

# **Paying the price for flexibility: Workers' experiences in the electronic industry in Mexico**

**Sixth Report on working conditions in the electronic industry in Mexico**

**By Centro de Reflexión y Acción Laboral**

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## Introduction

**At the time that Mexico's federal government was promoting its labour reform in 2012, we were assured that this would generate "400 000 new formal jobs on top of the 650 000 jobs created annually on average." The federal government indicated that "the main beneficiaries (...) would be young people and women, the new set of rules would make it easier to access the market labour."<sup>1</sup> These claims turned out to be only a half-truth.**

In this fifth report, Cereal summarizes the impact of this reform through analysis and a series of emblematic cases.

After two years of the modification of the labor law, and in what was considered its "maturing year", creation of new jobs has been much lower than expected. If we consider that temporary jobs have outgrown stable jobs and that working and wage conditions have deteriorated, we realize that the current outlook is not very promising.<sup>2</sup>

Some of the main outcomes of these reforms are the devaluing of the labor force and increasing job flexibility, resulting in situations where workers are not able to access other recognized universal rights such as health, nutrition, education, etc. If we consider that wages haven't had a substantial nominal increase<sup>3</sup> and that the purchasing power of the minimum wage is 77% lower than 10 years ago, it is easy to realize that the wage paid to the workers is not enough to satisfy basic needs.

This devaluation of the labor force has been condoned by illegitimate unions. The companies sign contracts with these unions behind the workers' backs. Jointly, these unions prevent the workers from organizing and seeking fair working conditions.

Women make up the majority of the assembly work force of these manufacturing companies, regularly subject to low category jobs and very unequal power relations with men. Quetziquel Flores Villicana, member of the academic staff at the Universidad Autónoma Metropolitana, points out that along with the labor reform, the consolidation of a "substantial equality" in the job market was announced, but this has never materialized into providing effective labor rights.<sup>4</sup> In contrast with male workers, women have to make more efforts in order to exercise their right to information, hiring and job promotion, amongst others rights.

After addressing these core issues - needed to understand the current labor conditions of our country - we can come to the conclusion that the recent labor law reform in Mexico has not contributed to an improvement in the quality of life of the workers; furthermore, it has undermined already existing sources of employment.

Rubenia Guadalupe Delgado Figueroa /Director of Fomento Cultural y Educativo A.C.

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1 <http://anuario.upn.mx/2012/index.php/plaza-juarez/72067-la-reforma-laboral-en-mexico-deja-en-entredicho-a-pena-nieto.html>

2 <http://www.elfinanciero.com.mx/economia/en-dos-anos-reforma-laboral-catapulta-el-empleo-eventual.html>

3 Electronic Industry workers keep on earning generally 2 minimum wages

4 <http://www.cimacnoticias.com.mx/node/66919>

# 1 Economic context of the electronic industry

## 1.1 The electronic industry in the world

For the purposes of our analysis, the electronics industry is understood as the industry that produces devices whose function is to process some type of information, for example, computers, smart phones, video game consoles, digital televisions, printers, electronic tablets, etc. The electronics industry is currently one of the largest and most dynamic in the world. It is estimated that in 2014 the value of the electronic devices produced in the entire planet was close to US \$3,722 billion dollars.<sup>5</sup> This industry is also characterized by its highly globalized production chain. The parts that make up an electronic device are produced in different geographical zones, which is reflected in the high trading volume of electronic devices between countries. According to the World Trade Organization (WTO), exports of Office and telecommunications equipment in 2012 represented 9.3% of total international trade.

**Table 1**  
**World merchandise trade by sector 2012**

	<b>Value</b>	<b>Part</b>
	<b>Billion dollars</b>	<b>In world merchandise exports</b>
<b>Agricultural products</b>	1657	9.2
<b>Fuel and products of the extractive industries</b>	4139	23.1
Fuels	3375	18.8
<b>Manufacturing</b>	11490	64.1
Iron and steel	486	2.7
Chemical products	1957	10.9
Office and telecommunications equipment	1674	9.3
Automotive industry products	1295	7.2
Textiles	286	1.6
Clothing items	423	2.4
<b>Agricultural and livestock products (AsA)</b>	1385	7.7
<b>Non-agricultural and livestock products (AMNA)</b>	16546	92.3

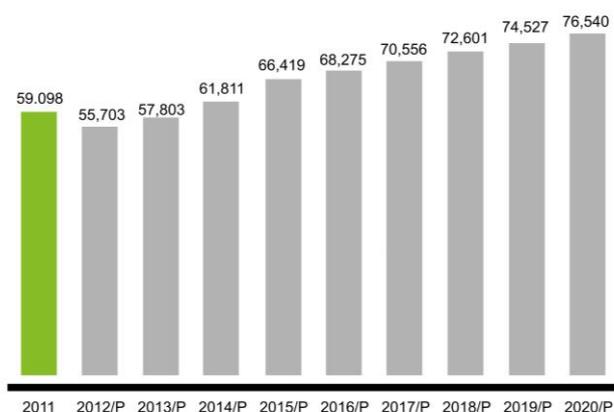
Source: *International trade statistic 2013. World Trade Organization (WTO)*

The electronics industry is also one of the industries with the strongest growth in the world. According to Global Insight, the world production of electronic devices is expected to reach a value of 5,298 billion dollars by 2020.<sup>6</sup>

<sup>5</sup>Zavala Aznar, G. (November 2013) Secretaría de Economía "Industria electrónica".  
[http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)

<sup>6</sup>Zavala Aznar, G. (November 2013) Secretaría de Economía "Industria electrónica".  
[http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)

**Graph 1**  
**Forecast of global production by the electronics industry 2013-2020**



Source: Global Insight

Due to the market's growing demands to reduce production costs, most of the brand name companies, known as original equipment manufacturers (OEMs), outsource manufacturing services to specialized companies known as Electronics Manufacturing Services (EMS). Outsourcing production allows the brand name companies to reduce production costs and focus their efforts on design, innovation, marketing, and sale of final products. The gap in the profit margins<sup>7</sup> between the brand name companies and the EMS is large: this margin is calculated at close to 27% for the former, and close to 6% for the latter<sup>8</sup>. In this way of doing things, the manufacturing labor cost represents around 0.5% of the sale price<sup>9</sup>.

Geographically this division between OEMs and EMS also coincides with the division between poor and rich countries. In this way, the activities with greater added value carried out by the OEMs, like design, innovation and marketing, are done in developed countries like the United States, China, Holland, Singapore, Finland and Canada, while the assembly and manufacturing activities carried out by the EMS are undertaken in poorer countries like Mexico, India, Thailand and Philippines.

Outsourcing manufacturing processes allows OEM companies to reduce working capital requirements and obtain greater flexibility in production. In this way, the OEM companies transfer the risk of unexpected changes in demand to the contracting companies. Thus the OEMs can focus on activities considered more strategic and of greater added value.

<sup>7</sup>The indicator used is the gross margin: "A company's total sales revenue minus its cost of goods sold, divided by the total sales revenue, expressed as a percentage. The gross margin represents the percent of total sales revenue that the company retains after incurring the direct costs associated with producing the goods and services sold by a company." (Investopedia: <http://www.investopedia.com/terms/g/grossmargin.asp>, accessed on November 24, 2014).

<sup>8</sup>Harris, Anthony (2014, October), "Dragging out the best deal. How billion dollar margins are played out on the backs of electronic workers", [http://www.somo.nl/publications-en/Publication\\_4109](http://www.somo.nl/publications-en/Publication_4109), accessed on November 24, 2014.

<sup>9</sup>Ibíd.

**Table 2.**  
**The 50 most important EMS companies according to world sales 2013<sup>10</sup>**

	EMS	Origen		EMS	Origen
1	Hon Hai Precision Industry (Foxconn )	Taiwan	26	Creation Technologies	Bumaby, BC, Canada
2	Pegatron	Taiwan	27	VIDEOTON Holding	Székesfehérvár, Hungary
3	Flextronics	Singapore	28	Éolane	Le Fresne sur Loire, France
4	Jabil	St. Petersburg, FL	29	VTech Communications	Hong Kong
5	New Kinpo Group	Taipei, Taiwan	30	Wong's International (Holdings) Limited	Hong Kong
6	Sanmina	San Jose, CA	31	V.S. Industry	Senai, Malaysia
7	Celestica	Toronto, Canada	32	Ducommun LaBarge Technologies	St. Louis, MO
8	Benchmark Electronics	Angleton, TX	33	ALL CIRCUITS	France
9	Shenzhen Kaifa Technology	Shenzhen, China	34	OnCore Manufacturing	San Jose, CA
10	Universal Scientific Industrial Co., Ltd (USI)	Shanghai, China	35	Di-Nikko Engineering	Nikko, Japan
11	Plexus	Neenah, WI	36	Neways Electronics International	Son, Netherlands
12	Venture	Singapore	37	Hana Microelectronics	Bangkok, Thailand
13	UMC Electronics	Saitama, Japan	38	PartnerTech	Vellinge, Sweden
14	SIIX	Osaka, Japan	39	KeyTronicEMS	United States
15	ZollnerElektronik Group	Zandt, Germany	40	Computime Limited	Hong Kong
16	Sumitronics	Tokyo, Japan	41	Nippon Manufacturing Service	Japan
17	Beyonics Technology	Singapore	42	SelcomElettronica	Castel Maggiore, Italy
18	Asteelflash	Paris, France	43	Orient Semiconductor Electronics	Kaohsiung, Taiwan
19	Global Brands Manufacture (GBM)	New Taipei, Taiwan	44	Kitron	Billingstad, Norway
20	Kimball Electronics Group	Jasper, IN	45	SMTc	Markham, Ontario, Canada
21	Integrated Micro-Electronics, Inc.	Laguna, Philippines	46	SMT Technologies	Sungai Petani, Kedah, Malaysia
22	Fabrinet	Pathumthani, Thailand	47	SVI	Bangkadi, Pathumthani, Thailand
23	3CEMS Group	Guangzhou, China	48	Scanfil EMS	Sievi, Finland
24	Enics	Zürich, Switzerland	49	LACROIX Electronics	Vern-sur-Seiche, France
25	WKK Technology Ltd.	Hong Kong	50	Sparton	United States

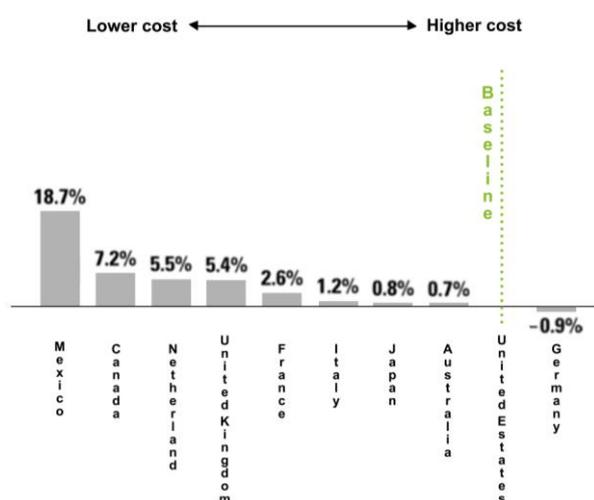
Source: *Manufacturer Market Insider*

<sup>10</sup> Zavala Aznar, G. (November, 2013) *Secretaría de Economía "Industria electrónica"*.  
[http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)

## 1.2 The electronics industry in Mexico: falling salaries and increased flexibility

Mexico has an electronics industry made up by more than 800 companies, which specialize in assembly and manufacture of electronic consumer products (televisions, cellphones and computers). These companies also produce, although to a lesser extent, devices for the medical, automotive and aerospace industries. Mexico maintains its appeal as destination of investment due to its low production costs. According to the consultancy firm KPMG, in 2014, the costs of doing business were 18.7% lower in Mexico than in the United States. Particularly, the cost of labor in Mexico has reached levels that are too low, even lower than China. According to official data, in June 2014 the monthly minimum wage in China ranged between US \$162 and 309, while in Mexico it was US \$153 dollars<sup>11</sup>. In fact, labor in Mexico is cheaper than in Tibet, where the minimum wage is equivalent to US \$211 per month (ibid.).

**Graph 3**  
**Estimated cost of doing business in different countries 2014**



Source: Competitive Alternatives. KPMG's guide to international business edition. [http://www.competitivealternatives.com/reports/2014\\_compalt\\_rep](http://www.competitivealternatives.com/reports/2014_compalt_rep)

According to the Secretariat of Economy of the Mexican government, the electronics industry represents 4.7% of the GDP (Gross Domestic Product) registered annually.<sup>12</sup> In 2014, this sector's exports exceeded US\$ 75,000 million.<sup>13</sup> According to Mexico's National Chamber of the Electronics, Telecommunications and Information Technology Industry (Canieti), more than 600,000 people work in this sector, which contributes 3.5% of the world production of electronic devices<sup>14</sup>. At present, Mexico is the number one exporter of flat screen TVs in the world, fifth largest exporter of computers, and tenth of cellphones.

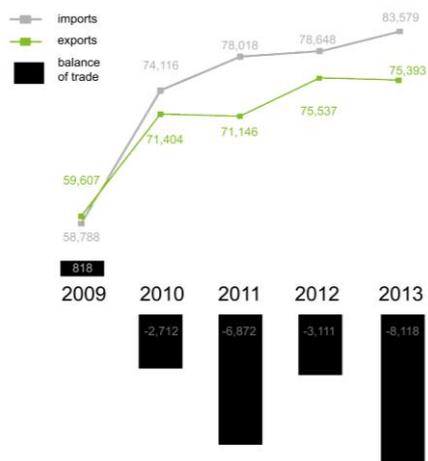
<sup>11</sup> Autor (October 13, 2014), "Mexico cuts salaries", Mural, <http://www.mural.com/> consulted 4 January 2015.

<sup>12</sup> Barajas, Oswaldo (April 14, 2014), Electronics Online, "Electronics industry drives Mexico's economy", <http://www.electronicosonline.com/2014/04/14/industria-electronica-empuja-economia-de-mexico/> (accessed on November 24, 2014).

<sup>13</sup> Zavala Aznar, G. (November 2013) Secretaria de Economía "Industria electrónica". [http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)

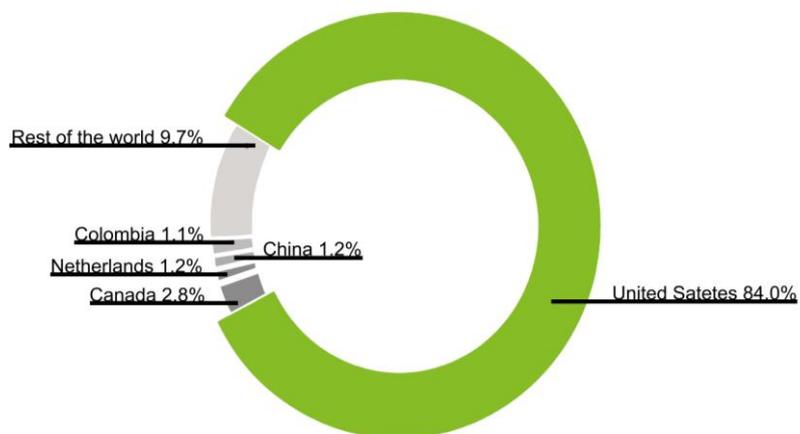
<sup>14</sup> Cesar Castro Rodríguez, CANIETI's chair, western section, during a meeting with Cereal in Guadalajara, 18 November, 2013

**Graph 4<sup>15</sup>**  
**Mexican Electronics Exports and Imports 2009-2013**



Source: Global Trade Atlas, 2013.

**Graph 5**  
**Main export destinations of Mexico's electronics industry 2013<sup>16</sup>**



Source: Global Trade Atlas

<sup>15</sup>Zavala Aznar, G. (November 2013) Secretaria de Economía "Industria electrónica".  
[http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)  
<sup>16</sup>Zavala Aznar, G. (Noviembre 2013) Secretaria de Economía "Industria electrónica".  
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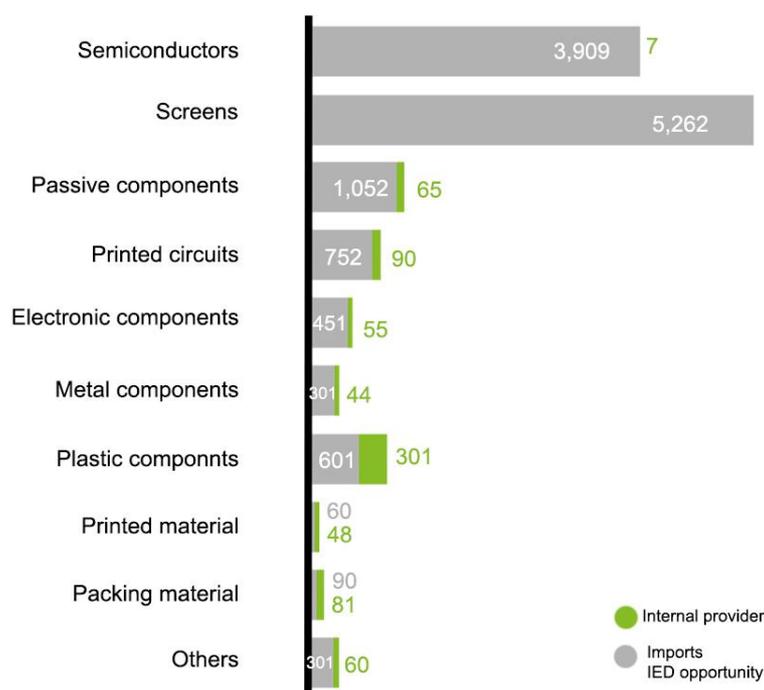
**Table 3.**  
**Main products exported by Mexico's electronics industry 2013<sup>17</sup>.**

World ranking	Description
1st place	Flat screen TVs
4th place	Computers
4th place	Microphones, speakers and headphones
8th place	Cellphones

Source: *Global Trade Atlas*

Despite of the dynamism shown by the official statistics about the electronic industry in Mexico, a small fraction of this activity is related to design or research and development. In 2012, the institution known as ProMéxico carried out a study on the demand for components necessary in the manufacturing of televisions in Mexico. This government department estimated that close to 94% of these components are imported, which reflects the low participation of Mexicans in this industry's production chain which, paradoxically, has become one of the most important in the country.

**Graph 6.**  
**Percentage of domestic and foreign consumables the manufacturing of televisions in Mexico 2012 (million dollars)<sup>18</sup>**



Source: *ProMéxico with data from Colliers 2013*

Although some companies and the government itself have made efforts to change this situation,

<sup>17</sup>Ibid.

<sup>18</sup>Zavala Aznar, G. (November 2013) Secretaría de Economía "Industria electrónica".  
[http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)

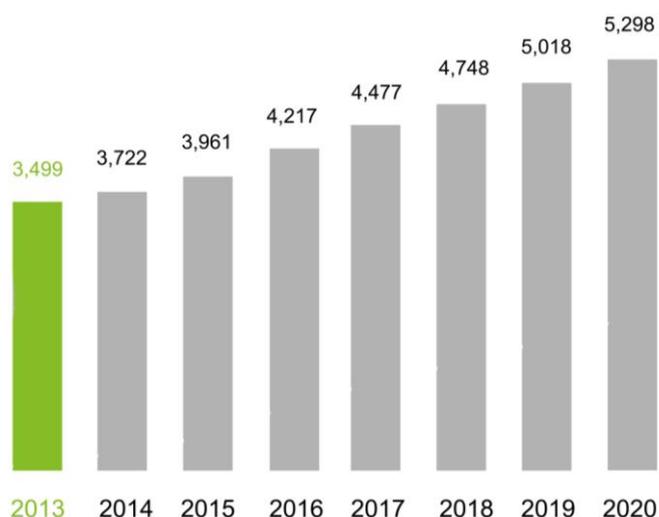
to this day the main contribution of Mexicans to this industry continues to be their cheap labor. Thus, the vast majority of the hundreds of thousands of Mexicans that work in electronics factories are modest and anonymous workers who do not participate in these companies' senior management. CEREAL believes that this situation contributes to a range of labor problems, some of which are presented in this report.

**Table 4**  
**Direct foreign investment per country in Mexico's electronics industry (Millions of US Dollars) 2013.**

Country	DFI 2010 (MD)	DFI Accumulated 2002-2012 (MD)
United States	599.9	6775
Netherlands	220.3	3168
Japan	-24.2	548
Singapore	52.4	356
Taiwan	115.5	412
Switzerland	9.4	130
Germany	-1.4	150
Others	13	480
Total	1 184	13 326

Source: Secretariat of Economy

**Graph 7**  
**Forecast of Mexico's electronics industry production.<sup>19</sup>**



Source: Calculations of ProMéxico with information from INEGI and Global Insight

<sup>19</sup>Zavala Aznar, G. (November 2013) Secretaría de Economía "Industria electrónica". [http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)

**Table 5.****Table: Main transnational companies of the electronics industry in Mexico**

Company	Subsector	State
Alcatel	Communications	Sonora
AMP (Tyco Electrónicos)	Components	Sonora
Amphenol	Components	Baja California, Sonora, Nuevo León
Benchmark	EMS	Jalisco, Sonora
Celestica	EMS	Nuevo León
Compal Electronics	Audio and video	Chihuahua
Ericsson	Communications	Estado de México, Querétaro
Falco electronics	Components	Yucatán
Flextronics	EMS	Aguascalientes, Coahuila, Jalisco, Chihuahua
Foxconn	EMS	Chihuahua, Baja California, Guadalajara
HP	Computing and office	Jalisco
International Rectifier	Semiconductors	Baja California
Jabil	EMS	Chihuahua, Jalisco, Tamaulipas
JVC	Audio and video	Baja California
Kodak	Optical instruments	Baja California, Aguascalientes
Kyocera	Components	Baja California
LG	Audio and video	Baja California, Tamaulipas, Nuevo León
Medtronic	Medical equipment	Baja California
Motorola	Communications	Tamaulipas, Jalisco
Panasonic	Audio and video	Baja California, Monterrey
Philips	Components	Durango
Plexus	EMS	Chihuahua
RectificadoresInternacionales	Semiconductors	Baja California
Samsung	Audio and video	Baja California, Estado de México
Sanmina	EMS	Nuevo León, Jalisco, Coahuila
Sanyo	Audio and video	Baja California, Nuevo León
Siemens	Components	Monterrey
Skyworks	Semiconductors	Baja California
Sony	Audio and video	Baja California
Tatung	Audio and video	Chihuahua
Texas Instruments	Semiconductors	Aguascalientes
Universal Scientific	Components	Jalisco
Wistron	EMS	Chihuahua
Xerox	Computing and office	Aguascalientes

Source: Official sites and Colliers International

**Figure 1.**  
**Geographical location of the main companies of Mexico's electronics industry<sup>20</sup>**



Source: Official sites and Colliers International

<sup>20</sup> Zavala Aznar, G. (November 2013) Secretaría de Economía "Industria electrónica". [http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202\\_DS\\_Eletronico\\_ES.pdf](http://mim.promexico.gob.mx/work/sites/mim/resources/LocalContent/290/2/141202_DS_Eletronico_ES.pdf)

## 2 Features of the electronic industry:

### analysis and cases

Cereal works directly with individuals and groups of workers within the electronics industry providing support and legal advice. These specific experiences, based on workers' testimonies, provide a snapshot picture of what is actually happening to some workers at factory level in Mexico's electronics sector<sup>21</sup>.

#### 2.1 Valutech pays low wage

Finding a job in Mexicali, as in the rest of the country, is hard. According to data from the INEGI (Mexico's National Institute of Statistics and Geography), the unemployment rate grew during this last year in this entity.

Mariana is currently a Valutech employee. She tells us about her experience:

*"I spent 3 months looking for a job and nothing... It's really hard to find a place to work, especially if you're old like me."*

Despite this, Mariana continued to look for a job. A friend of hers told her to go to Valutech, as the workers believe it's easier to find employment there because they don't ask for a lot of experience.

Mariana applied for a job as an operator at Valutech and got the position.

*"I felt relieved to find a job as I was really in debt and didn't know what I was going to do."*

But the happiness soon faded, when she found out how much she was really going to earn.

*"When I got the job they told me I would earn 955 pesos a week. It's not a lot, I thought, but because of the tight spot I was in, those pesos would help a lot. Afterwards, when I calculated the deductions and expenses I would have to make in order to work there, I realized it wouldn't be enough."*

Mariana's payroll specifies that her salary is 955 pesos a week, but in order to get to work she has to hire the service offered by the company, as there are no accessible bus routes from her house, and to take them she would have to walk for more than 10 blocks, with the security risks that implies. In addition, she had to ask for a loan from the company, as her son had a dental problem that the Social Security does not cover. In the end, between the deductions and payment of the loan, she earns a real salary of 416.39 pesos, which represents 70% of the basic urban food basket for one person and 20% of the basic urban food basket for the average Mexican household according to the official agency<sup>22</sup> which makes the measurements.

#### Table 6

<sup>21</sup> Cereal provides support and/or legal advice to approximately 1000 workers each year. To prepare this report, Cereal interviewed approximately 100 workers (80% of them are women) in Guadalajara (and its metropolitan area), Mexicali and Reynosa. Cereal held a meeting with companies on October 29th 2014 to discuss the cases and, afterwards, double-checked the information included in this report; in most cases this entailed interviewing a worker (or workers) for a second or third time; and/or checking documents such as pay slips, employment agreements, etc.

<sup>22</sup> The National Council for the Evaluation of Social Development Policy (Coneval) has, by law, the mandate to perform the periodic measurement of poverty levels (and, therefore, of establishing and updating the value of the official basic basket).

<b>Weekly salary</b>	<b>955 pesos</b>
Deductions	
Infonavit Contribution (housing loan)	165.96
Transportation to the company	150
Dental Insurance Loan	200
Social Security	22.65
Total	416.39

Mariana has to cover her three children's minimum expenses for food, transportation, and education with 1665.5 pesos a month, in addition to her house's maintenance costs (water, electricity, gas). This is especially hard in the country's border area given the high prices of these goods and services, as well as the need to fight the extreme weather (compared with other regions, a household in some border cities consumes more electricity in the winter, heating the house; and more electricity in the summer, cooling the house).

In 2014 the accumulated inflation in Mexicali was of 5.41%, 1.52 percentile points above the national mean, according to data of the Observatory of the Border Economic Situation, of the Department of Economic Studies (DEE) of the Colegio de la Frontera Norte.

Although the Mexican Constitution says in its article 123 that:

*"The salary must be enough to satisfy the normal necessities of a head of family, in the material, social and cultural order, and to provide for the mandatory education of their children"*

The reality is very different. The current value of the basic basket per person in the area where Mariana lives is of 2,526.49 pesos a month<sup>23</sup>. If we consider that her house has 4 members, two of them children, Mariana would need 8,590 pesos just to buy the basic products<sup>24</sup>. Even though this situation implies serious impact risks on human rights<sup>25</sup>, the company doesn't appear to have a plan to mitigate this impact.

*"Imagine!"* says Mariana, *"I have to work overtime or look for work elsewhere to make ends meet at the end of the month and sometimes I don't. It feels awful to not have enough to give your children the necessary. Sometimes they can't go to school because I don't have money for the bus. What future are they going to have without education and malnourished?...The same as mine? To work to survive?"*

Mariana continues to work at Valutech for fear of not finding another job and, with little hope of things changing, she wakes up every morning "with the hope of working so her children can have a better future."

In a written communication dated September 10<sup>th</sup>, 2014, a Valutech representative commits himself to "clarify any concern that our personal might have". Nevertheless this was the last time that we had contact with the company. Valutech did not comment at all with regard to the issues

<sup>23</sup>According to data of the Coneval, (online search, June 18, 2014).

<sup>24</sup>Considering the economies of scale and equivalent adult, according to the official methodology used to measure poverty.

<sup>25</sup>Several human rights are affected, among them: the right to a living wage, to right to food, to health, to education, the right to rest and leisure (low wages can sometimes put pressure on workers to do more overtime than they wished to do and/or to take a second job to have a complementary income).

mentioned here.

## 2.2 IBM y Jabil: insufficient information for workers.

According to the testimonies of hundreds of workers interviewed by Cereal, most of the companies of the electronics industry located in the metropolitan area of Guadalajara refuse to provide workers with a copy of their work agreement despite what Mexican law states.<sup>26</sup>

We documented the case of IBM in the last report, a company hiring personnel from the Kelly agency. In that case a female worker did not have sufficient documentation to assert a proper defense when she was dismissed. In response to the case published in our report<sup>27</sup>, IBM said “it had asked its suppliers to give the personnel they hire ‘a copy of the employment agreement’”. Some people received a letter-size written page without letterhead, listing some of their work conditions. This document in no way substitutes the employment agreement and, thus, IBM did not deliver on its statement which we published in our previous report.

A similar situation occurs at Jabil in Guadalajara.

In mid-July 2013, a group of 40 workers visited Cereal’s offices to ask for legal advice. They were scared because the company Jabil was demanding they sign a new work agreement.

Lucía tells us:

*“They went to my workplace and told me to sign a copy of the agreement. They explained that it had to be done for an audit and that they were updating their archives, so we didn’t have any other choice but to sign. I asked them if I could borrow it to read it, because I was working and didn’t have time to read it calmly. The woman told me they couldn’t lend it to me and to just sign it.”*

Lucía refused to sign the agreement and they called her in to the Human Resources office, where, as she told us, the following happened:

*“They called me and told me I had to sign and that I couldn’t refuse. They showed me the paragraphs that they said had been changed but they refused to lend it to me. I didn’t want to sign until I was sure and I asked for a copy of my previous agreement, but they refused to give it to me. They had me in there for more than an hour.”*

Many of the workers who at first had approached Cereal no longer wanted to proceed with their complaint; the running commentary was that they were afraid of losing their job. This group of workers did not receive a copy of their new employment agreement.

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<sup>26</sup>This is what the law states: “Working conditions should be stated in writing when there are no active collective agreements. There should be two copies, at least, one for each signing party” (Official Gazette of the Federation 2012, November 30. Federal Labor Law, Mexico, art. 24). It should be noted that the article does not mention the word “contrato (de trabajo)” (work agreement). In practice, this opens the door for an interpretation used by the companies to provide the workers with a written statement of their working conditions, but not of their work agreement. This is a law-abiding practice, some companies argued.

<sup>27</sup>After the reform. Fifth Report about the labor conditions of Mexico’s electronic industry, <http://www.fomento.org.mx/novedades/Informe2013-ingles.pdf> (page 18).

Lucia continued with her complaint and with Cereal's mediation and after several tries, she was able to get a copy of her agreement.

In a meeting which took place in Guadalajara on October 29, 2014, Jabil representatives assured Cereal that 100% of the workers had a copy of their agreement, information which Cereal undertook to corroborate. Cereal confirmed that at least 32 workers, independently of the first group, did not receive a copy of their agreement; the workers assured Cereal that they were only given it to sign but did not receive a copy.

Jabil undertook, through its representative, to turn over a copy of the agreements to any worker who did not have one. We urged the workers to ask for this document. Most of them didn't think it was a good idea for fear of giving rise to some type of reprisal.

As mentioned above, companies constantly refuse to hand over a copy of the employment agreement to the worker. The lack of this document sometimes represents an extra obstacle for a proper defense of the worker's rights.

Cereal sent a copy of the case to IBM and Jabil. From Jabil we received an answer which says the following, making reference to a meeting held in October 2014:

*"At that meeting, documentation that Jabil's contracts meet legal requirements and were merely a legal change that would not impact employee's tenure or overtime, was provided to CEREAL representatives who reviewed and confirmed their validity".*

Cereal did not review nor confirm the validity of this documentation. The first interest of Cereal is to achieve that the workers have sufficient information about their labor conditions and we wouldn't validate anything in their name. Cereal requested repeatedly from Jabil to hand out the copies of the old and the new contract to the workers so that they *themselves* would be able to assess if both contracts were effectively the same.

Jabil proposed to show Cereal documents in which the signature of the workers was to be found, indicating they had received their contract. Cereal refused to accept this proposal because, as we recounted in the previous case, according to the workers, they sign their contracts without getting the chance to review them.

In its reply, IBM confirms that it didn't hand out copies of the contract to the workers. The document given out doesn't contain all the information about the working contract (because it is *not a copy of the contract*). When IBM committed itself to hand out copies of the contract, we understood that its intention was not only to comply with the legal provisions, but rather inspired by the EICC Code of Conduct, which IBM signed, and which *"encourages Participants to go beyond legal compliance"*<sup>28</sup>.

In the following, the entire answers about the cases are recited:

Jabil's response:

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<sup>28</sup>[http://www.eiccoalition.org/media/docs/EICCCodeofConduct5\\_English.pdf](http://www.eiccoalition.org/media/docs/EICCCodeofConduct5_English.pdf)

*“Working closely and transparently with stakeholders such as CEREAL is one important way Jabil can create sustainable change through common goals. Therefore, we are surprised and disappointed that CEREAL has pursued the Jabil cases included in this report.*”

*Jabil’s local management has met multiple times with CEREAL concerning these issues, and Jabil’s Vice President of Social and Environmental Responsibility met with CEREAL in October 2014. At that meeting, documentation that Jabil’s contracts meet legal requirements and were merely a legal change that would not impact employee’s tenure or overtime, were provided to CEREAL representatives who reviewed and confirmed their validity. Jabil invited CEREAL to conduct an on-site audit of contracts and interview employees, but they declined. All cases in which CEREAL has provided the names of employees have been resolved.”*

### **IBM’**

“IBM is a company committed to CSR. We work together with our value chain to assure the compliance with the EICC code of conduct. In 2013 EICC assessed that Kelly Services meets the requirements of the articles 24 and 25 of the Mexican Labor Law through the delivery of a document that meets the requirements established to certify a labor subordination and the conditions under which it was agreed that relationship. This guaranties the correct defense of the labor rights in any case, since the corresponding jurisprudence like the applied legislation in working related topics has established the concept of “in dubio pro reo”. This is to say that if elements are missing, the authority should favour the part that it is in a state of defencelessness. As part of the compliance with the EICC code IBM will verify the compliance of Kelly Services in the second half of 2015<sup>29</sup>.”

## **2.3 Flexibility**

In addition to reducing salaries, manufacturing companies search for the greatest flexibility possible to reduce costs and to enable them to respond quickly to the demands of brand name companies, their clients. As can be observed in this report, some of the tactics used by the companies of the electronics industry in Mexico to guarantee this strategy are:

- Lack of follow-up or partial follow-up of suppliers.
- Most companies included in this report have signed the EICC (a global industry-wide association) Code of Conduct. This Code is a “total supply chain initiative”. A signing company acknowledges the commitment to monitor its supply chain. “At a minimum, Participants shall also require its next tier suppliers to acknowledge and implement the Code”. Notwithstanding, in practice, many companies do not monitor the full implementation of the Code, or only do this partially. Some companies do not acknowledge the negative impacts on human rights of their supply chain if these impacts are the result of business activities of their suppliers, although the latter constitute their supply chain.
- Unilateral relationships with workers:
  - Many companies provide limited or belated information/documents to workers, thus leaving the worker in a weaker position when trying to prepare a proper defense of his/her rights.

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<sup>29</sup>This is a translation from the Spanish response sent to Cereal by IBM.

- Lack of collective negotiations and agreements regarding major changes of working conditions (facilitated by agreements with unions controlled by the companies and/or the government).
- Restriction of freedom of association.
- Use of mechanisms that facilitate the use of the workers' vacations as workdays or working time.
- Disproportional use of temporary and/or outsourced employment; lower chances of obtaining a permanent position.
- Wages below the official poverty line.

## 2.4 The price of a competitive price

It is common for companies to hire transportation services for their employees, sometimes because they are located in areas that are difficult to reach through public transportation or simply to guarantee a direct route to the work center. Jabil, Valutech and Sanmina<sup>30</sup> are no exception.

These companies hire personnel transportation companies to provide transportation service for their employees. The company Jabil, located in the metropolitan area of Guadalajara, hires Scott, which, among its advantages, provides transportation services around the clock. One of the premises Scott expresses in its mission is to *“Provide all of our customers with a safe, timely and comfortable transportation service at a competitive price”*. The euphemistic expression of “competitive price” means they offer low prices or lower prices than their competitors for the same service. But how is it possible they offer *“competitive prices”*?

Manuel works for Scott covering different routes for Jabil.

One of the main problems he faces as a driver of this transportation company is the schedules in which his routes are programmed. Manuel describes his schedule:

*“My schedule begins at 4 a.m. I finish the first route at 8:15 and at 11:50 I have to be at the next point to begin my next route, which ends at 16:40, more or less. I cover my last routes from 19:30 to midnight. To get from my house to the Noria, which is the point where Scott’s buses leave from, it takes me at least 45 minutes or 1 hour, depending on traffic. I get home and half sleep and eat because I have a break of 4 hours between each trip, but if we subtract the time it takes us to get home and eat we can only sleep 2 hours. Working as an operator at Scott is hard, but we need the work.”*

Javier works for Viajes y Servicios Turísticos San Carlos covering Valutech’s routes, and has a similar schedule:

*“I have to wake up at 12:00 to get diesel. At 1:00 we already have to have the buses loaded with diesel. And we go to the plant to wait for the people who get out at 2:00. At 2:20 we leave*

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<sup>30</sup>Jabil and Sanmina facilities are located in Guadalajara; Valutech’s facility is located in Mexicali.

*the plant. Other days, I start at 4:00 in the morning. I go to the point (where workers are picked up) and begin at 4:20 and arrive at the plant at 6:05. They start work at 6:30 and I have to be there at 6:05 or 6:10 so they can form a line and go in. It is a really long route. I also work the afternoon shift which starts at 2:00 in order to be at the factory at 5:00 because they start work at 5:30 and I wait there for the morning employees to come out. I wait and they come out at 5:30, and we leave the factory at almost 6:00 to take them home again. When I finish the route it is already 7:00. And at that same point I wait until 8:00 because another route begins there of employees who start work at 9:30. I get to the plant at 9:05 or 9:10. From there I go home to sleep and I get there about 9:40, but after taking a shower and things, I go to sleep around 10:20 and again have to wake up at 12 a.m.”*

The Electronic Industry Citizenship Coalition - EICC acknowledges that excessive work shifts put employees' health, safety and work performance at risk. The EICC position is that “no EICC member should allow their workers to work a) more than 60 hours a week, or b) work longer hours than what the law permits.” If an excessive shift is deemed a “priority” in the EICC audit, the member company must establish corrective measures.<sup>31</sup>

We can see both drivers work for more than 12 hours a day, and they have to subtract from their hours of rest the time it takes to go home and to the following point where the route leaves. The time left is not even enough to sleep for a period of 4 consecutive hours.<sup>32</sup> Studies performed by the Center for Disease Control and Prevention of the United States' Health Department demonstrate that lack of sleep increases the difficulty to perform many daily tasks.<sup>33</sup> Since they are personnel drivers, the risk is heightened, as not only the driver's health is at risk, but also the physical integrity of the passengers.

Javier tells us:

*“We've had small crashes, scrapes or dents to other cars. I've been a driver for three years and it's happened twice and it's because in the mornings, when the sun is coming up, that's when you feel sleepy.”*

These excessive working hours are due to the fact that most of the drivers' salary is made up by commissions obtained for each trip. On average, a worker from this company earns 800 pesos a week, minus legal deductions, in addition to, in Javier's case, paying a loan the company made to pay for the license needed to work, as when they have to renew it, the company is not responsible for these expenses. In the end, the net weekly earnings are, on average, of \$400 pesos, which are only enough to buy less than 68% of the official basic urban food basket for one person and less than 20% of the official basic urban food basket for the average household.

The work scheme these companies' drivers have is one of the factors that allow these companies to offer a “competitive price” as the drivers earn a very low salary. In the case of

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<sup>31</sup>EICC (2014, June), “EICC position on working hours”, [http://www.eiccoalition.org/media/docs/EICC\\_WorkingHoursPosition\\_June2014.pdf](http://www.eiccoalition.org/media/docs/EICC_WorkingHoursPosition_June2014.pdf)

<sup>32</sup><http://www.nia.nih.gov/>

<sup>33</sup>“Unhealthy sleep-related behaviours”, “Effect of short sleep duration on daily activities- United States, 2005-2008”, Morbidity and Mortality Weekly Report (Centers for Disease Control and Prevention), Vol. 60, No. 8, March, 2011, <http://www.cdc.gov/mmwr/PDF/wk/mm6008.pdf>

Turística San Carlos, located in Mexicali, where Manuel works, the salary is only made up by commissions set up on a per trip basis, in addition to the fact that the transportation companies deduct costs they should absorb, such as the cost of transporting a mechanic, one reason why the workers have to do overtime in order to complete a salary that is moderately enough.

*“For example, Manuel told us when the unit breaks down, “we have to pay for the cost of transporting a mechanic ... and if it breaks down in a dangerous spot, we cannot abandon the unit, we have to stay there and protect it, but if something gets stolen, we still have to pay whatever they steal.”*

This situation is serious due to the impact it has on the bus drivers’ health, in addition to putting the passengers’ lives at risk.

Early September we met with Jabil to explain the conditions under which Scott operates according to workers’ testimony. Jabil assured us that everything was in order and that its audits had not raised any red flags and that from the companies they audited when searching for a supplier, Scott was the best evaluated.

Scott and LipuTransportesSeguros bus in the Sanmina personnel. Both transportation companies belong to the same owner. In October of 2014 we contacted Sanmina to talk about the practices of this supplier that it shares with other companies.

We held a meeting with Sanmina and those in charge of the transportation companies in late October. Sanmina and its suppliers recognized shortcomings in the management system that Cereal described based on workers’ testimonials and offered a remediation plan. Some of the pertinent points include:

- taking measures so workers may enjoy their weekly day off, will give a bonus to lessen the impact on their wages
- more personnel will be hired to lighten the drivers’ workload
- a log system will be established affording workers more certainty about the commissions they will be paid.

These changes are significant since they will benefit the majority of the Scott and Lipu drivers and not just those on the Sanmina routes.

After this meeting, Jabil agreed to hold back the payment of services to Scott to put leverage on them so the worker could receive his severance payment. Scott gave the worker his severance payment, but only 50% of the overtime payment.

In this case the transportation companies and those hiring their services “should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships”<sup>34</sup>.

This remediation plan is a positive first step and CEREAL asks that other companies within the industry should also consider adopting concrete changes to help the drivers avoid the risks

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<sup>34</sup>United Nations Guiding Principles for Business and Human Rights.  
[http://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)

outlined above.

Sanmina sent the following response to Cereal with regards to this case:

*“Sanmina takes it very serious that its suppliers work according to the outlines of CSR and will establish a plan of audits in compliance with the requirements of EICC to assure that they comply with the local legislation, international standards and internal principles of CSR. (...) As an initiative of Sanmina to assure working conditions of the drivers and the security of the workers, Sanmina suggests to manage with Cadelec the implementation of a certification model for companies that provide transportation of personal. Meanwhile, Sanmina will assure that all workers and drivers don't work more than 28 hours during the week and no more than 12 hours extra, and that they will have at least one day off during the week.”*

*Jabil wrote with regards to this:*

*“Jabil also asserted at the October 2014 meeting it does not have any control of SCOTT Transportation or its employees' schedules. However, Jabil did propose an industry-wide initiative to consider the issues facing transportation employees, and help find solutions. It is our understanding this case was resolved in December 2014 with severance paid to the drivers.*

*Employees there are provided multiple mechanisms for seeking resolution to workplace challenges, including an Open Door Policy, anonymous hotline, and human resources representatives available during every shift.*

*We value the contribution employees make to Jabil's success and are eager to collaborate with partners who are transparent and honest in order to solve challenges of importance to them.”*

## 2.5 Vacations

Enjoying vacation days is a basic right for any worker. Of all the countries in the world, Mexico is one of the countries where workers have the fewest vacation days per year. According to the Federal Labor Law, during the first year of service in a job, a Mexican worker has the right to take only 6 vacation days. Even though the law sets out that those days will increase by accumulating several years of service, the reality is that most of the workers of the electronics industry can only take 6 vacation days per year without expecting the number to increase. This is due to the fact that they are hired under temporary agreements (even though they are not really temporary workers), thus are always considered first-year workers. Cereal has learned of hundreds of cases of workers who have worked for the same company during 3, 5 or even 7 years and are still allowed to take only 6 vacation days a year. Moreover, in many cases these days are given in dribs and drabs, that is, intermittently and not continuously as the Mexican law itself demands.

According to the study “Prices and earnings 2012”<sup>35</sup>, published every three years by the UBS bank, Mexico is the country where workers work more hours per year, 2,375, and where they have fewer vacation days. In other Latin-American countries which have a similar level of

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<sup>35</sup>Höfert, Andreas (2012). Prices and earnings. A comparison of purchasing power around the globe. UBS. [http://www.ubs.com/global/en/wealth\\_management/wealth\\_management\\_research/prices\\_earnings.html](http://www.ubs.com/global/en/wealth_management/wealth_management_research/prices_earnings.html)

development to Mexico, workers have the right to more vacation days. In Bogotá, for example, workers have the right to 15 vacation days and in Caracas 18 days. The 6 days of vacation which Mexican workers have the right to take are far from the 30 days enjoyed by Brazilian workers

**Table 7**  
**Working hours and vacation days<sup>36</sup>**

City	Working hours per year	Vacation days per year.
Amsterdam	1,755	24
Athens	1,822	23
Auckland	1,852	20
Bangkok	2,312	7
Barcelona	1,761	29
Beijing	1,979	9
Berlin	1,742	29
Bogotá	1,981	15
Bratislava	1,884	24
Brussels	1,730	20
Bucharest	1,837	26
Budapest	1,912	23
Buenos Aires	1,831	13
Cairo	2,331	15
Caracas	1,879	18
Chicago	1,854	12
Copenhagen	1,674	30
Delhi	2,265	14
Doha	2,166	26
Dubai	2,096	25
Dublin	1,707	21
Frankfurt	1,731	28
Geneva	1,893	20
Helsinki	1,713	29
Hong Kong	2,296	12
Istanbul	2,140	19
Jakarta	2,112	12
Johannesburg	1,887	15
Kiev	1,850	25
Kuala Lumpur	1,986	15
Lima	2,107	27
Lisbon	1,969	22
Ljubljana	1,792	23
London	1,787	23
Los Ángeles	1,943	13
Luxemburg	1,788	25

<sup>36</sup>Höfert, Andreas (2012). Prices and earnings. A comparison of purchasing power around the globe. UBS. [http://www.ubs.com/global/en/wealth\\_management/wealth\\_management\\_research/prices\\_earnings.html](http://www.ubs.com/global/en/wealth_management/wealth_management_research/prices_earnings.html). Methodology: Annual working hours including vacation (paid) and legal holidays; weighted average of 14 professions (excluding primary school teachers). Vacation days per year (1) Paid vacation days (excluding legal holidays)

Lyon	1,642	27
Madrid	1,734	30
Manama	1,989	22
Manila	2,246	11
México City	2,375	6
Miami	1,939	12
Milán	1,753	23
Montreal	1,783	13
Moscow	1,800	25
Mumbai	2,251	20
Munich	1,756	26
Nairobi	2,197	22
New York	2,062	13
Nicosia	1,779	22
Oslo	1,749	25
París	1,558	30
Prague	1,829	21
Riga	1,806	23
Rio de Janeiro	1,895	30
Rome	1,899	22
Santiago de Chile	2,035	15
Sao Paulo	1,810	30
Seoul	2,308	14
Shanghai	1,967	9
Sofia	1,894	22
Stockholm	1,795	26
Sydney	1,846	15
Taipei	2,116	11
Tallinn	1,760	28
Tel Aviv	1,966	16
Tokyo	2,012	17
Toronto	1,847	14
Vienna	1,786	25
Vilnius	1,789	24
Warsaw	1,793	23
Zurich	1,887	24

## 2.5 Foxconn and IBM: mandatory vacations

In article 24 of the Universal Declaration of Human Rights it is set forth that “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”<sup>37</sup>

Despite this being a universally acclaimed right, it is not always respected.

With the goal of protecting the workers’ right to rest, Mexico’s federal labor law establishes that “employers shall annually provide their workers with written proof containing their seniority and according to it the vacation period that corresponds to them and the date on which they shall

<sup>37</sup>[http://www.un.org/es/documents/udhr/index\\_print.shtml](http://www.un.org/es/documents/udhr/index_print.shtml)

enjoy it.”<sup>38</sup>

Don Javier worked for 14 years in Foxconn, last year in a warehouse where IBM servers, and other brand products are stored. For the past 10 years Don Javier worked in that warehouse outsourced through the employment agency Spyga. Although this agency is certified as a socially responsible company by the Mexican Center of Philanthropy<sup>39</sup>, Don Javier says that in his experience, it does not respect its legal obligations regarding vacations.

Don Javier’s wife was suffering from cancer and had to visit her doctor constantly. But on occasions, when Don Javier wanted to use his vacation days to take his wife to the doctor, the agency told him he didn’t have any vacations. He told us:

*“When I asked for my vacation days to take my wife to the doctor, they told me I didn’t have any, but they never wanted to give me a document that stated what days I had taken, they didn’t even tell me orally. I told them I could no longer work like that, that they had been doing the same thing for years and that before I didn’t care, but that now I couldn’t do it anymore because I had to help my wife.”*

This form of proceeding is part of an agreement called “DHP” (“Descansoporhorasprogramadas”: Rest in exchange for programmed hours), whose existence was confirmed by the company through a written communication<sup>40</sup> and in an interview with a representative of the Spyga agency<sup>41</sup>.

But what happened to the workers’ vacation days?

Ruth, after 16 years of work for IBM (hired either directly by IBM or by one of IBM’s suppliers) tells us what happens:

*“When there’s libranza<sup>42</sup> or the company is taking inventory or simply because there are no raw materials, the people from the agency tell you that they are going to count those days as vacations, and if you don’t have any more available days, they take them from the following year. That’s why sometimes we owe vacation days from the following year. The other option they offer is for you to take an unpaid leave of absence, but I don’t like it because they count it as an absence and deduct the day. That’s when I say, why should they deduct the day or make me take vacation days? I didn’t ask for them!”*

Mexico’s Federal Labor Law established that “the employer’s obligation of paying the salary shall not be suspended except in the cases and requirements established by law”<sup>43</sup> and among those cases and requirements established by law, repairs, inventory or improvements to the

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38 Official Gazette of the Federation 2012, November 30. Federal Labor Law, Mexico, art. 81

39 <http://www.cemefi.org/esr/>

40 Héctor Ochoa, Foxconn, e-mail sent to Cereal, September 1, 2014

41 The initials mean “Days of Scheduled Hours”.

42 Libranza is the period in which a company makes repairs and suspends production operations. This suspension is solely the company’s decision.

43 Official Gazette of the Federation 2012, November 30. Federal Labor Law, Mexico, art. 106

work center are not included.<sup>44</sup> Forcing employees to miss their work without paying their salary or forcing them to use their vacation days is illegal.

According to the people interviewed, in 2001 the agency made them sign that agreement. The agency told them that as a result of the Twin Towers attack, orders had dropped and that in order to not lay off so many employees they asked for their authorization to make the agreement. The “DHP” agreement establishes that for every evening or morning shift they have off, they have to repay the hours of that shift with overtime in the next shift, or that for each two morning or evening shifts not worked they have to do a night shift *plus* 30 minutes. Workers interviewed by Cereal during the year do not know exactly what the “DHP” agreement says, because they were not given a copy of it, nonetheless because of the workers’ experience they know how it works. The workers don’t know why this agreement is still in force after 13 years:

*“They told us it was because there were no orders, and we accepted because they were hard times, but isn’t the economy better? They never told us for how long this agreement would be in force and to date they even apply it to newly hired workers.”*

Ruth’s case is particularly difficult as she has a son with a disability who requires special care, so on occasions when they force her to make up hours in the night shift, she doesn’t have anyone to leave her son with. Ruth tells us:

*“The problem is that they want to arrange our rest days and vacations as it suits them. Sometimes I tell them I can come even if there’s no work, that I can sweep, work in the garden, but they don’t accept and it’s very hard for me to not be around when my son needs me. I also don’t think it’s fair.<sup>45</sup> Sometimes we, as mothers, need days to take our children to the doctor or deal with matters at their school and we ask for days from our vacation or ask for them in advance, like they do, or we propose the possibility of making up the hours in another shift, and but they usually don’t let us. It’s only possible when they need it.”*

Despite the agency assuring that the workers “*have freedom to register or not to participate in (any) distribution plan of their work shift without impinging upon their rights*<sup>46</sup>”, testimony from the workers contradicts this version.

The fact that the company counts the rest it forces as an absence has two negative consequences for the workers:

1. it establishes a record of absences that could later be used to argue the worker is often absent
2. it affects the amount they are entitled to in the company’s annual profit sharing, according to the Mexican federal labor law<sup>47</sup>.

In addition to the foregoing, the problem is intensified as it has an impact on the workers’

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<sup>44</sup>Official Gazette of the Federation 2012, November 30. Federal Labor Law, Mexico, art. 52

<sup>45</sup> We understand that the worker is saying that the arrangement is not fair because it is not bilateral.

<sup>46</sup>Héctor Ochoa, Foxconn, e-mail sent to Cereal, September 1, 2014

<sup>47</sup> One of the criteria for the annual profit sharing among the workers is the total number of days worked during the year.

families' quality of life.

This personnel management system has a far-reaching impact on the life of the workers. Last year Miriam asked for a 7-day leave-of-absence to attend the most important celebration of her religion, which is fundamental for the community she belongs to. In principle, she could take some days off her vacation time she is legally entitled to, but because the company had forced her to take those days during the year when it had suspended activities, Miriam had no more available vacation time.

Her direct bosses gave her permission to miss only three days so she went to see the Human Resources Manager through her representative at the agency that had hired her, to get the rest of the days. She was given permission with no pay that would appear in the payroll as absences.

When she returned to work, her immediate bosses began to harass her because in the words of one of them, the worker *"had gone over their head"*.

When she spoke to Jose Carrion, Foxconn's Human Resources Manager, about what had happened, he told her: *"You have it made! You take vacation time during the entire year and afterwards come to tell us you need 7 days and then you go."* The worker tried to restate her case but Jose added: *"If you don't have any more vacation time, take it from the DHP agreement, and if you don't want to make up the hours, don't take it!"*

*"If you didn't force me to take my vacation days", Miriam said, "I could choose when to take it and I wouldn't have to go through all this."*

In this case, the provisions of Article 18 of the International Covenant on Civil and Political Rights<sup>48</sup> were violated as was the Universal Declaration of Human Rights<sup>49</sup> because Miriam could not have the days off needed to practice her religion due to the fact that the company forced her to take vacation time and she was not allowed to take it freely.

On October 28, 2014, Cereal interviewed representatives from IBM and the agency Spyga, who assured that the program was entirely voluntary and that the hours they had to *"make up"* have an expiry of three months and that in addition to the options the workers mentioned, there is the possibility of covering their work shift in another area during the same schedule. After this, Cereal interviewed a new group of workers. This new group of workers confirmed that the option of covering their work hours in another area (different to their regular position and area) is, in theory, an option. But in practice it is the least used, as, for example, if there is inventory or general repairs are being performed, there are no other areas where to place all the people. This group of workers agrees that *"if you don't want to sign the agreement, you are pressured (to accept), and if you refuse then they don't authorize vacations when you ask for them or they accuse you of not cooperating with the company"* and continued saying *"it's very strange for the hours to expire, as when its closing and production increases they ask us to come work the hours we 'owe' them"*.

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<sup>48</sup>International Covenant on Civil and Political Rights (ratified by México en 1981).[http://www.inali.gob.mx/pdf/Pacto\\_Derechos\\_Civiles\\_politicos.pdf](http://www.inali.gob.mx/pdf/Pacto_Derechos_Civiles_politicos.pdf)

<sup>49</sup>The Universal Declaration of Human Rights art. 18 <http://www.un.org/es/documents/udhr/>

The *Corporate responsibility to respect human rights, an interpretive guide*<sup>50</sup> to the United Nation's Guiding Principles on Business and Human Rights set forth that "the responsibility of respecting human rights is not limited to the compliance with the provisions of the national laws. This responsibility exists over and above legal compliance, constituting a global standard of expected conduct applicable to all businesses in all situations". In this case, the agency that hires the personnel for IBM's supply chain does not even comply with the standards the local law establishes.

IBM sent us the following response with regards to this case:

"We perceive that the name of IBM is being used out of the context in two of these cases since the editor does not relate the existing working relations between the involved companies. IBM fiercely refuses the use of its name to get media attention. The mentioned companies in the report do not only provide services to IBM but also to other brands, the supply chain therefore is in the responsibility of all the involved actors: The companies, the suppliers, NGOs, etc. the ethical behavior and responsibility of all parts creates better conditions of cooperation. The supply chain is a strategic asset that allows us to satisfy the needs of our clients, IBM recognizes the importance and responsibility of it and we focus our strengths to promote sustainable behavior as shared objective<sup>51</sup>."

Cereal recognizes that Foxconn (and its employment agencies) work for other companies also and is trying to engage them to respect labor rights, beyond compliance with local law.

## 2.6 Freedom of Association

During 2014, a series of newspaper articles published in the city of Guadalajara unleashed a scandal surrounding a family of local union leaders that flaunted luxuries and riches impossible to explain<sup>52</sup>. These articles mentioned that the children of this family of unionists frequently flew in a private jet to Las Vegas. They also showed luxury cars, apartments and expensive houses that were owned by the family. Even the clothes and shoes of the youngest members were brand name highly expensive models. All of these goods were far from corresponding to the income the family members earned for their union activity. Despite the anger these articles caused among citizens and workers from Guadalajara, practically no one was surprised by the news.

In Mexico there is an extremely irregular situation regarding unions. There are thousands of unions operating in the country that number millions of workers, but the vast majority of these workers do not know their own leaders and do not trust anything that has to do with the unions. This is due to the fact that the majority of the union leaders in Mexico do not defend the workers, but rather the companies. This type of union leader provides protection to the companies going against the workers who try to create an authentic union, and in exchange for that protection the companies pay the unions an amount of money called "*union fees*". Even

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<sup>50</sup> The corporate responsibility to respect human rights (2012), [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf) (consulted on 03 February 2015).

<sup>51</sup> This is a translation from the Spanish response sent to Cereal by IBM.

<sup>52</sup> Gil, Melina, 2014, Marzo, 19, "Ni una bicicleta", Mural. February 13 y 14 y March 21, 2014.

though this entire procedure is carried out legally, it is far from the nature of what an authentic union should be<sup>53</sup>.

In Guadalajara this situation acquires very peculiar characteristics, as practically all of the workers of the electronics industry belong to a union, but almost none of them know it. According to the official website of the Secretariat of Labor, by January 2015, there were 1,841 unions in Jalisco; the unions had signed 19,431 collective agreements with companies. At the end of 2014, in Guadalajara there were 481 unions. In that same year, the unions had collective agreements signed with 35,674 companies. At first glance one can see there are a lot more agreements than unions, which means that some unions sign collective agreements with hundreds of companies at a time. This can only be understood if one considers that these unions are not real and only operate as collection offices for the companies. The usual work of this type of union leaders is to maintain their unions artificially, as they do not practice a real union life, that is, the workers do not participate in the meetings and much less know about the negotiations carried out between the union and the company. According to the testimonies of the workers interviewed by Cereal, when attempts are made for the workers to organize themselves freely, the illegitimate unions and the companies prevent it by threatening them with dismissal.

### Sanmina: the same company with different realities

In the first half of 2014, the Brazilian economy had its worst performance since the 2008-09 crisis. Experts attribute this tendency to two causes: The first related to the 2014 FIFA World Cup and a large amount of holidays that helped reduce the result of the first semester of 2014, but analysts indicate that the greatest uncertainty are the elections.

“The reputation of the people who will be in government is directly proportional to the amount of optimism we will see,” said Marcelo Salomon, Barclays’ economist

However, the trend in the electronic goods production sector is different. Production of electronic goods in Brazil during the first seven months of 2014 grew 4.3% compared to the previous year, according to data of the IBGE published by the Brazilian Electrical and Electronics Industry Association (Abinee). Computer and communication equipment production grew 47.6% and 11.5% respectively. This stability of the production of the electronics sector was mainly due to the production of smart phones and tablets<sup>54</sup>.

Many of the companies that operate in Brazil also have operations in Mexico. It is important to mention that despite some of these companies having collective work agreements signed with representative and legitimate Brazilian unions, they continue to be profitable. One of the most rooted prejudices in the electronics industry sector in Mexico regarding unions is that, if there

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<sup>53</sup>A highly reputed researcher on labour issues in Mexico, Graciela Bensusán, has stated that collective agreements which in fact protect the employers (“contratos colectivos de protección”) are “the most important vice of the Mexican industrial relations system” (Bensusán, 2006: 330, quoted by Fujii, Gerardo, (2009), “Las relaciones laborales en México: rigidez legal y flexibilidad de hecho”, Revista del Ministerio de Trabajo en Inmigración. Economía y Sociología, 81, pp. 115-132, [http://www.empleo.gob.es/es/publica/pub\\_electronicas/destacadas/revista/numeros/81/105.pdf](http://www.empleo.gob.es/es/publica/pub_electronicas/destacadas/revista/numeros/81/105.pdf) (consulted on February 3rd, 2015).

<sup>54</sup>Teleco (2014, 21 November), “Cell phones: production, exportation and importation”, [http://www.teleco.com.br/en/en\\_celprod.asp](http://www.teleco.com.br/en/en_celprod.asp) (05 January 2015)

were genuine, functioning unions, the industry would be nonviable. There is a belief among a wide sector of executives and shareholders of the electronics industry in Mexico that the unions are only necessary to solve problems –or that they just make problems. In conversations with Cerebral managers have also expressed the view that if the companies' escalation systems of internal complaints work as they should, the unions mediation is no longer necessary. In practice, and in most cases, these internal systems are not effective for one basic reason: as individuals, the workers are always at a disadvantage when it comes to negotiate with the company because of the disparity of power. In contrast, where there are *legitimate* unions, organized workers are in a stronger position to negotiate their demands.

Sanmina has a plant in the region of Campinas in Brazil and another in the metropolitan area of Guadalajara. Although they do not produce exactly the same thing, the companies are governed by the same codes of conduct and corporate policies in Mexico and Brazil. The Campinas plants have a collective agreement with the metallurgical union of the Campinas region<sup>55</sup>, and the one here with SETEAMI. The Brazilian union has a visible, democratic and representative structure but the Mexican one does not.

The difference between the working conditions of Mexican and Brazilian workers is very significant, despite them working for the same company and that in many cases some managerial positions are the same for both plants.

In this chart we can see the difference between the work conditions of a Mexican worker and a Brazilian one with the same position (production line workers in both cases).

**Table 8**

<b>Nature of benefit</b>	<b>Brazil</b>	<b>Mexico</b>
Contract Types	-Temporal from 1 up to 6 months, after this period the company signs the workers up or dismiss them. -Permanent	-The worker can be contracted temporarily for over 5 years -Permanent
Maternity Leave	180 days of maternity leave A bonus equivalent to 20% of salary is paid unto each child is 18 months old.	42 days before the predicted birth date and 42 days after giving birth. If the mother gives birth before the first 42 day period has concluded, she loses the remaining days of said period.
Holidays	30 days of paid holidays including 1/3 more income	Temporary workers 6 days per year without pay -Permanent 8 days in the first year, and depending on the years working what the law states (After 20 years working without interruption, a worker can take 20 days off)

<sup>55</sup><http://www.metalcampinas.com.br/>

Savings fund	All workers have this benefit	Only permanent workers
Annual Raises	Done each year when the collective bargaining contract is negotiated	A percentage close to the country's estimated inflation rate. There is no negotiation with the union; the company decides the percentage of wage increase.
Employment Benefits	Grocery coupons worth 46.10 dollars, not deducted from wages. And adjusted each year.  Doctor and dentist agreement: for all workers deducting 15 dollars from their wages Child assistance bonus	Grocery coupons Private medical and dental agreement N/A

Sources: Workers interviewed by Cereal, in the case of Mexico; Campinas Metal Workers Union, in the case of Brazil

Why this difference?

The Campinas union achieved the signing of a collective agreement with Sanmina in 2008. Since that year the work conditions have improved substantially.

En ese periodo de tiempo, los sueldos se han incrementado 78%, la ayuda para comida ha aumentado 112% en este mismo periodo y se han conseguido prestaciones laborales por encima de las que marca la ley. Todo esto se ha logrado sin que la empresa deje de ser rentable.

In Mexico, on the other hand, the nominal salary in these companies has decreased in the same period. On top of that, we have to consider that the purchase power has declined. Obtaining these demands through an open-door system in Mexico is practically unthinkable, thus an internal escalation system of complaints or an open-door policy will never be enough, as effective as they may be.

One of the major roots of inequality and lack of quality of life for Mexican workers in the electronics industry –and in general for workers from other sectors as well– is the fact that legitimate unions do not exist to represent them. Even though the right to form unions freely is a universally recognized human right, the systematic violation of this right is greatly fostered by companies that sign collective agreements with white unions, which then suppress attempts to form new unions.

## 2.8 Sexual Harassment

Since the publication of its first report in 2006, Cereahas warned the companies of Mexico's electronics industry about the existence of sexual harassment cases inside the factories. The evidence contained in the workers' current testimonies suggests that to this day the companies' response has not been enough. Almost 90% of the more than 3,000 workers that Cereah interviewed during 2013 and 2014 told the team that they were aware of one or more cases of sexual harassment occurring in their work centers.

During that same period the workers, especially the female workers, assured the Cereah team that sexual harassment continues to be a common practice in the electronics industry. The interviews with the workers reveal that the most common form of sexual harassment is performed by superiors towards lower-rank female workers. The superiors, taking advantage of their position, condition the granting of absence permissions, vacation days or promotions in exchange for sexual favors from the female workers.

The vast extent of this problem can be explained both by psychological and cultural reasons. The harassers frequently feel protected by occupying a high-hierarchy position and the victims almost never report the events for fear of being pointed out or simply being fired. Unfortunately, these fears are not completely unfounded. The macho culture that prevails in Mexico frequently places the victims of sexual harassment in a category of "teasers" and since the harassment is almost always from a superior to a worker, the possibility of one of these workers being fired for reporting the events is very real. In the face of this situation, the effectiveness of the companies' policies in preventing and addressing cases of sexual harassment is extremely important. A worker that has been victim of harassment will not dare to report her harasser if she is not certain that the company will take her complaint seriously. In consequence, companiesurgently need to generate that trust among workers, resolving the harassment complaints brought by the workers quickly and efficiently. In this sense, Cereah once again warns that the internal complaints-handling systems used by many companies of the electronics industry in Mexico do not work properly and this reveals the importance of allowing the workers' free association in union organizations that represent and assist ordinary workers in these types of case.

## 2.9 Sexual Harassment in Microsoft and Benchmark

Civil society groups working with women in Mexico highlight the links between gender inequality and forms of violence. In Mexican society these are practices that are used to demonstrate manliness and power towards women or towards other men<sup>56</sup>.

One of the most influential factors is a lack of equity in work relations. According to data of the National Occupation and Employment Survey (ENOE) from the second quarter of 2014, of the 52 million economically active population, 19.7 million are women and 32.3 million are men<sup>57</sup>. Although there has been an advance of female participation in the work field, it has not translated into better equality conditions, as generally women occupy roles with a lower status

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<sup>56</sup>ONU Mujeres, INMujeres, LXI Legislatura, Cámara de Diputados, Comisión Especial (2012), "El origen de la violencia hacia las mujeres", en *Violencia feminicida en México. Características, tendencias y nuevas expresiones en las entidades federativas, 1985-2010*, <http://vidasinviolencia.inmujeres.gob.mx/sites/default/files/F05-1feminicidio1985-2010nal.pdf>

<sup>57</sup><http://www3.inegi.org.mx/sistemas/temas/default.aspx?s=est&c=25433&t=1>

than men and receive lower remuneration, even in the same work positions<sup>58</sup>. Mexico's electronics industry is no exception to this general tendency.

Jazmín and Milagros work in the electronics industry; Jazmín as a production line operator (at Benchmark, Guadalajara) and Milagros in charge of the communications area at the former Nokia plant, now owned by Microsoft (in Reynosa).

Jazmín has worked at Benchmark for more than 10 years. After a few years in the plant, she decided to ask for a promotion. On this first occasion, they refused as she did not have high school studies and the position's profile demanded it. After this, she decided she wanted a higher position and began studying high school and a bachelor's degree in engineering. In 2014 she decided to reapply for the promotion. A supervisor found out about her plans and offered to help her get the promotion in exchange for having a sexual relationship with him. The production manager gave her the position change document to sign. The supervisor told Jazmín that thanks to his participation they had given her the change and insisted on calling in the "alleged favor" with sexual relations. Jazmín decided to report the harasser and the lack of recognition of her position (which implied a salary raise) through Benchmark's internal channels. The supervisor was finally fired.

Jazmín was at ease with the decision the company made regarding the sexual harassment case, but the matter of the salary raise is unresolved to this day. She had no idea of the consequences this would later have.

From 2007 to 2010, she worked in supervising functions. The position set forth in the payroll was still of universal operator, and she didn't get the salary raise because she didn't have the academic level required (unfinished engineering). In 2011, she worked at the position of leader in SMT, but there were no vacancies to formally occupy that post either. From 2011 to 2013 she worked in the RMA (customer returns, in the quality department) area, reporting directly to the Quality director. There were no vacancies there either. In 2014, she decided to apply for a raise and she tells us what happened when they called her in to deal with the case.

*"They called me in to tell me that I wouldn't be given the position of leader by promotion; even though I was performing this job, they never wanted to make it official or give me a promotion. There was a meeting with the HR Manager, Víctor Martínez, the superintendent of employee relations, Felipe Valadez, the manufacturing manager, Rafael Amezcua, the supervisor, José Gudiño, and me. In this meeting I was informed that the reason why I didn't get the position was because the human resources department could not allow me to get that position or salary raise because I didn't have the work attitude for that post. Mr. Martínez stated that the perception HR has of a person is reason enough to deny a promotion."*

Jazmín answered that she didn't know why Mr. Martínez said such a thing and asked to see the documentation they had supporting it and if they had any testimony from her direct supervisors that backed that judgment about her. Víctor Martínez, Jazmín tells us, said the proof he had was enough and the decision was made, and that being liked by everyone was an essential requirement to get the position and as long as that didn't happen she wouldn't get the position.

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<sup>58</sup>Más allá del homicidio de la pareja ¿Feminicidio o violencia estructural contra las mujeres?, en *Violencia feminicida en México. Características, tendencias y nuevas expresiones en las entidades federativas, 1985-2010* (op. cit.),

*“In the last meeting I was called to they told me that they weren’t going to give me the position. Víctor Martínez reproached me that they had already fired a supervisor for no reason because of me<sup>59</sup> and he asked me ‘if you’re so good and the company is so bad, why don’t you look for an opportunity at another company instead of having so many problems in this one?’ and he mentioned the company next to Benchmark was hiring a lot of people”<sup>60</sup>.*

On October 29, Cereal had a meeting with Benchmark representatives to follow-up the case. In this meeting the Benchmark representatives assured that the supervisor had been fired

*“because of Jazmín’s whim” and that man “had an impeccable conduct” and that, in contrast, Jazmín had an “inappropriate sexual conduct”.*

According to Benchmark’s version, they made, along with the supervisor, the decision of making him resign and he was given a compensation at 100%, although it did not correspond as harassment is a cause for dismissal.

After this meeting, Cereal interviewed more female workers from Benchmark; three of them had also been sexually harassed by this supervisor. Among these testimonies is Susana’s, who tells us:

*“he would come up to us in the line and he was insistent with his invitations to go out or on occasions he would openly tell you that he liked you and invited you to go to a motel after work”.*

Sonia, another worker, comments:

*“After the first indecent proposal, I just made it very clear plain and simple that we could only be colleagues. I knew, because of my colleagues’ comments, that after he gets one (woman) he dumps her and goes on to the next. He didn’t want us for anything serious. We all knew exactly what he was like.”*

One of the characteristics of sexual harassment is that *“it is a phenomenon that affects a group defined by the sex of the people who make it up: women, to treat them in a special way that has wretched repercussions and attacks their condition as workers. Sexual harassment imposes restrictions to women that are not applied to men. It deprives them of possibilities that can benefit male workers without sexual determinants. In the end it creates two rules for work: one for women, which includes sexual demands, and the other for men, without these demands”<sup>61</sup>.*

Milagros’ case has other components. She was in charge of communication at Nokia, now Microsoft, and reported directly to David Torres, HR manager. She had worked at the plant for almost six years. She stated that on more than one occasion comments about her figure and emotional situation made her uncomfortable. As time went on, the “work” meetings to which she

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<sup>59</sup>Referring to her sexual harassment report

<sup>60</sup> File attached by the worker with the emails sent to Scott R. Peterson VP & General Counsel of Benchmark Electronics, September 2, 2014

<sup>61</sup>See: United Nations (2006), *Ending violence against women: From words to action*, Study of the Secretary-General of the United Nations, [http://www.un.org/womenwatch/daw/public/VAW\\_Study/VAW-Spanish.pdf](http://www.un.org/womenwatch/daw/public/VAW_Study/VAW-Spanish.pdf) (November 24, 2014).

was called were more about her intimate life than work-related matters.

In November of 2013 Santa Marcial replaced Ana Gonzalez in the HR department. In December of that year, Santa asked Milagros to come to her office under the pretext of discussing several issues. Milagros thought that would be good opportunity to bring up the harassment she had suffered since she had already broached this topic with Ana Gonzalez without receiving any favorable response. They began to talk about work-related issues, including the transition the company would have. Santa mentioned during the meeting that that the real reason for it was to talk about *“more personal topics”*.

Santa said that after talking to several people, she was concerned that she spoke ill of David and said that *“He has placed all his trust in you, he trusts you completely, he gives you special treatment and I think that is in your favor.”* At that time Milagros commented that was just what she wanted to talk about, that this *“particular”* treatment included looking at her lewdly, out-of-line body contact, remarks about her body and her love life, etc. She expressed her discontent explicitly and asked for the Human Relations Department to step in and put an end to this problem. Santa answered that she was a bit confused, that she should reconsider and added, *“I wouldn’t like it if you were ungrateful for everything I’ve done for you.”* Milagros tried to restate her case but Santa concluded, *“I don’t want to listen to gossip. I don’t want you to talk about him like that. I want you to improve your attitude, and I want you to treat him better.”* Milagros limited herself to saying that she had been sufficiently professional in her tasks and in her treatment towards David, and that was how she would continue to act. She added she had put up with David’s insinuations because she needed the job but she wouldn’t tolerate more than what had already happened. At that time Santa concluded the meeting.

On February 28 the situation came to a head. David Torres called her into his office and said he needed her support that day; that he was under a lot of stress because of Day 1<sup>62</sup>. Because Santa was out sick and Martina<sup>63</sup> was no longer there, a vacancy had opened in Human Resources. Then he said he could help her economically, all she had to do was ask. Milagros refused because it was not within her area of expertise; besides she did not think it was ethical to take Martina’s job. After insisting several more times, he said that the only condition for this to happen was that she accompany him to a meeting in Mexico City with the Microsoft Manager for Mexico. She refused because this kind of trip was not in her job description.

David replied that it was an order that she could not refuse, and added, *“This is a chance to get to know each other better because I think very highly of you.”* After that, he made sexual innuendos and insisted it was an order that she would have to obey, and if she did not do what he was asking, he did not want her there. She left David Torres’s office and the plant amidst threats and shouts. That was the last day she went to work and afterwards Milagros filed an employment-related claim based on wrongful dismissal.

Milagros contacted Microsoft’s Corporate Legal Department to May to apprise them of the situation. An attorney and two inspectors contacted her. She told them her story and they

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<sup>62</sup>This is how people referred internally to the day Nokia would officially hand over the plant to Microsoft

<sup>63</sup>Martina Worked In The Human Resources Department. She was aware of the harassment suffered by Milagros, and was fired without justification. Milagros currently has a wrongful dismissal complaint being heard by the local Administrative Labor Court.

undertook to help her. Two months later a representative of the Legal Department called her and said that David Torres had flirted with her and yes, he had been seen looking at her “*chest and tail*”, but that was not harassment.

Milagros decided to file a sexual harassment complaint.

On June 12 David Torres was summoned to appear to answer charges of sexual harassment by the Second Special Agency of the Attorney General’s Office but failed to appear at the first hearing. Another person summoned to give her statement was Martina who knew about the harassment suffered by Milagros and who had been fired. After giving her statement, Martina began to receive e-mails with death threats to her and Milagros.

There are several different consequences of sexual harassment in women who have suffered it. The main ones are: voluntary resignation or dismissal, subjection and silence so as to not lose income, sense of guilt, as many times they are made to believe it’s their fault for being “provocative”, in addition to nervousness, anxiety, depression, and other psychosomatic disorders that end up taking a toll on their work, family and health.<sup>64</sup> And if we add physical and psychological violence, the situation becomes alarming.

Sexual harassment in the workplace is very common,<sup>65</sup> and unfortunately it will continue to be as long as the companies do not make sure their employees actively support a culture of respect and non-violence.

In an email sent to Cereal on October 14, 2014, Microsoft said that it was “*in an active process of investigation (of the accusations) and was to take the necessary measures*”. But to this day, Microsoft has not informed Cereal (or the workers implied) what remediation plan will be implemented. In the meantime, David Torres is still manager of the Reynosa plant and there are judicial proceedings in process against him. The court of first instance denied his request for legal protection (*amparo*) that would render the sexual harassment charges ineffective. Milagros has not received any type of explanation from Microsoft.

Enviamos una copia del caso a Benchmark; no hizo comentarios al respecto.

## 2.10 The new federal labor law in Mexico and temporary agreements

With the coming into effect of Mexico’s new federal labor law, in December 2012 a series of restrictions were imposed as to the use of temporary workers and the use of outsourcing through employment agencies. Such restrictions are stipulated mainly in article 15 of the new law. Despite this, the companies of the electronics industry continue to use temporary agreements and employment agencies in highly disturbing percentages, which sometimes range from 30 to 60% of their total workers. The new law sets forth that companies cannot outsource a worker that will be assigned to perform work that is fundamental to the company. In this sense, the workers that perform manufacturing and assembly activities electronic equipment

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<sup>64</sup>[http://cedoc.inmujeres.gob.mx/ftpg/Aguascalientes/ags\\_meta8\\_2011.pdf](http://cedoc.inmujeres.gob.mx/ftpg/Aguascalientes/ags_meta8_2011.pdf)

<sup>65</sup><http://estadistica.inmujeres.gob.mx/formas/convenciones/Nota.pdf>

must not be temporary or outsourced, as it is precisely the fundamental activity of most of the companies of the electronics industry. However, approximately half of the workers of this sector in Mexico are outsourced and are hired through temporary agreements of 1 to 12 months. According to CEREAL's analysis of the new federal labor law, this places most of the manufacturing companies and employment agencies in a situation of illegality. Cereal urges the companies of Mexico's electronics industry to review their hiring policies and modify them so that they are in accordance with the provisions of the new labor law.

## 2.11 Foxconn: series of temporary contracts

When the labor reform was being promoted, one of the things the Federal Government and the some members of Congress promised was that they would regulate the outsourcing sector. It doesn't seem that has happened.

With regards to series of agreements contracts, the law has not been modified and sets forth that *"If at the end of a fixed term contract for work the employer has a continuing requirement for the type of work that has been the subject of that fixed term contract, then the employee shall continue to be employed to undertake that work for such period as there shall be a requirement for that type of work to be undertaken"* (art. 39).

Juan, who has worked at Foxconn for over 2 years, was hired by the Azanza y Asociados Agency.

Unlike the other agencies hiring personnel for the IBM supply chain, Azanza does give a copy of the agreements, although they are illegal.

Juan will sign agreements monthly as a temporal employee *"until the permanent position is granted through Azanza y Asociados S.C<sup>66</sup>"*, as stated by a representative of the agency<sup>67</sup>. This situation is illegal: his situation does not meet the requirements of the law for temporary contracts; besides, the law explicitly forbids this series of contracts.

Something similar happens at Sanmina: about 3,000 workers are hired for a specific project and sign employment agreements each year. Sanmina used to recognize a direct working relationship after three years of hiring a worker; but the company has changed its policy. Until now Sanmina has decided not to recognize the seniority of assembly line area workers, arguing that it is applying the new labor law reform provisions. But this interpretation is not in line the reform: term of the contract is related to its nature, so even if a company makes you sign a fixed term contract, if the work is of a fixed-term nature, the contract will extend as long as the work extends (art. 39 of Mexican Labour Law).

Plus, outsourced personnel do not meet the conditions provided by law to be hired under this system. For instance, subsection B of Article 15-A reads, *"Services may be justified due to their specialized nature"*. Under this condition, we understand that the need to subcontract only means that there are no employees at the workplace with the knowledge, capacity, skills or

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<sup>66</sup>In Mexico, employment agencies give permanent contract to workers and they become part of its personnel. This situation does not improve the workers perspective regarding security of employment because, in theory, he/she can be assigned to any activity by the employment agency, and not specifically to the job currently performed; so this status leaves them exposed to a drastic change in terms of shift, workplace, workload, etc.

<sup>67</sup>Iciar Azanza, Azanza y asociados, electronic communication addressed to Cereal, November 20, 2014

know-how needed to perform certain activities. For instance, people to maintain networks, or security and cleaning personnel (when the company does not perform such activities).

Subsection c reads, *“It may not include tasks the same as or similar to those performed by the rest of the employees hired by the employer”*. This condition is not met either.

When the Federal Labor Law reform was under discussion, Cereal and other community sectors warned that these kinds of abuses could happen<sup>68</sup>, while the Mexican Employers' Association (Coparmex) asserted that it was needed to improve competitiveness and productive investments, arguing that it already existed in other countries. The business sector pressed so strongly for changes to the subcontracting system that Coparmex's legal representative publically admitted, *“If this item is conceded to us, the rest would be the icing on the cake.”*<sup>69</sup>

Despite that, the law has not brought the expected benefits 2 years after it was enacted. Mauricio Kuri, President of the Employers' Confederation of the Mexican Republic (Coparmex) in Queretaro, said,

*“We had very high expectations with the labor law reform. It was a reform that had not been taken up over the previous 40 years and the good news was that it was a reform that took into account the will of all the (political) parties to make a more competitive law at the global level, but the bad news is that the expectation we had of a million jobs has not been achieved and the creation of new jobs has been quite below that expectation”*.<sup>70</sup>

Lawmakers believed that the labor law reform would bring enormous benefits to workers, more investment and better working conditions, but regrettably it has only served to make existing jobs more precarious and has done little to eradicate old illegal outsourcing practices.

## 2.12 Microsoft: Many changes, little information

Although the sale of Nokia took place several months ago (April, 2014), the workers' pay slips are still labeled *“Nokia Servicios”*, instead of Microsoft. It seems the change of employers has not been fully completed yet. This change has brought the workers a huge wave of uncertainty and confusion.

One of the workers' main complaints is that there is no clarity on the new direction the company will follow. Soraya, a Microsoft worker, tells us:

*“There was a meeting to let us know of the change a few days before it happened, but they didn't give us a lot of details on the purchase or the future activities that would be developed in the plant.”*

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68 Robles, Paloma (2012, Octubre 10), *“¿Quién podrá defendernos?”*, Reporte Índigo, <http://www.reporteindigo.com/reportes/guadalajara/quien-podra-defendernos>, consultado el 22 de octubre de 2014.

69 Alcalde Justiniani, Arturo (2011, Julio 30), *“Tres graves riesgos de la reforma laboral”*, La Jornada, (<http://www.jornada.unam.mx/2011/07/30/opinion/021a2pol>), consultado el 22 de octubre de 2014.

70 Almanza, Lucero (2014, Agosto 10), *“Reforma laboral, sin beneficios para los trabajadores: Coparmex”*, El Economista, <http://eleconomista.com.mx/estados/2014/08/10/reforma-laboral-sin-beneficios-trabajadores-coparmex>, consultado el 22 de octubre de 2014.

As an example, the interviewed workers mention that in a communication meeting that took place in mid-August, a worker questioned the person leading the meeting saying, *“When you come up with a new product you always bring people from somewhere else, when are you going to give us a chance?”* The meeting leader answered that the first openings would be for them, and that’s effectively what happened, but when they saw the profiles requested for technicians, they understood that almost no one in the plant could cover the profile. *“How can they ask for that profile and experience if we’ve been here for several years and haven’t been able to develop in other areas like programming, processors and microprocessors, etc.?”* When the workers mentioned this to their superiors, the answer they got was that there was no problem, that there were already people covering those positions.

The uncertainty also grows because in the beginning the workers were told that they were going to perform a repair at the assembly level, and now they want to repair at the components and diagnosis level. All of this, in addition to lack of work, has made anxiety grow among the workers and the fear of being let go for not meeting the necessary profile for the plant’s new functions.

Another situation that bothers the workers is that there is not enough information to know who the employer is: the payroll says Nokia; their ID badge, coat and workplace say Microsoft. This has not only caused confusion, but also practical problems. For example, a worker attempted to ask for a Fonacot<sup>71</sup> credit and it was denied because the corporate address on the payroll does not correspond to the one on the ID badge. Another worker was stopped by the *hawks*<sup>72</sup> of her neighborhood who asked her to prove she worked close by. She showed them her payroll, but they asked for her ID badge. The *hawk* felt she was trying to trick him and it turned into an uncomfortable and risky situation for the worker, as hawks are usually armed and tend to be violent.

In this year, due to the fall in production, according to what Nokia personnel explained, they have had two production stoppages where they’ve only been paid 30% of their base salary. Bonuses are not paid during stoppages. They were also informed that there was a chance the stoppages would be more constant and that they would only be paid 30% of their salary during those stoppages, although they haven’t taken place.

Regarding the union, we can see that they follow a pattern similar to other companies. Nokia entered into a collective agreement with a union that was publicly visible, but does not represent the members’ interests. That same union changed its name to continue to have the collective agreement with Microsoft. The workers found out about that change once it had already taken place. Evidently this arrangement between the company and the union is very convenient for both of them, but not for the workers.

Before publishing this report, Cereal had Microsoft receive a copy of the case, but we didn’t get any answer.

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<sup>71</sup>A government agency

<sup>72</sup>Hawks are people, usually men, who guard the areas that are under the control of drug cartels. They monitor people and merchandises crossing and report incidents to their bosses.

### 3 With regards to the tenth anniversary of the Electronic Industry Citizenship Coalition, CEREAL expresses the following:

The EICC has prioritized growth in membership (they started with 8 companies and now there are 100 or more) over establishing stricter requirements for companies that want to become an EICC member. The main instrument to comply with their Code of Conduct continues to be the audits, which on occasions show results strangely inconsistent with the reports of civil organizations like CEREAL and others, for example members of GoodElectronics. For example: freedom of association and collective bargaining are at the bottom of their list of problematic areas, according with their audits, but many trade unions and civil society organizations (like Cereal) find that these enabling rights are been systematically infringed worldwide. In short, *EICC*, as a brand loses strength and its credibility fades away, especially for human rights organizations that regard the insufficient progress of this industry body with suspicion and disappointment.

For this same reason –preferring substantial membership, although with less stringent parameters– the companies' commitment is heterogeneous: some are more committed to the progressive substitution of toxic substances, the reduction of excessive work schedules, and the relative acceptance of a certain degree of freedom of association, while others systematically look for the lowest labor and environmental costs, despite the negative effects on the workers' health and wellbeing, and also refuse to accept the workers' right to freedom of association and collective bargaining.

We urge the global electronics industry to assume a deep and straightforward commitment to respecting human rights and environmental sustainability in the workplace. This commitment includes subscribing and putting into practice the ILO core labour standards and similar standards regarding environmental sustainability and responsible use of chemicals.

## 4 Cereal's evaluation of compliance with labour rights:

Name of the company	Ranking
Sanmina	Improving
HP	Improving
Samsung	Bareminimum
Foxconn	Bareminimum
IBM	Bareminimum
Jabil	Bareminimum
Flextronics	Insufficient
Motorola	Insufficient
Microsoft	Insufficient
HTC	Verypoor
Valutech	Verypoor
Benchmark	Verypoor

Very poor	0 a 25
Insufficient	25 a 50
Bare minimum	51 a 70
Improving	71 a 90
Excellent	91 a 100

### 4.1 Index for evaluating compliance with labour rights, drawing on human rights standards

In order to be more objective and transparent as to their evaluation of companies regarding their compliance with labour rights, and taking into consideration some of the suggestions of the companies themselves, CEREAL has designed this *Index for evaluating compliance with labour rights, based on human rights standards*. The starting point is the principle that establishes the companies' responsibility to respect human rights and to implement due diligence "to identify, prevent, mitigate and account for how they address their impact on human rights" (United Nations Guiding Principles on Business and Human Rights).

This index comprises three dimensions:

1. Labour rights drawing on human rights standards, which includes the following issues: freedom of association and collective bargaining, security of employment, living wage, working conditions (working hours, vacations, absence of discrimination, harassment or humiliating treatment, healthy and safe workplace and working conditions, attention and compensation in cases of work-related risks and accidents, social security, housing benefits), gender equality, maternity and paternity leave and other rights, inalienability of

rights, access to judicial mechanisms regarding labour rights.

2. Estimation of prevalence: based on the validity and reliability of the workers' testimonies, CEREAL estimates if a case is an exception, if it could be the case of a group of workers or if it is a structural or systemic problem.
3. Remedy of business-related human rights abuse: grievance mechanism, responsibility regarding supply chain, use of the escalation system (CEREAL-CANIETI agreement).

**Table 9**

Issue	Human Rights standards: References in terms of labour rights	References in terms of EICC Code of Conduct
Workers' real chance of forming or joining a coalition or union of their own choosing without the intervention of authorities or employers.	Declaration of fundamental principles and rights at work (ILO core labour standards), United Nations Universal Declaration of Human Rights (UDHR) (art. 23)	A-7 (partial)
Freedom to elect representatives or to be elected	ILO Core Labour Standards, UDHR (art. 23)	"The provisions in this Code are derived from key international human rights standards including the ILO Declaration on Fundamental Principles and Rights at Work and the UN Universal Declaration of Human Rights" (Preamble, 5.0 Version)
Absence of reprisals or harassment related to union activities or leadership	ILO Core Labour Standards, ILO Conventions 87 and 98	"The provisions in this Code are derived from key international human rights standards including the ILO Declaration on Fundamental Principles and Rights at Work and the UN Universal Declaration of Human Rights" (Preamble, 5.0 Version)
Collective bargaining, bilateral agreements	ILO Core Labour Standards, ILO Conventions 98	"The provisions in this Code are derived from key international human rights standards including the ILO Declaration on Fundamental Principles and Rights at Work and the UN Universal Declaration of Human Rights" (Preamble, 5.0 Version)
The term of the contract is related to its nature: the contract extends as long as the work extends.	Mexican Labour Law (art. 39).	"Fundamental to adopting the Code is the understanding that a business, in all of its activities, must operate in full compliance with the laws, rules and regulations of the countries in which it operates"

		(Preamble).
Dismissal notice and severance package in accordance with the law, absence of blacklist.	Mexican Labour Law (art. 47, 133), Tripartite declaration of principles concerning multinationals and enterprises and social policy (Tripartite) (art. 24 a 28)	Full compliance with the laws.
Support program to help dismissed workers to get a new job	Tripartite (art. 24 a 28)	“The Code encourages Participants to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility and business ethics” (Preamble, 5.0 Version)
Absence of abusive use of temporal/outsourced work	Mexican Labour Law (art. 15 A-D, 39, 39 A-F)	Full compliance with the laws.
Copy of working contract	Mexican Labour Law (art. 24)	A-4 (partial)
Minimum wage (above poverty line)	Mexican Labour Law (art. 90), UDHR (art. 23 y 25)	A-4 (partial)
Equal pay for equal work	ILO Core Labour Standards, UDHR (art. 23)	A-4, A-6 (partial)
Profits distribution in accordance with the law	Mexican Labour Law (chapter VIII)	A-4
Overtime pay	Mexican Labour Law (art. 66-68)	A-4
Working hours	Mexican Labour Law (art. 66-68, capítulo II), UDHR (art. 24)	A-3
Vacations	Mexican Labour Law (chapter IV), UDHR (art. 24)	Full compliance with the laws.
Humane treatment, absence of discrimination of harassment	ILO Core Labour Standards	A-5, A-6
Safe and healthy workplace	Mexican Labour Law, International Covenant on Economic, Social and Cultural Rights (art. 7 y 12)	B.
Attention and compensation in case of an accident or work-related ailment or disease	Mexican Labour Law, International Covenant on Economic, Social and Cultural Rights (art. 7 y 12)	B.

Social security and housing benefits	Mexican Labour Law, UDHR (art. 22)	Full compliance with the laws
Gender equality	ILO Core Labour Standards	A-6
Rights related to pregnancy and maternity leave	Mexican Labour Law (art. 170)	A-6 (partial)
Break for lactation	Mexican Labour Law (art. 170)	Full compliance with the laws
Paternity leave	Mexican Labour Law (art. 132)	Full compliance with the laws
Absence of anticipated signature of resignation letters	Mexican Labour Law (art. 5 y 33)	Full compliance with the laws
Inalienability of rights	Mexican Labour Law (art. 5 y 33)	Full compliance with the laws
Access to judicial mechanisms regarding labour rights	Mexican Labour Law, UDHR (art. 8)	Full compliance with the laws
Access to grievance mechanisms for the remedy of business-related human rights abuse.	UDHR (art. 8), UN Guiding principles on Business and Human Rights	“The Code encourages Participants to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility and business ethics” (Preamble, 5.0 Version)
Responsibility regarding supply chain	UN Guiding principles on Business and Human Rights	“Participants must regard the Code as a total supply chain initiative”.
Agreement between CANIETI and CEREAL on the escalation process	UN Guiding principles on Business and Human Rights	“The EICC is committed to obtaining regular input from stakeholders in the continued development and implementation of the Code of Conduct”.  “The Code encourages Participants to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility and business ethics” (Preamble, 5.0 Version)

# Colophon

## **Paying the price for flexibility: Workers' experiences in the electronic industry in Mexico** **Sixth Report on working conditions in the electronic industry in Mexico**

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Cereal provides legal assistance, labour rights training and organisational support to workers' groups; it also carries out research on working conditions in different productive sectors in the country and promotes public awareness campaigns to improve workers' condition. [www.cerealgdl.org/](http://www.cerealgdl.org/)

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The GoodElectronics Network accommodates networks, organisations and individuals that are concerned about human rights, including labour rights, and sustainability issues in the global electronics supply chain, including but not limited to trade unions, grass roots organisations, campaigning and research organisations, academia, and activists. The Network has a strict civil society-only profile.





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