

A Report on Sexual Harassment in the Workplace in Mexico

Part of a series of reports for the International Labor Rights Fund's
Rights for Working Women Campaign

Field research in Mexico in 2003
Performed by Lorenia Trueba de Avendano

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International Labor Rights Fund
733 15th St., Suite 920
Washington, DC 20005
202/347-4100
Contact: Bama Athreya
bama.athreya@ilrf.org

Introduction

This report is intended to study the scope and extent of sexual harassment faced by women workers in Mexico. It is part of a series of similar reports for the International Labor Rights Fund's Rights for Working Women Campaign, with the aim of preventing violence in the workplace against women in developing countries. This study will provide a background of occupational conditions affecting women wage workers and the legal framework of existing protections for them, highlight certain findings from research data, and provide a brief conclusion with recommendations on how the problem of sexual harassment should be addressed in Mexico.

I. Background of Occupational Conditions

The population of Mexico is nearly 100 million, with an estimated 40 million workers contributing to the economy.¹ Roughly 13 million, or 33%, of women are active in the country's workforce. Of these working women, roughly 60% are wage workers, and the rest are independent workers or are working without pay.²

The quality of compensation for most workers (both men and women) in Mexico is poor. The general minimum wage is currently 35.23 Mexican pesos per day, which is approximately \$3.50 in U.S. dollars.³ In 2000, nearly half of economically active workers received no more than twice the minimum daily wage, a rate that is already dangerously low. An estimated 23% of workers do not receive any benefits (such as medical insurance or retirement savings) from their employers. Worse, approximately 3 million workers in Mexico did not receive any income at all for their labor in 2000.⁴

The labor force in Mexico is segregated, in that women are concentrated in public social service industries, retail, and export manufacturing. As of 1996, 72% of working women in Mexico were employed in the service and retail trade sectors. In that same year, 16.9 percent of working women were employed in the manufacturing sector, out of which 62.9 percent was in the garment, food processing and electrical products and

¹ As of 2000, the population in Mexico was 97,483,412, according to the National Institute of Statistics, Geography and Informatics (INEGI). Obtained October 2002 at <https://www.inegi.gob.mx> at "Informacion Estadistica. Estadisticas Sociodemograficas de Mediano Plazo."

² As of 1996, independent workers made up 23% and workers not receiving pay made up 16.9% of the total number of working women in Mexico. "Employment and Work in North America" (1998) Secretariat of the Commission for Labor Cooperation. North America Agreement on Labor Cooperation <http://www.naalc.org> at Appendix B.

³ This is based on a 2003 exchange rate of 10 Mexican pesos per 1 U.S. dollar.

⁴ INEGI. *Supra* note 1 at "Estadisticas Economicas de Coyuntura. Empleo y Desempleo" (Economic Statistics for the Short Term. Employment and Unemployment).

machinery industries.⁵ In manufacturing for export, as of 2002, 54.36% of manual workers (who represent 80% of all workers in the industry) were women.⁶

Women workers in Mexico spend an estimated 63 to 66 hours per week working in their jobs and performing household chores. Nearly two-thirds (63%) of these women are supporting children, while 40% are single, roughly 46% are married or cohabitating with a partner, and the remaining 14% are separated, divorced or widowed. In terms of educational attainment, 9% of women workers have had no formal education, and 16% have not even completed elementary schooling.⁷

Salary discrimination between men and women is prevalent. For example, in the manufacturing industry, women earn only 9.69 pesos per hour compared to men's hourly earnings of 13.74 pesos. In commerce, women earn 10.96 pesos per hour compared to men's hourly earnings of 13.34 pesos, and in public administration and social services women earn 23.74 pesos per hour next to men's hourly earnings of 24.58 pesos.⁸

In addition to salary discrimination, women are also subject to pregnancy-based discrimination, both during the hiring process and throughout their employment. Employers do this to avoid having employees that require maternity leave and related benefits. Some prospective employers go so far as to request doctors' certification to prove women are not pregnant. The Mexican National Administrative Office (NAO) argued it was not a wide spread practice in Mexico. The practice of pregnancy-based discrimination is not explicitly prohibited under Mexican law, as the Labor Code only protects workers after they have been hired. Therefore there is presently no legal remedy to address such discrimination when it occurs during the hiring process.

Women are not only subjected to harassment and discrimination by their employers, but also by union leaders. For example, in-depth interviews for this study revealed a situation involving women workers in the subway stations of Mexico City. These women were subject to harassment by union leaders, who demanded sexual favors throughout the hiring process and as a requirement to keep their jobs. The new government of the PRD (Democratic Revolution Party) in Mexico City has attempted to address this issue by allowing the Human Resources Office of the subway system to control the hiring process, and by appointing women to some supervisor and management positions.

II. Legal Framework

⁵ "The Employment of Women in North America" *supra* note 2.

⁶ *Supra* note 1.

⁷ As of 1999 estimates. INEGI, *supra* note 1 at "Sistema de Indicadores para el Seguimiento de la Situacion de la Mujer en Mexico. Trabajo. INEGI (Indicators System for the Follow-up Women's Condition in Mexico. Employment).

⁸ Figures as of 1996. "The Employment of Women in North America" *supra* note 3(?).

National labor legislation in Mexico does not explicitly address sexual harassment for private industries. The Federal Constitution does stipulate that when workers are subject to “wrongful treatment” (including violence, threatening behavior or verbal assault) by their employers or superiors during working hours, they are entitled to leave their jobs and receive indemnification of up to three months of their salary.⁹ However, the Federal Labor Code stipulates that during non-working hours, victims can only receive compensation when it can be proven that the harassment would “make it impossible to continue with the working relationship.”¹⁰ When harassment is committed by one worker on a co-worker of the same level, the employer has legal cause to dismiss the aggressor only if his actions “disrupt discipline at the workplace.”¹¹ Not surprisingly, these conditions are difficult to prove.

The Federal Criminal Code does criminalize sexual harassment under Article 259. However, this only applies to federal officers who commit such behavior within the scope of their employment. Sexual harassment in this context is defined as a repeated attempt to make sexual advances by someone in a superior position. However, most victims are reluctant to report such behavior for fear of losing their jobs.

The Mexican federal and many local governments have administrative agencies to promote women’s rights and gender-oriented policies. At the federal level, there is a Women’s National Institute, which was created in early 2001 to promote gender issues. At the local level, 26 states, including the Federal District (Mexico City), have their own Women’s Institutes, and most of the rest of the states in the country have some public programs that address gender issues. Many states in Mexico even have legal agencies that specialize in the investigation and prosecution of sexual offenses and crimes such as sexual harassment.

Despite these advances, 16 of Mexico’s 31 states (plus the Federal District) do not have criminal legislation to punish sexual harassment offenders.¹² Only 14 out of the 16 jurisdictions that do recognize sexual harassment as a crime refer to sexual harassment in a strict sense, the other two refer to such crimes as “taking sexual advantage” and “harassment”, but what they are criminalizing is not harassment itself, but the fact of actually having sexual intercourse as a condition for being hired, not being dismissed or being promoted, obtaining a salary raise or a labor right or benefit. Only one state, Guerrero, explicitly considers both sexual harassment and sexual advantage as crimes in its criminal code.

In terms of punishment, 5 out of the 14 States that do recognize sexual harassment as crime in a strict sense, require that some damage must be done to the

⁹ Article 123, Section XXII of the Federal Constitution.

¹⁰ Article 51, Section III of the Federal Labor Code.

¹¹ Article 47, Section III of the Federal Labor Code.

¹² These 16 include: Baja California Sur, Campeche, Coahuila, Durango, Guanajuato, Michoacan, Nayarit, Oaxaca, Puebla, Queretaro, Quintana Roo, San Luis Potosi, Sonora, Tabasco, Tamaulipas and Tlaxcala.

victim as a condition to prosecute and sanction. Two-thirds of the States that have sexual harassment as a crime in their criminal, that is 10 out of 14 require the existence of a hierarchical/subordinate relationship between the perpetrator and victim in order to prosecute. Needless to say, these obstacles make it difficult for victims to find justice in the legal system, and deter others from even trying.

Several working groups have submitted initiatives to amend the Federal Constitution and Labor Code to address sexual harassment in recent years. Two of the most well known of these are the Abascal Project, organized by the Federal Labor and Social Prevention Secretariat, and a joint proposal by the Workers' National Union and the Federation of Goods and Services Industry Unions.¹³ Both of these initiatives propose important constitutional and labor law changes regarding gender equity, non-discrimination and sexual harassment at the workplace. While the Abascal project focuses on fostering improved employer/employee relations, the latter project focuses on freedom of association and the democracy of unions, including negotiated legal flexibility between unions and employers through collective bargaining. For this objective, the project proposes to amend Article 123 of the Federal Constitution to prohibit gender-based discrimination in hiring, training and all other employment conditions. This proposed amendment would also force employers to become responsible for maintaining workplaces free of sexual harassment and related abuse.

At the local level, there were several campaigns in Mexico City in 1999 and 2000 that had a significant impact on the problem of sexual harassment. Those most effective were organized by the local government of Mexico City and by the Red de Mujeres Sindicalistas (Women Unionists Network).

Mexico has indicated its willingness to address the problem of sexual harassment in the workplace by ratifying several well-known international treaties. These include the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), ratified in 1981, as well as the Optional Protocol of this Convention, in 2002. Mexico has also ratified 77 ILO Conventions, including the following: Underground Work (Women) of 1935 (C45), Equal Remuneration of 1951 (C100), Discrimination (Employment and Occupation) of 1958 (C111), and the Indigenous and Tribal People's Convention of 1989 (C169).

Mexico has also ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women in 1998.¹⁴ This Convention makes several provisions against sexual harassment and discrimination in the workplace. Specifically, Article 6 stipulates that discrimination is a form of violence against women, violence against women includes "sexual harassment in the workplace" (Article 2b), and every woman "has the right to be free from violence" (Article 3). This Convention also

¹³ The title of the Abascal project comes from Mr. Carlos Abascal, the Secretary of Labor and Social Prevention.

¹⁴ Belem do Para, Brazil, 1994.

makes requirements for government agencies to take responsibility for ensuring safe and respective working environments for women. Specifically, they must create domestic legislation with provisions to “prevent, punish and eradicate” violence against women and to “amend or repeal existing laws and regulations, or to modify legal or customary practices which sustain the persistence and tolerance of violence against women.”

Despite Mexico’s ratification of these treaties, the research findings presented below prove that the country is far from effectively protecting its women workers from sexual harassment and related abuse at the workplace.

III. Research Data

Research for this study was conducted by questionnaire to 160 women wage workers from the four different sectors of the economy where they are most active. These sectors include public health care institutions, public schools, the informal retail industry, and export manufacturing (known in Mexico as maquilas). In-depth interviews were also conducted to gain the perspective of local academics, attorneys, government officials, and union leaders.

Results of the questionnaire provided the following characteristics of respondents:

- 60% are between the ages of 20 and 39
- 50% are married or live with their partners
- 63% have children
- 53% are at work between 40-48 hours per week (which does not include household work)
- 87% have at least one other member of the household who contributes financially
- 62% have a male direct supervisor.

Given these characteristics, consider the following responses from those in the study regarding sexual harassment:

- 28% of respondents are not familiar with the term sexual harassment, and therefore would be unable to recognize it as harmful (Table 1)
- 26% recognize that sexual harassment is an unwanted behavior, but know little else about it (Table 1)
- 11% of respondents assume that only aggressive sexual violence constitutes sexual harassment (Table 1)
- 53% are not aware that there are any laws that punish against sexual harassment (Table 2)
- 47% have suffered from some form of sexual harassment at the workplace (Table 3)

- Of those 47%, 25% involved unwanted touching, 12% were threatened to give in to demands or suffer real consequences, and 2% were sexually assaulted (Table 4)
- 34% of aggressors in these cases held superior positions in the workplace, while 23% were employees of the same level as the victim, and the remaining 20% of cases were committed by union leaders (Table 5).

The following tables display respondents' previous understanding and personal experiences with sexual harassment in the workplace. Table 1 shows how respondents associated with the term sexual harassment, and how those who were familiar with the term would define it.

Table 1: Respondents' Perceptions of Sexual Harassment¹⁵

	Unfamiliar with the concept	Seen as unwanted behavior	Breach of right	Need not be physical	Touching without permission	Involves abuse of position	Persistent sexual advances	Aggressive sexual violence
Hospitals	23.4%	31.2%	-----	1.6%	15.6%	4.7%	6.3%	17.2%
Schools	34.8%	30.4%	-----	-----	-----	4.4%	26%	4.4%
Retail	40%	26%	-----	12%	12%	-----	-----	10%
Maquilas	8.7%	8.7%	8.7%	8.7%	-----	30.4%	30.4%	4.4%
Total	28%	26%	1%	6%	10%	7%	11%	11%

1617181920b1e 2 details respondents' knowledge of any criminal or labor legislation that deals with sexual harassment in the workplace - national or otherwise.

Table 2: Respondents' Knowledge of Legislation to Prohibit Sexual Harassment

¹⁵ Read left-to-right. Add percentages by row, not by column.

¹⁶ Those who responded to this category do recognize sexual harassment as unwanted and offensive behavior.

¹⁷ Respondents in this category recognized sexual harassment in the workplace as violating their rights.

¹⁸ Those who associate with this category recognize that sexual harassment does not have to involve physical contact, and can include verbal abuse and visual intimidation.

¹⁹ Respondents in this category were of the opinion that harassment has to involve someone of a supervisory role abusing his position in the workplace, such as by threatening termination if the victim would not give in to his demands.

²⁰ Respondents in this category considered only aggressive sexual violence, such as rape, to constitute sexual harassment.

	Aware of legislation		Unaware of legislation		Total	
	respondents	% of total	respondents	% of total	respondents	% total
Hospitals	29	45%	35	55%	64	100%
Schools	20	87%	3	13%	23	100%
Retail	15	30%	35	70%	50	100%
Maquilas	11	48%	12	52%	23	100%
Total	75	47%	85	53%	160	100%

Table 3 reveals respondents' personal experiences with sexual harassment of any kind in the workplace, both directly to themselves and indirectly by witnessing or hearing of someone else being subject to harassment.

Table 3: Respondents' Personal Experiences

	Have had experience		Have not had experience		Total	
	Respondents	% of total	Respondents	% of total	Respondents	% total
Hospitals	30	47%	34	53%	64	100%
Schools	6	26%	17	74%	23	100%
Retail	23	46%	27	54%	50	100%
Maquilas	16	70%	7	30%	23	100%
Total	75	47%	85	53%	160	100%

Table 4 provides a breakdown of the types of harassment experienced by those who responded positively in Table 3.

Table 4: Type of Harassment Experienced²¹

	Stared or whistled at		Exposed to pornography		Touched		Asked on date		Threatened		Sexually assaulted		Total
Hospital	34	27%	13	10%	35	28%	23	18%	22	17%	---	---	127

²¹ Totals for Table 4 were calculated according to the number of cases reported, since some respondents reported several cases. Similar to Tables 2 and 3, the first smaller column under larger columns is the number of respondents, and the second smaller column is the percent of total. This is the same format for Table 5.

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Schools	8	29%	6	21%	6	21%	4	14%	3	11%	1	4%	28
Retail	43	38%	14	13%	30	27%	19	17%	4	3%	2	2%	112
Maquilas	8	15%	14	26%	9	17%	10	18%	11	20%	2	4%	54
Total	93	29%	47	15%	80	25%	56	17%	40	12%	5	2%	321

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For those who have experienced sexual harassment, Table 5 details responses regarding the position in the workplace of the person who committed the acts, in relation to the victim.

Table 5: Position of the Aggressor

	Co-worker		Supervisor		Co-worker of a higher position		Union leader		Customer		Police officer		Total
Hospitals	4	12%	8	24%	10	30%	11	33%	---	---	---	---	33
Schools	3	38%	3	38%	2	25%	---	---	---	---	---	---	8
Retail	14	29%	---	---	---	---	11	23%	16	33%	8	16%	49
Maquilas	4	22%	6	33%	8	45%	---	---	---	---	---	---	18
Total	25	23%	17	16%	20	19%	22	20%	16	15%	8	7%	108

IV. Analysis and Recommendations

In-depth interviews with respondents revealed that women workers concur that sexual harassment at the workplace is part of a larger problem of violence against their gender, and that it is somewhat related to a Mexican culture that encourages male superiority. They also suggested that cases of sexual harassment are underreported, both due to a lack of awareness of the problem and because affected women may not know

²² The category “threatened” refers to the aggressor demanding sexual favors under direct threat of firing, demotion or similar consequence to the victim.

how to seek support. There is also a general assumption among women that few victims who seek legal remedy are successful with their cases.

A significant problem in addressing this issue is that many women are not able to recognize sexual harassment. Many respondents were surprised to learn that some behaviors they had always encountered in their places of work were considered harassment, and that they could take action against it. Even those who are familiar with the term have different connotations of what it entails and what they are legally protected against.

In addition to the problem of recognition, national and state legislation to combat sexual harassment is not homogenous and not comprehensive. For instance, the states that require damage to the victim's person or rights in order to be criminal are only addressing around the 14% of harassment cases in which this happens; the remainder of cases that do not involve damage to the victim's person or rights but that still offend the victim are not protected under the law.²³ Similarly, the states with laws requiring the aggressor to be in a higher position than the victim also put them at a disadvantage, as 23% of reported cases in this study occurred between co-workers of the same level in the workplace. These stipulations in the law make it especially hard for victims to achieve justice and receive compensation.

Unfortunately, those responsible for protecting workers are sometimes the ones initiating harassment. Findings from this study show that 20% of reported cases of sexual harassment were initiated by union leaders, and 7% were by police officers. It is difficult for women to demand support from authorities when they cannot recognize harassment themselves and are not informed of their legal options.

Government officials in Mexico must initiate a public awareness campaign against sexual harassment so that former and potential victims can recognize such behavior and take action against it. Criminal and labor legislation must be amended to be in compliance with international standards prohibiting sexual harassment in the workplace, and law enforcement officers should receive training on how to handle these issues. Unions should also be more active in preventing such behavior, and employers (especially in certain sectors where women workers are more prevalent) should be forced to provide training programs on sexual harassment in the workplace. Only then can Mexico promote workplaces that are free of violence against women.

²³ The 2% figure comes from Table 4.