and realize how they have been living with and accepting gender violence and discriminatory treatment. However, it has become apparent that many women workers still think it is natural to be asked for a certificate showing they are not pregnant as a requirement for being offered a job. They also find it natural for bosses and supervisors to target them with pressures and abuses. Some women begin to reflect on this situation, however, when they participate in workshops and training courses in which information about their rights as people and as workers is provided. Such trainings encourage them to think about what they have been experiencing as a violation of their human rights and their dignity. Often, it is only then that they propose to change the situation that degrades and oppresses them.

⁴ Wall, Carol, "Definiendo el hostigamiento sexual en un mundo cambiante: la experiencia canadiense." In: *Si te molesta... es hostigamiento sexual*. Working group against sexual harassment in the workplace, México, 2000.

⁵ Zúñiga, Mercedes, *La violencia de género y su expresión en el trabajo. Violencia en el trabajo: el género hace la diferencia. Dominación y resistencia de las trabajadoras en México*, Doctoral Thesis, Universidad Autónoma Metropolitana, México, 2004.

⁶ *Guía sindical para la construcción de ambientes laborales libres de hostigamiento sexual*, Red de Mujeres Sindicalistas, México, 2002.

2.3 Myths and Truths about Sexual Harassment

In the workplace, within organizations, and in society in general, sexual harassment is dealt with in a superficial manner due to myths and false beliefs. For example:

- **It is said that women provoke this kind of conduct by the way that they dress and behave, especially towards men.** In fact: Women have the right to decide how to dress and behave. This power conflict has led to a cultural confrontation. Men in positions of power justify their violent conduct by the dress and behavior of women.
- **It is said that women confuse normal behavior like flirting and gentlemanly conduct with sexual harassment.** In fact: Flirting involves mutual attraction. This kind of behavior is well received and makes a person feel good, and it respects the person's dignity. Sexual harassment, on the other hand, is a manifestation of one person's power over another person. It is degrading and hurts the victim's dignity.
- **It is said that the women who file complaints about sexual harassment are either inventing these stories, or using this mechanism as a form of revenge against a coworker.** In fact: When a man is accused of inappropriate or violent behavior against a woman, he launches a campaign to discredit her, accusing her or trying to thwart her right to defend herself.
- **It is said that women who complain are “delicate” or “too devout”, because they can't handle the interactions that occur in overwhelmingly male environments.** In fact: These comments reflect how difficult it is for workers to change their cultural frame of reference, when women workers show that they do feel comfortable in environments with strong language, double meanings, or references to their bodies.
- **It is argued that women use their sexuality as a tool to get promoted.** In fact: This belief invalidates any effort by women workers to be valued in their jobs as people who are intelligent and have professional skills. It shows that sexuality is considered more relevant than their professional capacity.

Addressing these myths makes it possible to deal objectively and neutrally with the problem and complaints that are filed regarding specific incidents.⁷

It is not easy to identify this behavior and point out how one particular action may qualify as sexual harassment. Still, we should keep in mind that:

- Sexual harassment in the workplace should be considered as a manifestation of power as well as a discriminatory practice that hurts most women workers.
- Sexual harassment in the workplace can vary in character and intensity. It can be very subtle or repeated, but one single incident may also suffice.

⁷ Guía sindical para la construcción de ambientes laborales, op. cit.

3. International and National Legal Framework

3.1 International Treaties and Conventions

Different human rights organizations around the world have recognized how serious and widespread the problem of violence against women is. The United Nations, World Health Organization, and UNESCO have denounced gender violence due to the serious effects it has on the world's female population, and have developed action proposals to promote social and legislative changes. These actions have set the stage to address a problem that was previously silenced or ignored.

The Mexican government is obliged to comply with the different international agreements and international conventions that aim to eliminate discrimination and gender violence and facilitate the regulation of labor relations with a greater degree of gender equality. These agreements include: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); ILO Convention 100 on Equal Compensation; ILO Convention 111 on Non-discrimination in Employment; and the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence Against Women (OAS).

The various world UN conferences on women's issues address violence against women as a specific area of focus.

Declaration on the Elimination of Discrimination Against Women

The United Nations General Assembly of 1967 declared that:

“Considering that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind, including any distinction as to sex,

Considering that, despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments of the United Nations and the specialized agencies and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women,

Considering that it is necessary to ensure the universal recognition in law and in fact of the principle of equality of men and women...

This Declaration proclaims the following:

Article 1

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Article 2

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

(a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

Article 7

All provisions of penal codes which constitute discrimination against women shall be repealed.

Article 10

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

(a) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

(b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;

Article 11

1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.

2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.”

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

This UN Convention was adopted on December 18, 1979, in New York. It was signed by Mexico on July 17, 1980, and ratified by said country on March 23, 1981.

The text establishes that:

“The States Parties to the present Convention,
Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

...

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

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.

Article 2

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.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view of achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

PART III

Article 11

1. 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;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”

Inter-American Convention for the Prevention, Punishment, and Eradication of Violence Against Women (Belem Do Pará, Brazil)

This Convention of the Organization of American States was adopted in Brazil on June 9, 1994 and ratified by Mexico on November 12, 1998.

An excerpt of the text follows:

“RECOGNIZING that full respect for human rights has been enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and reaffirmed in other international and regional instruments;

Have declared the following:

Chapter I. Definition and Application

Article 1

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2

Violence against women shall be understood to include physical, sexual and psychological violence:

- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place.

Chapter II. Rights Protected

Article 3

Every woman has the right to be free from violence in both the public and private spheres.

Article 4

Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- b. The right to have her physical, mental and moral integrity respected;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights.

Article 6

The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination.

Chapter III. Duties of the States

Article 7

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. apply due diligence to prevent, investigate and impose penalties for violence against women;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property.

Article 8

The States Parties agree to undertake progressively specific measures, including programs:

- b. to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women.

Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

Chapter IV. Inter-American Mechanisms of Protection

Article 10

In order to protect the right of every woman to be free from violence, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.

Article 12

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American

Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

IV World Conference on Women

The IV World Conference on Women was celebrated in Beijing in 1995. At this conference, it was determined that “Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms.”

The Beijing Action Platform established the eradication of violence against women as one of its strategic objectives. It also defined violence against women as the following:

The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work.

ILO Conventions

The International Labor Organization (ILO) defines discrimination as “Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

ILO Convention 111 from 1960 addresses discrimination in employment. It was ratified by Mexico in 1961. Article 2 of this Convention reads: “Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view of eliminating any discrimination in respect thereof.”

3.2 National Framework

Mexican Political Constitution

Article 1

Discrimination based on ethnic or national origin, gender, age, disability, social condition, health, religion, opinion, preferences, civil status, or anything else that goes against human dignity and aims to nullify or undermine people's rights and liberties is prohibited.

Article 4

Men and women are equal before the law.

“Every individual has the right to an environment adequate for their development and wellbeing.”

Article 123

“Every person has the right to work that is decent and socially useful. To that effect, the creation of jobs and social organization for work will be promoted, according to the law.”

VII.- “Equal work will be compensated with equal salary, without regard for sex or nationality.”

Federal Labor Law

Article 3

Women and men will enjoy the same rights and have the same obligations in the workplace. (This is a principle of equal equality consisting of neutral treatment, but in practice it produces unequal and unfair consequences for women).

Article 6

“The respective laws and the treaties celebrated and approved in accordance with Article 133 of the Constitution will be applicable to labor relations in everything that benefits the worker.”

Article 17

“If there is no express clause in the Constitution, in this Law or its regulations, or in the Treaties referred to in Article 6, the dispositions that regulate similar cases, the general principles that derive from said norms, the general principles of law, the general

principles of social justice deriving from Article 123 of the Constitution, jurisprudence, custom, and equality will be taken into account”.⁸

Article 51

“The following are causes for the cancellation of the work relationship, without responsibility for the worker:

I.-...

II.- “If the employer, his family members, or personal officers or administrators, lacking uprightness and honorability, commit acts of violence, threats, injury, mistreatment, or anything similar in the workplace, against the worker, spouse, parents, children, or siblings.”

III.- “If the employer, his family members, or employees, commit any of the aforementioned acts outside of the workplace, and they are serious enough that they make it impossible to work in that relationship.”

Article 132.

It is the responsibility of the employers:

VI.- “To give workers due consideration, refraining from mistreatment in word or action.”

The authorities should consider that sexual harassment in the workplace violates Article 123 because the employers are not complying with their obligation to guarantee a safe working environment.

SCJN Jurisprudence

The following legal thesis is presented to explain that the international human rights treaties that have been signed by the Mexican presidency and ratified by the Senate should be applied in a manner that broadens and guarantees said rights.

International Treaties: Their Application

“According to Article 133 of the Constitution, the Constitution and the laws of Congress and all treaties that are in accordance with these laws, celebrated by the president of the Republic with the approval of the Senate, will constitute the supreme law of the Union. When the international treaties regulate and broaden the fundamental rights established by the Constitution, they should be applied over the federal laws that do not do so.”⁹

⁸ “Mexicano esta es tu Constitución”, Cámara de Diputados, Miguel Ángel Porrúa, México, 1994.

⁹ CUARTO TRIBUNAL COLEGIADO EN MATERIA ADMINISTRATIVA DEL PRIMER CIRCUITO. Amparo en revisión 799/2003. Ismael González Sánchez and others. April 21, 2004. Unanimous vote. Ponente: Hilario Bárcenas Chávez. Secretary: Mariza Arellano Pompa. Semanario Judicial de la Federación y su Gaceta, Tribunales Colegiados de Circuito, Registro No. 180431, Novena Época, Tesis Aislada, XX, Sept. 2004, p. 1896.

Federal Regulation on Safety and Hygiene

The Federal Regulation on Safety, Hygiene, and the Working Environment says, in Article 1, that its objective is to establish the necessary measures to prevent occupational accidents and illnesses. It aims to ensure that work is carried out under adequate and safe conditions, according to the Federal Labor Law and international treaties ratified by Mexico. In Article 9, it says that the Secretary of Labor will carry out studies and investigations in the workplaces, in order to establish the basis for writing and updating the norms.

Federal Law to Prevent and Eliminate Discrimination

The Federal Law to Prevent and Eliminate Discrimination is a new law that entered into effect in June 2003. Article 1 explains that the law's objective is to prevent and eliminate all forms of discrimination that are used against any person, according to Article 1 of the Mexican Constitution, as well as to promote equal opportunities and equal treatment. Article 2 says that "it is the State's responsibility to promote conditions so that liberty and equal opportunities are real and effective. The public federal powers should eliminate those obstacles that limit their exercise and impede the full development of people as well as their effective participation in the economic, political, cultural, and social life of the country. They will promote the participation of the authorities of the other branches of government and individuals in the elimination of said obstacles." In Article 4, discrimination is defined as any distinction, exclusion, or restriction, based on ethnic or national origin, sex, age, disability, social or economic condition, health, pregnancy, language, religion, opinion, sexual preference, civil status, or anything else, which has the effect of impeding or annulling the recognition or exercise of the rights and real equal opportunities of persons. Article 9 is also important: "All discriminatory practices that aim to impede or annul the recognition or exercise of rights and equal opportunities are prohibited".

The Federal Labor Law, the Federal Law to Prevent and Eliminate Discrimination, and the Federal Regulation on Safety, Hygiene, and the Working Environment do not refer to workplace violence or sexual harassment. As such, the law falls short in addressing the need for protection for women's labor rights. Even so, there are linkages between these laws, such as those already indicated in the Federal Labor Law and Federal Regulation on Safety, and these things should be examined further in order to achieve justice for workers.

It is worth noting that the Federal Law to Prevent and Eliminate Discrimination incorporates the definition of discrimination according to the international legal framework, and emphasizes the obligation of the State to promote equal opportunity for all people and prohibition of discrimination. However, we lack sufficient understanding of implementation regulations of this Law and the resources available to ensure compliance.

As the Federal Regulation on Safety aims to ensure safety in the workplace, it is important to explore the possibility of including a norm against sexual harassment in the workplace as part of this Regulation.

Despite the Mexican government's promise to bring labor legislation up to par with ratified international conventions, current Mexican laws do not sufficiently address the issue of sexual harassment in the workplace, and therefore are not in compliance with international commitments.

Sexual Harassment and the Legal Framework in the State of Chihuahua

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4. Introduction to Chihuahua

Sexual harassment in the workplace has been a common problem experienced by workers ever since maquilas first appeared in the 1970s. Since that decade, the issue of sexual harassment has become increasingly complex, perhaps due to the fact that in the past, more maquila workers were women. While it is true that the harassment is not as blatant and direct as it used to be, the problem still exists in the maquilas of today. Unions should be including clauses in collective bargaining agreements aimed at protecting workers from such abuses, demanding that companies take measures to address the issue, and supporting workers who have been harassed. This is not the reality of the situation. Sexual harassment in the workplace is an issue very much forgotten and ignored both by labor authorities and by workers' representatives. Sexual harassment has forced many workers to leave their jobs, or else 'accept the harassment' in order to be able to maintain their employment at the maquilas.

Very few workers have denounced experiences of sexual harassment. Of those who have, many have been "swimming against the current" because the problem is virtually ignored by the labor and criminal courts.

Labor authorities barely recognize that sexual harassment is a problem. Sandra Ibáñez, Delegate of the Secretary of Labor in Ciudad Juárez, said: "Sexual harassment does not exist in the maquilas in Juárez, or at least in the STPS we do not have any documentation that it exists in the maquilas that are here. Maybe it used to happen, but the truth is that there is no evidence that it ever did. I invite the workers that are present here today to

come to STPS if they have problems with their supervisors or coworkers sexually harassing them.”¹⁰

For the reasons addressed here, we are provoking discussion on the issue in order to find the legal mechanisms available to aid maquila workers who suffer from such abuses, and also to find ways to lobby senators and representatives so that they pass more equitable laws.

4.1 Migration and Work

During the last thirty years, the development of Ciudad Juárez has been centered on the maquila export industry, resulting in rapid and problematic social change. The employment generated by the maquila industry increased migration to Ciudad Juárez, and the accelerated population growth led to setbacks in the provision of urban and health services and educational infrastructure. The sudden growth of the city simultaneously caused profound sociocultural shifts, leading to the transformation of Ciudad Juárez into a multicultural city.

Ciudad Juárez has experienced migratory phenomena for many years due to the ups and downs of the North American economy, but migration to and from the city increased dramatically in the last thirty years. With the introduction of the maquila industry, Ciudad Juárez became the stuff of dreams and promises, and Mexicans from all over the country made their ways to Ciudad Juárez with the hopes of improving their quality of life. The majority of this new wave of immigrants were young.¹¹

Today, Ciudad Juárez has a population of approximately 1.4 million people, of whom between 32-50% were born in other cities. Most come from rural areas or small towns. The city also has a considerable non-resident population, who frequently move to the city intending to cross the border to the US, but end up staying to live in Ciudad Juárez.¹²

The migratory processes described above have had major impacts on family life and on women living in Ciudad Juárez. Social vulnerability and risk increased for large sectors of the population, especially women (and particularly women who recently migrated). Women represent one of the most vulnerable groups in Ciudad Juárez, and they are the most frequent targets of violence. Many young women have been murdered in Ciudad Juárez in recent years, in a trend that has scandalized both Mexico and the US.¹³

¹⁰ In her speech at the Forum “Derechos de las Trabajadoras y Violencia de Género, *El acoso sexual: Un mito o una realidad*”. March 27, 2004, Ciudad Juárez, Chihuahua

¹¹ Las políticas públicas de juventud: Retos y perspectivas desde Ciudad Juárez. T. Almada e I. Marrufo.

¹² Informe de gestión, noviembre 2003-abril 2004. Comisión para Prevenir y Erradicar la Violencia contra las Mujeres en Ciudad Juárez (CPEVMCJ).

¹³ Políticas públicas de juventud: Retos y perspectivas desde Cd. Juárez.

4.2 Maquilas and Poverty

Historically, the economic development of Ciudad Juárez occurred primarily due to its location on the Mexico-US border, and also due to the US Bracero Program which increased migration across this border. In 1965, however, the Bracero Program ended, and in subsequent years the development of Ciudad Juárez was centered on the maquila industry.¹⁴

During the 1970s and 1980s, the majority of maquila jobs were given to women, and unemployment increased dramatically among the male population. This phenomenon resulted in a gender clash within families. The men were left without work, while the women became responsible for both financial support and home maintenance. Alcoholism increased alarmingly among the men, and many began to neglect their children, who were raised by “grandmothers, schools, and the streets.”¹⁵

The maquilas preferred to hire women because they considered women to be more competitive, tougher, and less likely to miss days of work. The incorporation of women into the workplace occurred under precarious conditions, failing to incorporate minimal guarantees for their health while expecting them to continue to carry out roles and functions in the home. As of yet, Ciudad Juárez has not created the necessary mechanisms or services to be able to truly speak of equal opportunities for men and women in the workplace.

In 1983, the disproportionate hiring of female workers began to balance out, and in 1990 both men and women were hired in more or less equal numbers. From 1983 to 2000 employment rates were high in the city and in every household, an average of 2.9 people worked in the maquilas. In the last decade, however, the percentage of women being hired in the maquilas has again increased and surpassed that of men, according to data from INEGI.

The US economic recession of 2000 severely impacted Ciudad Juárez. From October 2000 to December 2002, 96,111 jobs were lost, which represents 80% of the formal jobs lost in the entire state of Chihuahua during that time. Local estimates demonstrate that poverty more than doubled in the last two years due to unemployment in the maquilas.¹⁶

Poverty is a reality of life for most of the residents in this border city. In 2001, there were 85,000 people living in poverty, and at the end of 2003 the number had increased to 200,000.¹⁷

¹⁴ Informe de gestión CPEVMCJ.

¹⁵ Hugo Almada, speech before the CPEVMCJ.

¹⁶ Instituto Municipal de Investigación y Planeación (IMIP) de Cd. Juárez.

¹⁷ “Sabemos que salimos, pero no sabemos si vamos a regresar”, Mirna Ajo.

4.3 Formal and Informal Education

Illiteracy in the neighborhoods around Juárez varies from 13% to 28.5%, with most of the illiterates being women. About 92% of 6-14 year olds are in school, but only 41% of 15-19 year olds are still in school, implying a drop-out rate of 50% between those ages. In the state of Chihuahua, 69% finish high school, while the national average is 75%.¹⁸

These statistics reflect the difficulties encountered by young people trying to study in a border city, where family priorities are focused on basic survival, and school-age children often must work to help support their families. Drop-out rates and illiteracy are therefore very high, resulting in a social crisis that warrants urgent attention. School desertion has had worrisome implications for the population of youth in Ciudad Juárez. Since the 1980s there have been serious problems with drug addiction and crime among the youth of the city.¹⁹

The elementary school system does not include courses on sexual education, and the few courses in high school that should address these topics, such as Psychology, Social Sciences, and Biology, are often wrought with strong moral prejudices, manifested in the presentation of homosexuality as a sexual deviation, and the discussion of sexuality only in the context of human reproduction. Similarly, in informal education (from the family, the street, and the media) there are also prejudices that instead of informing, actually serve to misinform and confuse youth and adults about topics of sexuality. For example, there is insufficient information on AIDS, unwanted pregnancies, family planning, sexually transmitted diseases, and sexual violence.

4.4. Health and Social Security

Infrastructure and public policies oriented towards promoting the health and wellbeing of women are lacking. While there are centers that attend to women who have been raped (at NGOs like Casa Amiga and Programa Compañeros, and at governmental institutions like MUSIVI and Centro de Atención a Mujeres Víctimas del Delito Sexual de la PGR), and some mental health services at hospitals and clinics, sexual harassment is not considered a physical or mental health problem that needs to be addressed.

5. Sexual Harassment in Chihuahua

Excerpts from news articles:

Minor denounces sexual abuse by employers. The family of a 16-year-old girl presented a complaint against two employees of the Analex S.A. de C.V. company regarding the mistreatment that she was subjected to by these individuals. Mario Marínez, brother-in-law of the girl, said that she had been hired to work to promote the SERFIN Light credit card in a booth of a well-known shopping center. He said that they offered her 1500 pesos plus commissions, but after 15 days they had not paid her or her coworkers, so they went to the Analex offices.

¹⁸ IMIP, Radiografía Socioeconómica del Municipio de Juárez 2002.

¹⁹ CPEVMCJ

He explained that when they asked for their pay, they were physically and verbally mistreated, and told that they were fired. “The final straw was that they asked my sister-in-law to take off her t-shirt, which had the name of the credit card on it. My sister-in-law refused, and they took it off her by force, touching her breasts and hip, and they left her on a public road in only her bra.”
(*El Diario*, November 2001)

70% of women workers have been harassed. About 15 million women work, and according to data from the Red de Mujeres Sindicalistas, 70% of them have suffered sexual harassment in the workplace. Margarita de la Cruz, director of the Red, said that sexual harassment is a serious problem that remains hidden, is not punished, and every year causes hundreds of women to be fired or feel forced to quit their jobs.

Statistics from the International Labor Organization (ILO) show that sexual harassment is the reason why one in four women is fired and why four in ten quit. (*El Diario*, Jan. 30, 2005)

Victims of sexual violence are often hesitant to denounce the violation, because they feel ashamed and fear the reaction of their coworkers, or fear retaliation from the aggressor.

- In 2003, only nine complaints were presented before the Public Ministry. In 2002 there were 17 (according to the State Judicial Police).
- Casa Amiga has only documented five cases during the last trimester of 2002.
- The Chihuahuan Women’s Institute only documented three cases in 2003.²⁰
- Here at the Comité de Obreras y Obreros en Lucha, we have only documented two cases filed since 2004.

The ILO notes that the workers most likely to be harassed are widows, women separated from their husbands, women in predominantly male jobs, women in unstable jobs, or women who have recently entered the workforce. In rare cases, men are also harassed by women or by other men, or women are harassed by other women. Although sexual harassment can occur in any workplace or center of education, women in the maquilas continue to be the primary target.

6. Sexual Harassment in the Maquila Labor Conventions

6.1. Collective Bargaining Agreements

In Ciudad Juárez about 30% of the maquilas have unions (mostly affiliated to the CTM and CROC). “These unions are unconcerned with the safety of the women workers, whether it be in the workplace or in the public or private sphere.”²¹

The Confederación de Trabajadores de México is the main workers’ confederation, or union, that represents the majority of collective bargaining agreements. However, very little is known about these agreements because they are carefully guarded from the

²⁰ *El Diario*, April 11, 2003.

²¹ “Identidad y cultura en torno de las condiciones de vida y de trabajo del sector obrero de las maquiladoras de Ciudad Juárez”, P. Ravelo and S. Sánchez.

workers so as to protect the interests of companies. We were able to review two of these contracts, one from the CROC and one from the CTM. Only the CROC contract included a clause that provided minimal protection for workers against sexual harassment. It was not even mentioned in the CTM contract.

**Collective Bargaining Agreement
Union of Workers of SURGIKOS-CROC²²
CLAUSE 19**

“SURGIKOS and the UNION establish and agree that:

...

e) The good customs within SURGIKOS must be observed, maintaining due consideration for coworkers and superiors...

“The violation of any of these clauses will be punished by the cancellation of the violator’s work contract.”

6.2 Internal Workplace Regulations

About 70% of the maquilas have Internal Workplace Regulations, a form of labor “convention” that is created by the labor departments of companies and approved by the labor authorities. These regulations, which vary little from one maquila to the next, often establish many demands for workers, while doing little to ensure their rights. For this study, we analyzed five sets of regulations from five maquilas.

**Internal Workplace Regulation
Sistemas Eléctricos y Conmutadores-Delphi²³
DISCIPLINARY MEASURES**

Article 54.- The COMPANY can discipline its WORKERS by warning them, temporarily suspending them, or cancelling their work contracts, according to the seriousness of the violation.

To apply these sanctions, the COMPANY will investigate the facts and resolve the case, taking into account the gravity of the violation, the employee’s position and classification, his or her education and normal behavior; except in those cases when the verification of the violation that has been committed is obvious or when the employee accepts guilt and/or participation in the committing of the error.

In all cases, the WORKER will always have the right to tell his or her version and be heard.

Article 55.- To determine the disciplinary measures indicated in this regulation, the following will be taken into account: the seriousness of the violation committed, the circumstances of the case, and the background history of the WORKER. Any of the following sanctions could be applied, without this implying an order to be followed:

- Verbal warning
- Written warning

²² Pamphlet “Contrato Colectivo de Trabajo 1993-1995 SURGIKOS, S.A. de C.V., *Johnson & Johnson Company*”.

²³ Pamphlet “Sistemas Eléctricos y Conmutadores, S.A. de C.V., Reglamento Interior de Trabajo SEC-DELPHI”.

- Unpaid suspension for up to 8 days according to the severity of the violation
- Cancellation of the work contract with no responsibility for the COMPANY.

A sanction ranging from a verbal warning to 1-8 working days of unpaid suspension will be applied for:

...

2.- *Committing any obscene or immoral act or gesture, or using obscene language within the COMPANY installations and/or in any vehicle at the service of the company, whether during or outside of working hours.*

...

24.- *Putting indecorous or obscene inscriptions or figures on any part of the establishment, vehicle, building, or property of the COMPANY.”*

6.3. Codes of Conduct

Some companies have also signed on to international social responsibility regulations, which they have signed with the goal of competing on a global level. These norms have a variety of names, including: Codes of Conduct, Global Ethical Guidelines, General Business Principles, and Corporate Social Responsibility Guidelines.

Codes of conduct are often virtually unknown to the workers and are not legally recognized by the labor authorities. The companies, therefore, have no obligation to comply with them.

Some recommendations found in the codes of conduct include:

Philips²⁴ Code of Conduct and General Business Principles

Codes of conduct and ethical behavior speak well of those who comply with them. Being able to attract clients, suppliers, investors, and the best employees depends in large part on our reputation. That is why we are committed to strictly complying with the ethical workplace norms in our relationship with people and organizations...

This Code of Conduct hopes that we are all:

- Honest and trustworthy in our relationships
- Fair and considerate in our treatment of coworkers, clients, suppliers, and others.

Commitment to our employees:

a) We know that our employees are a key element. That is why we maintain an environment of good communication, commitment and responsibility, as well as the personal and professional development of the employees, taking advantage of their talents.

b) We will provide safe working conditions for our employees.

...

e) *No employee should be the target of sexual harassment in the workplace. Any kind of*

²⁴ Pamphlet “Código de Conducta Philips y Principios Generales de los Negocios”.

sexual (be it physical or verbal) insinuation is expressly prohibited. Retaliating against any employee that rejects, protests, or denounces any kind of sexual harassment, is also prohibited. The incident should be reported to the immediate superior, to the Manager of Human Resources, to the Ethics Coordinator in the workplace, and/or to the General Ethics Coordinator. Disciplinary action can go as far as cancelling the work contract of the person who commits such harassment.

EATON: Ethical Guidelines²⁵

Code of Ethics

EATON Corp. requires that all directors and employees of EATON and its subsidiaries observe the following principles of ethical behavior while carrying out their duties and functions.

1.- Compliance with the laws. We respect and observe the laws and regulations that are applicable to the companies that we own in different parts of the world.

...

6.- We respect Diversity and practice Equanimity in work relationships. In all parts of the world where we carry out activities, we are committed to respecting the interests of a culturally diverse population of employees, through practices that facilitate equal access and equal treatment, based on merit. In our company we do not tolerate anyone being the target of harassment or discrimination in the workplace.

Eaton Corp. also has a series of pamphlets and internal regulations, not recognized by the labor authorities, which are used to prevent and sanction sexual harassment.

It is worth mentioning that these regulations were made in maquilas where most of the workers are men – like EATON Corp.

7. Criminal Code of Chihuahua

Title 14: Crimes against sexual freedoms and safety

Chapter III. Sexual Abuses

Article 245

“He who without a person’s consent commits a sexual act with her, other than copulation, will be sentenced to between 6 months and 2 years in prison and a fine of 30-80 times the salary.”

²⁵ Pamphlet “EATON: Ética Global. Una empresa. Un compromiso. Guía Ética”.

Article 246 Bis.

“For the aforementioned crimes, in addition to the corresponding punishment, a prison sentence of 1-3 years and a fine of 50-100 times the minimum wage will also be applied in cases of:

...

III.- Violating the faith that explicitly or tacitly arises from any relationship inspiring trust and respect, and

IV.- When the means provided by a public position, profession, or teaching position are used.

In this last case, besides the corresponding punishment, the aggressor will be suspended from exercising that job for five years and will be removed from public office.

Chapter IV. Sexual Harassment

Article 247

“He who besieges a person with sexual intentions, despite their manifest opposition, will be punished with a prison sentence of 3 months to 2 years and a fine of 30-60 times the salary. If the harasser is a public servant and uses the means and circumstances that his position grants him, he will also be removed from that post.”

Commentary on the article:

This crime is, unfortunately, one of the hardest ones to prove. It is hard to prove in a criminal court because, first of all, most cases of sexual harassment happen in secret, and second, Article 247 of the Chihuahua Criminal Code does not specify what it considers to be lascivious conduct, nor does it explain how to differentiate it from a compliment or a nuisance. The only way that it can be proven is through videos, recordings, or witnesses, and in most cases, witnesses don't want to get involved. Even if there is evidence available, the law does not protect all victims. According to the way that Article 247 was written, the crime of harassment is committed in a relationship of 'superiority-subordinacy' which means that the law only punishes bosses who harass their employees (whether they are male or female). This excludes other kinds of cases, such as workers who harass other workers, or employees that harass their bosses. (Lic. Adela Lozoya).²⁶

²⁶ Comments from Adela Lozoya, attorney with the Crisis Center at Casa Amiga. Interview in *El Diario*, published April 11, 2003.

**LEGAL CONTEXT OF SEXUAL HARASSMENT IN THE WORKPLACE
(By Lic. Jorge Gaytan)**

The legal concept of sexual harassment is found in the Criminal Code of the state of Chihuahua. It refers to harassing someone, with sexual intent, despite their clear opposition.

This concept is quite new. Before the October 17, 2001 reform, Article 247 of the Code said the following: “He who with lascivious intent repeatedly besieges someone despite their clear opposition, taking advantage of his hierarchical position in the workplace, an education center, a domestic situation, or any other situation that implies subordination, causing any harm or damage, will be fined with 30-70 times the salary. If the harasser is a public servant and uses the means and circumstances that his position grants him, he will also be removed from that post”.

As one can observe, before the reform, the definition of sexual harassment required very specific elements for an act to be considered a crime, and even the punishment was minimal. In the new version, it is no longer necessary for there to be a relationship of subordination for it to be considered a crime, it simply must be harassment with sexual intent, without the passive target’s consent. In other words, now there is room to address sexual harassment between coworkers. In addition, it now contains the additional sanction of three months to two years in prison, besides the fine of 30-70 times the salary. The new version keeps the clause saying that if the harasser is a public servant, he will be removed from his job.

Women workers will have to file their complaints before the Agent in the Department of Sexual Crimes and Crimes against the Family at the Public Ministry. There, the public servants are legally obligated to address the complaint, provide all necessary measures to protect the victim, receive all proof of the crime, and collaborate with the investigators through the legal representative. This is established in Article 20B of the Constitution, which is quoted below.

These are the rights of the women who suffer sexual harassment in the workplace:

Article 20

...

b) [Rights] of the victim:

- I.- Receive legal advice; be informed about the rights granted by the Constitution; and, when requested, be informed about the progress of the criminal proceedings.
- II.- Collaborate with the Public Ministry; receive from them all of the proof that they have gathered during the prior investigation as well as the legal process itself. When the Public Ministry does not consider it necessary to provide all information, it must justify its refusal.
- III.- Receive urgent medical and psychological attention from the crime commission.
- IV.- Receive reparations for the damage. The Public Ministry will request reparations and the court will not be able to exempt the accused from paying this if a guilty sentence has

been issued. The law will set swift procedures to execute sentences in terms of reparations for damages.

Article 16 Bis of the Code of Criminal Procedure of the state of Chihuahua expands on the human rights of crime victims contained in the Constitution:

Article 16 bis.- From the beginning of the criminal proceeding, the victim of the crime or the directly affected family members, according to the case, have the right to:

I.- Receive legal advice from the Public Ministry.

II.- Read the file and obtain certified copies of what it contains.

III.- Name a representative for the purposes of clause II, who will also be empowered to make allegations on the same occasions when the defender does so.

IV.- Cross-examine the accused, the witnesses, and experts, and make pertinent observations in the other evidence-gathering processes.

V.- Collaborate with the Public Ministry, through a lawyer or a person of confidence who has been duly authorized, providing all of the available elements to prove the crime, the responsibility of the accused, and the damage that was caused.

To this effect, the victim may provide and object to evidence, file appeals, request measures to seize property and persons, and request the source of and amount of the reparations, so that the public servant can analyze these requests and send them to the judge.

When the Public Ministry considers it unnecessary to follow some of these proceedings, it should justify its refusal.

VI.- The victim or the family members, according to the case, will receive urgent medical and psychological attention, in the way established by the regulations issued for this purpose by the state executive.

VII.- The delivery of the items that were taken through the committing of the crime should be done through a receipt, title of property, or any other public or private document, with two witnesses, according to Article 48 of the Criminal Code, as long as it fully gives over the right of possession. Once the delivery has been requested, the investigating authority or judicial authority should issue a duly justified agreement on the admissibility or inadmissibility of this request within 24 hours. If it is admissible, the authority then has 24 hours to deliver the property to the victim, or issue the corresponding release order.

VIII.- Ask the Public Ministry to enact, or ask the judicial authority to enact, safety measures established by this Code and the State Criminal Code.

IX.- Under the terms of the law, challenge a decision to desist from the criminal case.

8. Conclusions and proposals

Sexual harassment has only been considered a crime in Mexico for the last decade. This came about as the result of pressure from groups of women workers and civil society organizations. However, despite their efforts, it is still not treated as a crime in all regions

of the country. In 2001, only 23 states punished sexual harassment with economic fines or imprisonment.²⁷

The Criminal Code of Chihuahua punishes sexual harassment in Article 247 of Chapter IV. Activists criticize this Article as ambiguous and difficult to prove. Furthermore, even after two reforms, the Article only names a violation as sexual harassment when it occurs in situations of hierarchy (when the aggressor is the boss and the victim is the subordinate). It does little to protect the victim.

The Article should be changed to be more precise about different situations of sexual harassment, and give the benefit of the doubt to the victim. It also currently lacks the ability to truly teach the aggressor a lesson because the punishment is only an economic fine.²⁸ (When this report was last edited, the sanction also included 10-40 days in prison).

Different civil society organizations, including Grupo 8 de Marzo and Mujeres por Juárez, advocated for an increase in the prison sentence to a range of 6 months to 3 years, and a monetary fine of 30-60 times the minimum wage. In the end, only part of the proposal was adopted. In the last reform, which was published on October 17, 2001, only the monetary fine was included.

The frequency of sexual harassment incidents in the workplace could be decreased with educational outreach based on respect and gender equality, as well as a strengthening of policies or codes of conducts in the workplace. Traditional stereotypes must also be overcome, now that our culture has changed. The time is long overdue that women know they have rights that must be respected. Finally, Article 247 of the Criminal Code should be improved to detail situations of sexual harassment and strengthen the punishment. Together, such measures could help eradicate the problem.²⁹

Sexual harassment is considered sufficient cause for cancelling a work contract or firing a worker (based on the justification of lack of integrity). It is considered a crime by the state criminal code.

In addition, the Mexican Supreme Court of Justice ruled that “to accuse someone of the crime of sexual harassment, it is necessary to show that the contact with the victim had lustful intent.” The Primera Sala of the Court specified that any act “though it be only a caress, touch, or rubbing, can qualify as sexual harassment, independently of the duration of the incident or the form of contact between the aggressor and the victim, as long as it does not aim to achieve copulation, because in that case it would be attempted rape. An accidental touch or rubbing, whether it be in the street or in some means of transportation, would not be considered sexual harassment, as long as it did not have the intentional element of trying to satisfy a sexual desire at the expense of the victim.”

This resolution has legal grounds, according to a report published in the Semanario

²⁷ Mexico has 31 states and one Federal District (Mexico City).

²⁸ Victoria Caraveo, Director of the Instituto Chihuahuense de la Mujer.

²⁹ Esther Chávez Cano, Director of Casa Amiga.

Judicial in January 2006.

We believe there is a need to pass stricter laws, with fewer requirements made of the women workers that file sexual harassment complaints. In practice, it is nearly impossible to prove these cases to the satisfaction of the courts due to the lack of legal tools currently available in the Criminal Code and the Federal Labor Law.

Sexual Harassment and the Legal Framework in the State of Coahuila

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9. The History of the Maquila Export Industry in the State of Coahuila

The State of Coahuila de Zaragoza is located in the central part of northern Mexico. Coahuila has 38 municipalities, and it is the third largest state in Mexico. Its northern boundary is marked by the Río Bravo and it shares more than 500 km of border with the United States.

The state of Coahuila is divided by the Sierra Madre Oriental mountain range. Its peaks form a number of mountainous regions with their valleys and gullies, and the roads run from the principal cities to Saltillo, the state capital, and cross the state to facilitate trade between Mexico and the US.³⁰

According to official data, Coahuila has an approximate population of roughly 2.3 million inhabitants, with a slightly higher percentage of women over men. The urban population is concentrated in the cities of Saltillo, Torreón, Monclova, Piedras Negras and Ciudad Acuña. Approximately 86% of the inhabitants of Coahuila live in places with more than 2,500 people. The population density is 15 people per square kilometer; nationally there are 50 people per square kilometer.

The population growth rate is 2.4%. Migrants come from the nearby states of Nuevo León, Durango, Veracruz, and Chihuahua. Migrants also come from other states in the south of Mexico, hoping to cross the border into the US.

³⁰ “Plan Regional Frontera Norte” by SEDEPAC, Proyecto Institucional 1998-2000, México, 1997.

The economically active population is 1,664,615; of these, 817,728 are men and 846,887 are women. The manufacturing industry (particularly the production of metals, machines, and equipment) is the sector that contributes the most to GDP. Other important sectors include agriculture, cattle farming, commerce, industry, mining, and crafts. The economy reflects that of the nation as a whole: the primary sector decreased from 26% in 1970 to 12% in 1990, and secondary and tertiary activities increased from 28% to 38% and from 36% to 47%, respectively. Women are most involved in agriculture, commerce, and industry—particularly the sewing industry.

Some sectors of Mexican agro industry benefited from the signing of the Free Trade Agreement with the United States and Canada (NAFTA) because they were able to have increased access to agrochemicals, irrigation technology, and industrial machinery. Agroindustrial production is concentrated in the most fertile zones of Coahuila—the micro region of Laguna, and the municipalities of Parras, Ramos Arizpe, and Arteaga in the central zone. The main agricultural products are corn, sorghum, beans, cotton, and fruits.³¹ Small producers face serious difficulties, because the government has eliminated subsidies for small farmers, and thus they now only produce for their own consumption or go to work for larger producers.

9.1 A Description of the Maquilas in Coahuila

In the state of Coahuila, workers in the railroad, mining, steel, agricultural, and electric industries have long been active in union organizing. Who doesn't remember, to mention just a few cases, the agrarian efforts of the Laguna region during *cardenismo*, the heroism of the miners' hunger caravan of Nueva Rosita, Cloete and Palau in 1951, or the greatness of the union project of the Monclova iron and steel workers in the 1970s? Maquila workers, despite the fact that union activity has been dormant for many years, have formed communities for which the union, farmworker groups, and popular organization are an integral part of daily life. In other words, these communities are part of a tradition that has the potential to be revitalized.³²

In Coahuila, the accelerated growth of the maquila industry has been a recent phenomenon. The number of these factories increased significantly in the 1970s, at a much faster rate than the national average and many of the other northern states. For this reason, the maquilas in Coahuila possess some characteristics that differentiate them from those in other regions.

Similar to the rest of the country, low wages, weak unions, repetitive tasks, urban and social deterioration, and sexual harassment towards women workers are all found in the maquiladoras of Coahuila. However, other aspects of the Coahuila maquila industry are more unique; in Coahuila, more than half of the maquilas primarily produce textiles and clothing, whereas in other regions most maquilas produce electronics and auto parts. This

³¹ Anuario Estadístico Coahuila de Zaragoza, Instituto Nacional de Estadística e Informática, INEGI, 2001, México.

³² Reygadas, Luis, Las maquiladoras de Coahuila: Un reto para la construcción de políticas públicas alternativas. En maquiladoras en Coahuila. Servicio Desarrollo y Paz, México, 1999.

is important to mention because the clothing industry is less complex and less monopolized than the electronics and automobile industries, and therefore it can use more national inputs and allow the creation of production chains that include small and medium-sized companies and agricultural producers. In fact, every part of the production chain can be found in Laguna, from the raw production of cotton, to cloth production, to the factories that assemble clothing, to those who wash and iron the final products.³³

The 100,000 jobs created by the maquila industry in Coahuila have come at a high social cost, especially in the Lagunera region and in Ciudad Acuña, where industrial development has occurred alongside acute social deterioration. For example, Torreón and its Conurbada area are frequently featured on the front page of the news, in articles about pollution problems, the exhaustion of the groundwater reserves, cases of domestic violence, drug addiction, gangs, and increased crime rates. The problems described above illustrate the effects of an industrialization process that has not been accompanied by investment in social services. Even the authorities recognize that the demands for social services exceed their capacity.

9.2 Organizing Experiences in Coahuila

There is no exhaustive documentation available about unionizing efforts and union participation rates in the maquilas of Coahuila, but it is worth mentioning several specific cases.

Juanita Soto, former secretary general of the Autonomous Union of Carrizo Manufacturing, shared the following testimony about the union, which was established in 1968 at the factory of the same name in Piedras Negras. “[In 1998] one day the company called the CTM to ask them to intervene, and the government supported the company and CTM in an effort to make the independent union disappear. The process ended on March 6, 1998 when they did not recognize the Secretary General of the union (after a rigged recount and much pressure towards the workers). About 100 Carrizo workers who supported the continuation of the independent union were fired and blacklisted, so that they have been unable to find new jobs in the city.” With the removal of the union, production collapsed, contracts were violated, economic problems arose, and the company declared itself bankrupt and suspended operations.³⁴

The only independent union that exists today in Coahuila was also formed in Piedras Negras. The union at the Dickies company, a textile factory employing 140 workers, has been active for 28 years. According to its legal advisor Roberto Jimenez, the Dickies company offers the best salaries and benefits of all of the maquilas in Piedras Negras. Maria Elena Contreras, secretary general of the independent union at Dickies, says: “Here, 99% of the unions are advised by the CTM, but in Dickies we don’t want to be related to the CTM.”

³³ Reygadas, *op. cit.*

³⁴ Interview with Attorney Roberto Jiménez in: *Maquiladoras en Coahuila*, SEDEPAC, México, 1999.

These independent organized movements search for an autonomous collective identity that helps distance workers from the practices of manipulation and clientelistic subordination, and gives workers power when confronting the paternalistic and authoritarian attitudes of the official unions and powerful political parties.

9.3 The Rise and Crisis of the Maquiladoras in Coahuila

In the 1990s, the state governments promoted a growth strategy focused on Torreón, Francisco I. Madero, San Pedro de las Colonias, and Matamoros, where the inhabitants, largely dependent on agricultural work, had recently felt the negative effects of falling international cotton prices.

According to the Secretary of Economic Promotion, Antonio Murra, Wrangler is one example of a production chain focused entirely in one location. This company invested \$55 million to bring its entire production chain to Coahuila. It built two sewing plants in Laguna, and a third in the northern part of the state. They buy cloth from Lajat and cut it with very sophisticated machinery, later distributing the sewing work amongst three sewing plants in the state and twenty others in the region, each of which has 500 workers. Once the pants have been sewn, they are returned and put through three washes, ironing, and anti-wrinkle processes that are completely automated. Before Wrangler's move to Coahuila, all of the cutters were in El Paso. Today, however, the product leaves Torreón and goes directly to the distribution centers, and is sent as far away as Europe. Hanes, Fruit of the Loom, and Dimit have recently started similar projects.³⁵

Laguna is now becoming the main exporter of denim in Mexico. Three national groups (Lajat, Libra 2000, and Pámanes) in Torreón are dedicated to this work and have received strong support from the state government. They have increased production from 12 million meters to 100 million meters of cloth, illustrating the dramatic growth in maquila industry to a point at which the production chain now includes cloth making, cutting, sewing, ironing, washing, and finishing touches. One of the US-based transnational clothing companies, Sara Lee, installed a textile plant called Confecciones de Monclova in Ciudad Frontera, Coahuila, more than ten years ago, with more than 2,000 workers.

The international economic crisis affected the maquilas in Mexico. In 2001, it led to the loss of 17% of the jobs (219,188 workers), equivalent to the firing of 609 people daily. These firings and plant closures occurred between October 2000 and March 2002, according to the Instituto Nacional de Estadística Geografía e Informática (INEGI). In Coahuila, companies decreased their workforce, number of shifts, and bonuses. Unemployment and social problems soared as a result. These changes had a regional impact on the productive scenario in the border region, as well as a national impact on the employment structure as a whole. In 2002, the situation appeared to improve slightly, and the previous levels of production intensity and quality were reestablished, but salaries did not recover. Unemployment continued to increase in the cities where maquilas had been

³⁵ Maquiladoras en Coahuila, op. cit.

concentrated, including Ciudad Juárez, Tijuana, Reynosa and Matamoros in Tamaulipas, and Ciudad Acuña and Monclova, in Coahuila.

The chart below illustrates that in 2001, when the crisis was most intense, at least 2,400 jobs were lost in Coahuila. In 2002, 4,830 people were fired, mostly in Torreón. In 2003, 1,086 workers were fired in Torreón.

Maquilas that have closed in recent years³⁶ (Ciudad Frontera, Monclova and Torreón)			
Name of Maquila	Workers left unemployed	Date	Place
Alta Loma de México /textiles	850	May 2001	Monclova
Macrosew /textiles	550	October 2001	Monclova
Confecciones de Monclova Sara Lee /textiles	1,000 (downsizing)	June 2001	Ciudad Frontera
Casolco /textiles	1000	May 2001	Gómez Palacio
Axa Yazaki /automobiles	350	2002	Cuatro Ciénegas
Eneritech /mechanics	700	2002	Ciudad Frontera
Ryerson	380	2002	Monclova
Pelsa 1	1,000	2002	Torreón
Libra /textiles	1,200	2002	Torreón
Naher Lajat	400	2002	Torreón
Jatrisa /textiles	500	2002	Torreón
Mi Niño /textiles	300 (downsizing)	2002	Torreón
Metales Procesados	36	2003	Ciudad Frontera
Mecánica Industrial Monclava	50	2003	Ciudad Frontera
Cableados del Norte Planta 2	1000 (downsizing)	2003	Torreón
Total 15 factories	Total 10,316		

9.4 The case of Confecciones Monclova

In 2000, SEDEPAC started providing organizational support and advice to a group of workers at Confecciones Monclova, at their request. This very intense process led to the creation of the Committee of Workers United to Improve CETRAUMP, with whom a work plan was formed with the goal of fighting for union rights and gaining control over a union that was in the hands of the CTM.

³⁶ Table made in 2004 by Jessica Ponce Ramírez and Eva Padilla Carrera of SEDEPAC, based on information that SEDEPAC is personally familiar with. “Downsizing” means that some workers were fired but the factory didn’t close.

This campaign to organize the workers at Monclova was plagued by countless abuses and violations of workers' rights. Twelve key organizers were fired in January 2001, and the leaders of the workers' committee were fired in 2002. This situation helps to demonstrate how difficult it can be to form and consolidate a union in the maquila.

In 2003, as a result of the international situation, Confecciones Monclova threatened to close. This led to a series of solidarity actions in the factory, with the support of international organizations, to pressure the plant to remain in the city. In June 2004, the company announced the definitive closure of the factory, despite workers' demands that they maintain operations and compensate workers who had suffered occupational accidents. The company closed in September of that year, compensating 100% of the fired workers, and promising to rehire 200 workers at the Monclova International factory. Ultimately, only 100 workers were rehired there. The workers who had suffered occupational accidents and health problems were not given compensation for those problems, nor pensions, and it was not possible to negotiate with the company or with Social Security about this issue. Meanwhile, solidarity organizations managed to negotiate with the company headquarters in the US, under external rules and not under Mexican law. In the end, the key demands were not resolved. This situation was a very important phase of work for CETRAUMP and SEDEPAC, and taught many important lessons to all those involved, giving SEDEPAC the foundation and strength to continue in the struggle to help other workers gain rights and live with dignity.

10. Legal Framework of the State of Coahuila

10.1 Case Studies

Case 1: "Exonerated by his peers"³⁷

Héctor Gálvez Tánchez, Court Magistrate in Torreón, Coahuila, was accused of sexual harassment by two female employees. The Judge had asked them to greet him with a kiss, dress in mini-skirts ("because that's how I like to see you"), and have sex with him. He was very vindictive when they refused to comply. He had faced similar charges before, in Tijuana.

The Federal Judicial Counsel, which is in charge of monitoring the work of the judges, thought that the complaint was well-founded and decided to punish Gálvez Tánchez by removing him from his position. They said, "the violations committed by the accused public servant are very serious and harm not only the image of the Judicial Branch, but also the functioning of the courts."

The Judge, however, appealed to the Supreme Court. Guillermo Ortiz Mayagoitia, Margarita Beatriz Luna Ramos, Juan Díaz Romero, Salvador Aguirre Anguiano and Olga Sánchez Cordero revoked the first decision and punished Gálvez Tánchez with a three month suspension, but did not remove him from his position.

³⁷ "Laxos contra el abuso sexual", *La Revista del Universal*, México, 2006.

Case 2: “Coahuila official accused of harassing girls”³⁸

The Attorney General detained 42-year-old Cristo Sierra Gloria, the person in charge of publishing the local Congressional debates, in 2002 when three parents presented complaints against him for sexually harassing their daughters, who were between the ages of 10 and 13. During the investigation, the agents found dozens of pornographic videos and magazines, photos of naked women, and letters with obscene messages apparently addressed to a minor, in his house. The three girls were harassed with phone calls.

Local legislature 54 determined that there was insufficient evidence to remove him from his position. “According to the Federal Labor Law, we can’t fire him unless a judge declares him guilty, and until that happens, we can’t do anything,” said the Head of the Main Congressional Office, Alfonso Martínez Pimentel. Considering the possibility that Cristo Sierra Gloria may have used the legislative building to carry out his criminal acts, Martínez Pimentel said that the PGJ would have the ability to investigate the accused’s offices, but that for that to be authorized there must be an agreement between the different parliamentary coordinators. “The legislative offices are inviolable unless the Junta de Gobierno allows an authority to enter and carry out required tasks,” he said. The PGJ delegate in the southeast region of Coahuila, Francisco Cortés, said that he could not keep Sierra Gloria in detention because he was not caught red-handed.

Both of these cases illustrate the impunity and failure to apply justice, as well as the inexistence of a law that punishes the crime of sexual harassment, in the state of Coahuila. In both cases, the Supreme Court and the Coahuila State Congress protected public servants instead of pursuing justice.

10.2 The Law of Assistance and Attention for the Prevention of Domestic Violence

The Law of Assistance and Attention for the Prevention of Domestic Violence was passed in Coahuila in 1997.

Article 1: “The objective is to establish the foundation and procedures of assistance and attention to prevent domestic violence in the state of Coahuila, in order to eradicate this problem between family members related by blood or by marriage or by living together.”

Article 3 defines domestic violence as “a recurrent, intentional, and cyclical act of power or omission aimed at dominating, subduing, controlling, or physically, emotionally, or sexually assaulting any member of the family (related by blood, marriage, or living together), inside or outside of the home, that tends to cause any of the following types of damage.” It lists three kinds of abuse: physical, psycho-emotional, and sexual. The

³⁸ Ramos, Leopoldo, *corresponsal en Saltillo de La Jornada*, México, February 11, 2005.

application of the law corresponds to the state executive and the Secretary of Government.

This law is important for sexual harassment cases because it sets a precedent in terms of defining domestic violence and the different forms that it may take. Still, it is limited to domestic situations, where the aggressor and the victim are related. This law complies with Mexico's commitment to harmonize its laws with the international conventions like CEDAW and the Belem do Pará Convention. More importantly, it opens a door to being able to incorporate other laws, like one against sexual harassment.

10.3 The Criminal Code of the State of Coahuila

Sexual harassment is not defined in the Coahuila Criminal Code. "Our culture says that women are weak, although they aren't, and the omission of the crime of sexual harassment is understood to be a kind of discrimination," says David Omar Cifuentes Bocardo, second inspector of the State Human Rights Commission. He notes that the Universal Declaration on Human Rights and the American Convention on Human Rights are international treaties, signed by Mexico, to which legislators should pay attention. "The treaties defend people's integrity, honor, reputation, and privacy, but these norms are currently inapplicable. The victims are at a disadvantage when they try to file complaints, and they are made to feel guilty and ashamed."³⁹

Workers who have suffered sexual harassment do not have options for legal recourse in Coahuila. Thousands of women workers suffer in silence the terrible practices to which they are subjected daily. Sociologist Rosario Varela says that the lack of laws makes it even harder for victims to denounce sexual harassment. "The environment does not make a person feel confident that if they denounce the incident, it will really be attended to; on the contrary, because there is no legal framework, people who are the victims of these practices think two or three times before complaining."⁴⁰

Sexual harassment should have been addressed in the Third Title ("Crimes Against Sexual Freedoms and Safety") of the Coahuila Criminal Code,⁴¹ where Articles 385 (referring to rape), 389 (abduction), 394 (rape of a minor) and 397 (sexual assault of a minor) address other similar issues. But, since sexual harassment is not explicitly mentioned, it means that prevention of and punishment for the crime is highly unlikely.

Erika, a worker from Tildan, Monclova, says: "How is it possible that the manager is rubbing my shoulders and sitting on my sewing machine and I, helpless, can't say anything because they will fire me? This makes me very uncomfortable and I don't know who to complain to, or what I can do."

³⁹ Morales, Luis Alberto, *Viola los Derechos Humanos omisión de acoso sexual en Códigos Penales*, El Siglo de Torreón, May 2004.

⁴⁰ Morales, Luis Alberto, *op. cit.*

⁴¹ El Código Penal del Estado de Coahuila, Gobierno del Estado de Coahuila, Saltillo, 1999.

Cynthia, a worker from Takata, recounts: “I was at the company for four years, putting up with my boss’s invitations and insinuations; he even sent pornographic messages to me by email. I decided to denounce it, and I was fired for not accepting this behavior. They call this being fired for disobeying the boss. It is unfair.”

We don’t know if anyone has presented a proposal to deal with this problem, so we have the urgent task of working with academics and human rights groups to put together a proposal for a legal initiative that can prevent and sanction sexual harassment.

10.4 Sexual Harassment in Different Mexican States

Sexual harassment is considered a crime in the states of Baja California, Colima, Chiapas, Chihuahua, Guerrero, Hidalgo, Jalisco, Morelos, Nuevo León, Mexico City, and Yucatán, among others. The laws defining the crime of sexual harassment are contained in the state Criminal Codes, and were passed between 1982 and 1995. In Colima, the law is called “Crimes against Sexual Liberty and Safety”; in Chiapas it is called “Sexual Crimes”; in Hidalgo, it is called “Sexual Use”; and in Morelos the law is called “Crimes against Liberty and Normal Psycho-Sexual Development”.⁴²

The 11th Title (Chapter IV, Article 271 bis) of the Criminal Code of Nuevo León, “Sexual Crimes”, reads: “He who assaults another person by asking them to execute any act of a sexual nature, taking advantage of his hierarchical position derived from educational or domestic relationships or subordination, commits the crime of sexual harassment.”

The punishment imposed for this sexual crime ranges from six months to three years in prison, and a fine of 40-100 days.

Most of the state laws that we reviewed said that if the aggressor is a public servant, and he uses the means or circumstances given him by his job, he will be removed (and prohibited from occupying any other public position for 1-2 years, in the case of Colima). In the case of the Morelos Criminal Code, when the harasser is a public servant or teacher, the penalty will be removal from his or her position.

In most states, the criminal proceeding is only begun at the request of the victim. This is a major obstacle, because most women who have been the targets of sexual harassment do not dare to denounce it.

It is worth studying these state laws in order to consider what concepts and content would be most appropriate for a proposed legal initiative in Coahuila.

⁴² Instituto de Investigaciones Jurídicas, web page.

11. SEDEPAC's Experiences with Cases of Sexual Harassment in the Maquilas

One of SEDEPAC's priorities in Coahuila is to raise workers' awareness about the discrimination and labor violence that they face. We have had the opportunity to accompany, advise, and follow up on several specific cases. The greatest obstacle to this task is that SEDEPAC does not have a lawyer on staff. The other significant problem is that, because there is no law against sexual harassment, there is no way for the Public Ministry and other judicial authorities to legally proceed when such cases are presented.

One of the cases we followed was that of María Luisa, a 21-year-old worker at FALCOMEX in Ciudad Acuña. On January 14, 2000, she was fired from FALCOMEX for having said that she had been the victim of sexual harassment by her supervisor and immediate boss Homero Saldaña, and also by the production supervisor, Manuel Moreno. The manager repeatedly propositioned her, standing in front of the machine that she operated. He repeatedly asked her out during working hours and insisted she have sex with him. When she refused, he threatened her, saying he wouldn't promote her, but that if she agreed to go out with him she would have all of the privileges that she wanted.⁴³ In November 1999, María Luisa was also harassed by Homero Saldaña. He made comments about her body, with clear sexual insinuations, that were aggressive and made her feel bad.

In February 2000, María Luisa went to the Public Ministry in Ciudad Acuña and filed a complaint against her bosses for sexual harassment in the workplace. The accused were subpoenaed, but they denied all claims and said she was lying as revenge for being suspended. The Public Ministry said they couldn't do anything because "there was no touching, only words. There had to be something more to intervene, because the law wasn't there to help in just any case." This means that sexual harassment is not addressed in the law, and therefore does not exist as a crime. "In the end, the reason I had to leave the company was that I denounced the sexual harassment of which I had been a victim. The management claimed they had suspended me because I didn't accept the company rules, because from then on I told my coworkers that they shouldn't put up with everything they said to us. They realized this, and started to argue that I wasn't following the company rules. They fired me." When the Public Ministry refused to take the case, a lawsuit based on unjust dismissal was presented in the Conciliation and Arbitration offices in Piedras Negras, asking for the reinstatement of María Luisa and an end to the sexual harassment of workers at FALCOMEX. In the end, she won this case and was compensated for being fired unjustly.

⁴³ Testimony of María Luisa, FALCOMEX worker, Ciudad Acuña, Coahuila, 2000.

María Luisa's case is just one of thousands. María Luisa was very brave and decided to take action to stop the abuse by her superiors, but there are many more workers that are afraid to take action.

In the interviews that we carried out with numerous women workers, one woman said: "I was harassed almost daily by my boss, who came into my work area and said things to me, beginning when I first greeted him. He squeezed my hand, and it was an obscene thing, not a normal greeting. Then the offensive words started, and he began to pursue me incessantly. In the beginning, I didn't pay attention, but then he started to touch me when I passed near him. I had to quit because it bothered me so much. It made me lose the job that I had worked so hard to get. Once the harassment started, my work changed; I couldn't produce as much, and I was always afraid of running into him during rest periods."⁴⁴

12. Conclusions and Proposals

One of the greatest obstacles in addressing the problem of sexual harassment is that the Coahuila legal system is characterized by a *machista* attitude which does not treat sexual harassment cases impartially or seriously. We must take advantage of the advances made in other Mexican states, where the concept of sexual harassment has been incorporated into the law, and develop our own legal proposal for Coahuila.

1. The concept of sexual harassment should be incorporated into the Third Title of the Coahuila Criminal Code, along with a comprehensive definition similar to that in the Criminal Code of Nueva León.
2. We should convene social, human rights, and academic organizations, as well as legislators, to create a comprehensive and advanced bill to defend and promote the human and labor rights of women in Coahuila.

Sexual Harassment and the Legal Framework in the State of Baja California

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13. Introduction to Baja California

This section is based on the work experience and the vision of the Colectiva Feminista Binacional ("The Collective") and the Centro de Información para Trabajadores

⁴⁴ Interview with worker in Torreón. Interview done by Eva Padilla of SEDEPAC, 2005.

y Trabajadoras (CITTAC). The Collective's mission is to support the construction of a new movement to support and strengthen the human, spiritual, and political aspects of various women's struggles in the border region of Tijuana and San Diego.

The Collective decided to form as a new group that acts as a space for constant reflection, education, analysis, and political discussion for women activists, feminists, Zapatistas, community members, environmentalists, visual artists, maquila workers, students, and others. The women who participate in the Collective come from different backgrounds but all believe in the importance of forming a group that is clearly feminist and autonomous and that supports both maquila workers as well as other women.

CITTAC is a workers' organization whose central objective is to create and support a space for organizing in the maquilas. It provides information, documentation, trainings, and legal defense for the human and labor rights of maquila workers. It presents legal cases before the local courts and the Federal Conciliation and Arbitration courts (JFLCA). CITTAC also researches the maquilas and informs the workers in order to contribute to their worker organizations and their struggles. Much of CITTAC's work and methodology is centered around violations of workers' Constitutional rights.

Democratic unions have gone through monumental struggles in Tijuana, such as the organizing drives at Plásticos Bajacal in 1993, Hyundai in 1994-1995, Ley Mex and Dae Woo 1996, and Hang Young in 1997-1998. All of these movements have been squashed by the CROC and the CROM unions, which are the unions most favored and supported by the government. These struggles, however, represent more than 16 years of experience in new methods of organization and resistance within the maquila sector, and have resulted in the formation of local organizations made up of workers, previous maquila workers, activists, feminists, Zapatistas, and others working in solidarity with this struggle.

This is the background of CITTAC. We are from the working class, and we are women. We are almost always excluded from the workers' meetings at the unions, because they only talk about male workers and don't take into account the particularities of being a woman in the workplace.

Baja California

Baja California is the 12th largest state in Mexico. It has approximately 2.5 million people in its five municipalities (Ensenada, Playas de Rosarito, Tecate, Mexicali, and Tijuana).

The average education level reached by inhabitants of this state is the second year of high school.

According to the Instituto Nacional de Estadística Geografía e Informática (INEGI), the industrial structure established in Baja California is already producing intermediate goods for the supply and production chains. The State and the transnational maquilas seek to consolidate entire production chains in Baja California for products such as electronics.

Besides maquilas, the region has agroindustrial facilities (where conditions are similar to or worse than conditions in the maquilas), and also produces glass, machinery, electrical equipment, ceramics, paper, beer, and wine.

There are more than 750 maquila factories in Baja California, and in Tijuana alone there are 650. These factories produce medical supplies, electronic parts, appliances, and auto parts, for companies like Hyundai, Samsung, Sanyo, Toyota, Panasonic, Sony, Hitachi, St. John, Rectificadores Internacionales, Sharp, Pioneer, Evenflo, Mattel, Aerodesign, Canon, Casio, Nelcor, JVC, Kiocera, Phillips, Vigobyte, Kenworth, and Mitsubishi. There are a total of 246,222 workers in these companies; 60% are women and 40% are men.

13.1 Tijuana: The World's Television Capitol

As a result of the North American Free Trade Agreement (NAFTA), Tijuana became one of the world capitals of television production. Baja California is one of the regions that produces the most television sets, although in fact a good number of these factories were already in place before 1994 when the "Free Trade Zone" regimen, which preceded NAFTA, was in put in place. In practice, a "Free Trade Zone" is an area in which companies can evade labor and environmental laws and taxes, and disrespect women's human rights.

Approximately 11 million television sets are produced in Tijuana every year, mostly by five Japanese companies (Hitachi, Sanyo, Sony, Panasonic, and JVC) and the Korean company Samsung. The Japanese company Sharp produces televisions in Rosarito; in the nine years since it arrived in the region, it has produced about 10 million television sets. About 22,000 workers, most of them women, work at these six companies.

In Baja California, the government uses the media to broadcast to the population that the Free Trade Zones have created more jobs. However, in reality, workers continue to be fired, especially from the maquilas. This situation worsens in November and December every year. The bosses insult, humiliate, and harass the workers, even threatening them, in order to force them to sign voluntary resignations. Sometimes they say "maybe I will hire you again next year, but as a new employee". They put workers out on the street as if they were common criminals, without the compensation that they are due by law, and not caring that their families depend on their salaries. They rarely tell workers the reason for the dismissal, and many of these reasons are actually illegal since they are not included in the Federal Labor Law or the Mexican Constitution. Sometimes management fires workers so the company can avoid an increase in salary or the provision of benefits for seniority, or to avoid paying for vacations, maternity leave, work-related accidents or illnesses. When workers demand that their rights be respected, management repress them even further. As a result, workers are in a state of permanent job instability, and society is experiencing problems with public safety, all of which contribute to an increase in poverty and violence against women.

To illustrate the current situation, and the way in which workers and organizations are struggling for workers' rights, we will cite some testimonies and reflections from several women who participated in the Binational Encounter of Women Workers, Promoters, and Residents, which was held in September 2004 in the Maclovio Rojas section of Tijuana. Approximately 150 people attended this meeting, and 80% of them were organized women from Baja California and California. We will also quote some comments made by workers in workshops at the "VI Declaration of the Lacadona selva of the Zapatista Army and the Maquila in Tijuana" from 2006.

Current situation:

In the popular neighborhoods where maquila workers live, there is a lack of government support for public services (water, light, sewage), safety problems, racism, violations of labor rights, and a lack of medical services and childcare services. In addition, there are no unions, social services for abused women, or counseling and psychological attention (only the DIF service and some civil society organizations attend to this need). Women must walk through empty lots and dark streets that don't have streetlights, where assaults, robberies, and rapes are common. These attacks are made by common criminals, or sometimes even by the police themselves. CITTAC staff person Mago Avalos, a labor rights defender and maquila worker, was attacked by a stranger in our offices last April 15, 2006; she was assaulted, beaten, and threatened with death, but fortunately defended herself and the attacker fled.

We are coming to understand the strategies used by the government and police to try to eliminate and discredit the movement for community rights. In Atento and Texcoco, in the state of Mexico, the municipal, state, and federal police brutally attacked several residents, killing one young flower vendor who, along with his companions, was asking for a place to work. These attacks occurred in order to prevent local competition with Wal-Mart, soon to be constructed in this zone. This community has been struggling since 2001, when inhabitants refused to sell their land for the construction of an airport on the land they occupied.

In the maquilas, the police are at the service of the investors. More than 200 people, including 49 women, have been attacked and incarcerated. At least 30 of the detained women were raped.

Women earn so little money in the maquilas that many of them must find additional work to support their families. Some make and sell handicrafts, or work a second factory job. In addition, they must do housework at home, which is rarely appreciated—much less shared—by the men.

The salaries in the maquilas are approximately 600 pesos per month,⁴⁵ in a city where rent and utilities cost more than 2,500 pesos per month. So the workers have to go live in small, miserable rooms, or in the marginalized neighborhoods.

⁴⁵ About US\$55 using May 2007 exchange rates.

Another problem, which is left to women and unaddressed by the unions, is childcare. The maquilas do not provide childcare services. Women experience pressure from different directions, due to the multiple roles they fill in society: “You have to be a good mother, a good daughter, a good wife, a good worker, a good organizer, a good student, a good unionist, a good lover, etc.” This makes women feel insecure, humiliated, and discriminated against.

Addressing patriarchal structures

The maquila system was specially designed to exploit women workers. The unemployment problem was not resolved in 1965 when the farm workers who had been in the US returned to Mexico. Today, thousands of men and women still wander the streets without work. The employers and governments believed then, and continue to believe now, that women are naturally submissive, careful, quiet, and work cheaply. One maquila owner said, “You have some education, that is dangerous,” explaining why he hired inexperienced and uneducated women.

As a result, the struggle in the maquila has to address not only salaries in the factories, but must be integrated with an attempt to address violence, mistreatment, and labor rights violations in the factories. From the moment that a woman arrives at a factory to apply for a job, she is discriminated against, and asked whether or not she is pregnant. If a woman worker becomes pregnant later, she is fired. Women are sexually harassed and verbally attacked. The patriarchal system increases profits and contributes to the continuation of the capitalist system. On the production lines, workers are hurt or killed by chemicals, knives, or blades. These same systems, that view women only as sexual objects and targets for domestic or labor exploitation, also kill women in the street and at home.

The conditions that transnational companies impose on Mexico before they invest in the country, and which the Mexican government unconditionally promotes and supports, are a serious problem. Mirella says that “with the change in working conditions we realized that we were unaware of the situation and that we had to unite and start to meet and seek support from CITTAC. Then they fired us, isolated us, stopped us from going to the bathroom. We kept organizing, we sought support from the media, we coordinated events in San Diego and Tijuana, and we joined the Coalition for Justice in the Maquila. We work at a company, ‘Optica Sola de Mexico’, that uses many chemicals, and they don’t want to recognize that some of our illnesses are caused by these chemicals. We have won some fights to make them change working conditions. There is a Maquila Workers’ Network in Tijuana and a support network in San Diego and other groups in other parts of the country. We have done events in solidarity with the women assassinated in Ciudad Juárez.”

13.2 Labor Violations and Gender Rights

The conditions in the maquilas are inhumane. The maximum work shift, by law, is eight hours, but most maquila workers are forced to work between 10 and 15 hours per day.

Supervisors use insults, humiliations, and verbal and sexual harassment to demand compliance with exaggerated production standards. Stress and tension lead to chronic health problems.

“Flor de Baja”, a maquila in Mexicali, makes guacamole to export to the US. Workers there say: “We are afraid, they want to take away our machines. The managers say that they want to hire older women because they are more responsible, and that since it is harder for older women to find jobs, they put up with more in the workplace.” When Flor de Baja factory closed, the workers lost their social security benefits and pensions, which they should have received after working there for so many years.

Use of toxic chemicals

The toxic chemicals used in the factories and maquilas hurt workers’ health and the health of their families. They can produce cancer, sterility, reproductive health problems, miscarriages, birth defects, irritation in the nasal passages, leukemia, flaking of the skin, black marks on the face, visual problems and conjunctivitis (due to the chemical vapors). Some workers suffer abnormalities in their sexual and reproductive health, perhaps due to these chemicals. When we study the safety data sheets at the maquilas, we find that most of the chemical substances listed have not been studied for their impact on human health, particularly in the workplace.

Many workers are not aware of the problems that constant exposure to chemical substances in the workplace can cause. Workers should be educated, to the extent that information is available, about the chemicals used in their places of work, and the corresponding risks.

Pregnant workers should not be exposed to known or suspected risks that can affect the health of their babies. They should be very careful in the workplace, because even industrial alcohol and Windex could cause damage.

Other occupational safety problems result from defective work instruments and safety and hygiene equipment. Many maquilas also use different physical and biological agents like radiation and bacteria. Some, like Óptica Sola and Sig Armolite, use corrosive substances like KOH, Cellosolve, methanol, acetone, and acetic acid that have long-term effects on workers’ health.

The abuses detailed above are not the only problems experienced by maquila workers. Other problems include:

- Discrimination against older workers;
- Job instability due to short-term contracts and frequent firings so the company can avoid giving seniority bonuses;
- Workers are blacklisted if they stand up for their rights;
- Pregnant workers are discriminated against;
- Workers are not allowed to drink water or make medical appointments;

- Unclean bathrooms facilities;
- Discounted salaries during medical visits;
- Increasing frequency of “3 x 4” shifts, which mean 12 hour shifts for 3 or 4 days each week;
- Extreme temperatures in the workplace.

13.3 Child Labor in the Maquilas

There are many underage workers in the maquilas. Children under the age of 14 should not be employed. Their birth certificates are falsified. These jobs are dangerous for minors because the workplace is unsafe. Children can be contaminated by the lead and chemical residues carried home on the clothing, skin, and hair of their parents who work in the factories, and these children can suffer anemia and even death. When children suffer accidents, they are not registered. All of the pressure at work makes many of these child workers drop out of school. They are not given vacation time from the maquilas, and they are not paid fair wages. When inspectors come to the workplace, child workers are hidden.

13.4 Struggles of Indigenous Women in Baja California

A significant number of the migrants that come to Tijuana are indigenous women from the Maya, Mixteca, Mixe, and Zapoteca cultures, and from original communities like the Cucapah, Kumiai, and Kiliwas. Indigenous women are subject to repression, discrimination, violence, and exploitation. This is not a situation unique to Mexico; as Maylei said, “We are discriminated against; we live in Chicano or marginalized neighborhoods that the government has set aside for the indigenous population in the United States. In these places there is corruption, abuses, and a lack of social services.” Maura, from the Frente Indígena Oaxaqueño Binacional (FIOB), says: “Indigenous women face triple discrimination: first for being women, second for being indigenous, and third for being migrants.”

Indigenous women face a number of specific problems in Mexico, including:

- Repression and lack of support from governmental authorities, for example in approving permits to sell crafts;
- Discrimination;
- Changes in cultural traditions such as eating habits, etc due to migration;
- Domestic violence;
- Serious health problems;
- Government programs to exterminate indigenous groups.

Second- and third-generation daughters of migrant indigenous families face new situations and challenges, and some have a renewed awareness of the importance of their indigenous heritage. A large number of young women work in the maquilas. Some say, “It is important to strengthen our indigenous roots.” The recovery of a people’s identity

can bring power and a reason to do things. Even if an indigenous community changes their clothing and eats non-traditional foods, the essential indigenous spirit remains.

Women are responding to this situation with a variety of tactics. When women on both sides of the border share their experiences, more women become aware of their labor rights, human rights, and reproductive health rights. Another form of resistance is using traditional clothing and medicine. “We must be conscious of our roots, and awaken our minds.”

13.5 Challenges and strategies

This essay has described in detail the problems confronted in attempting to eradicate violence against women in the maquila industry of Baja, Mexico. In sum, the broader challenges we encounter in fighting for women’s labor rights include:

- Little support from unions.
- Repression and false accusations.
- Insufficient amount of workers involved.
- Pressure to increase production.
- Lack of motivation to join together for a cause.
- Lack of understanding about how to fight against governmental policy.

The government, labor authorities, and “ghost” unions (unions that do not represent workers but serve to protect the companies) violate women’s human and labor rights and allow companies in Tijuana to do so as well.

Companies take advantage of the excessive migration towards the northern border of Mexico.

The country is not free and sovereign and we are prisoners of our own ideas. Or else we let everyone else express their opinions instead. We shouldn’t be silent. We haven’t demanded our rights. It has been this way since the time of our grandmothers and great-grandmothers. Maybe our children will find freedom. Our parents wanted to be free, and now we do.
--Guadalupe, in the VI Declaration workshop

Women workers deserve more respect and space in civil society organizations and unions. As the Zapatistas say, “We are not going to ask for permission to exercise our rights and forms of organization” -- not from the employers, nor from the government, nor from the unions or labor organizations that really don’t include women workers or address their conditions and struggles.

On a few occasions workers have managed to form independent unions and sign collective bargaining agreements, but the employers, with the support and complicity of the labor authorities and “ghost” unions, have committed fraud in the union elections, moved the factories to other cities or countries, bribed the leaders, etc. These kinds of

corrupt activities have happened in a number of companies, including Hyundai, Ley Mex, Dae Woo, Hang Young, Óptica Sola, Industria Fronteriza, Sistema Médicos Alaris, Plásticos Bajacal, Panasonic batteries, Kyocera cell phones, and Coastcast golf clubs.

On a daily basis we are participating in resistance movements in Baja California, sometimes without even realizing it, because we are fighting to survive as migrants, women, youth, lesbians, feminists, maquila workers, Zapatistas, single mothers, victims of domestic violence, landless peasants, or victims of incarceration. We should put more energy into these struggles.

The struggles of the maquila workers have strengthened and justified the existence of a number of organizations, such as CITTAC, Colectiva Feminista Binacional, Red de Trabajadoras y Trabajadores, Colectivo Chilpancingo Pro Justicia Ambiental, and the San Diego Network in Solidarity with Maquila Workers.

In 2004, CITTAC supported more than 1,500 workers in their labor struggles and lawsuits, against more than 40 companies (almost all maquilas). Most of the workers' demands centered on salaries, bonuses, and firings, but always included other rights that had been violated, but that are not addressed in the Federal Labor Law, like sexual harassment in the workplace. In closing, the following list encompasses our strategies for ending violence against women in the maquilas.

How we organize and fight:

- We educate ourselves.
- We organize groups in the maquilas to confront the manager, and try to find a lawyer to represent the workers.
- We learn all of the tasks in the workplace so that we are able to take any of the positions.
- We support our coworkers.
- We try to form independent unions.
- We conduct trainings on workers' rights.
- We emphasize understanding of gender issues.
- We collaborate with organizations on both sides of the border.
- We share ideas and strategies and promote new ideas.

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