

**2015 Annual Report on Korean Multinational Corporations'
Human Rights Practices Abroad**

Field Investigation Report: Mexico

(September 1 – 12, 2015)

Korean Transnational Corporations Watch (KTNC Watch)

(Advocates for Public Interest Law / GongGam Human Rights
Law Foundation / Hope and Law / Korean House for
International Solidarity / Lawyers for Democratic Society /
International Labor Team / Korean Confederation of Trade
Unions / Good Corporations Center)

*This report was sponsored by the 'Scenarios of Change Project' of the
Beautiful Foundation*

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Center]

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Opening Remarks

With the rapid expansion of Korean businesses abroad, the human rights practice of Korean corporations in overseas operations has increasingly become problematic. Most human rights complaints against Korean corporations involve labor union dissolution, nonpayment of wages, physical abuse, and layoffs of local labor receiving low wages. Thus, domestic abuse of labor during the rapid growth phase of the 1970s and 80s in Korea is being repeated overseas.

As we recognized a need for the government and civil society to take action against Korean corporations' human rights abuse abroad, we decided to launch a field investigation to better understand the current conditions.

Since 2014, Advocates for Public Interest Law (APIL), the Operations Office of KTNC Watch, applied for and received funding from the 'Scenarios of Change Project' of the Beautiful Foundation for field investigations of Korean corporations' human rights conditions in countries of concern.

In 2014, we concentrated on countries in Southeast Asia: Bangladesh, Vietnam, and the Philippines. In Bangladesh, we investigated the death of a female employee during a protest at a subsidiary factory of Youngone Holdings Co., Ltd. In Vietnam, we studied the case of multiple worker injuries by private

securities at the construction site for a new Samsung Electronics factory. In the Philippines, serious human rights and environmental issues surrounding dam construction and related investments from the Korea Export-Import Bank were noted.

For this year's field research, we visited Mexico, Guatemala, and Honduras in Latin America. In Mexico, with corporatism disabling labor unions from representing workers, Korean conglomerates in the electronics industry were hindering efforts to create labor unions and violating labor rights in contract formation, wages, and working conditions. In Guatemala and Honduras, maquila companies were engaging in fraudulent name changes, evading social security insurance fees, and oppressing labor movements.

The six members of this year's investigation team were selected amongst the organizations under KTNC Watch, and reports have been compiled for each country visited.

Besides releasing findings of the field investigation in this report, KTNC Watch will use the information obtained to attempt to meet these challenges in various ways, and will take further action against Korean corporations' human rights violations in other countries as well.

December 21, 2015
APIL, Operations Office for KTNC Watch

Table of Contents

I. Introduction----- 13

1. Background

- A. Country Overview
- B. Economic Outlook
- C. Characteristics of Labor-Management Relations
 - 1) The Mexican Revolution and the Rise of Corporatism
 - 2) Deterioration of the Labor Union
 - 3) Types of Labor Unions: ‘Official’ and ‘Independent’
 - 4) ‘General contracts’ (contracto ley) and ‘protection contracts’ (contracto de proteccion)
- D. Characteristics of the Mexican Economy
 - 1) Export-Oriented Manufacturing
 - 2) Free Trade: NAFTA and FTA
 - 3) Maquiladora

2. Korean Multinational Corporations in Mexico

3. Necessity of Research and Research Boundaries

- A. Explaining Mexico’s Selection for Report
- B. Focus Industry: Manufacturing
- C. Research Boundaries

4. Investigation Process

- A. Method of Investigation
- B. Investigation Team
 - 1) Team from Korea
 - 2) Partner in Mexico
- C. Location and Dates of Investigation
 - 1) Investigation Sites

2) Detailed Schedule of Investigation

II. Related Legal Statutes -----31

1. International Treaties Ratified by Mexico
 - A. ILO Conventions
2. Federal Law of Labor (Ley Federal del Trabajo)
 - A. Overview
 - B. Labor Contracts
 - 1) Contract Types
 - 2) Termination of Contract
 - 3) Subcontracting
 - 4) Working Hours and Breaks
 - 5) Salary
 - 6) Minimum Wage
 - 7) Allocation of Profit amongst Workers
 - 8) Labor of Women and Children
 - 9) Occupational Safety and Industrial Disasters
 - 10) Labor Unions, Collective Bargaining and Labor Disputes

III. Findings – Korean Enterprises’ Human Rights Practice -----46

1. Interviewees, the Interview Process, and Challenges
 - A. Interviewees and the Interview Process
 - B. Challenges in Interviews and Other Investigation Methods
2. Specific Cases of Human Rights Violations
 - A. Labor Unions
 - B. Labor Contracts
 - C. Child Labor

- D. Wages, Bonuses, and Deductions
 - E. Working Hours
 - F. Treatment of Workers
 - G. Vacations
 - H. Occupational Safety
 - I. Subcontracted Workers
 - J. Dismissal
 - K. Labor and Living Conditions
 - L. Complaint Processing Mechanism
3. Absence of Effective Remedies
- A. National Human Rights Commission
 - B. Mexican Court of Arbitration
 - C. Domestic Courts
 - D. NCP
 - E. EICC
 - F. NAALC

IV. Moving Forward: Our Plan of Action ----- 65

I. Introduction

1. Background

A. Country Overview¹

The official name of Mexico is the United Mexican States (Estados Unidos Mexicanos). Situated in the southern tip of the North American continent, it is bordered by the United States in the north and by Guatemala and Belize in the south. Mexico covers an area of approximately 1,940,00 km², nine times the land area of the Korean peninsula. According to statistics from July 2015, Mexico's population amounts to approximately 121,740,000 people, 93% of whom speak Spanish. The nation's capital, Mexico City, is located in the South Central region of the country and is populated with approximately 20,000,000 people.

After 200 years of colonization, Mexico earned its independence from Spain in 1810 and currently maintains a presidential central system and a federal system (31 states, 1 Federal District). The current president is Enrique Peña Nieto of the Institutional Revolutionary Party (PRI), former governor of the State of Mexico. His presidential term ends in 2018.

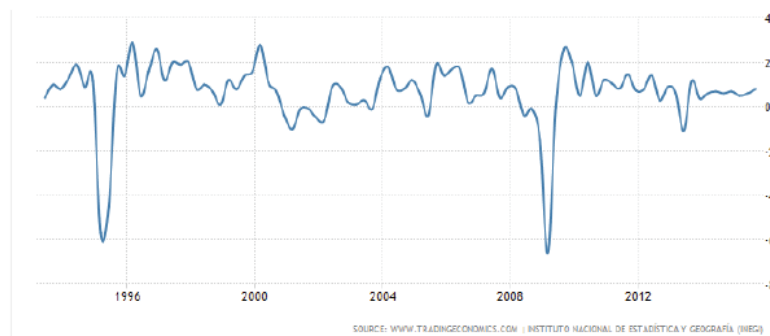
B. Economic Outlook

After the Mexican Revolution of the 1930s, the Mexican government has engaged in an import substitution strategy, and has pursued tactics

¹ See Country Overview: Mexico by the Korea Export-Import Bank Foreign Economies Research Center, 2015; Spain/Latin American Research Center: Korean Corporations in Mexico and Localization Strategies. June 2014; Ministry of Foreign Affairs Basic Information on Country, Aug. 2011. (http://www.mofa.go.kr/countries/southamerica/countries/20110805/1_22720.jsp?menu=m_40_40_20)

including nationalization of the petroleum industry. Then, in 1982, Miguel de la Madrid's government abandoned this economic strategy and chose to open up the Mexican market to the world. This was accomplished through the 1986 GATT (General Agreement on Tariffs and Trade) and the 1988 NAFTA (North American Free Trade Agreement).

Mexico survived the 1994 Mexican economic crisis, which was most tangibly seen by the drastic devaluation of the Mexican currency (the peso), with the help of a reduced budget policy and a booming American economy. Moreover, in comparison to other Latin American countries, Mexico retained a relative stable and secure economy after the American financial crisis of 2008.



GDP Growth Rate (Source: World Bank Database)

Table: Main Economic Indicators of Mexico (2014)

		Notes
GDP	1.283 trillion USD	

GDP/Capita	10,837 USD	
GDP Growth Rate	2.1%	Latin America Average: 0.7%
Currency	Peso(ps)	
Unemployment Rate	4.75%	0.16% down from 2013
Inflation	4.02%	0.21% up from 2013
Trade balance	-14.08 billion USD	- 3.08 billion USD from 2013

C.Characteristics of Labor-Management Relations

1) The Mexican Revolution and the Rise of Corporatism

A term that must necessarily be explained when speaking of labor-management relations in Mexico is the so-called ‘corporatism.’ Unlike in the rest of Latin America, since the beginning of the 20th century to the modern day, there has been a symbiotic relationship between the state and the labor force in Mexico.

The history of corporatism in Mexico² can be traced back to the 1910s. During the Mexican revolution, labor supported the revolution and the constitutionalists, thus gaining a strong voice in the public political sphere once the revolution ended. Their position was

² For history of corporatism in Mexico, see Joon Kim, *International Labor Movements: the History and Structure of Labor Relations in the Society in Mexico*. Korea Research Center for Labor Society Book 23, 1998, page 57 onward.

solidified in the institutionalization of the revolutionary government. For example, the Confederation of Mexican Workers (CTM), which at the time represented the labor movement, developed to be the organization representing the labor section of the ruling party.

1) Deterioration of the Labor Union

This union of politics and labor started to deteriorate in the middle of the 20th century. As the ruling party, the Institutional Revolutionary Party (PRI) became conservative and the leaders of the labor union became corrupt; the labor union no longer promoted the labor movement but instead became the enforcer of labor regulations. The government gave the institutionalized labor union (the so-called Official Labor Union) political power, and in return, the leaders of these unions supported the government's union members in the elections of the ruling party which brought the government political stability. The leaders of the labor union gained the power to control independent labor movements and privatize organizations.

There is disagreement about whether such corporatism remains to this day in the Mexican political structure. Since corporatism could not coexist with a neoliberal system which seeks free competition through the market, the Mexican government broke the labor-state pact and thus the labor sector's political influence has weakened. Some argue that corporatism was weakened following the fall of the political influence of the labor sector, while others purport that it continues to exist.³

³ For opinions on the current state of corporatism in Mexico, see Joo-Hee Kim, Institutional Characteristics of the Mexico Labor Law and Labor-Management Relations. Labor Policy Research Book 15 No.1, Korea Labor Research Foundation, 2015, 148-149.

3) Types of Labor Unions: 'Official' and 'Independent'

Since the 1980s when neoliberal policies were implemented, a new labor movement formed in opposition to the 'Official Labor Unions' enjoying privileges under corporatism. In 1997, labor unions including STRM (telephone), STIMSS (social security), and STUNAM (Mexico National University) led the efforts to establish the National Union of Workers (UNT). A more progressive/radical organization, May First Inter-Union Coordinating Committee (CIPM), was also formed around this time.

The differences between 'Official Labor Unions' and 'Independent Labor Unions' are many. Official unions are formally sanctioned by the government, engage in collective bargaining, and receive member status at regional and central dispute mediation committees. By contrast, independent unions are politically independent and usually are less compromising in relation to capital.⁴⁵

Table: Comparison of Official vs. Independent Labor Unions

	Official Unions	Independent Unions
Relations with the government	Collaboration	Opposition

⁴ The tables below were adapted from Young-Hee Kang et al., *Analysis of Economic Environments in Brazil/Mexico/Columbia*. Developing Areas Research from the Spain/Latin America Research Center (June 30, 2013).

⁵ For a more detailed comparison, see Young-Il Lim, *Globalization of Capital and the Labor's Response: Labor Systems in Mexico and Korea*. Industrial Labor Research Book 5, No.2, Korea Industrial Labor Academy, 1999, p. 64-.

Oppression from the government	Protection	Oppression
Relationship with Institutional Revolutionary Party (PRI)	Party members	Non-party members
Difficulty of approval of union	Easy	Difficult
Willingness to bargain (with capital)	High	Low
Collective bargaining power	High	Low
Risk of dismissal	Low	High
Law abidance	High	Low
Union formation rate	Low	High
Representation of labor interests	Low	High
Union leadership	Corrupt	Democratic
Internal democratization	Low	High

Official labor unions through the years include the Confederation of Mexican Regional Labor Unions (CROM; 1918-early 1930s), Confederation of Mexican Workers (CTM; late 1930s to mid-1960s), and the Workers' Congress (CT; late 1960s-present).⁶ According to the Secretariat of Labor and Social Welfare, 791 out of 1,606 officially registered unions were part of

⁶ See Joon Kim, p. 60

the CT as of 2013.⁷

4) ‘General contracts’ (contracto ley) and ‘protection contracts’ (contracto de proteccion)

Similar to limitations on the formation of labor unions and the right to strike, there are often impediments to the workers’ right to collective bargaining. The most unique and widespread of such impediments are the ‘general contracts’ and ‘protection contracts.’

‘General contracts’ refer to industry-specific contracts that are utilized throughout the nation’s industries, and require the consent of 2/3 of union executives and ½ of employers. However, since the conditions of this negotiation are mostly decided by union leaders, most workers do not know the content of the bargaining; nonetheless, these contracts are binding on all workers, including those in the affected industry who do not belong to a union.

‘Protection contracts’ refer to the practice of employers colluding with leaders of corporate-friendly unions to prevent the emergence of conflict-seeking unions.⁸ Unions formed through this process are referred to as ‘protection unions (sindicato blanco).’

These contracts, in conjunction with corrupt official unions, make it virtually impossible for workers to exercise their fundamental rights. In 2012 reforms to the labor law, there were attempts to solve some of these issues by

⁷ See Joo-Hee Kim, p. 151

⁸The problematic nature of protection contracts is well known in the international community. For instance, in June 2009, call center workers from Telefonica/Atento Mexicana sought to escape the protection contract by joining an independent union (STRM), but were threatened by commissioned militants. In response, the Korean Confederation of Trade Unions (KCTU) filed a complaint against the violation of basic labor rights and the oppression of independent unions in Mexico.

amending Article 388 to strengthen the requirements for concluding a collective negotiation; this amendment passed the Senate, but was rejected by the Chamber of Deputies, the lower house.⁹

D. Characteristics of the Mexican Economy

1) Export-Oriented Manufacturing

Manufacturing is the foundation of Mexico's economic growth. According to 2012 data from the Mexico Statistics Bureau, manufacturing accounted for 17.9% of the GDP, the highest of all industries. Similarly, manufacturing accounts for approximately 80% of Mexico's exports.¹⁰

Table: Relative Share of Manufacturing in Mexico's Exports

	2009	2010	2011	2012
Total	229,707	298,473	349,677	370,914
Manufacturing	189,579	245,745	278,617	301,993
Relative share	82.5%	82.3%	79.7%	81.4%

[Unit: ???]

This manufacturing-centered industrial structure can be explained first by the Mexico's proximity to the United States. Mexico borders the States, the biggest consumer market in the world. It requires an average of 30 – 60 days for products from China to be shipped to America by sea, but only less than a week

⁹ MEXICO: Labor Rights Concerns, AFLCIO Report, 2015, p. 20.

¹⁰ The table below is referenced from KOTRA, Global Market Report: Mexico, Mar. 3, 2013, p. 4.

from Mexico and by land. Therefore, Mexico can tailor its manufacturing output according to American needs, retaining flexibility to meet sudden changes in request even for mass orders.¹¹

Mexico's abundant labor and low wages are also part of its comparative advantage. Mexico's real minimum wage is 2,215 USD (2014), while the legal minimum wage per day is \$4.68 USD (2015), numbers lower than even China.¹²

2) Free Trade: NAFTA and FTA

Moreover, Mexico has maintained since 1980s state-led policies to encourage exports. NAFTA and FTA are cases in point.

After entering a FTA with Canada in 1989, the United States actively sought to include Mexico in this agreement. As a result, in August 1992, agreement between the three countries was reached, coming into effect on January 1, 1994. Major tenets of the NAFTA are: ① abolition of tariffs (eliminated gradually by sector for goods produced within the region), ② non-tariff barriers (import quotas eliminated as a principle, but some exceptions to agriculture, textile, automobiles and other specified industries), and ③ rules of origin (Change in Tariff Classification Rule as a principle, but special regulations apply to industries in need of protection). In addition, there are regulations on trade of services, direct investments, intellectual property, and government procurement, as well as the establishment of a trade commission and panel to resolve conflicts within the NAFTA.¹³

¹¹ Id., p. 8.

¹² OECD, <https://stats.oecd.org/Index.aspx?DataSetCode=RMW#>, last accessed Nov. 30, 2015.

¹³ The Change in Tariff Classification Rule applies to products manufactured in two or more countries. The HS Code (Harmonized Commodity Description and Coding System) is used to recognize the country in which the raw material **세 번과 다른 세 번의 제품을 생산한 경우 당**

With the advent of NAFTA, Mexico's exports increased. Average American tariffs on Mexican products were lowered from 3.3% to 1.1% after NAFTA, heightening the competitiveness of Mexican products in the American market. Mexico's exports increased at an average of 18% per year since NAFTA came into effect, making Mexico the largest exporting country in Latin America by 1998. However, this growth was not without side effects. Mexico's dependence on the American economy accelerated, and neo-liberalist economic policies significantly hurt small/medium enterprises and the agricultural industry, worsening domestic inequality and social insecurity.¹⁴

Mexico continues to maintain market-oriented, neo-liberal economic policies; presently, Mexico has FTAs with around 50 countries around the world, and recently announced commencement of negotiations with Korea.¹⁵

3) Maquiladora

Export-oriented industrial policy is also reflected in the formation and management of export processing zones known as 'maquiladora.'¹⁶ Maquila is the Spanish word that refers to the share that a crop dealer takes in return for

is recognized as the country of origin.

¹⁴ Woon-Jung Park, NAFTA's Influence on Mexico – Focus on Issues Related to the Korea–America FTA. Master's Thesis at Seokang University School of Economics. 2006. p.50–.

¹⁵ Includes bilateral and regional agreements. Precise statistics can be found at World Trade Organization, <http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=484&lang=1&redirect=1>

¹⁶ The following content is referenced from Jung-Hoon Lim, Research on the Supply Chain Structure of the Mexican Maquiladora. International Regional Research Book 16, No. 3. International Regional Research Center at Korea Foreign Languages University. 2012. p. 225 onwards.

refining other farmers' crops. Maquiladora is the custom of allocating this kind of share; in Mexico's Export Processing Zones, maquiladora stands for factories of multinational corporations manufacturing goods for export.

Maquiladora's origins are in the Border Industrialization Program (BIP) into which the United States and Mexican governments entered in 1965. In accordance with this program, Mexico allows raw materials or parts to be entered into the country tariff-free, while America imposes lower taxes on goods produced by these factories.

Initially, maquiladora was understood as a simple assembly production. However, it was gradually transformed into a technology-intensive industry beginning in the 1980s; automobiles and other electronics (e.g. television) came to form the majority of maquiladora products. But concerns have been raised about the rights of workers in maquiladora. There are allegations that workers labor in inadequate working conditions, and that the fundamental rights of labor of women and children are violated.¹⁷

2. Korean Multinational Corporations in Mexico

As of August 2014, an estimated 250 Korean corporations operate in Mexico.¹⁸ This figure excludes corporations owned or operated by foreign nationals, which mostly take the form of sole production ventures. Manufacturing is the largest industry, with machinery/metal, textile/clothing, electrical/electronics/precision equipments, and plastic forming the majority. Currently, major enterprises in the industry are as follows:

¹⁷ Joshua M. Kagan, Workers' Rights in the Mexican Maquiladora Sector: Collective Bargaining, Women's Rights, and General Human Rights: Law, Norms, and Practice, *Journal of Transnational Law and Policy* v. 15 (Fall 2005) p. 153-180.

¹⁸ The content below was referenced from Soon-Sung Kim, Korean Corporations in Mexico and Major Issues, Latin America Regional Issue Paper No. 6, 2014, p.11-.

Table: Major Korean Enterprises in Manufacturing (Mexico)

Name of company	Year of entry	Type of business/products	Region
Samsung Electronics Mexicana (SAMEX)	1988	LCD, PDP, LED	Tijuana
LG Electronics Mexico (LGEMX)	1988	Home appliances	Estado Mexico
Hyundai Translead (HT)	1989	Trailers, containers	Tijuana
Dongbu Daewoo Electronics Mexico (DECOMEX)	1993	Home appliances (sales)	Estado Mexico
Dongbu Daewoo Electronics Home Appliance (DEHAMEX)	1995	Home appliances (refridgerators, washing machines, microwaves) (manufacturing)	Queretaro
Samsung SDI	1995	Display devices	Tijuana
Samsung Electronics Mexico ()	1995	Home communications (sales/manufacturing)	D.F.
Samsung Engineering Mexico	1998	EPC	D.F.
LG Electronics Monterrey Mexico	2000	Refridgerators, electric ovens (manufacturing)	Monterrey
LG Electronics Reynosa	2000	LCD, PDP, LED (manufacturing)	Reynosa
Samsung Electronics Mexico (SEM)	2003	Home appliances (refridgerators, washing machines) (manufacturing)	Queretaro

POSCO-MPPC	2006	Steel coil processing	Puebla
POSCO-MEXICO	2007	Steel products (zinc plates for automobiles) (manufacturing)	Altamira
KOMEX-GAS	2008	Natural gas terminal construction	D.F.
KMS (KOGAS, Mitsui, Samsung)	2008	Natural gas terminal construction	Manzanillo
Daewoo International Corp. Mexico	2009	Steel, automobile parts, textile, (field office established in 1979; incorporated in 2009)	D.F.
KST(KOGAS, Samsung C &T, Techint)	2010	Combined heat & power plant	Chihuahua
POSCO-MEXICO	2011	Steel products (new factory opened)	Alatamira
Hyundai Dymos	2012	Automobile parts	San Luis Potosi
LG Innotek	2013	LED, displays, automobile parts	Queretaro
Hyundai Motors Mexico	2014	Automobiles	D.F.

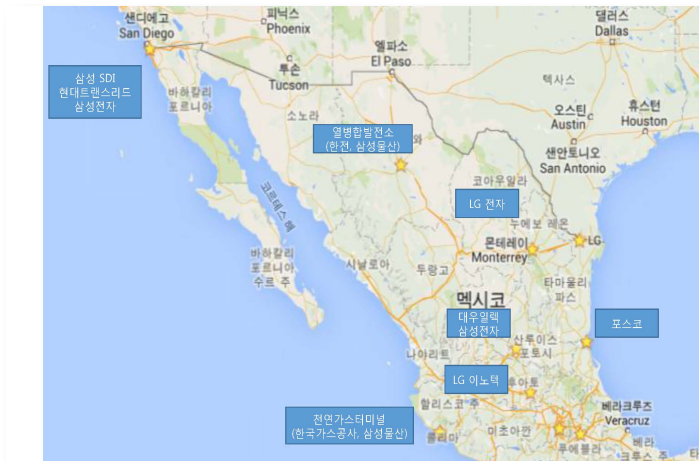
Major Korean Corporations in Mexico

Most common geographic areas in which Korean corporations are based are border regions of Tijuana, Reynosa; central regions of Mexico City and State of Mexico; Monterrey; and Guanajuato. In particular, electronics manufacturers of white goods are concentrated in maquiladora of northern Mexico bordering the United States.

In addition, Kia Motors has been building an automobile manufacturing plant in Monterrey since 2014, which will produce 300,000 completed cars

from 2016.

Major Regions in which Korean Corporations Operate



3. Necessity of Research and Research Boundaries

A. Explaining Mexico's Selection for Report

Mexico has strong advantages in manufacturing as it is located in a strategic geographic position linking the North American market to Latin America and has lower average wages than even China. Furthermore, along with Brazil, Mexico has the highest number of Korean corporations in Latin America.

We selected Mexico partly because Korean corporations are very active in the country, but also because cases of Korean companies failing to pay wages, dismissing workers unlawfully, abusing employees and interfering with labor union formation have been repeatedly reported in foreign media in the last five

years. Some of such media reports concerned:

- Korean manager at a Mexican branch of Korean Company X supplying Company Y violently abused a Mexican worker¹⁹
- Shipping Company X unlawfully dismissed and refused to pay wages to workers²⁰
- A female employee at Electronics Company X, a supplier of Electronics Company Y, had both of her hands severed while at work²¹

Korean House for International Solidarity (2002), Don-Moon Cho (2003, Jung-Hoon Lim (2012, 2013, 2014) are amongst those who recently conducted investigations or analyzed the practice of corporations in Mexico. But the Korean House's research was centered on a specific industry, and thus was unsuitable for a thorough understanding of the general environment and conditions. Similarly, the other two needed to be complemented since Cho's research was on Volkswagen (not a Korean corporation), while Lim's analyzed the value chain structure and possible innovations, and not human rights. Therefore, we saw a need for a field investigation to validate and evaluate the background and structural causes of the claims of labor rights abuse at Korean corporations.

Moreover, Mexican and Korean civil/labor societies have not had many opportunities for collaboration because of the geographical distance. The last civil society field research was in 2002 (Korean House for International Solidarity). Therefore, we also sought to develop a network with local NGOs in Mexico by completing an investigation together.

¹⁹ <https://www.youtube.com/watch?v=ObbL2j7DAog>

²⁰ http://www.octavodia.mx/articulo/41223/d_ebe-empresa-coreana-44-mdp-needed-16072011

²¹ <http://www.theguardian.com/commentisfree/2015/jun/11/lost-hands-making-flatscreens-no-help>

B. Focus Industry: Manufacturing

Initially, we intended to include sewing/cotton industry in our research area to follow up on our research in 2014 on labor rights in the global cotton industry. However, preliminary research and interviews with local managers revealed that the cotton industry in Mexico is not significantly large, many companies have moved or are moving to Central American countries like Guatemala, and those that remain in Mexico are operated by ethnic Koreans who are Mexican or American nationals (and not as overseas operations of Korean corporations). Thus, we decided instead to investigate electronics manufacturing, an industry with higher representation of Korean enterprises and prospects of frequent entry of Korean companies in the future.

C. Research Boundaries

Therefore, this report limits its subject area to Korean electronics manufacturers in Mexico and the state of labor rights in these companies. In addition, we attempt to evaluate the effectiveness of various mechanisms in addressing labor rights issues, where found.

4. Investigation Process

A. Method of Investigation

This report discusses related literature and field investigation based on the literature research. The literature we studied included English and Spanish works on the Mexican Labor Law, labor-management relations, expansion of Korean corporations, and media reports concerning the electronics industry.

For the field investigation, we took a qualitative approach, using a prepared

questionnaire for interviews, and adding individualized and specific questions during the process.

Before the investigation started, we discussed whether to contact Korean corporations in advance to secure a group of interviewees. While we did not have reservations in reaching out to KOTRA, Korean Consulate in Mexico, and NCP Mexico, we were cautious in asking for cooperation from enterprises out of concern that it could lead to the company, naturally worried about its image, to train or select interviewees in advance to distort or pollute the conversations. Therefore, we looked at various possibilities from different angles before finally deciding to ask for the companies' cooperation immediately prior to departing for Mexico. However, as feared, some companies did not respond at all. One corporation not only rejected our request for cooperation but went further, placing its personnel and security guards around the workplace to prevent us from interviewing workers.

Under these non-cooperative conditions from the enterprises, we took two approaches: ① asking workers who just finished, or are about to start, their day questions from a pre-made questionnaire, right outside the workplace; and ② conducting interviews at a pre-determined place with workers who agreed in advance to respond.

All interviews were completed in Spanish. An activist from CEREAL, our co-investigator, asked the questions from the questionnaire and translated the responses into English. The activist further asked questions in Spanish when we requested additional information.

We took notes during the interviews, recorded the conversations by audio, or had them videotaped. All interviews were thereafter transcribed and translated in to English.

An activist from CEREAL facilitated the interviews with workers, and translated our English questions into Spanish.



B. Investigation Team

1) Team from Korea: Jongchul Kim (Attorney, Advocates for Public Interest Law), Sejin Kim (Attorney, Advocates for Public Interest Law), Donghyun Kim (Attorney, Hope and Law)

2) Partner in Mexico: Felipe (Activist, CEREAL)

Our team from Korea partnered with a Mexican NGO called CEREAL (El Centro de Reflexión y Acción Labora)²² which has long been involved in labor rights issues in the Mexican electronics industry. Founded in 1997, CEREAL is an expert in labor rights issues, publishing a report on labor rights in the electronics industry in 2013 and 2014; it has two offices in Mexico City and Guadalajara.²³ We thoroughly discussed the dates and method of

²² CEREAL website: <http://www.cerealgdl.org/>

²³ Working Conditions in the Electronics Industry in Mexico. This report can be found at: <http://www.cerealgdl.org/index.php/en/reports/43-abut-working-conditions-in-the-electronics-industry-in-mexico>

investigation with CEREAL, who graciously allowed their activist, Felipe, join our team. Felipe accompanied us from the beginning to the end during the field investigation, as translator and main interviewer.



CEREAL is part of Goodelectronics, and has completed research on the electronics industry in Mexico with SOMO; SOMO is a group that Nokia (merged with Microsoft) hired along with an Indian NGO to evaluate Microsoft.

C. Location and Dates of Investigation

1) Investigation Sites

Tijuana, Mexicali, Guadalajara, Mexico City, Querétaro

2) Detailed Schedule of Investigation

Date	Region	Activities
9/1 (Tues)	Tijuana	- Arrived around 11 p.m. - Met CEREAL coordinator.
9/2 (Wed)	Tijuana	- Interviewed workers at a maquila area
9/3 (Thurs)	Tijuana	- Interviewed workers in front of Factory A (I)
9/4 (Fri)	Tijuana	- Interviewed workers in front of Factory A (II)
9/5 (Sat)	Tijuana	- Interviewed 1 current employee and 1 dismissed worker from Company A
9/6 (Sun)	Mexicali	- Interviewed 15 workers from Company B

9/7 (Mon)	Guadalajara	- Visited CEREAL office and met with activists
9/8 (Tues)	Mexico City	- Visited Korean Consulate in Mexico; talked to commerce officer - Visited Mexico office of KOTRA; talked to Director General
9/9 (Wed)	Mexico City	- Visited Mexico Office of NCP (National Contact Point) - Interviewed Latin America Coordinator for the Business and Human Rights Resource Center - Visited Fomento; interviewed Secretary General
9/10 (Thurs)	Mexico City	- Compiled interview data and discussed report
9/11 (Fri)	Queretaro	- Interviewed Ms. Rorenia, lawyer with specialties in labor issues
9/12 (Sat)	Mexico City	- Return flight

September 1-12, 2015 (12 days)

II. Related Legal Statutes

1. International Treaties Ratified by Mexico

A. ILO Conventions

In 1981, Mexico signed the United Nations Convention on Economic, Social and Cultural Rights. Amongst the eight Fundamental Conventions of the ILO, Mexico is a party to No. 29 (Forced Labor), No. 105 (Abolition of Forced Labor), No. 100 (Equal Remuneration), No. 111 (Employment and Occupation Discrimination), No. 138 (Minimum Age), No. 182 (Worst Forms of Child Labor), and No. 87 (Freedom of Association and Protection of the Right to Organize); No. 98 (Right to Organize and Collective Bargaining) has not been ratified.

Table: Mexico's Ratification of the Eight Fundamental Conventions of ILO

Subject Area	Name of Convention	Ratification Status (year ratified)
Discrimination	Equal Remuneration Convention (No. 100)	Y(1952)
	Discrimination (Employment and Occupation) Convention (No. 111)	Y(1961)
Child labor	Minimum Age Convention (No. 138)	Y(2015)

Forced labor	Worst Forms of Child Labor Convention No. 182)	Y(2000)
	Forced Labor Convention (No. 29)	Y(1934)
	Abolition of Forced Labor Convention (No. 105)	Y(1959)
Freedom of Association	Freedom of Association and Protection of the Right to Organize (No. 87)	Y(1950)
	Right to Organize and Collective Bargaining Convention (No. 29)	N

Table: Mexico's Ratification of the Four Governance Conventions of ILO

Subject area	Name of Convention	Ratification status (year ratified)
Labor Inspection	Labor Inspection Convention (No. 81)	N
	Labor Inspection (Agriculture) Convention (No. 129)	N
Employment Policy	Employment Policy Convention (No. 122)	N
Tripartite Consultation	Tripartite Consultation (International Labor Standards) Convention (No. 144)	Y(1978)

2. Federal Law of Labor (Ley Federal del Trabajo)

A. Overview

The Mexican Constitution, established in 1917, was the result of the social revolution that started in 1910. It specifies the right to labor in Article 123 that derives from liberalist political ideology. It is the most progressive legislation in the 20th century, providing for employment security, vacations, minimum wage, bonuses, eight hours maximum working day, ban on women and children participating in unhygienic and dangerous work, six-day work week, social security/education/health services for workers, employe responsibility for accidents and diseases caused at workplace, recognition of strike and labor dispute as labor rights, and grievance committee to resolve conflicts between employers and employees. Based on this article, the first Federal Law of Labor (Ley Federal del Trabajo) came into effect in 1931, which underwent several amendments in the years thereafter; until the early 1980s, these amendments did not significantly deviate from the original intent of Article 123.

However, because of its dependent nature on surrounding economies as a manufacturing-centered country, Mexico was swept up in an international crisis in the 1970s, and underwent structural changes after 1980 to open its economy and relax its financial regulations. This led to Mexico's entry into the General Agreement on Tariffs and Trade (GATT) and NAFTA in 1993. The gap between the federal law and the reality of labor widened as subsequent measures took place to make labor flexible and devalued. The amendments on November 30, 2012 went further by decreasing labor costs, degrading employment security, encouraging cost-effective dismissals, and heightening corporate control on collective negotiations, thereby legalizing broad uses of corporate 'outsourcing' and blessing employers' evasion of responsibility through their use of subcontractors who are essentially unprotected by the law. The introduction of optional part-time contracts further impeded employment stability.²⁴²⁵

²⁴ Lylia Palacios Hernández. Translatin 28. Seoul National University. June 2014. Mexico's Labor Reforms.

²⁵ The Federal Labor Law comprises of Labor Law and Labor Law in the Public Sector. Labor

B. Labor Contracts

1) Contract Types

Labor contracts in Mexico largely fall under two categories: individual contracts and collective contracts. Individual contracts refer to contracts between the employer and the employee, while collective contracts are contracts between the employer and the labor union. The law holds that contracts must be permanent in principle; unless it qualifies for a special cause (under Article 37 or 38), temporary/provisional contracts are not allowed.²⁶ If the court finds a wrongful dismissal in a labor dispute, workers in temporary contracts receive higher compensation as a penalty to the employer (Article 50). However, the 2012 amendments made probation/intern as well as seasonal temporary contracts possible (Article 39). An exception for part-time work was also established by the amendments for the first time (Article 83). The expansion of temporary and part-time contracts makes it difficult for workers to have accumulated length of employment, augmenting the possibility that their seniority will be infringed upon.

Labor contracts must be written, in principle. Mandatory provisions include the nature and location of work, hours per day, payment method and amount of wages. A receipt of wages/bonuses with both signatures must be kept.

2) Termination of Contract

Law regulates private sector (Sector 'A') labor-management relations, while the latter regulates that of the public sector (Sector 'B'). Workers in Sector 'B' have limited collective action rights, and civil servants at city councils or local governments do not have the right to collective bargaining.

²⁶ Lyliá Palacios Hernández, Id.

Cause of Dismissal

Termination of contract is allowed when there is 1) mutual agreement, 2) death of worker, 3) termination of work, period expiry or termination of capital investment specified in the law, 4) physical or mental disability of worker that makes performance impossible, or 5) another reason that the law recognizes as legitimate. The 2012 amendments added 'inappropriate behavior to the management, client, or supplier' as a legitimate reason for dismissal (Article 47), increasing the possibility for dismissal at employer's will.

If the reason for dismissal is not recognized by the law, the worker can file for compensation against the employer. Unlawful dismissal grounds include violence from the employer, reduction in wages, inadequate hygiene conditions at work, threats to worker's safety or welfare because of violation of safety standards, and failure to notify the worker and relevant dispute mediation committee (Article 51).

Dismissal Procedure

For a dismissal to be lawful, an Administrative Document (Acta Administrativa) must be created and signed by the employee and witnesses immediately after the cause of dismissal occurs; the employer must present the worker with a written notice of the date of contract expiry and reasons for dismissal. If the worker refuses to accept the notice, dismissal is complete if the employer informs the dispute mediation committee within five days of contract termination, sends a copy of the notice to the designated address, and requests a response from the worker (Article 47 Clause 14; Article 48).

2) Subcontracting

The 2012 amendments legalized subcontracting. Besides defining

subcontracting, the amendments specified that subcontracted work cannot be the entirety of employment activities, must be limited to necessary cases because of special properties, and may not include work that is equivalent or similar to the work performed by the original contractor (15-A). Contracts for subcontracting must be written (15-B). Original contractors must consistently check whether the subcontractor is abiding by regulations on safety, health, and work conditions (15-C); failure to comply imposes employer responsibilities on the original contractor, including the duties related to social security pension (15-D). In addition, original contractors cannot convert the status of its workers to subcontractors in order to violate their rights under Labor Law; failure to comply results in 250 -5000 days of minimum wage as a fine (1004-C).

Even before the 2012 amendments, subcontracting was widespread in the Mexican labor market. Although the amendments limit the permissible boundaries of subcontracting and impose penalties on employers for violations, they nonetheless provide an impetus for corporations to broadly use outsourcing by legalizing subcontracting in the context of what is essentially a legal protection vacuum for subcontracted workers.

4) Working Hours and Breaks

Working Hours

The law holds the maximum working hours per day at 8 for daytime work, 7 for nighttime work, and 7.5 for combined work (Article 61). Working hours cannot exceed 48 hours (daytime) or 42 hours (nighttime) per week, and must be six days or less.²⁷ Employer and employee must agree on working hours

²⁷ Daytime work refers to work performed between 6 a.m. and 8 p.m., nighttime work refers to that between 8 p.m. and 6 a.m., and combined work is any combination of hours that do not exceed 3.5 hours in nighttime work. If length of nighttime work exceeds 3.5 hours, the whole work is regarded as nighttime work (Article 60).

that do not exceed the legal limits (Article 59). For consecutive hours of work, the worker must be granted a minimum of 30 minutes of breaktime (Article 63); if employee may not leave the workplace during breaks or meals, this time is regarded as work hours (Article 64).

Overtime Work

Working hours can be extended for certain exceptions specified by the law. Daily work hours may be extended to address an immediate danger or disaster affecting the survival of worker, employer or the corporation (Article 65), and the hours in overtime must be compensated the same as regular hours. Overtime work is possible to take care of overdue business or to increase productivity, but only for less than three hours per day or thrice per week (Article 66), and the hours in overtime must be compensated by twice the regular wages (Article 67). A fine is imposed for violations, and if overtime work exceeds 9 hours per week, the employer must pay more than 200% of the regular wage paid for normal hours on top of the fine (Article 68).

Holidays

Workers are entitled to at least one paid holiday for every six working days (Article 69). Employer and employee must reach a general agreement on the 'off-day' in work settings requiring consistent employment (Article 70), and employees working on Sundays have a right to at least 25% more wages than regular salary as a bonus (Article 71). Workers do not have the responsibility to work on holidays, but if they do, they are entitled to wages for double the number of hours actually worked on top of vacation pay (Article 73). Employees working on legal holidays like New Year's Day or federal/local election days must receive a bonus equivalent to twice the regular wage (Articles 74-75).

Vacations

Workers who have been consistently employed for more than a year are entitled to a paid annual vacation. The length must be more than six working days. Vacation entitlement increases every year by 2 days until it reaches 12 days, and increases by 2 days every 5 years after 4 years of work (Article 76). Workers receive at least six consecutive days as annual vacation (Article 78); it is illegal to substitute this with vacation pay. Workers receive a bonus equivalent to at least 25% of wages during the vacation (Article 80). Workers can claim the vacation within six months of completing work training. Employer must issue worker a written record of the length of employment every year, on the basis of which the period and dates of vacation are determined (Article 81).

5) Salary

Standard Wage

Worker's salary is comprised of the wages in cash accumulated daily, remuneration, allowance, housing allowance, additional bonuses, contingent fees, in-kind payment and other types of money or allowance (Article 84). In practice, employer and employee agree on a monthly salary (before taxes) at the time of contract formation, from which daily wages are calculated. Overtime allowance and holiday work allowance are calculated on this daily wage. The quality and quantity of work are 'taken into consideration' when the salary is negotiated. Same wages are paid for the same industry, same working hours and same work with same productivity (Article 86). Period between wage payments cannot exceed one week for physical labor, and 15 days for all other types of labor (Article 88). Wages must be paid directly to the worker, but a substitute delegated by written document with two witnesses' signatures may receive the payment on the worker's behalf if the worker is unable to. Employer is held responsible if he/she pays wages using a different method (Article 100). Cash wages must be paid in cash, and cannot be substituted by coupons, goods, securities or other type of document, token

money, etc. Wages may be paid online under the employee's agreement, and the employer must pay the transaction fee (Article 101). All in-kind payments must be made in accordance with the worker or the family's individual needs and in proportion to the entitled cash amount (Article 102).

Besides the basic salary, workers are entitled to Minimum Employment Benefits (Las Prestaciones Por La Ley) including overtime allowance, holiday work allowance, and annual Christmas bonus (Article 87). Automobile allowance, seniority allowance, transportation allowance, quarterly bonus, and housing assistance are optional benefits. Employers in agriculture, forestry, mining and other industries have a duty to provide comfortable and clean housing for employees; to comply, they must contribute the equivalent of 5% of total salary of workers to the INFONAVIT.

Salary Deductions

Worker's salary includes daily cash wages in return for workers' services, allowances, compensation, food, housing, vacation pay, service charges, employment benefits and all other payment in cash or in kind. However, the following are not deductible (Article 136).

- 1) Job equipment including tools and clothing
- 2) Weekly or monthly contributions to savings assistance for employee or corporation; employer expenditure with purpose of socializing or usage in a union
- 3) Payments to INFONAVIT and corporate participation in Profit-Sharing Mechanism (PTU)
- 4) Housing, meals and other groceries provided to employees for a fee
- 5) Allowance for paid vacations
- 6) Overtime allowance, unless this kind of work was agreed upon as regular schedule
- 7) Employee's share of contribution to the INFONAVIT that the employer

paid instead

6) Minimum Wage

Federal Labor Law Article 85 holds that wages must be adequate; any amount below the minimum wage is never permitted; and if wages are paid on the basis of the quantity of labor performed, the payment received for 8 hours of regular work must be at least the equivalent of the minimum wage.

The same law defines minimum wage as ‘minimum cash payment for the labor performed during working hours,’ and specifies that the amount must be enough to allow the breadwinner to provide for the family’s basic physical, social, cultural and educational needs (Article 90). In general, minimum wage applies to all workers in the physical region regardless of the industry, type of employment or special nature of job (Article 92). Minimum wage is determined by a national committee comprised of representatives from the government, labor, and employers, with the help of a special advisory commission (Article 94).

Minimum wage is not subject to compensation, deductions or reductions, except in the following circumstances:

- 1) Alimony ordered by relevant district decrees to be paid to spouse, child, parent, grandparent or grandchild
- 2) Deductions for wage payment per Article 151 (rent for employees); may not exceed 10% of wages.
- 3) Deductions for INFONAVIT loan repayment; may not exceed 20% of wages

- 3) Deductions for purchase of consumer goods or service fee payments; may not exceed 10% of wages

In 2015, the daily minimum wage for January-March is 70.10 pesos (Region A), 66.45 pesos (Region B); for April-September is 70.10 pesos (Region A), 68.28 pesos (Region B); and for October-December, 70.10 pesos (Regions A and B).²⁸

- 7) Allocation of Profit amongst Workers

Mexican Labor Law specifies that all workers, excluding those at the executive level (CEO, Board of Directors, etc.), must be allocated a certain share of profit for the year. The exact share of allocation is determined by a national committee, which is currently set at 10% of taxable profit after tax adjustment. The profit allocation is divided into two equal parts: the first is an equitable distribution of profit amongst all employees regardless of individual differences in salary based on the number of days worked, and the second is a proportional amount to the wages earned through labor that year (Article 123). The precise calculation of the allocation is done by a mixed commission of representatives from workers and employers.

8) Labor of Women and Children

Protection of Female Workers

As defined by Article 3, sexual harassment and assault are now legitimate reasons for dismissing the perpetrator (Article 47). Article 133 Clause 12 forbids sexual harassment and abuse in the workplace, and the employer cannot himself/herself be involved in, nor overlook/tacitly approve such behavior (Article 133 Clause 13). Article 132, addressing maternity protection

²⁸ http://www.conasami.gob.mx/pdf/salario_minimo/2016/salarios_area_geo_2016.pdf

(Duties of the Employer), specifies that employers have a legal responsibility to protect pregnant workers (Clause 27). Female workers have equal rights and responsibilities as male workers (Article 164), and the rights below are specified to protect their maternity (Article 170 Clauses 1-7):

Clause 1. Women shall not be ordered to perform dangerous work or lift up heavy objects during pregnancy.

Clauses 2 and 3. With accompanying medical document from a doctor, female employee may choose to use four weeks of the six weeks of maternity leave to which she is entitled under the law after, instead of before, childbirth (all wages must be paid for a maximum of ten weeks of maternity leave, including two weeks before and after childbirth). Vacation after childbirth can be extended for up to two weeks if infant needs medical attention. If child is an adopted child, woman gets six weeks of paid vacation. Men, who used to have to use their annual holidays to request paternity leave, can now claim separate leave for up to five days.

Clause 4. For six months after childbirth, woman may claim hours for breastfeeding (2.5 hours). Employer may substitute this provision by reducing the working hours by one hour.

Clause 5. Woman receives all wages during maternity leave, and 50% during extended leave.

Clause 6. If returning to work within one year, woman can return to the same job she attended before childbirth.

Clause 7. For purposes of promotion, etc., maternity leave must be included in accumulated period of employment.

Protection of Children

Children older than 16 can freely engage in employment, while children younger than 16 can work under certain exceptions (Article 23). Children aged 14 and 15 can work under parental permission (Article 23). For children under 14 or children aged 14 and 15 who have not completed mandatory education, work is forbidden in principle; however, it is allowed if the work is legally permitted as an educational measure (Article 22). For children younger than 16, there is a limit to the number of working hours. Work outside of specified hours is forbidden, nighttime work at industrial establishments is completely prohibited, and at any workplace after 10 p.m. (Article 5 Clause 4, Clause 12). Children aged 14-16 are designated to receive special supervision and protection by the Inspectorate of Labor; they must regularly submit health checkup reports and aptitude tests per Inspectorate requests. It is illegal to hire a child who has not submitted the specified documentation (Article 174).

9) Occupational Safety and Industrial Disasters

Employer's Duty to Ensure Safety and Types of Industrial Disasters

Federal Labor Law Article 132 lists the employer's responsibilities, Clause 18 of which stipulates that the employer has the duty to inform workers of occupational risks and hazards, and must display legal regulations and collective agreements on hygiene, safety, and the environment at the workplace. Workers also have the responsibility to abide by the protocols on hygiene, safety, and the environment within the workplace in accordance with Article 134, and comply with employer-provided safety rules. On occupational accidents, the law includes accidents on the way to and from work as accidents on duty (Article 474), and imposes responsibility on the employer to ensure a safe and hygienic working environment and eliminate risks of industrial accidents. Similarly, the worker has the responsibility to comply with all safety regulations (Article 475-2).

Compensation for Industrial Accidents

Compensation for industrial accidents must, by principle, be paid directly to the worker (Article 483). The compensation amount is calculated from the date of accident to the date of determination of disability or death, based on the basic daily wage of the worker at the time of accident. All kinds of allowances to which the worker was entitled are included in the compensation (Article 484). If worker is temporarily injured by a danger posed in the workplace, the compensation is the regular wages the worker would have received during the period he/she now cannot perform labor because of the injury (Article 491). If the worker died as a result of a danger posed in the workplace, the equivalent of 5,000 working days of wages is provided as compensation (Article 502). The standard wage for compensation purposes cannot be lower than the minimum wage (Article 485).

Rights of Injured Worker and Duty of Employer

To protect workers victimized by industrial disasters, Article 487 stipulates the worker's rights:

- Right to receive treatment and operations
- Right to receive rehabilitation treatment
- Right to be hospitalized if necessary
- Right to be provided materials, including medication, necessary for treatment
- Right to be provided artificial habiliments (e.g. prosthetic leg)
- Right to receive the compensation specified in this law

Even when the accident happened as a result of the worker's inexperience or a co-worker's mistake, the employer has the responsibility to compensate the worker; if the accident is a result of employer fault or violation of the law, the compensation discussed above is increased by up to 25% (Article 490). The dispute mediation committee is in charge of these determinations, but the

fault is on the employer for any of the reasons specified in the law below:

- If employer did not follow the law on hygiene, safety or the environment at the workplace
- If employer failed to take necessary action despite a previous occurrence of accident
- If employer failed to comply with recommendations by the labor-management conference or the Department of Labor with regards to safety measures at the workplace
- If employer failed to provide necessary measures even after the worker notified employer of safety risks at the workplace

To prevent the occurrence of industrial accidents, the employer is imposed the following special duties (Article 504):

- Constant reserve of emergency medication and simple medical equipments for emergency care
- For workplaces hiring over 100 workers, operation of a medical room with doctors and medical professionals ready to complete emergency operations
- For workplaces hiring more than 300 workers, operation of a hospital with doctors and medical professionals
- If so agreed by labor and management, employer may have a contract with a specific hospital or medical facility for emergency treatment
- If accident happens at workplace, employer must notify the Secretariat of Labor and Social Welfare, Inspectorate of Labor and the Dispute Resolution Committee within 72 hours of occurrence with name of company, address, personal information of victim, location/time of accident, etc.

10) Labor Unions, Collective Bargaining and Labor Disputes

Workers have the freedom to establish an association to represent their interests (Article 356). Workers 14 and older have the freedom to join a labor union (Article 362), and may not interfere with another worker or employer's freedom to join or not to join a certain organization (Article 358).

Labor unions require at least 20 members, and at least 3 employers in the case of an employers' association (Article 364). No prior approval is needed to establish a labor union (Article 357), but the actual right to autonomy is hindered by Article 366 that allows denial of registration permits if the union does not meet legal requirements and by Article 377 that requires regular evaluation and approval of union management including changes in membership.

III. Findings – Korean Enterprises’ Human Rights Practice (Human Rights Violations at Ohsung Electronics, Supplier of Samsung Electronics and LG Electronics)

1. Interviewees, the Interview Process, and Challenges

A. Interviewees and the Interview Process

While we met many different parties of interest during our stay in Mexico, the most important were the thirteen workers at Tijuana Samsung Electronics TV Manufacturing Factory from September 2 to 5 and the fifteen workers from Ohsung Electronics (produces remote control devices for LG Electronics and others), a supplier to Mexicali LG Electronics, on September 6. Interviews with the Samsung Electronics workers took place in front of the factory with employees to and from the way to work, one of whom agreed to a separate, more in-depth interview along with her husband (who also used to work at the factory) on September 5. Workers at the Ohsung factory in Mexicali were recruited by a college student (whose mother works at Ohsung) who all came to the student’s house where we conducted the interviews.

Vivid testimonies from employees at Ohsung, a subcontractor of LG Electronics: interviews with the 15 employees at Ohsung took place simultaneously, which we recorded and videotaped.



Interviews centered around prepared questions as reproduced below, but we did not hesitate to ask for additional information when other inquiries arose. But since the interviews took place in front of the factory where workers were busy commuting to and from work (Samsung Electronics), or en masse with 15 people (Ohsung), the responses were not translated sentence by sentence, making it difficult to ask follow-up questions based on the answers given.

1. Basic Information
 - A. Date and time
 - B. Name and gender of interviewee
 - C. Name of company; product manufactured for which brand?
 - D. Location of company/factory
 - E. Other questions
2. Labor Unions
 - A. Feel free to form and join trade unions?
 - B. Obstacles to labor union activities?
 - C. Retaliation for union-related activities?
 - D. Other questions
3. Labor Contracts/Forms of Labor Relations
 - A. Did you receive a copy of your labor contract?
 - B. How are labor contracts terminated?
 - C. What are the terms of your contract?
 - D. Is there child labor at the factory/company?
 - E. Other questions
4. Wages/working hours/etc.
 - A. Monthly wages?
 - B. Deductions?
 - C. Involuntary overtime work? Overtime allowance?
 - D. Working hours and shifts?

- E. Breaks?
 - F. Holidays and vacations?
 - G. Pregnancy and maternity leave? Profit allocation?
 - H. Other questions
5. Treatment
- A. Discrimination? Gender equality?
 - B. Sexual harassment/abuse?
 - C. Inhumane treatment
 - D. Food, accomodation, transportation?
 - E. Other questions
6. Safety and Health
- A. Risk of occupational disease?
 - B. Compensation for occupational accidents?
 - C. Provision of safety equipments?
 - D. Usage of dangerous or unkonwn chemicals?
 - E. Compliance with regulations for health and safety?
 - F. Other questions
7. Remedial Mechanisms
- A. Internal grievance mechanism?
 - B. Assistance from labor/human rights NGOs?
 - C. Awareness of external remedial mechanisms?
 - D. Other questions
8. Other inquiries

B. Challenges in Interviews and Other Investigation Methods

Before commencing the field investigation, we debated whether to contact the companies in advance. Given that these companies do not even allow a labor union, we feared that there may be systematic interference with our efforts to investigate. On the other hand, we hoped to be able to visit the manufacturing plant with their cooperation and interview the workers there if possible. After a lengthy contemplation, a few days before our departure for Mexico, we eventually sent an email to Sung-Soo Song, a manager at Samsung Electronics' Public Relations Department who supposedly worked for a significant length of time in corporate social responsibility, giving a brief description of our planned investigation and asking for cooperation. Song called our office in response, stating that it may be difficult but that he would like to help arrange a meeting with an employee at the field office. During our phone conversation, we mentioned the dates of our trip but not the specific locations out of fear that we may be obstructed.

From September 1 to September 5, 2015, we stayed in a city called Tijuana in the northwestern part of Mexico near the American border, starting the investigation in a maquiladora in the area in which a Samsung Electronics TV manufacturing plant is located. We were assisted by Felipe, an activist from CEREAL.

We soon found out that the Vice Chair of Queretaro Samsung Electronics, after being contacted by Manager Sung-Soo Song (Samsung Electronics Public Relations Department), had utilized his domestic network to locate Felipe and demand him of our whereabouts. Our team had requested the Vice Chair of Queretaro Samsung Electronics multiple times, through Felipe, to allow us to visit the manufacturing plant in Queretaro and the Tijuana TV manufacturing factory. However, our request was wholly denied; moreover, our location was exposed so that on September 4, 2015, we had to leave prematurely due to the security's threats while interviewing workers at the Tijuana TV manufacturing plant. Thus, our concerns in hesitating to contact Samsung Electronics before arriving in Mexico had materialized.



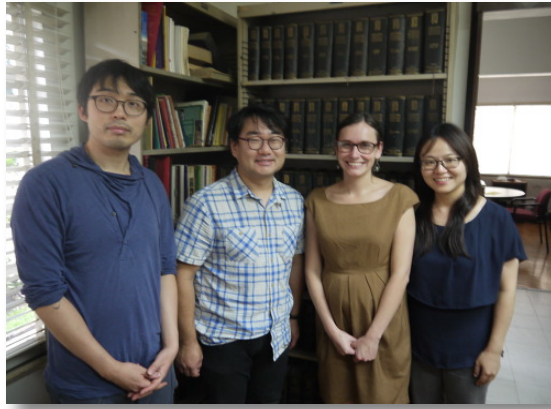
We requested Samsung Electronics to allow us to visit the factory, but were denied. Our attempts to interview workers commuting to and from work were also blocked by security personnel hired by the company.

Our investigation into Korean electronics companies in Mexico faced difficulties for many reasons; they can be classified into three major challenges:

- 1) Difficulties arising from corporations refusing to disclose or controlling information. A case in point is the incident described above of Samsung Electronics interfering with our efforts despite our request for cooperation. Karen Hudley, the Latin America Coordinator for the Business and Human Rights Resource Center, echoed similar concerns about Samsung Electronics' lack of transparency when we met her on September 9:

“To enhance corporate transparency, I sent around ten questions based

on the United Nations Guiding Principles (UNGP) on corporate human rights practice to 94 companies in Mexico, and only Samsung Electronics did not respond.”²⁹



²⁹ On Korean corporations' abuse of human rights in Mexico, Karen also said: "One case that still remains unresolved is the case of Rosa in Reynosa, who had both her hands severed while working at HD Electronics, a supplier of LG Electronics. Rosa received a very small amount for compensation, but even that took a long and complicated battle. LG Electronics insists that we shouldn't raise this issue anymore because she has already been compensated in accordance with domestic law and she wasn't a direct employee of LG. An American organization worked on Rosa's case quite a lot, and consumer groups also raised this problem. One recent Korean business entry into Mexico is KIA in Monterrey. There is also a company called YURA, which manufactures automobile parts in an area called 과구일라 (과구일라의 영문명을 찾지 못했습니다; 유라에 대한 내용은 없는데 유라가 진출해있다는 이야기는 왜 들어간 것 인지요?) The local community in Monterrey had conflicts with KIA because of issues in using/accommodating land; the NGO addressing this issue is CADHAC. In August 2015, Posco in the Tamaulipas area also unlawfully dismissed 8-9 workers for going on strike to protest the company's failure to pay wages and provide tools to prevent industrial accidents."

Business and Human Rights Resource Center is an international organization headquartered in London and the United States, with seventeen research coordinators. The coordinator for East Asia is in Japan, and Karen is in charge of Mexico and the Caribbean. She studies not only labor rights, but also broader human rights issues including gender and native peoples.

- 3) It was difficult to find NGOs monitoring labor rights and human rights practice of foreign corporations in the maquiladora, much less concentrating on Korean businesses. In Tijuana, for instance, an organization called Maquiladora Solidarity Network used to be quite active, but ceased operations after 2015. The dearth of such NGOs is partly explained by the fact that most foreign-invested corporations are located in border areas far from major cities, posing challenges to activists seeking physical access.
- 4) The most detrimental obstacle to our research was the absence of labor unions that have systematic data on labor rights violations and are able to inform the public of these issues. We had been to several countries in Southeast Asia and Central Asia for similar purposes, and had no large problems in information access because local labor unions of Korean corporations supplied us with relevant data. However, since most labor unions in Mexico are ‘Official Unions’ that do not represent the interests of workers, and because foreign corporations – especially Korean ones – in the maquiladora rarely have labor unions at all, it was tough to study actual cases of human rights abuse. As will be discussed in a later section, one of the reasons for the dearth of labor unions is because Korean corporations systematically interfere with and suppress their formation.

2. Specific Cases of Human Rights Violations

We organized the responses to the questionnaire from the thirteen workers at Samsung Electronics and fifteen workers at Ohsung by twelve themes: labor unions, labor contracts, child labor, wages/bonuses/deductions, working hours, treatment of workers, vacations, occupational safety, subcontracted workers, dismissal, labor/living conditions, and complaint processing mechanism. Furthermore, we devised questions for Samsung Electronics and LG Electronics (buyer of Ohsung) on the problems we identified through the interviews.

A. Labor Unions

Most workers we interviewed from Samsung Electronics had never heard of labor unions or collective bargaining at the company, much less elected union leaders or had union fees deducted. When asked why they do not attempt to form a union, some of the workers at Samsung and Ohsung expressed fear of dismissal, while two Samsung workers reported knowing people who had been fired for trying to establish a union.

*Questions for Samsung Electronics and Ohsung: Is there a labor union at your factory? If so, when was it established, and who is the current leader? If there is no union, what measures does the company take to protect the workers' right to establish a union? Has the company ever fired workers for attempting to establish a labor union?

B. Labor Contracts

Most workers at Samsung Electronics reported not having had the opportunity to thoroughly read the contract, and signed without a full explanation. None of the workers we interviewed had a copy of the contract, and simply had heard oral explanation of the general labor conditions when signing.

*Questions for Samsung Electronics: Did the company provide the original or a copy of the labor contract after the worker signed the contract?

C. Child Labor

There were children aged 15 and 16 working at Ohsung, and one interviewee said he had been employed at Ohsung since he was 17. While we could not confirm whether children are involved in overtime or nighttime work, workers testified that most children receive lower wages than adults. One interesting testimony described a Korean nun who introduces children to Ohsung for employment. According to the interviewees, Ohsung had entered into an agreement with the nun on Children's Day, one clause of which stipulated that if the child goes on to college after working at Ohsung, he/she would be hired back as a skilled worker after graduation.

*Questions for Samsung Electronics and Ohsung: Are there children aged below 17 working at the factory? If so, how many? Do they receive the same wages as adults? What policies does the company have to protect these children? Has the company ever ordered these children to perform overtime or nighttime work?

D. Wages, Bonuses and Deductions

Since the daily legal minimum wage in 2015 was set extremely low at 70 pesos (3.85 USD), Samsung Electronics and Ohsung were complying with this standard. However, given the cost of living in Mexico and the number of family members that workers need to support, the wage does not satisfy the minimum requirement to allow for a humane living.

The lowest wage reported among the Samsung Electronics workers we interviewed was 102 pesos per day, and the highest was 180 pesos. Samsung employees were receiving around 20% of the basic wage as a bonus, but had 1,200 pesos deducted every month for food, commuting bus, and various taxes.

Furthermore, pay raise was extremely small; one worker who had been employed for 16 years was only receiving 160 pesos per day.

Ohsung had similar circumstances. One employee who had been working for 11 years only received 109 pesos per day. Similarly, employees of 12 years were getting paid 107 pesos, 14 years 114 pesos, and 14 years 123 pesos. With regards to bonuses, workers used to receive 100-200 pesos ever week, but the policy changed in July 2015 to only pay bonuses for overtime work.

According to 2015 research by the National Council of the Evaluation of Social Development Policy in Mexico, an urban worker spends at least 600 pesos for basic food per week. But food and lodging in border areas like Tijuana are 1.5-2 times more expensive than cities, and have higher electricity bills because of low temperatures in the winter and high temperatures in the summer. Adding the number of family members each worker supports to these statistics, the wages at Samsung Electronics and Ohsung hardly allow for a minimum humane living.

Both groups of workers responded that overtime allowance is paid by a 'working-hours-bank' system, by which workers are forced to go home early when the amount of work is low and the hours thus accumulated are then deducted from overtime hours when extra work is needed.

* Questions for Samsung Electronics and Ohsung: What is the starting salary at the factory? How are pay raises calculated? Given the minimum expenditure on food per week per person determined by the Mexican government, is the salary enough to guarantee an adequate standard of living? How are bonuses disbursed? How much does the company pay for overtime work? What are deducted from workers' wages? Does the company implement a 'working-hours-bank' system? Does the company allocate profits to workers? If so, what is the standard amount for allocation calculations?

E. Working Hours

All Samsung Electronics interviewees reported working more than 60 hours per week, a few even 69 hours per week. Some worked more than 20 hours in overtime per week, while one reported working overtime almost every day. With regards to day/night shifts, four workers said that unexpected changes to the shifts happen frequently, particularly when there are large orders.

For three reasons, overtime work was not voluntary at Samsung and Ohsung. First, workers faced risks of dismissal or negative evaluation for refusing overtime work. Second, the wages are so low that overtime work is necessary for survival. One worker even put it this way:

“I would like to work overtime more frequently to support my family, but there’s extra work to do only from mid-August to mid-December, so I can’t do overtime as much as I want.”

Third, as discussed in conjunction with the ‘working-hours-bank’ system, if an employee worked for less than 8 hours one day, the unworked hours are counted against overtime calculations later, forcing workers to stay overtime without allowance.

* Questions for Samsung Electronics and Ohsung: How many employees worked for more than 60 hours for at least one week during the year 2015 (including overtime hours)? How are workers notified of day/night shifts? What does the company have in place to guarantee that overtime work is voluntary?

F. Treatment of Workers

Both groups of workers described verbal abuse from managers. One worker from Ohsung testified:

“This female Mexican manager often yells at newly hired workers for not doing well, or tell workers that they don’t do a good job because they are fat. She calls people ‘ugly’ and ‘shapeless.’”

One Samsung Electronics worker said that some production lines limit the number of restroom visits, while Ohsung workers testified that they cannot freely use the restroom - only under the management’s permission.

Some Ohsung workers said they are barred from entering the factory and forced to return home for being late by one minute. Physical violence from Korean managers was also described:

“Mr. Lee, a molding manager, insults workers by pulling on our nose when there is a defective product. Last year, one employee protested this insulting behavior and got beat up. Mr. Lee even grabs things from the production line and throws them at our faces.”

* Questions for Samsung Electronics and Ohsung: What measures does the company take to prevent physical and verbal abuse from managers? Does the company limit production line workers’ use of restrooms? What measures does the company take to eliminate this custom of managers restricting workers’ restroom visits?

* Questions for Ohsung: Is there a manager with the last name Lee at the factory? There are allegations that this manager, at the production line, throws objects at workers’ faces and insults workers by pulling on their noses for defective products; have you received complaints against this manager?

G. Vacations

All interviewees from Samsung Electronics reported that they cannot take vacations when they want, but must take them in December when the orders

are low. Ohsung workers also could not set their own vacation dates, but could rest for one week at a time designated by the company; but the company does not pay wages during vacations, so 초과근로 시간과 휴가 기간을 정산한다고 한다.

* Questions for Samsung Electronics and Ohsung: What is the company's policy on vacations? Can workers at the company take annual vacations at the time they want? Does the company abide by the annual vacation periods that are expanded over the years, as established by the law?

*Questions for Samsung Electronics: What is the rationale behind uniformly allowing for vacations only in December? Does the company pay wages during regular vacations?

*Questions for Ohsung: Does the company pay wages during vacations, separate from overtime allowance?

H. Occupational Safety

Around thirty workers at Samsung Electronics were injured and another three died from a commuting bus accident in an area called Delicias in 2015. However, the company only compensated the family of these workers mere 20,000 pesos.

One Ohsung worker testified that she performed welding all throughout her pregnancy. Another worker had fingers damaged from using strong chemicals like solvent, alcohol, acetone, silicone, and paint. Others echoed these issues of occupational safety:

“We often feel dizzy when we're dealing with chemicals or welding, but the company doesn't give us any safety equipment. When we requested them, the Korean manager told us that we don't have the right to have them.”

“When there are inspectors coming from outside, the company gives us gloves and masks in advance, only to take them away when the inspectors are gone.”

At Ohsung, there was a fire at the factory in 2014 while the premises were being painted. The company prevented workers from leaving despite the fire alarm, even closing the doors.

*Questions for Samsung Electronics: Are you aware of the commuting bus accident in 2015 that resulted in the death of at least 3 of your workers another 30 injured? What was the cause of this accident? What kind of monitoring does the company engage in to ensure that commuting buses are safely operated? How were the victims of this accident compensated by the industrial accident compensation insurance? How much has the company paid in compensation to the victims, especially the family of the deceased? What kind of chemicals does the company use to clean TV screens, etc.? What does the company do to protect the safety of workers using these chemicals? How often does the company provide occupational safety education for workers, and what kind?

* Questions for Ohsung: In the past four years, has the company ever ordered a pregnant employee to perform welding involving lead? What kind of chemicals does the company use to clean remote controls, etc.? What does the company do to protect the safety of workers using these chemicals? Is the company aware of the fire that happened at the factory in 2014? What was the cause of this fire? At the time of the fire, what measures did the company take to ensure the safety of workers? How often does the company provide occupational safety education for workers, and what kind?

I.Subcontracted Workers

In 2004, the share of subcontracted workers in Mexico was 8.8%, which

increased to 16.6% in 2014 after the 2012 amendments to the Federal Labor Law. The ratio of subcontractors is particularly high in the electronics industry, accounting for 30-60% of all workers. One Samsung Electronics interviewee explained that out of 36 workers at his production line, 20 are employed directly by Samsung, while the others are subcontracted. The Federal Labor Law holds that subcontracted workers cannot be hired for basic jobs or for the same jobs as directly employed workers. However, the subcontracted workers at Samsung and Ohsung were all performing the same labor as the directly employed, i.e. product assembly.

Subcontractors face many kinds of discrimination. At Samsung, subcontracted workers are easily fired, especially in the period immediately after mid-December when orders dramatically decrease. Furthermore, subcontracted workers at Samsung receive lower wages and worse treatment than directly employed workers despite performing the same jobs; their schedules also change more often. At Ohsung, subcontractors were more frequently forced to do overtime and received lower wages; one worker was getting paid 78 pesos per day.

*Questions for Samsung Electronics and Ohsung: What is the ratio of subcontracted workers (dispatched workers) at the company? What jobs do subcontracted workers complete? What conditions must subcontracted workers meet to be directly employed by the company?

J. Dismissal

The dismissal process stipulated by the law, including written notice, was not being followed at Samsung Electronics; instead, the company forced workers to sign a letter of resignation. If dismissed for attempting to form a labor union or raising complaints to the management, workers were put on a blacklist, facing obstacles in finding another job in other maquiladora companies.

*Questions for Samsung Electronics and Ohsung: How many workers did the company dismiss in 2014 and 2015? How many employees submitted letters of resignation in 2014 and 2015? What is the dismissal process at the company?

K. Labor and Living Conditions

Ohsung had 30-minute lunch breaks, which in practice translated into 25 minutes because workers had to return 5 minutes early. There was not enough space for eating inside the factory, forcing workers to eat outside in the heat. Drinking water was lacking, and only one men's bathroom and three women's bathrooms were available for 200 workers. No toilet paper was provided in the bathrooms.

* Questions for Ohsung: What is the total number of workers, including subcontractors, at the factory? How many men's and women's bathrooms are there for workers' use?

L. Complaint Processing Mechanism

All interviewees had no knowledge of a complaint processing mechanism. They could only raise concerns to human resources managers or direct supervisors, but processing took too long, the managers did not really care, or workers raising the issues faced the risk of retaliation.

* Questions for Samsung Electronics and Ohsung: What is the internal complaint processing mechanism at your company? How many workers used such mechanism in 2015? Does the company have the results/statistics of issues addressed through this mechanism?

Thus, workers did not benefit from an internal complaint processing mechanism despite experiencing various abuses of human rights and labor rights. Furthermore, as discussed below, they are not receiving protection from

the country's legal/justice system and non-legal remedial mechanisms.

3. Absence of Effective Remedies

When workers at Korean corporations in Mexico suffer from human rights violations, potential sources of support to which they could turn are the National Human Rights Commission, Mexican Court of Arbitration, domestic courts, National Contact Point established by OECD guidelines, Electronic Industry Citizenship Coalition (EICC), and the North American Agreement on Labor Cooperation (NAALC).

A. National Human Rights Commission

The Mexican Constitution stipulates that the National Human Rights Commission does not have jurisdiction over cases involving labor or human rights violations by non-state parties. Therefore, Mexican workers cannot turn to the Commission for Korean corporations' human rights violations.

B. Mexican Court of Arbitration

The Mexican Court of Arbitration, comprised of representatives from trade unions, employers' associations, and the government, is meant to function as a kind of labor court. However, given that 'official labor unions' do not represent the workers' interests and the government, especially at the local level, is capital-friendly because of its focus on securing foreign investment, workers have a difficult time having their rights protected by the Court of Arbitration.

Furthermore, public interest lawyers who can assist workers during the process are very few, while private lawyers are too expensive for workers to afford. Most cases at the Court of Arbitration are dismissal cases, partly because workers bring cases only after they are dismissed out of fear of dismissal and other retaliation if they initiate court proceedings while still employed.

C. Domestic Courts

Workers can litigate the decisions of the Court of Arbitration by bringing them to ordinary courts, but labor cases rarely get addressed this way. High attorney costs are part of the reason, but it is also because workers hardly expect the court to grant them relief, given the corrupt nature of judges.

D. NCP

As a member of the OECD, Mexico has a National Contact Point (NCP) in the Secretariat of Economy in accordance with OECD Guidelines on Multinational Enterprises. However, the NCP in Mexico has yet to fulfill its functions, largely because most cases are rejected at the first screening because of problems in its neutrality and notoriously high standards.

The Director of NCP Mexico has been working consistently in economy-related fields; her master's thesis was on multinational enterprises and development, and her work in the past five years was mostly related to social work.



E. EICC

Both Samsung Electronics and LG Electronics are members of the EICC and are bound by their regulations on behavior. However, not only is the EICC a voluntary initiative, it has also failed to hold members accountable for practices concerning the freedom of association and labor unions.

F. NAALC

As Mexico, the United States, and Canada entered into NAFTA, a separate convention on improving labor conditions called the North American Agreement on Labor Cooperation (NAALC) was concluded. Diverse institutions and mechanisms are in place to implement the NAALC, the most representative of which is the National Administrative Office in each member country. The Office is supposed to intervene when the country fails to respect the eleven laws and regulations on freedom of association, collective bargaining, forced labor, child labor, wage discrimination, occupational safety, and more. However, these remedial mechanisms are not frequently used. Even when a complaint is filed to the National Administrative Office, the Office

cannot do much other than launching an investigation and arranging for discussions between member countries or releasing research reports. Therefore, it is unrealistic to expect that workers will have their rights secured or see institutional problems resolved through these mechanisms.

As workers have neither trade unions representing their interests nor effective internal/external remedial mechanisms, the possibility that workers can have their rights violations remedied is extremely low. This in turn means that enterprises can easily abuse labor rights since they are not regulated by unions and the government. Thus, there is a vicious cycle of ‘violation of workers’ rights’ and ‘absence of trade unions and remedial mechanisms’

IV. Moving Forward: Our Plan of Action

We plan to send to Samsung Electronics and LG Electronics/Ohsung a questionnaire based on findings from the interview. Since follow-up research is made possible by financial support from Goodelectronics, we aim to launch another field investigation in 2016 ourselves or through CEREAL. We will initiate discussions with the United States Department of Labor about our findings, and come up with strategies for future activism. One such strategy we envision at this time is creating an English version of the revised report after the follow-up investigation for publication in Europe, Mexico, and Korea. Lastly, on the basis of the findings of this report, we will submit a complaint on labor rights violations to the National Contact Point in Mexico.