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## Workers' Rights in the Mexican Maquiladora Sector: Collective Bargaining, Women's Rights, and General Human Rights: Law, Norms, and Practice

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**WORKERS' RIGHTS IN THE MEXICAN MAQUILADORA  
SECTOR: COLLECTIVE BARGAINING, WOMEN'S  
RIGHTS, AND GENERAL HUMAN RIGHTS: LAW, NORMS,  
AND PRACTICE**

JOSHUA M. KAGAN

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“We believe it’s indispensable to democratize the world of work,  
because the workers have been kidnapped by their own unions.  
For ninety percent of them, their unions are just a pretense. They  
work under protection contracts and corrupt arrangements, which  
are never renegotiated. In our country, Mexicans can elect a new  
president, but the workers can’t *elect* their own leaders.”

~Francisco Hernández Juárez<sup>1</sup>

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1. DAVID BACON, *THE CHILDREN OF NAFTA: LABOR WARS ON THE U.S./MEXICO BORDER* 293 (Univ. of California Press 2004). Francisco Hernández Juárez is the Secretary-

## I. INTRODUCTION

It was hoped that the birth of *maquiladoras*<sup>2</sup>—“foreign-owned assembly plants clustered along the Mexico-U.S. border”<sup>3</sup>—in 1965 would christen an era of increased foreign investment and employment in Mexico.<sup>4</sup> These goals have been largely realized. Between 1966 and 2004, the number of Mexicans employed in the *maquiladora* sector grew from 3000<sup>5</sup> to approximately 1.14 million.<sup>6</sup> While the influx of *maquiladoras* in Mexico has delivered on its promise of increased employment, critics contend that such growth has come at the expense of human rights in the Mexican border towns.<sup>7</sup> This Note analyzes the emergence and sustainability of the Mexican *maquiladora* sector, its effect on working conditions and workers’ rights, the correlation between its

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General of the Mexican National Union of Workers (UNT). *Id.* In September 2002, the UNT introduced a series of labor reforms in the Mexican Chamber of Deputies. *Id.* at 292-93.

2. Throughout Mexican-American border culture, the words *maquiladora* and *maquila* are used interchangeably to describe the foreign-owned assembly plants clustered along the border. For the sake of consistency, the former is used throughout this Note. The term *maquiladora* is also often used to describe the workers in these plants. For the sake of consistency and clarity, it is used here only in reference to the assembly plants themselves.

3. THE MAQUILADORA READER: CROSS-BORDER ORGANIZING SINCE NAFTA 1 (Rachael Kamel & Anya Hoffman eds., American Friends Service Committee 1999) (hereinafter MAQUILADORA READER); see also William C. Gruben & Sherry L. Kiser, *NAFTA and Maquiladoras: Is the Growth Connected?*, in FEDERAL RESERVE BANK OF DALLAS, THE BORDER ECONOMY 22-24, at 23 (2001), available at [http://www.dallasfed.org/research/border/tbe\\_gruben.pdf](http://www.dallasfed.org/research/border/tbe_gruben.pdf). (“A *maquiladora* is a labor-intensive assembly operation. In its simplest organizational form, a Mexican *maquiladora* plant imports inputs from a foreign country—most typically the United States—processes these inputs and ships them back to the country of origin, sometimes for more processing and almost surely for marketing”); Elvia R. Arriola, *Voices from the Barbed Wires of Despair: Women in the Maquiladoras*, *Latina Critical Legal Theory, and Gender at the U.S.-Mexico Border*, 49 DEPAUL L. REV. 729, 762 (2000) (defining *maquiladoras* as sharing four basic characteristics: “(1) being American subsidiaries or contract affiliates under Mexican or foreign ownership; (2) principally engaged in the assembly of components . . . the processing of primary materials or the production of intermediate or final products; (3) that import most or all primary materials and components from American plants and re-export them to the United States; and that (4) are labor intensive”).

4. See JORGE A. VARGAS, *MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS* 194 (West Group 1998).

5. Khosrow Fatemi, *Introduction to THE MAQUILADORA INDUSTRY: ECONOMIC SOLUTION OR PROBLEM?* 4 (Khosrow Fatemi ed., Praeger Publishers 1990) (hereinafter MAQUILADORA INDUSTRY).

6. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT’ OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2004: MEXICO, § 6(b), (2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41767.htm> [hereinafter STATE DEPT’ REPORT].

7. For general discussions of the negative consequences to human rights that the *maquiladora* industry has brought to Mexico, see HUMAN RIGHTS WATCH, *A JOB OR YOUR RIGHTS: CONTINUED SEX DISCRIMINATION IN MEXICO’S MAQUILADORA SECTOR*, (vol. 10, no. 1(B) 1998), available at <http://www.hrw.org/reports98/women2/> [hereinafter A JOB OR YOUR RIGHTS]; BACON, *supra* note 1, at 60-79; MARÍA PATRICIA FERNÁNDEZ-KELLY, *FOR WE ARE SOLD, I AND MY PEOPLE: WOMEN AND INDUSTRY IN MEXICO’S FRONTIER* (State Univ. of New York Press 1983); MAQUILADORA READER *supra* note 3; NORMA IGLESIAS PRIETO, *BEAUTIFUL FLOWERS OF THE MAQUILADORA* (Univ. of Texas Press 1992).

success and the enforcement of Mexican labor law, and its future prospects. In doing so, this Note suggests a model of corporate regulation whereby the interests of the state and the individual worker can hopefully be reconciled.

## II. HISTORY OF THE MEXICAN MAQUILADORA SECTOR

### A. *The Bracero Program*

In order to understand the current state of the Mexican *maquiladora* sector, it is helpful to understand its history and precursors. In 1942, the U.S. and Mexican governments entered into the Bracero Program.<sup>8</sup> Under the Bracero Program, Mexican citizens were permitted to take temporary agricultural work in the United States.<sup>9</sup> Border towns such as Tijuana and Ciudad Juárez (Juárez) grew dramatically as they became the bases from which U.S. farmers and agricultural companies hired Mexican workers.<sup>10</sup> Though the program ended in 1964, Mexican citizens remained hopeful that they would still be able to find work in these towns.<sup>11</sup> Thus, the termination of the Bracero Program did not halt the influx of Mexican citizens to the border towns. These towns became overcrowded, and their citizens suffered from “extreme shortages of food, water, shelter, and transportation.”<sup>12</sup>

### B. *The National Border Development Program (PRONAF)*

In an effort to boost Mexico's economy by attracting foreign investment and creating jobs for those living in these overcrowded border towns, the Mexican government created the National Border Development Program (Programa Nacional Fronterizo, or PRONAF) in 1965.<sup>13</sup> This program resulted in the development of the modern *maquiladora* sector. Under PRONAF, the Mexican government grants licenses to foreign companies to import machinery, raw materials, parts, and components into Mexico.<sup>14</sup> After assembly in Mexican *maquiladoras*, the products generally

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8. Bracero Agreement, Mex-U.S., Aug. 4, 1942, 56 Stat. 1759, available at <http://sunsite.berkeley.edu/calheritage/latinos/agreement1942frameset.html> (last visited Nov. 16, 2005); see also ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* (McNally & Loftin 1972).

9. Bracero Agreement, *supra* note 8.

10. Jorge A. Vargas, *U.S. Border Patrol Abuses, Undocumented Mexican Workers, and International Human Rights*, 2 SAN DIEGO INT'L L.J. 1, 16 (2001).

11. *Id.* at 15-16.

12. *Id.* at 16.

13. *Id.*; see also MAQUILADORA READER, *supra* note 3, at 2-3.

14. MAQUILADORA READER, *supra* note 3, at 3.

are re-exported.<sup>15</sup> Other than the prospect of cheaper labor costs,<sup>16</sup> the major benefit to U.S. corporations setting up these assembly plants in Mexico was favorable tariffs. Under Section 9802.0080 of the Harmonized Tariff Schedule (HTS), the import duties levied by the U.S. were limited only to the value added in Mexico (the actual cost of wages and related costs in Mexico), "rather than the full value of the products."<sup>17</sup>

### *C. The 1989 Maquiladora Decree*

Mexico has a long history of limiting foreign investment and ownership.<sup>18</sup> While the *maquiladora* program signified the beginning of a break from that tradition, the Mexican government originally limited *maquiladoras* to the Mexico-U.S. border region.<sup>19</sup> This limitation was intended to curtail the influx of foreign goods and competition into the Mexican domestic market, stimulate employment in the overpopulated border region, and capitalize on Mexico's geographic proximity to the United States.<sup>20</sup> But ostensibly in response to the debilitating oil crises of the early 1980s,<sup>21</sup> Mexico sought to revitalize its economy by loosening the restrictions on *maquiladoras*.<sup>22</sup>

In 1989, the Mexican Government passed the Decree for the Promotion and Operation of the Maquiladora Export Industry (1989 Maquiladora Decree).<sup>23</sup> This decree had two primary effects on the *maquiladora* sector. First, it permitted *maquiladora* owners to sell up to half of their Mexican-manufactured goods in domestic markets.<sup>24</sup> Second, the 1989 Maquiladora Decree made *maquiladora* licenses valid for an indefinite period, versus the

15. *Id.*

16. See Thea Lee, *Happily Never NAFTA: There's No Such Thing as Free Trade*, in *THE CASE AGAINST FREE TRADE 70-77* (William Greider et al. eds., Earth Island Press and North Atlantic Books 1993).

17. VARGAS, *supra* note 4; see also MAQUILADORA READER, *supra* note 3, at 3.

18. See, e.g., VARGAS, *supra* note 4, at 119; Sanford E. Gaines, *NAFTA as a Symbol on the Border*, 51 UCLA L. REV. 143, 191 (2003).

19. See David A. Gantz, *New Challenges for the Maquiladoras: Legal and Policy Implications of NAFTA Article 303 for United States-Mexico Trade*, 30 DENV J. INT'L L. & POL'Y 1, 11 (2001).

20. See Fatemi, *supra* note 5, at 8-10.

21. See Kenneth S. Culotta, *Recipe for a Tex-Mex Pipeline Project: Considerations in Permitting a Cross-Border Gas Transportation Project*, 39 TEX INT'L L.J. 287, 290 (2004).

22. See Fatemi, *supra* note 5, at 11.

23. DECREE FOR THE PROMOTION AND OPERATION OF THE MAQUILADORA EXPORT INDUSTRY, reprinted in 4 WILLIAM D. SIGNET, *MEXICAN LAW LIBRARY 259-95* (West Publishing 1997) [hereinafter 1989 MAQUILADORA DECREE].

24. *Id.*; see also James R. Gallop & Christopher J. Craddock, *The North American Free Trade Agreement: Economic Integration and Employment Dislocation*, 19 J. LEGIS. 265, 277. (1993).

previously imposed two-year limit.<sup>25</sup> This liberalization of Mexico's foreign investment restrictions led to increased growth in the *maquiladora* sector and paved the way for the enactment of NAFTA five years later.

#### *D. The North American Free Trade Agreement (NAFTA)*

Recently, the most significant law affecting *maquiladoras*—and Mexico-U.S. commerce in general—has been the North American Free Trade Agreement (NAFTA).<sup>26</sup> Taking effect on January 1, 1994, NAFTA created a “free trade zone” between Mexico, the United States, and Canada.<sup>27</sup> Under NAFTA, the tariff exemptions afforded to the *maquiladora* industry are no longer confined to the border region, but are offered throughout Mexico.<sup>28</sup> While this further liberalization of Mexico's foreign investment framework was expected to stimulate economic growth throughout the nation, the *maquiladora* industry remains largely concentrated along the Mexico-U.S. border.<sup>29</sup>

Rather than immediately altering Mexico's foreign investment laws, NAFTA was intended to have a more gradual effect. As a result of this gradation, *maquiladoras* were permitted to sell 100 percent of their production into the Mexican domestic market by January 1, 2001.<sup>30</sup> By 2009, all products traded between the three NAFTA state-parties will receive duty-free entry if the products originated in a NAFTA state.<sup>31</sup>

While the piecemeal liberalization of Mexico's foreign investment laws has increased the prospects for the nation's economic growth, it is widely contended that the emergence of the *maquiladora* sector has also created an abundance of social problems within Mexico's border region. Among Mexicans, the general opinion of NAFTA's effect on the State is, at best, mixed. “In a poll conducted at the end of 2002 by Ipsos-Reid for the Woodrow Wilson Centre in Washington, only 29 percent of Mexicans interviewed said that NAFTA has benefited Mexico; 33

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25. 1989 MAQUILADORA DECREE, *supra* note 23; *see also* Gallop & Craddock, *supra* note 24.

26. *See* North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 296 [hereinafter NAFTA].

27. *Id.*; *see also* Gabriela A. Gallegos, *Border Matters: Redefining the National Interest in U.S.-Mexico Immigration and Trade Policy*, 92 CAL L. REV. 1729, 1734 (2004).

28. MAQUILADORA READER, *supra* note 3, at 3.

29. Two years after the enactment of NAFTA, more than 85 percent of *maquiladora* workers continued to be employed along the Mexico-U.S. border. *Id.*

30. VARGAS, *supra* note 4, at 195.

31. *See* Chiang-Feng Lin, *Investment in Mexico: A Springboard Toward The NAFTA Market – An Asian Perspective*, 22 N.C. J. INT'L L. & COM. REG. 73, 119 (1996).

percent thought that it had hurt the country and 33 percent said that it had made no difference.”<sup>32</sup> It would be unrealistic to suggest that all of the social ills occurring in Mexico’s border towns are solely attributable to the emergence of *maquiladoras*. Many of the problems undoubtedly stem from a confluence of causes, among them the vast wealth disparity and unemployment along the border that proponents of the *maquiladora* system suggest it is intended to rectify. Nonetheless, in order to fully understand the scope of *maquiladoras* in the trans-border region, an examination of these social situations is warranted.

### III. HUMAN RIGHTS CONCERNS ASSOCIATED WITH THE MEXICAN MAQUILADORA SECTOR

#### A. Substandard Working Conditions

One of the primary complaints lobbed against the *maquiladora* sector is that the working conditions are substandard. Issues surrounding the working conditions in *maquiladoras* include general occupational health and safety concerns, allegations of fundamental human rights violations, and life-threatening situations.

Exposure to dangerous chemicals is a common health threat for *maquiladora* workers.<sup>33</sup> One study published in the *American Journal of Industrial Medicine* (AJIM study) stated that 43 percent of *maquiladora* workers “interviewed reported being exposed to dust-borne chemicals during at least part of their shift, while 45 percent reported gas or vapor exposure.”<sup>34</sup> In the same study, 41 percent of workers surveyed reported that their daily work regularly involved handling chemicals.<sup>35</sup> “A similar study, conducted in Tijuana, found that 35 percent of those surveyed handled chemicals on a daily basis.”<sup>36</sup> Granted, exposure to chemicals may be a routine part of work in any factory. However,

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32. *Free Trade on Trial*, THE ECONOMIST 13, Jan. 3, 2004.

33. See Michael S. Barr et al., *Labor and Environmental Rights in the Proposed Mexico-United States Free Trade Agreement*, 14 HOUS. J. INT’L L. 1, 16 (1991); George Kourous, *Workers’ Health Is on the Line: Occupational Health and Safety in the Maquiladoras*, in MAQUILADORA READER, *supra* note 3, pp. 52-56, at 52 (citing a study published in the *American Journal of Industrial Medicine* which found that many *maquiladora* workers reported exposure to toxic materials); Diane Lindquist, *Toxic Legacy: Polluter Leaves Faint Tracks; but U.S.-Mexican Officials Follow Trail into ‘Uncharted Waters,’* SAN DIEGO UNION-TRIB., Apr. 6, 1993, at C1 (discussing health problems of *maquiladora* workers frequently exposed to toxic chemicals).

34. Kourous, *supra* note 33, at 52.

35. *Id.* at 53.

36. *Id.*

without appropriate safety equipment and training, this exposure quickly becomes a dangerous proposition.

*Maquiladora* workers often are neither properly trained nor educated as to the relevant safety precautions for their particular job.<sup>37</sup> A study of Tijuana/Tecate *maquiladora* workers by the Comité de Apoyo Fronterizo Obrero Regional (CAFOR study) found that “53 percent of the . . . workers surveyed . . . had not received Material Safety Data Sheets from their employers, as required by Mexican law.”<sup>38</sup> That same study found that “40 percent of all workers surveyed had not received any training from employers regarding on-site hazards or recommended protective practices.”<sup>39</sup> “A similar survey of *maquiladora* workers in Reynosa, Tamaulipas, conducted by the Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos,” revealed that “72 percent of the respondents had not received training in handling toxic substances, 53 percent had no training in general health risks related to their work, and 50 percent hadn’t been taught the proper execution of plant emergency response plans.”<sup>40</sup>

Another area of concern is the function of safety equipment in *maquiladoras*. They may lack safety equipment, existing safety equipment may be outdated, or the equipment may malfunction.<sup>41</sup> For example, in 1996, eight workers suffered third-degree burns in an explosion at a Juárez *maquiladora* that regularly handled flammable substances but did not have basic fire safety equipment.<sup>42</sup> The CAFOR study found that “only 33 percent of electronics workers with exposure to airborne toxins reported being given filter respirators.”<sup>43</sup> Respondents also reported that *maquiladora* owners disable the safety controls on machinery in the hopes of improving procedural efficiency.<sup>44</sup>

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37. *Id.*; see also Sherri M. Durand, *American Maquiladoras: Are They Exploiting Mexico's Working Poor?*, 3 KAN. J.L. & PUB. POL'Y 128, 131 (1994) (citing a report by the U.S. General Accounting Office which found that eight American-owned *maquiladoras* “lacked or had incomplete hazard-specific programs and training necessary to mitigate certain observed hazards”).

38. Kourous, *supra* note 33, at 53.

39. *Id.*

40. *Id.*

41. *Id.* at 52; see also ALTHA J. CRAVEY, *WOMEN AND WORK IN MEXICO'S MAQUILADORAS* 6 (Rowman & Littlefield 1998); PRIETO, *supra* note 7, at 10-11 (describing the reflections of a *maquiladora* worker, Gabriela, on working with toxic acids and chemicals in a room without appropriate safety or ventilation equipment); Judith Ann Warner, *The Sociological Impact of the Maquiladoras*, in *MAQUILADORA INDUSTRY*, *supra* note 5, at 193.

42. Kourous, *supra* note 33, at 52.

43. *Id.* at 54.

44. *Id.*



The average workweek in the *maquiladoras* is five to ten hours longer than the average workweek in the U.S.<sup>45</sup> One study found that only 7 percent of *maquiladora* workers reported working less than 45 hours per week.<sup>46</sup> Although the average 48-hour workweek is supposed to be spread out over six days, *maquiladora* owners have “gringo-ized” the week “by collapsing the 48 hours into five days.”<sup>47</sup> Despite condensing the legally mandated workweek, additional Saturday work shifts still are a regularity, and overtime hours are often worked at the same rate of pay.<sup>48</sup> During these shifts, workers are expected to keep their production in line with certain output quotas.<sup>49</sup> A worker who does not demonstrate a consistent pattern of improved production risks losing her job.<sup>50</sup> Long workweeks and the emphasis on production to meet individual output quotas further contribute to the physically and mentally stressful work environment of *maquiladoras*. Studies reveal that the combination of long working hours and high production quotas is likely related to the high incidence of worker injuries and negative health effects.<sup>51</sup>

*B. Health Effects and Health-Related Problems Associated with Working in the Maquiladoras*

Due to the factors described in the preceding section, *maquiladora* work results in high incidences of injury, disease, and general poor health.<sup>52</sup> The CAFOR study indicated several negative health conditions among Tijuana *maquiladora* workers, such as chest pain (76.5 percent of respondents),<sup>53</sup> rashes (62.5 percent of respondents),<sup>54</sup> and upper airway irritation (58.55 percent of respondents).<sup>55</sup> An additional 21 percent of the respondents reported illnesses that they believed were caused by

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45. Arriola, *supra* note 3, at 773.

46. *Id.*; see also DEVON G. PEÑA, THE TERROR OF THE MACHINE: TECHNOLOGY, WORK, GENDER, AND ECOLOGY ON THE U.S.-MEXICO BORDER, 46-51 (Univ. of Texas Press 1997).

47. KATHRYN KOPINAK, DESERT CAPITALISM: MAQUILADORAS IN NORTH AMERICA'S WESTERN INDUSTRIAL CORRIDOR 137 (Univ. of Arizona Press 1996).

48. Arriola, *supra* note 3, at 773; see also CRAVEY, *supra* note 41, at 97 (“[M]aquiladoras commonly extend the working day beyond the limit of eight hours mandated by Mexican labor law”).

49. Arriola, *supra* note 3, at 772.

50. *Id.*

51. See Warner, *supra* note 41, at 193.

52. See, e.g., CRAVEY, *supra* note 41, at 96-97; PRIETO, *supra* note 7, at 4-5, 21; Kourous, *supra* note 33, at 52-53.

53. Kourous, *supra* note 33, at 52.

54. *Id.*

55. *Id.*

work conditions; the majority attributed these to chemical exposure.<sup>56</sup>

Another informative study of the health problems faced by *maquiladora* workers was conducted in 1992 by the University of Massachusetts–Lowell, Work Environment Program (Lowell Study).<sup>57</sup> This study focused on *maquiladora* workers in Matamoros and Reynosa.<sup>58</sup> Common complaints among the respondents to the Lowell Study included headaches (56 percent),<sup>59</sup> chest pressure (41 percent),<sup>60</sup> and stomach pain (37 percent).<sup>61</sup> Additionally, of those respondents who reported exposure to airborne substances for the full duration of their shift, 43 percent experienced nausea or vomiting and 31 percent experienced eye or nose secretions.<sup>62</sup> The Lowell researchers concluded that the *maquiladora* workers surveyed suffered from these acute health problems as a result of their exposure to hazards in their working environment and that these conditions had the potential to develop into chronic medical conditions.<sup>63</sup>

In addition to the negative health effects associated with exposure to chemicals and other toxic substances, *maquiladora* workers report a high incidence of “musculoskeletal disorders related to the rapid pace of work, poor workplace design, and other ergonomic hazards.”<sup>64</sup> “Optical nerve disorders and stress-related illnesses are prevalent,” also.<sup>65</sup> In the AJIM study, 21 percent of respondents “reported pain, numbness, or tingling in one or both hands” as a result of the stress and repetitive labor experienced in the *maquiladora*.<sup>66</sup> Other respondents in this study complained of chronic elbow, forearm, or shoulder pain.<sup>67</sup>

The health consequences of working in a *maquiladora* may also be understood by examining the incidences of birth defects in children born to past or present *maquiladora* workers.<sup>68</sup> A study of *maquiladora* workers in Nogales found a 14 percent incidence of

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56. *Id.* at 53.

57. Rafael Moure-Eraso, et al., *Back to the Future: Sweatshop Conditions on the Mexico-U.S. Border*, 31 AM. J. INDUS. MED. 587, 587 (1997).

58. *Id.*

59. *Id.* at 591.

60. *Id.*

61. *Id.*

62. *Id.* at 592.

63. Michael Joseph McGuinness, *The Politics of Labor Regulation in North America: A Reconsideration of Labor Law Enforcement in Mexico*, 21 U. P.A. J. INT'L ECON. L. 1, 34 (2000).

64. *Id.*

65. Warner, *supra* note 41, at 193.

66. Kourous, *supra* note 33, at 53.

67. *Id.*

68. See CRAVEY, *supra* note 41, at 97 (describing the birth weights of workers' children “as a measure widely accepted as an excellent indicator of the” mother's health).

low birth-weight babies,<sup>69</sup> three times greater than the rate for pregnant women who worked in service occupations in that region.<sup>70</sup> Another study determined that children born to *maquiladora* workers are three to five times more likely to suffer from anencephaly.<sup>71</sup> Studies in Matamoros linked the high rate of mental retardation exhibited in the children of *maquiladora* workers with the mothers' work-related exposure to PCB while they were pregnant.<sup>72</sup> Thus, not only do the workers themselves suffer the negative health consequences of *maquiladora* work, but such work also takes a detrimental toll on the health of their children.

### C. Low Wages

Workers are paid a low wage for all the hardships they endure in the *maquiladoras*. In general, the income of Mexican workers has lost 76 percent of its purchasing power over the past two decades.<sup>73</sup> "The government estimates that 40 million people live in poverty, with 25 million in extreme poverty."<sup>74</sup> While the Mexican government claims that unemployment is less than 6 percent, the National Union of Workers (Unión Nacional de Trabajadores) argues the number is closer to 25 percent.<sup>75</sup> There is widespread belief that the government intentionally holds down wages—thus perpetuating this crisis—in order to encourage foreign investment and sustain the *maquiladora* sector.<sup>76</sup> After the Mexican peso was devalued in January 1995, prices of groceries and basic services began to climb steeply, but the wages paid to most *maquiladora* workers did not increase correspondingly.<sup>77</sup> The average wage of manufacturing workers in Mexico increased 1.2 percent during 2003, "less than the 3.98 [percent] rate of inflation for the same period."<sup>78</sup> The low wage

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69. *Id.*

70. *Id.*

71. AUGUSTA DWYER, ON THE LINE: LIFE ON THE U.S.-MEXICAN BORDER 53 (Monthly Review Press 1995); see also BACON, *supra* note 1, at 73-74 (noting the high rate of anencephaly among children born to *maquiladora* workers in the Tijuana *barrio* of Chilpancingo).

72. See Durand, *supra* note 37, at 131.

73. BACON, *supra* note 1, at 54.

74. *Id.*

75. *Id.* (citing the Unión Nacional de Trabajadores as putting the number of unemployed in Mexico at more than 9 million people, or a quarter of the workforce).

76. See *id.* at 50, 61; see also JIM YONG KIM ET AL. EDS., DYING FOR GROWTH: GLOBAL INEQUALITY AND THE HEALTH OF THE POOR 267 (Common Courage Press 2000); KOPINAK, *supra* note 47, at 148-50 (discussing three governmental sources for the downward pressure on wages); Durand, *supra* note 37, at 132.

77. See BACON, *supra* note 1, at 71.

78. STATE DEP'T REPORT, *supra* note 6, at ¶ 3.

paid to *maquiladora* workers makes purchasing even basic necessities problematic.<sup>79</sup>

The purchasing power of wages paid to *maquiladora* workers stands in stark contrast to those paid to American workers just across the border. A 2001 study by the Center for Reflection, Education, and Action presents an illustrative example of this disparity in purchasing power.<sup>80</sup> The study found that "it took a *maquiladora* worker in Juárez almost an hour to earn enough money to buy a kilo . . . of rice."<sup>81</sup> A *maquiladora* worker in Tijuana needed an hour and a half to earn enough for that same purchase.<sup>82</sup> By comparison, a dockworker in the San Pedro harbor, south of Los Angeles, earned enough to buy the rice after only three minutes of work.<sup>83</sup> Even a worker in Los Angeles earning minimum wage needed only twelve minutes of work to earn enough to purchase an equivalent amount of rice.<sup>84</sup>

#### D. Women's Rights Issues

The majority of *maquiladora* workers are female.<sup>85</sup> As such, women's rights issues represent one of the most integral components of the struggle for workers' rights. Perhaps the most controversial and highly publicized issue of all stems from the frequent requirement that they undergo pregnancy testing prior to hiring.<sup>86</sup> Workers report this practice is commonplace and contend

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79. Joshua Briones, *Paying the Price for NAFTA: NAFTA's Effect on Women and Children Laborers in Mexico*, 9 UCLA WOMEN'S L.J. 301, 311 (1999) (quoting Eduardo Badillo Martinez, the Secretary of Coordination at the Comité Urbano Popular Asociación Civil) ("[S]alaries for *maquiladora* workers are so small that most cannot buy basic necessities for survival"); see also Arriola, *supra* note 3, at 769; Durand, *supra* note 37, at 132.

80. BACON, *supra* note 1, at 215.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. Scholars differ as to exactly what percentage of *maquiladora* workers are female, though they seem to agree that females make up the majority of the *maquiladora* workforce. See Arriola, *supra* note 3, at 767 (noting that while women make up 37 percent of Mexico's general labor force, roughly 56 percent of its *maquiladora* workers are female); Jorge A. Vargas, *Family Law in Mexico: A Detailed Look Into Marriage and Divorce*, 9 SW. J.L. & TRADE AM. 5, 25 (2002-2003) (commenting that women make up over 95 percent of the *maquiladora* workforce).

86. See A JOB OR YOUR RIGHTS, *supra* note 7; see also Sam Dillon, *Sex Bias is Reported by U.S. at Border Plants in Mexico*, N.Y. TIMES, Jan. 13, 1998, at A8; Ken Guggenheim, *Pregnancy Test a Standard Practice for Female Job Seekers in Mexico*, L.A. TIMES, Sept. 26, 1999, at B7; *Mexican Women Fight for Labour Rights*, BBC News Online, Aug. 29, 2002, <http://news.bbc.co.uk/1/hi/world/americas/2223655.stm>; Molly Moore, *Rights of Pregnant Workers at Issue on Mexican Border*, WASH. POST, Aug. 21, 1996, t A20.

that companies will not hire pregnant job applicants.<sup>87</sup> In addition, many *maquiladora* workers report that their employers distribute birth control pills once they are hired.<sup>88</sup> These workers also report that employers fire or pressure coworkers to quit if they refuse to take birth control or become pregnant during their employment at *maquiladoras*.<sup>89</sup> It is widely believed that the *maquiladora* owners have adopted this policy in response to Mexico's labor laws,<sup>90</sup> which provide for six weeks of paid maternity leave prior to a woman's delivery date as well as six weeks of paid leave after the delivery.<sup>91</sup> The law also requires that workers returning from maternity be fully reinstated to their previous position with any appropriate accrued rights or benefits.<sup>92</sup> It is a common contention that Mexico's *maquiladora* owners attempt to circumvent these provisions by restricting their hiring of pregnant workers.<sup>93</sup>

While critics claim that these mandatory pregnancy tests represent an affront to such protected interests as women's rights,<sup>94</sup> human rights in general,<sup>95</sup> labor rights,<sup>96</sup> and individual privacy rights,<sup>97</sup> the Mexican *maquiladora* industry maintains its right to continue such practices. In response to the allegations

87. See, e.g., BACON, *supra* note 1, at 169; A JOB OR YOUR RIGHTS, *supra* note 7; Human Rights Watch, *No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector*, in MAQUILADORA READER, *supra* note 3, pp. 31-35, at 31; PRIETO, *supra* note 7, at 41; Nora Lockwood Tooher, *For Mexican Women, Sexism Is a Daily Battle*, in MAQUILADORA READER, *supra* note 3, pp. 38-40, at 39; Nicole L. Grimm, *The North American Agreement on Labor Cooperation and Its Effects on Women Working in Mexican Maquiladoras*, 48 AM. U. L. REV. 179, 219 (1998).

88. See Tooher, *supra* note 87, at 39-40; Michelle Smith, *Potential Solutions to the Problem of Pregnancy Discrimination in Maquiladoras Operated by U.S. Employers in Mexico*, 13 BERKELEY WOMEN'S L.J. 195, 200 (1998).

89. See Smith, *supra* note 88, at 197-98; see also Shelley Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF HUM. RTS. L. REV. 55, 92 (2001); Juan Carlos Linares, *The Development Dilemma: Reconciling U.S. Foreign Direct Investment in Latin America with Laborers' Rights: A Study of Mexico, The Dominican Republic, and Costa Rica*, 29 N.C. J. INT'L L. & COM REG. 249, 280-81 (2003).

90. See BACON, *supra* note 1, at 169; PRIETO, *supra* note 7, at 41.

91. Mexican Federal Labor Law (*Ley Federal del Trabajo*), art. 170, *reprinted in* 1 WILLIAM D. SIGNET, MEXICAN LAW LIBRARY 403 (West Publishing 1997) [hereinafter FLA]; see also Tooher, *supra* note 87, at 39.

92. See FLA, *supra* note 91; VARGAS, *supra* note 4, at 171.

93. See, e.g., BACON, *supra* note 1, at 169; CRAVEY, *supra* note 41, at 135; PRIETO, *supra* note 7, at 41.

94. See Human Rights Watch, *supra* note 91, at 31 (describing pregnancy-based discrimination as a form of sex discrimination because it targets a condition that only women experience).

95. See, e.g., Arriola, *supra* note 3, at 784; Lee A. Tavis, *Novartis and the U.N. Global Compact Initiative*, 36 VAND. J., TRANSNAT'L L. 735, 757-59 (2003).

96. See Grimm, *supra* note 91, at 219-21.

97. See, e.g., Arriola, *supra* note 3, at 787; Berta Esperanza Hernandez-Truyol, *Sex, Culture, and Rights: A Re/Conceptualization of Violence for the Twenty-First Century*, 60 ALB. L. REV. 607, 615 n.32 (1997); Tavis, *supra* note 95, at 758.

that such discriminatory hiring and firing practices are based on a desire to avoid paying government-mandated maternity benefits, *maquiladora* owners have asserted that these pregnancy tests serve four legitimate goals: (1) they prevent high turnover among the *maquiladora* workforce;<sup>98</sup> (2) they help maintain consistent production levels within each *maquiladora*;<sup>99</sup> (3) they contribute to Mexico's aggressive family-planning program by controlling unplanned births;<sup>100</sup> and (4) they protect the health of pregnant women and their unborn children by excluding them from the laborious work of the *maquiladoras*.<sup>101</sup> However, despite these assertions, the negative press and vocal condemnation of the mandatory pregnancy tests required of *maquiladora* workers continues.

### E. Child Labor

A widespread issue in the economies of many developing nations, child labor is also common in Mexico's *maquiladoras*.<sup>102</sup> "The Mexican government's Secretariat of Labor and Social Forecasting estimates that eight hundred thousand children under the age of fourteen work in various sectors of the economy."<sup>103</sup> There are accounts of children between eleven and fourteen years of age working up to fifteen hours per day.<sup>104</sup> The emergence of the *maquiladora* industry has served to further increase the prevalence of child labor in the Mexican economy.<sup>105</sup>

## IV. A DEFICIENT CULTURE OF UNIONIZATION

In much of the developed world, a common way of protecting workers from these predicaments arises in the form of unionization and collective bargaining. By banding together, workers can increase their bargaining power with their employer as well as increase their collective ability to influence legislation and

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98. Tooher, *supra* note 88, at 40.

99. Arriola, *supra* note 3, at 783-84.

100. Tooher, *supra* note 88, at 39-40.

101. Arriola, *supra* note 3, at 785-86.

102. See Griselda Vega, *Maquiladora's Lost Women: The Killing Fields of Mexico—Are NAFTA and NAALC Providing the Needed Protection?*, 4 J. GENDER RACE & JUST. 137, 147-49 (2000).

103. BACON, *supra* note 1, at 33.

104. See Don Sherman, *Congeladora Del Rio Workers Fight for Union Recognition*, 4 MLNA (July 1999), <http://www.igc.apc.org/unitedelect/alert.html>, noted in Arriola, *supra* note 3, at 780 n. 4.

105. See Jill C. Stroguiludis, *The Refugee Act of 1980: An Empty Promise to Exploited Children*, 29 J. MARSHALL L. REV. 995, 1002 (1996).

government regulation. It is much easier for an employer to ignore a myriad of fragmented, easily-replaceable, individual voices, than to take no notice of a voice that speaks for his entire workforce. But if Mexican *maquiladora* workers could increase their lot by banding together and unionizing, why haven't they done so?

First, it must be acknowledged that the owner of a Mexican *maquiladora*, and perhaps even a Mexican government official, is likely to assert that Mexico does, in fact, have labor unions. These *sindicatos* are fraught with corruption, though. They are often affiliated with the *maquiladoras* themselves and make no pretense as to their true loyalties. Thus, *maquiladora* workers often determine membership in such a *sindicato* to be fruitless.

Enrique Dávalos, of the Centro de Información para Trabajadoras y Trabajadores, A.C. (CITTAC) of Tijuana,<sup>106</sup> gives five reasons why he believes that legitimate labor unions have not taken hold among the *maquiladora* workers of Tijuana.<sup>107</sup> First, Mr. Dávalos asserts that the unemployment rate in Mexico is so high and the working conditions in many other industries so poor that striking or dissenting workers are easily replaceable. As Mr. Dávalos puts it, "there [is] a line of other people who want your job."<sup>108</sup> The second reason cited by Mr. Dávalos as to why labor unions have not become prevalent among the *maquiladora* workers of Tijuana is the threat of businesses leaving Mexico for other developing nations.<sup>109</sup> With the increasing globalization of the world's economy and the manufacturing industry's virtually limitless access to a ready and willing workforce, there exists a "race to the bottom" in the international manufacturing and assembly industries.<sup>110</sup> With the ubiquitous threat of losing jobs to

106. "The Workers' Information Center (CITTAC) is a non-governmental organization of women and men from Baja California, Mexico, that promotes, publicizes, supports, and accompanies workers' struggles—especially within the *maquiladora* industry—to better their labor and living conditions, defend their human rights (especially those related to labor and gender), and create autonomous and democratic organizations." CITTAC, *¿Qué es CITTAC?* [http://www.cittac.org/index.php?option=com\\_content&task=view&id=14&Itemid=28&lang=es](http://www.cittac.org/index.php?option=com_content&task=view&id=14&Itemid=28&lang=es) (last visited Dec. 14, 2005).

107. Enrique Dávalos, Address Before the University of San Diego School of Law Chapters of the National Lawyers Guild and Amnesty International (Mar. 2, 2005) (notes on file with author).

108. *Id.*

109. *Id.*

110. The phrase "race to the bottom" is used here to describe the phenomenon whereby multinational corporations seek to maximize their profit margin by locating their manufacturing and assembly plants in the nations with the cheapest labor and the least stringent regulation of workers' rights and labor law. Thus, developing nations either adopt lax regulatory policies or do not enforce existing policies for fear of losing foreign investment to another developing nation that is "closer to the bottom." See, e.g., Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. PA J. INT'L ECON. L. 61, 89 (2003); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451, 1492-93 (2000); Alison A. Gormley, Note, *The Underground Exposed:*

countries like China or Bangladesh,<sup>111</sup> there are incentives for workers not to “rock the boat” and for the government to cultivate a climate that is inhospitable to unionization.

The third explanation put forth by Mr. Dávalos is that workers simply have little time for organizational activities.<sup>112</sup> The aforementioned protracted work hours, coupled with the family responsibilities of many *maquiladora* workers,<sup>113</sup> leaves little time for unionizing the workforce. Fourth, Mr. Dávalos asserts that the *maquiladora* workers are unaware of their rights.<sup>114</sup> Without knowledge of their labor rights under Mexican law, these workers often fail to see the benefit of organization. NGOs such as CITTAC seek to remedy this situation by informing *maquiladora* workers of their rights, so that they might make better-informed decisions and raise their collective well-being.

The fifth and final reason that Mr. Dávalos gives for the dearth of effective labor unions in Tijuana is that foreign companies often lack knowledge of, or otherwise ignore, Mexican labor law.<sup>115</sup> As mentioned above, the Mexican government has a disincentive to enforce its labor laws on foreign *maquiladora* owners, lest they risk losing jobs to other developing nations. Since the Mexican government fails to enforce its statutorily encoded protections for collective bargaining, Mr. Dávalos asserts that *maquiladora* owners frequently repress efforts to unionize by firing those involved in such organizations.<sup>116</sup>

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*The United States Corporations' Use of Sweatshops Abroad, and the Abuse of Women*, 25 SUFFOLK TRANSNAT'L L. REV. 109, 117-19 (2001).

111. For general discussions of the role of developing nations like China and Bangladesh in the international “race to the bottom,” see Timothy A. Canova, et al., *Labor and Finance as Inevitably Transnational: Globalization Demands a Sophisticated and Transnational Lens*, 41 SAN DIEGO L. REV. 109, 113 (2004); Lisa Clay, *The Effectiveness of the Worker Rights Provisions of the Generalized System of Preferences: The Bangladesh Case Study*, 11 TRANSNAT'L L. & CONTEMP. PROBS. 175, 185-86 (2001); Stephen F. Diamond, *The “Race to the Bottom” Returns: China’s Challenge to the International Labor Movement*, 10 U.C. DAVIS J. INT'L L. & POL'Y 39 (2003); John C. Knapp, Note, *The Boundaries of the ILO: A Labor Rights Argument for Institutional Cooperation*, 29 BROOK. J. INT'L L. 369, 396 n.125 (2003).

112. See Dávalos, *supra* note 107.

113. See, e.g., PRIETO, *supra* note 7, at 33-34 (describing the “double shift” that women work between the *maquiladora* and at home); GEOGRAPHY OF GENDER IN THE THIRD WORLD 291 (Janet Henshall Momsen & Janet G. Townsend eds., State Univ. of New York Press 1987); Lesley J. Wiseman, Student Article, *A Place for “Maternity” in the Global Workplace: International Case Studies and Recommendations for International Labor Policy*, 28 OHIO N.U. L. REV. 195, 210 (2001).

114. See Dávalos, *supra* note 107.

115. *Id.*

116. *Id.* (“If [your] boss learns you are trying to unionize, you will be fired immediately”).



## V. THE HISTORY AND DEVELOPMENT OF MEXICAN LABOR LAW

These preceding justifications seem to be a plausible explanation for the lack of effective labor organization among Tijuana *maquiladora* workers, but an appreciation of the historical development of Mexican labor law is vital to a full understanding of the deficient culture of unionization in Mexico.

A. *The Revolution of 1910 and the 1917 Constitution*

In order to comprehend the letter and application of Mexican labor law today, one must first understand its historical antecedents: the Mexican Revolution of 1910 and the 1917 Constitution. The Mexican Revolution of 1910 was intertwined with the notions of workers' and labor rights.<sup>117</sup> Prior to the Revolution, the *laissez-faire* system of labor regulation in Mexico equated to long working days, backbreaking work, and marginal pay.<sup>118</sup> President Porfirio Díaz sought to perpetuate these circumstances by suppressing strikes and labor unions,<sup>119</sup> but through organizational efforts—including involvement in labor unions—the Mexican *campesinos* (peasants) were able to rise up in the 1910 Revolution and defeat the ruling, aristocratic *latifundistas*.<sup>120</sup>

In the wake of the 1910 Revolution, Mexico sought to create a paternalistic governmental regime which recognized and affirmed workers' rights.<sup>121</sup> These notions are enshrined in the Mexican Constitution of 1917.<sup>122</sup> In particular, Article 123 of the 1917 Constitution is the basis for Mexico's current labor law.<sup>123</sup> Article 123 of the Constitution enumerates the rights of individual workers in detail, including the right to strike and the right to form unions.<sup>124</sup>

117. See, e.g., VARGAS, *supra* note 4, at 152-54; Lin, *supra* note 31, at 90, n.94.

118. See, e.g., ANNA L. TORRIENTE, MEXICAN & U.S. LABOR LAW & PRACTICE: A PRACTICE GUIDE FOR MAQUILAS & OTHER BUSINESSES 53 (National Law Center for Inter-American Free Trade 1997); Jenna L. Acuff, Comment, *The Race to the Bottom: The United States' Influence on Mexican Labor Law Enforcement*, 5 SAN DIEGO INT'L L.J. 387, 390 (2004); Mark J. Russo, NAALC: A *Tex-Mex Requiem for Labor Protection*, 34 U. MIAMI INTER-AM. L. REV. 51, 71 (2002).

119. See, e.g., A. Maria Plumtree, Note, *Maquiladoras and Women Workers: The Marginalization of Women in Mexico as a Means to Economic Development*, 6 SW. J. L. & TRADE AM. 177, 191 (1999).

120. See, e.g., *id.*; Russo, *supra* note 118, at 72.

121. See, e.g., Acuff, *supra* note 118, at 391-92.

122. See, e.g., McGuinness, *supra* note 63, at 6.

123. VARGAS, *supra* note 4, at 154.

124. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [Const.], as amended, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), available in English at <http://www.ilstu.edu/class/hist263/docs/1917const.html>. Among the protections

### B. The Federal Labor Act

In 1931, Mexico's National Congress passed the Federal Labor Act (*Ley Federal del Trabajo*), implementing the paternalistic protection of workers enumerated in the 1917 Constitution.<sup>125</sup> Eventually, the Federal Labor Act of 1970 (FLA) replaced the 1931 Act.<sup>126</sup> The FLA remains the primary source of labor law in Mexico today.<sup>127</sup> It re-codifies the paternalistic protection of workers inherent in the 1917 Constitution. In addition to sections providing for compulsory profit-sharing,<sup>128</sup> protection of women's rights,<sup>129</sup> and the prohibition of child labor,<sup>130</sup> the FLA also contains provisions regarding collective labor relationships.

Title VII of the FLA governs collective labor relationships.<sup>131</sup> Employees are granted the right to freely associate and form trade unions.<sup>132</sup> The FLA also maintains that a person may neither be forced to join nor prohibited from joining a labor union.<sup>133</sup> However, in addition to the provisions of Title VII of the FLA, all unions in Mexico are "subject to the jurisdiction of the Confederation of Mexican Laborers" (CTM).<sup>134</sup> Long Mexico's largest labor organization, the CTM is widely considered to serve as an extension of the Mexican government.<sup>135</sup> Within the last ten years, the CTM has counted approximately 70 percent of the Mexican labor force among its members.<sup>136</sup> According to observers,

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provided by Article 123 of the 1917 Constitution are: a limitation of eight working hours per day without overtime compensation; prohibition of work by children under 14 years of age; one month of paid maternity leave; requirement that the minimum wage be sufficient to satisfy the normal material, social, and cultural needs of the head of the family; profit-sharing among workers; entitlement to a Christmas bonus (*aguinaldo*); the right of employees to strike and employers to engage in lockouts; and the right to organize by forming unions, professional associations, etc. *Id.*

125. VARGAS, *supra* note 4, at 156.

126. *See* FLA, *supra* note 91, at 315-711.

127. *See* VARGAS, *supra* note 4, at 156.

128. The FLA mandates compulsory profit-sharing under Title III, Ch. VIII, art. 117-31. FLA, *supra* note 91, at 359-67.

129. The FLA prohibits sex-based discrimination (art. 3), requires employers to provide child-care services for their employees (art. 171), and requires that pregnant mothers be granted 12 weeks of paid maternity leave with full reinstatement, including accrued benefits, upon return (art. 170). *Id.* at 315, 403-05.

130. The FLA prohibits the employment of children under 14 years of age or overtime work for children under 16 years of age (art. 5). *Id.* at 317.

131. Title VII of the FLA encompasses art. 354-439. *Id.* at 477-513.

132. *Id.*

133. This protection is provided in art. 358 of the FLA. *Id.* at 477.

134. VARGAS, *supra* note 4, at 172.

135. *Id.*; *see also* DAN LA BOTZ, *THE CRISIS OF MEXICAN LABOR 1* (Praeger 1988); EDWARD J. WILLIAMS & JOHN T. PASSE-SMITH, *THE UNIONIZATION OF THE MAQUILADORA INDUSTRY: THE TAMAULIPAN CASE IN NATIONAL CONTEXT 3* (Institute for Regional Studies of the Californias, San Diego State Univ. 1992); Acuff, *supra* note 118, at 398.

136. Jill Sanner Ruhnke, *The Impact of NAFTA on Labor Arbitration in Mexico*, 26 *LAW & POL'Y INT'L BUS.* 917, 929 (1995).

government involvement in the collective bargaining relationship undermined the strength and growth of a legitimate union movement in Mexico.<sup>137</sup>

### C. Government Involvement in Labor Organization

The strong connection between the government and the existing labor unions has led to accusations of corruption,<sup>138</sup> and it has contributed to the disparity in bargaining power within Mexican collective labor relationships. Any historical success of Mexican labor unions (*sindicatos*) at organizing workers has come as a result of alignment with the government, notably the Institutional Revolutionary Party (PRI).<sup>139</sup> Widely vilified for its praetorian practices and 70-year totalitarian dominance of the Mexican state, the PRI conspired with the dominant labor unions to keep workers' wages low in order to attracting foreign investment.<sup>140</sup> The CTM consistently supports these government anti-inflation wage-price pacts.<sup>141</sup> Government interference in labor organization spawns *sindicato* leaders who are loyal to the government rather than to the workers they claim to represent.<sup>142</sup> Accusations of government interference with labor unions go even farther: There are accounts of PRI officials breaking up labor meetings at critical moments, harassing independent union leaders, and even having some of them murdered.<sup>143</sup> While the PRI is no longer the ruling party in Mexico, having been displaced by the National Action Party (PAN), allegations of corruption and government interference with the labor unions continue.<sup>144</sup>

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137. See, e.g., VARGAS, *supra* note 4, at 172; Jennifer Mandina, *International Watch: NAFTA's Contribution to the Discrimination of Mexican Women in the Maquiladoras*, 9 BUFF. WOMEN'S L.J. 25, 30 (2000-2001); William F. Pascoe, *Déjà Vu All Over Again? Collective Bargaining and NAFTA: Can United States and Mexican National Unions Foster Growth Under the NAALC?*, 19 ARIZ. J. INT'L & COMP. L. 741, 748-49 (2002); Russo, *supra* note 118, at 74-76.

138. See, e.g., Symposium, *The Multinational Enterprise as Global Corporate Citizen*, 21 N.Y.L. SCH. J. INT'L & COMP. L. 1, 20 (2001); Juan Forrero, *Tijuana Workers Reject Independent Union*, SAN DIEGO UNION-TRIB., Dec. 16, 1993, at B3.

139. See, e.g., David Fairris, *Unions and Wage Inequality in Mexico*, 56 INDUS. & LAB REL. REV. 481, 483 (2003).

140. See, e.g., KIM ET AL., *supra* note 76, at 267.

141. *Id.*

142. See, e.g., Smith, *supra* note 88, at 213.

143. See, e.g., Plumtree, *supra* note 119, at 194.

144. See Symposium, *supra* note 138, at 20.

*D. The North American Agreement on Labor Cooperation (NAALC)*

The final legal enactment relating to Mexican labor law and the regulation of trade unions in Mexico is the North American Agreement on Labor Cooperation (NAALC).<sup>145</sup> The NAALC—which entered into force on January 1, 1994—is a side agreement to NAFTA.<sup>146</sup> The objectives of the NAALC include: (1) to “improve working conditions and living standards in each Party’s territory;”<sup>147</sup> (2) to “promote, to the maximum extent possible, the labor principles set out in Annex 1”<sup>148</sup> (including the freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, elimination of employment discrimination, and prevention of occupational injuries and illnesses);<sup>149</sup> (3) to “promote compliance with, and effective enforcement by each Party of, its labor law;”<sup>150</sup> and (4) to “foster transparency in the administration of labor law.”<sup>151</sup> Thus, the NAALC does not create any uniform labor laws or labor standards between the three NAFTA countries.<sup>152</sup> Instead, the NAALC emphasizes requiring that each Party to: (a) enact labor laws that are protective of workers’ rights, and (b) enforce these domestic labor laws.<sup>153</sup>

While the NAALC seems to be a well-intentioned effort to promote the creation of protective “black letter” labor law in the domain of each State-Party, critics contend that it has improved the enforcement of domestic labor laws in Mexico very little, if at all.<sup>154</sup> The problem with the NAALC, according to observers, is that it lacks effective enforcement mechanisms.<sup>155</sup> Within the European Union, the European Court of Justice has the power to review specific labor law violations and decisions by a member-state’s highest court.<sup>156</sup> The NAALC lacks any such supranational

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145. See North American Agreement on Labor Cooperation, U.S.-Can.-Mex., Sept. 13, 1993, 32 ILM 1499 [hereinafter NAALC], available at <http://www.naalc.org/english/agreement.shtml> (last visited Nov. 16, 2005).

146. See Maria Teresa Guerra & Anna L. Torriente, *The NAALC and the Labor Laws of Mexico and the United States*, 14 ARIZ J. INT’L & COMP L. 503 (1997).

147. NAALC, *supra* note 145, at art. 1(1).

148. *Id.* at art. 1(2).

149. *Id.* at annex 1.

150. *Id.* at art. 1(6).

151. *Id.* at art. 1(7).

152. See Guerra & Torriente, *supra* note 146, at 505.

153. *Id.*

154. See, e.g., KIM ET AL., *supra* note 76, at 267 (“Mexico routinely disregards its labor laws, and the NAALC has led to little or no improvement in enforcement”).

155. See, e.g., Kate E. Andrias, *Gender, Work, and the NAFTA Labor Side Agreement*, 37 U.S.F. L. REV. 521, 552 (2003).

156. *Id.* at 551.

tribunal for adjudicating alleged labor law violations.<sup>157</sup> Instead, under the NAALC, an individual must appeal to another State-Party's National Administrative Office (NAO) to investigate allegations of labor violations.<sup>158</sup> This procedure was implemented in *The Mexican Pregnancy Testing Case*.<sup>159</sup>

In *The Mexican Pregnancy Testing Case*, the US NAO had to apply Mexican labor law in order to determine whether Mexico failed to enforce its own non-discrimination laws in permitting the mandatory pregnancy testing of *maquiladora* workers.<sup>160</sup> Under pressure from the Mexican government, the US NAO failed to enforce any sort of labor standard, citing "differing opinions within the Government of Mexico on the constitutionality and legality of the practice."<sup>161</sup> Therefore, despite its optimistic goals, the NAALC has failed to meet its obligation of enforcing the domestic labor law of its State-Parties.

Furthermore, the NAALC limits the remedies available for a particular labor law violation, depending on the classification of the particular violation.<sup>162</sup> Some labor law violations may warrant the issuance of binding remedies on the violating party, while the remedy available for other violations may be limited to consultation and/or an expert evaluation process.<sup>163</sup> Thus, while violations of a State-Party's health and safety, child labor, and minimum wage laws may hypothetically result in binding remedies,<sup>164</sup> the only remedy available for violations of the freedom

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157. *Id.*

158. *Id.*

159. U.S. N.A.O. Case No. 9701 (*The Mexican Pregnancy Testing Case*) was submitted in May 1997 by a group of NGOs that accused the Mexican government of failing to meet its obligations under Mexican labor law, and thus the NAALC, by permitting widespread discriminatory pregnancy testing in its *maquiladora* sector. U.S. NAT'L ADMIN. OFFICE, BUREAU OF INT'L LABOR AFFAIRS, U.S. DEPT OF LABOR, SUBMISSION CONCERNING PREGNANCY-BASED SEX DISCRIMINATION IN MEXICO'S MAQUILADORA SECTOR (1996), available at <http://www.dol-union-reports.gov/ilab/media/reports/nao/submissions/Sub9701.htm>; U.S. NAT'L ADMIN. OFFICE, BUREAU OF INT'L LABOR AFFAIRS, U.S. DEPT OF LABOR, PUBLIC REPORT OF N.A.O. SUBMISSION NO. 9701, at II (1998), available at <http://www.dol.gov/ilab/media/reports/nao/pubrep9701.htm> [hereinafter U.S. N.A.O. PUB. REPORT OF REVIEW]. For the U.S. N.A.O.'s statement of the facts, analysis, and recommendations regarding the *Mexican Pregnancy Testing Case*, see U.S. N.A.O. PUB. REPORT OF REVIEW; see also Andrias, *supra* note 155, at 551.

160. Andrias, *supra* note 155, at 551.

161. U.S. N.A.O. PUB. REPORT OF REVIEW, *supra* note 159, at VII(2).

162. For an explanation and discussion of the NAALC's three-tier system of labor violations and the respective remedies available, see NAALC *Objectives, Obligations, and Principles*, in HUMAN RIGHTS WATCH, CANADA/MEXICO/UNITED STATES: TRADING AWAY RIGHTS: THE UNFULFILLED PROMISE OF NAFTA'S LABOR SIDE AGREEMENT at IV (Vol. 13, no. 2(B), 2001), available at [http://www.hrw.org/reports/2001/nafta/nafta0401-04.htm#P445\\_66138](http://www.hrw.org/reports/2001/nafta/nafta0401-04.htm#P445_66138).

163. *Id.* at ¶ 5; see also Andrias, *supra* note 155, at 552-53.

164. According to the most recent data available, a total of 30 submissions have been filed with NAOs under the NAALC. Nineteen were filed with the US NAO, with seventeen

to associate, the right to bargain collectively, and the right to strike is non-binding ministerial consultation.<sup>165</sup>

### *E. Mexico's Proposed New Law: The Abascal Project*

In December 2002, a group presented a proposal to reform the FLA to the Mexican Chamber of Deputies.<sup>166</sup> This proposal is commonly known as the Abascal Project, after Mexico's Labor Secretary, and driving force behind the proposal, Carlos Abascal Carranza.<sup>167</sup> Critics of the law contend that the Abascal Project both fails to address the existing deficiencies of Mexican labor law and actually makes the situation for Mexican workers worse.<sup>168</sup> These critics maintain that the Abascal Project makes the FLA less protective of workers' rights by curtailing the rights of unions and denying Mexican workers their heretofore statutorily protected rights regarding long-term employment, working hours, and profit-sharing.

Human rights organizations allege that the Abascal Project will weaken the general protection of organized labor by adding new ways in which a union's certification may be revoked,<sup>169</sup> and by introducing concepts such as "radius of action,"<sup>170</sup> "processability,"<sup>171</sup> and "legitimation"<sup>172</sup> to obstruct the formation of democratic unions.<sup>173</sup> Such provisions, it is asserted, will

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involving allegations against Mexico and two involving allegations against Canada. Seven were filed with the Mexican NAO involving allegations against the US. Four were filed with the Canadian NAO, with two involving allegations against Mexico and two involving allegations against the US. To date, no binding remedies had been issued by any of the NAOs. U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, STATUS OF SUBMISSIONS UNDER THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION (NAALC), *available at* <http://www.dol.gov/ilab/programs/nao/status.htm> (last visited Nov. 16, 2005).

165. Andrias, *supra* note 155, at 553.

166. U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, U.S. NAO PUB. SUBMISSION US2005-01 (2005), *available at* <http://www.dol.gov/ilab/media/reports/nao/submissions/Sub2005-01.htm#f18> [hereinafter PUBLIC SUBMISSION US2005-01].

167. *Id.*

168. *Id.*; see also HUMAN RIGHTS WATCH, MEXICO: FOX'S LABOR REFORM PROPOSAL WOULD DEAL SERIOUS BLOW TO WORKERS' RIGHTS: LETTER TO MEXICO'S CHAMBER OF DEPUTIES (2005), *available at* <http://hrw.org/english/docs/2005/02/09/mexico10156.htm> (last visited Apr. 15, 2005).

169. Under the Abascal Project, a union's certification may be revoked for not reporting changes in a union's board or its statutes to the Secretariat of Labor or for not reporting increases or decreases in the number of union members. Additionally, a union's registration may be cancelled if the collective bargaining agreement is not amended for two consecutive terms. PUBLIC SUBMISSION US2005-01, *supra* note 166, n.14.

170. The term "radius of action" limits the sectors in which unions can organize. *Id.* at n.18.

171. Critics claim that "processability" is simply a term used to justify impeding the exercise of collective rights without proper basis. *Id.*

172. "Legitimation" is described as a means of blocking the formation of unions based on an employer's subjective perceptions. *Id.*

173. PUBLIC SUBMISSION US2005-01, *supra* note 166.

further debilitate an already ineffective and unrepresentative system of collective bargaining. These critics also claim that the Abascal Project will weaken workers' individual rights by: (1) giving employers an increased ability to hire temporary workers who may be terminated at any time without penalty,<sup>174</sup> (2) granting employers significant discretion in altering working hours,<sup>175</sup> and (3) allowing employers greater leniency in substituting productivity bonuses for wages, without any provisions for the profit-sharing of the benefits of such increased productivity.<sup>176</sup> However, as this potential reformation of the FLA is still in its formative stages,<sup>177</sup> it remains to be seen exactly how such reforms would be legislated, and perhaps more importantly, how they would be enforced.

## VI. ENFORCEMENT OF MEXICAN LABOR LAW

While the paternalistic overtones of Mexican labor law and the labor law obligations of the NAALC may seem to create a protective environment for the promotion of workers' rights, the aforementioned examples of human rights concerns associated with the Mexican *maquiladora* sector imply that this is not the reality of the situation. Thus, the problem for Mexican *maquiladora* workers lies not in the laws themselves, but rather in their lack of enforcement.<sup>178</sup> There are a myriad of conceivable explanations for why the Mexican government has chosen not to enforce its labor laws. However, each justification must be predicated on a devaluation of the human rights of Mexico's *maquiladora* workers in relation to some other concern.

One explanation for the lack of enforcement of Mexico's labor laws in the *maquiladora* sector is that no one is holding the Mexican government accountable. Despite the defeat of the PRI in 2000,<sup>179</sup> accusations of government corruption and exploitation of

174. *Id.* at § IV(1).

175. *Id.*

176. *Id.*

177. As of the writing of this Note, the Abascal Project had not been enacted into law by the Mexican legislature. However, in May 2005, Mexican Secretary of Labor Carlos Abascal continued his push for labor reform by distributing a document entitled, "Modernization of the Federal Labor Law." See United Electrical, Radio and Machine Workers International, Mexican Labor News and Analysis, May 2005, Vol. 10, No. 5, Labor Law Reform on Back Burner, available at [http://www.ueinternational.org/Mexico\\_info/mlna\\_articles.php?id=87#424](http://www.ueinternational.org/Mexico_info/mlna_articles.php?id=87#424) (last visited Dec. 11, 2005).

178. BACON, *supra* note 1, at 76 (describing the commonly-held opinion of *maquiladora* workers that "their problem isn't the law; it's the lack of enforcement").

179. See *PRI Beaten in Mexico Election*, BBC NEWS, July 3, 2000, <http://news.bbc.co.uk/1/hi/world/americas/799550.stm>.

the workforce are still common.<sup>180</sup> Due to its limitations, the NAALC has been ineffective in creating an impetus for the enforcement of Mexican labor laws. While Mexico is a signatory to international conventions and resolutions by the United Nations and the International Labour Organization articulating the importance of women's and workers' rights,<sup>181</sup> the ability of these organizations to bind Mexico to any such international obligations has also been somewhat limited.<sup>182</sup> Despite the statutes Mexico has passed and international treaties it has ratified—evidencing a desire to comport with international standards relating to labor and women's rights—the Mexican government still remains unwilling to circumscribe its own state sovereignty in the name of these international legal standards.<sup>183</sup>

Many of the reasons cited by Mr. Dávalos for the deficient union presence in Tijuana<sup>184</sup> may also explain the lack of enforcement of Mexican labor laws within the *maquiladoras*. These explanations include: workers who do not know their rights,<sup>185</sup> labor unions that fail to hold employers accountable for violations of Mexican labor laws,<sup>186</sup> and foreign companies that either ignore or do not comprehend their obligations within the Mexican legal system.<sup>187</sup> While these justifications amount to, at best, an ignorance of the law, they cannot exculpate the Mexican

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180. See, e.g., Heidi M. Timmons, Comment, *Fox Tracks Across the Mexican Maquiladora Industry*, 17 TRANSNAT'L LAW 321, 331 (2004) (citing a World Bank study which estimates that "corruption costs Mexico 9 percent of its Gross Domestic Product"); Nick Miles, *Challenges Ahead for Fox*, BBC NEWS, June 9, 2003, <http://news.bbc.co.uk/1/hi/world/americas/2974970.stm>.

181. Relevant UN Conventions and Declarations to which Mexico is a signatory include: The Universal Declaration of Human Rights (arts. 2, 20, 23, 25), the Convention on Economic, Social, and Cultural Rights (arts. 3, 7, 8, 10), the Convention on Civil and Political Rights (arts. 3, 22), and the Convention on the Elimination of All Forms of Discrimination Against Women (arts. 2, 11). See Office of the United Nations High Commissioner for Human Rights, Mexico, Ratifications and Reservations, available at <http://www.unhcr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=112#112> (last visited Nov. 16, 2005). Mexico has also ratified the International Labour Organisation (ILO) Workers' Representatives Convention (arts. 1, 2, 5). International Labour Organization, Workers' Representatives Convention, C135 (June 23, 1971), available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C135>.

182. See Reka S. Koerner, Note, *Pregnancy Discrimination in Mexico: Has Mexico Complied with the North American Agreement on Labor Cooperation?*, 4 TEX. F. ON C.L. & C.R. 235, 253-59 (1999); see also Alicia Ely Yamin & Ma. Pilar Noriega Garcia, *The Absence of the Rule of Law in Mexico: Diagnosis and Implications for a Mexican Transition to Democracy*, 21 LOY. LA. INT'L & COMP. L.J. 467, 497 (1999).

183. See Bernardo Sepúlveda Amor, *International Law and National Sovereignty: The NAFTA and the Claims of Mexican Jurisdiction*, 19 HOUS. J. INT'L L. 565, 573 (1997).

184. See Dávalos, *supra* note 107.

185. *Id.*

186. *Id.*

187. *Id.*



government or *maquiladora* employers from their failure to enforce workers' rights.

The final, and perhaps most compelling, explanation for the Mexican government's failure to enforce its labor laws within *maquiladoras* is that the government focuses on creating and maintaining jobs rather than affirming human rights.<sup>188</sup> In a nation where the unemployment rate has been estimated by some observers to be as high as 25 percent,<sup>189</sup> attracting and retaining opportunities for permanent employment must be a paramount objective of the government. Can people really be worried about such concepts as "human rights" when they are struggling to put food on the table? As Professor Gerhard Erasmus puts it, "[it] will be difficult to convince people in poor countries of the value of any human rights if basic needs are not fulfilled."<sup>190</sup>

While it is undeniable that the economic conditions in Mexico complicate the matter of enforcing and upholding labor rights, women's rights, and human rights in general, these conditions negate neither the obligation nor the ability of the Mexican government to do so. In order to appreciate the ability of the Mexican government to enforce such rights in the face of harsh economic conditions, one must understand the difference between positive and negative rights. Positive rights are those rights that a state has an affirmative duty to "respect, protect, and fulfill."<sup>191</sup> With regard to positive rights, the key inquiry is whether the state is affirmatively acting to meet its obligations. Negative rights can be described as prohibitions against state interference.<sup>192</sup> For negative rights, the key inquiry is whether the state is leaving its citizens alone to exercise their rights.<sup>193</sup> In the context of *maquiladoras*, an example of a positive right which the Mexican government owes to its workers is the protection against occupational safety hazards and dangerous work environments.

188. See, e.g., Jorge A. Vargas, *Privacy Rights Under Mexican Law: Emergence and Legal Configuration of a Panoply of New Rights*, 27 HOUS. J. INT'L L. 73, 116-17 (2004) (noting that due to the sustained demand for jobs in Mexico, the Mexican government's "highest political and economic priority is directed at creating and securing permanent jobs for its incessantly growing population, instead of protecting the privacy rights of workers in the workplace").

189. BACON, *supra* note 1, at 54.

190. Gerhard Erasmus, *Socio-Economic Rights and Their Implementation: The Impact of Domestic and International Instruments*, 32 INT'L J. LEGAL INFO. 243, 245 (2004) ("[P]overty is perhaps the greater violator of human rights").

191. Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT'L L. 505, 539 (2003).

192. *Id.*

193. See Lance Compa, *Assessing Assessments: A Survey of Efforts to Measure Countries' Compliance with Freedom of Association Standards*, 24 COMP. LAB L. & POL'Y J. 283, 283-284 (2003).

An example of a negative right in this context is the prohibition against government interference with labor unions.

The poor condition of the Mexican economy may make it difficult for the government to provide regulatory schemes that enforce the positive rights of its workers,<sup>194</sup> but that does not preclude the government's recognition of its workers' negative rights. While developing a social or administrative network to regulate occupational safety issues may create significant costs for the government, simply limiting its own involvement in independent labor unions requires the government to shoulder no conspicuous financial burden. In fact, limiting its involvement in this aspect of the private sector may even reduce the operating and administrative costs of the Mexican government. Thus, a claim of economic hardship will not excuse the Mexican government from recognizing such negative rights owed to its workforce. But what about the Mexican government's fear of losing jobs to other developing nations? What about the "race to the bottom?" It certainly is conceivable that holding Mexico to higher labor standards than other developing nations could result in multinational corporations leaving Mexico in search of less stringent policies. However, an international regulatory scheme that focuses on nation-states is not the only option.

#### VII. REGULATION OF MAQUILADORA OWNERS AND OTHER TRANSNATIONAL CORPORATIONS

In August of 2003, the United Nations Commission on Human Rights adopted draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Norms).<sup>195</sup> The Norms state that within their respective spheres of activity and influence, transnational corporations have the obligation to "promote, secure the fulfillment of, respect, ensure respect of, and protect human rights recognized in international as well as national law."<sup>196</sup> In addition to general

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194. This is not to suggest that the Mexican government is not also required under its international and domestic legal obligations to uphold its workers' positive rights, but simply that economic factors may play a greater role in the government's ability to protect positive rights.

195. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 13, 2003), available at <http://www1.umn.edu/humanrts/links/norms-Aug2003.html> [hereinafter Norms]; see also Julie Campagna, *United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers*, 37 J. MARSHALL L. REV. 1205, 1206 (2004).

196. Norms, *supra* note 195, at art. 1.

human rights regarding the right to equal opportunity<sup>197</sup> and the right to the security of persons,<sup>198</sup> the Norms require transnational corporations to recognize and uphold workers' rights. In regard to the rights of workers, the Norms obligate transnational corporations to provide a safe and healthy working environment,<sup>199</sup> to pay workers at a level "that ensures an adequate standard of living for them and their families,"<sup>200</sup> and to recognize the right of workers to associate and to bargain collectively without outside interference.<sup>201</sup>

There are three general means by which the provisions of the Norms are to be implemented. Transnational corporations are to "adopt, disseminate, and implement internal rules of operation" that comply with the Norms.<sup>202</sup> These corporations are also subject to periodic monitoring and verification by the United Nations and its existing monitoring bodies.<sup>203</sup> Additionally, nation-states are expected to create "and reinforce the necessary legal and administrative framework for ensuring" corporate compliance with the Norms.<sup>204</sup> Towards this end, the UN Human Rights Commission also instructs that the Norms be applied by national and international tribunals, pursuant to national and international law.<sup>205</sup>

While they are not yet binding international law, the Norms are evidence of a widely accepted international contention that may soon take the form of a binding, *jus cogens* obligation.<sup>206</sup> The emergence of resolutions such as the Norms, which oblige transnational corporations to comply with international human rights regulations, seems to bode well for the future of workers' rights in Mexico's *maquiladora* sector. By holding these corporations accountable, regardless of the developing nation in which they choose to establish an assembly plant, enforceable international declarations and conventions deny corporations the ability to "race to the bottom" in pursuit of less stringent labor and human rights standards. If the corporations themselves are the focus of international regulation, it will not matter where they

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197. *Id.* at art. 2.

198. *Id.* at art. 3.

199. *Id.* at art. 7.

200. *Id.* at art. 8.

201. *Id.* at art. 9.

202. *Id.* at art. 15.

203. *Id.* at art. 16.

204. *Id.* at art. 17.

205. *Id.* at art. 18.

206. All 53 members of the United Nations Commission on Human Rights supported the adoption of the Norms. See Campagna, *supra* note 195.

choose to incorporate, as their international *erga omnes*<sup>207</sup> obligations will be due the entire world over.

It is hoped that such universal application of this corporate regulation will end the "race to the bottom" in workers' rights. Regulation of corporations also does not necessitate the consideration of controversial and problematic issues of state sovereignty that are implicit in international regulation of states.<sup>208</sup> Furthermore, unlike developing nation-states such as Mexico, corporations are more restricted in their ability to claim legitimately an economic incapacity to enforce human rights obligations. As declarations such as the Norms acquire the status of binding international law, corporations will be forced to recognize both the positive and negative rights of their workers.

#### VIII. CONCLUSION

While the growth of the Mexican *maquiladora* sector has largely accomplished its goals of attracting foreign investment to Mexico and creating jobs for its workers, critics contend that these successes have come at a high price. Particularly in the *maquiladora* sector, labor law violations are perceived to be commonplace. Issues such as substandard working conditions, debilitating health effects, and mandatory pregnancy tests are often a part of the daily life of *maquiladora* workers. The paternalistic overtones of Mexican labor law provide a fertile framework for the recognition of workers' rights. However, with a government that chooses to focus on sustaining employment levels rather than on recognizing workers' rights, and the proliferation of labor unions that are either unable or unwilling to adequately represent the workforce, these laws are not consistently enforced.

It is widely contended that the proposed reforms to Mexican labor law will only serve to further subjugate the rights of Mexico's *maquiladora* workers. But international law may be providing a solution to the complexities of this situation. By regulating the labor practices of multinational corporations, and obligating them to meet their domestic and international obligations, it may be

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207. See *Barcelona Traction, Light and Power Co. Ltd. (Belg. v. Spain)*, 1970 I.C.J. 3, 32 (Feb. 5) (Defining obligations *erga omnes* as "obligations of a state to the international community as a whole").

208. See, e.g., Adeno Addis, *The Thin State in Thick Globalism: Sovereignty in the Information Age*, 37 VAND J. TRANSNAT'L L. 1, 4 n.4 (2004); Jean Bethke Elshtain, *Sovereign God, Sovereign State, Sovereign Self*, 66 NOTRE DAME L. REV. 1355 (1991); John H. Jackson, *Sovereignty-Modern: A New Approach to an Outdated Concept*, 97 AM. J. INT'L L. 782 (2003); Sepúlveda, *supra* note 185; John R. Worth, Note, *Globalization and the Myth of Absolute National Sovereignty: Reconsidering the "Un-signing" of the Rome Statute and the Legacy of Senator Bricker*, 79 IND. L.J. 245, 258-63 (2004).

possible to improve the working conditions in developing nations such as Mexico and prevent the proliferation of a “race to the bottom” in workers rights. Such a solution can meet the goals of both the Mexican government and the Mexican worker, by maintaining high standards of human rights without compromising foreign investment and economic development. It is towards this “win-win” situation that regulation of Mexico’s *maquiladora* sector must progress in order to ensure that such regulation is beneficial, practicable, and likely to be enforced.