

# Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico





Organization of  
American States

**IACHR** Inter-American  
Commission on  
Human Rights

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

OEA/Ser.L/V/II.  
Doc. 48/13  
30 December 2013  
Original: Spanish

**Human Rights of Migrants and  
Other Persons in the Context of  
Human Mobility In Mexico**

2013

<http://www.cidh.org>

### **OAS Cataloging-in-Publication Data**

Inter-American Commission on Human Rights. Rapporteurship on the Rights of Migrants.

Derechos humanos de los migrantes y otras personas en el contexto de la movilidad humana en México / [Preparado por la Relatoría sobre los Derechos de los Migrantes de la Comisión Interamericana de Derechos Humanos].

p. ; cm. (OAS. documentos oficiales ; OEA/Ser.L)

ISBN 978-0-8270-6121-7

1. Human rights--Mexico. 2. Mexico--Emigration and immigration. 3. Civil rights--Mexico. 4. Foreign workers--Legal status, laws, etc.--Mexico. I. Title. II. Series: OAS. documentos oficiales ; OEA/Ser.L.

OEA/Ser.L/V/II. Doc.48/13

Document published thanks to the financial support of Spain.  
Positions herein expressed are those of the Inter-American Commission on Human Rights and do not reflect the views of Spain.

Design and layout: Miki Fernández/ULTRAdesigns

Cover photo: courtesy of *Albergue de Migrantes Hermanos en el Camino*. Stretch of cargo train railway between Arriaga (Chiapas) and Ixtepec (Oaxaca).

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The Commission would specially like to recognize its Executive Secretariat for preparing this report. In particular to Álvaro Botero Navarro, Human Rights Specialist, and Gloria Gordon, Document Technician.

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\* In keeping with Article 17(2) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion of, research and deliberations on, and approval of this report.

*Approved by the Inter-American Commission on  
Human Rights on December 30, 2013*

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*Mexico is today a country of origin, transit and destination for migrants, and increasingly a country to which they return. Mexico is the necessary gateway of mixed migration flows, which include thousands of migrants, asylum seekers, refugees and victims of human trafficking which have the United States as their main destination and, to a lesser extent, Canada. Of all the countries in the Americas, Mexico is doubtless the one that most clearly reflects the pluridimensional character of international migration in a country.*

# Human rights of migrants and other persons in the context of human mobility in Mexico

## CHAPTER I

### Introduction

#### A. The scope and objectives of the report

1. Pursuant to Article 41 of the American Convention on Human Rights and Article 58 of its Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) is presenting this report to assess the human rights situation of the international and domestic migrants in the context of human mobility in Mexico and to make recommendations to ensure that the migration and immigration policies, laws and practices in the United Mexican States (hereinafter “the Mexican State,” “Mexico” or “the State”) comport with the international human rights obligations it has undertaken to protect migrants, asylum seekers, refugees, victims of human trafficking and the internally displaced persons.

2. Throughout this report, various situations are described that affect the human rights of migrants, asylum seekers, refugees, victims of human trafficking and the internally displaced in Mexico. This report’s particular focus is on the serious violence, insecurity and discrimination that migrants in an irregular situation encounter when traveling through Mexico, which includes, *inter alia*, kidnapping, murder, disappearance, sexual violence, human trafficking and the smuggling of migrants. The report also looks at the issue of immigration detention and due process guarantees for migrants, asylum seekers and refugees held in immigration holding or detention centers. The report will also examine situations that affect the human rights of migrants who live in Mexico, such as their right to nondiscrimination in access to public services and their labor rights. The last part of the report examines the difficult circumstances under which those who defend the rights of migrants perform their mission.

3. Mexico is today a country of origin, transit and destination for migrants, and increasingly a country to which they return. Mexico is the necessary gateway of mixed migration flows, which include thousands of migrants, asylum seekers, refugees and victims of human trafficking which have the United States as their main destination and, to a lesser extent, Canada. Of all the countries in the Americas, Mexico is doubtless the one that most clearly reflects the various faces of international migration in a country. Because

of the enormous impact that international migration has had on Mexico, particularly as a country of origin for migrants, globally Mexico has been a principal driving force and advocate for the recognition and protection of the human rights of all migrants.

4. Furthermore, in recent years, public security in Mexico has been severely eroded by the intense violence generated by organized crime and the battle being waged against it.<sup>1</sup> The spike in criminal violence in recent years in Mexico poses very complex challenges for the State, which is called upon to take every measure necessary to safeguard the security of persons within its jurisdiction, which obviously includes migrants. Security and protective measures have to be premised on respect for human rights to ensure that the actions taken by the State to fight crime do not end up becoming a source of still greater insecurity or even State abuse. Mexico does not have a citizen security and safety policy specifically geared to preventing, protecting and prosecuting crimes committed against migrants. Furthermore, the State's response to the surge in violence has been to shore up the military and police forces to help them fight crime, mainly drug trafficking. In many instances, the effect of these two factors has been to increase the violence and human rights violations committed by State agents, rather than to safeguard the security of those in Mexico.

5. While the severe insecurity that Mexico is now experiencing has had profound effects on the Mexican population, it has also revealed just how vulnerable migrants in Mexico are, particularly migrants in an irregular situation<sup>2</sup> in transit through Mexico. In recent years, the Commission has been receiving news and reports of multiple cases in which migrants are abducted, driven into forced labor, murdered, disappeared and, in the case of women, frequently the victims of rape and sexual exploitation by organized crime. The Commission has also received information to the effect that in a considerable number of cases, State agents—members of the various police forces or personnel of the National Institute of Migration—have been directly involved in the commission of the crimes and human rights

<sup>1</sup> According to the United Nations Office on Drugs and Crime (UNODC), Mexico saw a 65 per cent increase in the homicide rate between 2005 and 2010. For more information, see United Nations Office on Drugs and Crime, *2011 Global Study on Homicide: Trends, Contexts, Data*. Vienna, 2011, p. 50. Available at: [http://www.unodc.org/documents/southerncone/noticias/2011/10-outubro/Globa\\_study\\_on\\_homicide\\_2011\\_web.pdf](http://www.unodc.org/documents/southerncone/noticias/2011/10-outubro/Globa_study_on_homicide_2011_web.pdf) [Consulted on December 30, 2013].

<sup>2</sup> Throughout this report, the Commission will use the term “migrant”. The Commission will also use the expression “migrant in an irregular situation” to refer to those migrants who have entered Mexican territory without the necessary documentation or have stayed past the time that they were authorized to stay. The Commission recommends that OAS member states avoid the expressions “illegal”, “illegal migrant” and “illegal migration” to refer to migrants whose immigration status is irregular. The use of the expressions “illegal” or “illegal migrant” reinforces the criminalization of migrants and the false and negative stereotype that migrants, for the simple fact of being in an irregular situation, are criminals. The Commission considers it necessary to specify that the irregular entry or stay of a person in a State are not criminal offenses but administrative misdemeanours. In addition to the above, “legal” or “illegal” are not qualities that can be ascribed to human beings. For the sake of clarity, the actions of human beings can be described as “legal” or “illegal”, but not the persons *per se*. A person's immigration status may not comply with what a given State's legal system requires, but one cannot extrapolate from that the ‘legality’ or ‘illegality’ of that person.

violations listed above. At the present time, the extreme vulnerability of migrants and other persons to the heightened risks of human mobility in Mexico is one of worse human tragedies in the region, involving large-scale and systematic human rights violations.

6. The insecurity of migrants in Mexico was why, during the hearing on the “Situation of the Human Rights of Migrants in Transit through Mexico” held on March 22, 2010, civil society organizations asked the IACHR to have its Rapporteurship on the Rights of Migrant Workers and Their Families conduct an on-site visit to Mexico to examine the situation of migrants’ human rights. For its part, the Mexican State’s response was that the oversight mechanisms of the Inter-American and universal systems have an open, standing invitation to visit Mexico, so that the Rapporteurship’s visit would be welcome.<sup>3</sup> The on-site visit was hastened by a series of communications that civil society organizations sent to the IACHR Rapporteur on the Rights of Migrant Workers, and by thematic hearings held at Commission headquarters<sup>4</sup> which revealed large-scale violations of migrants’ human rights in recent years, the inefficacy of the public safety and security services, and the fact that no one was made to answer for the crimes committed against migrants. The Mexican State formally invited the Rapporteur to conduct an *in loco* visit, which he did from July 25 to August 2, 2011.

## B. Visit to Mexico by the IACHR’s Rapporteurship on the Rights of Migrant Workers and Their Families and its follow-up

7. Given the multiple effects of the migration phenomenon in Mexico, particularly as a consequence of the grave insecurity and danger that migrants transiting through Mexico experience, an IACHR delegation visited Mexico between July 25 and August 2, 2011.<sup>5</sup> The delegation was composed of Commissioner Felipe González Morales, Rapporteur on the

<sup>3</sup> Cf. IACHR, *Hearing on the Human Rights Situation of Migrants in Transit through Mexican Territory*. 138th Session, Washington, D.C., March 22, 2010. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=118> [Consulted on December 30, 2013].

<sup>4</sup> See, *inter alia*: IACHR, 144th Session: *Situation of Missing Migrants and Unidentified Remains in Mexico*, March 23, 2012; 143rd Session: *Hearing on the Follow-up to the Visit to Mexico by the Office of the Rapporteur on the Rights of Migrant Workers and Their Families*, October 27, 2011; 141st Session: *Hearing on the Human Rights Situation of Migrant Persons on the Southern Border of Mexico*, March 29, 2011; *Working Meeting on the Procedure and Efficacy of Precautionary Measures for defenders of migrants’ human rights in Mexico*, March 26, 2011; 138th Session: *Hearing on the Human Rights Situation of Migrants in Transit through Mexican Territory*, March 22, 2010; 137th Session: *Hearing on the Human Rights of Migrant Indigenous Agricultural Laborers in Guerrero, Mexico*, November 5, 2009; 131st Session: *Hearing on the Human Rights of Migrant Workers in Transit in Mexico*, March 12, 2008. The IACHR’s hearings can be viewed at: <http://www.oas.org/es/cidh/audiencias/default.aspx?lang=en> [Consulted on December 30, 2013].

<sup>5</sup> As part of its function of promoting the observance and protection of human rights in the hemisphere, the Inter-American Commission, through the Rapporteurship on the Rights of Migrant Workers and Their Families, has conducted a number of visits to member states of the Organization of American States (hereinafter “the OAS”) to observe, analyze and make recommendations to protect the human rights of migrants and their families. Since its creation in 1996, the Rapporteurship has visited the following countries: the United States (1998, 1999 and 2009), Costa Rica (2001), Guatemala (2002), and Mexico (2002 and 2011). The IACHR’s agenda during these *in loco* visits

Rights of Migrant Workers and Their Families; Santiago Canton, then Executive Secretary of the IACHR; Álvaro Botero Navarro, Attorney Specialist with the Rapporteurship, and María Isabel Rivero, Director of the IACHR's Press and Outreach Office. This was the second visit by the Rapporteurship on the Rights on Migrant Workers to Mexico. The first was in 2002.<sup>6</sup>

8. While the episodes of large-scale abductions, extortion, sexual abuse, murders and disappearances of migrants in recent years have exposed the gravity of the human rights violations that migrants in an irregular situation in transit through Mexico experience, because migration in Mexico is a complex phenomenon the Commission decided that, rather than focus exclusively on situations that threaten the lives, integrity and security of migrants in transit in Mexico, other issues of particular concern in the case of migrants needed to be examined, such as human trafficking, the situation of migrant children, immigration detention, the situation of those who defend the rights of migrants, consular assistance, migrants' access to labor rights and to public services in Mexico, and the situation of the internally displaced persons.

9. In the course of the visit, the IACHR delegation traveled to 7 cities in 5 federated units: Mexico City in the Federal District; Oaxaca and Ixtepec in the state of Oaxaca; Tapachula in the state of Chiapas; Tierra Blanca and Veracruz in the state of Veracruz; and Reynosa and San Fernando in the state of Tamaulipas. The seven cities were selected because they would give the Commission's delegation different angles on the many faces of the migration phenomenon in Mexico. Also, some of these cities were on the main migration routes and were where the incidence of violations of migrants' human rights was highest, especially kidnapping.<sup>7</sup>

10. The delegation was able to observe the different dynamics of migration along the southern border with Guatemala and along the northern border with the United States. On Mexico's southern border, around Ciudad Hidalgo in the state of Chiapas, the IACHR delegation observed how, in makeshift vessels, migrants cross the Suchiate River from Guatemala into Mexican territory. On Mexico's northern border, at Reynosa in the state of

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has included the topic of human rights and migrant workers and their families, as in the case of the visits to Canada and the Dominican Republic, both in 1997.

<sup>6</sup> For more information about the first visit that the Rapporteurship on the Rights of Migrant Workers made to Mexico and the report published after that visit, see: IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003 – Chapter V. Special Studies: Fifth Progress Report of the Special Rapporteurship on Migrant Workers and Their Families – V. On site visit to Mexico*. The report of the first visit to Mexico is available at: <http://www.cidh.org/annualrep/2003eng/chap.5.htm> [Consulted on December 30, 2013].

<sup>7</sup> During its visit to Mexico, the IACHR Delegation visited some of the areas that the National Human Rights Commission has singled out as being those where migrants are most in danger of being abducted, such as Ixtepec in Oaxaca; Tapachula in Chiapas; Tierra Blanca in Veracruz; and Reynosa and San Fernando in Tamaulipas. For more information see, National Human Rights Commission, *Informe Especial sobre Secuestro de Migrantes en México* [Special Report on Abduction of Migrants in Mexico]. Mexico, 2011, pp. 42-43. Available at: <http://www.cndh.org.mx/> [Consulted on December 30, 2013].

Tamaulipas, the IACHR visited one of the border control points between Mexico and the United States. At the end of the visit, a member of the delegation crossed the border into the United States by way of the control points at Ciudad Juárez in the state of Chihuahua, and El Paso, Texas.

11. During the visit, the IACHR delegation went to some of the principal points through which migrants travel, such as Ixtepec in the state of Oaxaca, Tapachula in the state of Chiapas, Tierra Blanca in the state of Veracruz and Reynosa in the state of Tamaulipas. In Ixtepec, accompanied by members of the INM's Beta Group and staff from the *Albergue Hermanos en el Camino* ["Brothers in the Road" Shelter], the IACHR delegation witnessed the arrival of the train known as "*La Bestia*" [the Beast], which originates in the municipality of Arriaga in Chiapas state. The train was carrying several hundred migrants, most of whom were men from Central America, although migrant women and children were also to be seen. Upon the train's arrival in Ixtepec on July 28, 2011, the Commission's delegation had an opportunity to see how the vast majority of these migrants are received and assisted by volunteers from the *Albergue Hermanos en el Camino*, who work in the early morning hours to provide help. Initially, the migrants' names are entered into the shelter's database,<sup>8</sup> after which they are given food, clothing and a place to sleep. In Tierra Blanca, state of Veracruz, the IACHR delegation went to the train tracks, accompanied by members of the *Alberge Decanal Guadalupano* and the Human Mobility Pastoral Office, where it watched as migrants waited to continue their trip northward heading for Mexico's border with the United States of America.

12. During the visit, the Rapporteurship had meetings with federal, state and municipal officials, civil society organizations, and international organizations with offices in Mexico. In its meetings with state officials, a broad spectrum of actors provided the Rapporteurship with information that has been very useful in preparing this report. The following were among the officials with whom the IACHR met: Juan Manuel Gómez Robledo, Under Secretary for Multilateral Affairs and Human Rights with the Secretariat of Foreign Affairs (hereinafter "the SER"); Alejandro Negrín, the SER's Director General of Human Rights and Democracy; Alejandro Alday, Deputy Director General of Cases, Human Rights and Democracy of the SER; Consuelo de la Salud Olvera, Director of International Policy on Civil and Political Rights of the Office of the SER's Director General of Human Rights; Joel Hernández García, Permanent Representative of Mexico to the OAS; José Francisco Blake Mora, Secretary of the Interior; René Zenteno Quintero, Under Secretary for Population, Migration and Religious Matters; Felipe de Jesús Zamora Castro, Under Secretary for Legal Affairs and Human Rights; Salvador Beltrán del Río Madrid, Commissioner of the National Institute of Migration; Omeheira López Reyna, Head of the

<sup>8</sup> Historically, each *casa del migrante* has managed its own database to compile information on how many persons came to the center. With the passage of time, the databases have become an important tool that the *casas del migrante* use to identify the places that the migrant has traveled through, document human rights violations and determine possible threats to the migrants' lives, safety and personal liberty. The Scalabrini missionaries in Tijuana, northern Mexico, were the first to use databases.

Unit for the Promotion and Protection of Human Rights; Katya Somohano, Coordinator of the Mexican Refugee Assistance Commission; Genaro García Luna, Secretary of Public Safety; Monte Alejandro Rubido García, Under Secretary for Prevention and Citizen Participation; Víctor Hugo Pérez Hernández, Director General for Human Rights; Raúl Placencia Villanueva, Chair of the National Human Rights Commission; Fernando Batista Jiménez, Fifth Examiner of the CNDH; Gerardo Montfort Ramírez, Director General of the CNDH's Migrant Services Program; Luis González Placencia, Chair of the Federal District's Human Rights Commission (CDHDF); Leonardo Mier Bueno, CDHDF Coordinator of Liaison with Human Rights Institutions; José Antonio Guevara, CDHDF Secretary for Liaison with Civil Society Organizations; Fernando Coronado Franco, the CDHDF's General Consultant; María de los Ángeles Fromow Rangel, Head of the Steering Unit for Liaison and Social Participation; Dr. Gudelia Rangel, Coordinator of the Comprehensive Health Strategy for Migrants; Jorge Alberto Lara Rivera, Deputy Prosecutor for Legal and International Matters; Miguel Ángel González Félix, Coordinator of International Affairs and Attaché Offices; Yéssica de Lamadrid Téllez, Director General of International Cooperation; Pedro Efraín González Aranda, Director General of Preliminary Inquiries with the Office of the Attorney General of Tamaulipas; Marco Antonio Paz Pellat, Under Secretary for Analysis, Planning and Evaluation; Margarita de Lourdes Guerra Guerrero, in charge of the Micro-regions Unit; Blanca Lilia García López, in charge of the Office of the Deputy Director General of International Relations; Jorge Alberto Vargas Rodríguez, in charge of the Office of Statistical Analysis; Mario Chacón Carrillo, Director General of International Relations; Rosalinda Morales Garza, Director General of Indigenous Education; Alina Xóchitl Olvera Rosas, Director of Basic Education; Eleuterio Olarte Tiburcio, Director of Development and Strengthening of Indigenous Languages; Rocío García Gaytán, President of the National Institute of Women; Tuche Gaona, Deputy Director of Migration and Human Trafficking; Helietta González, Chief of the Department of Migration and Human Trafficking; Laura Liselotte Correa, Director of Human Development; Margarita Zavala, Mexico's First Lady and President of the National Comprehensive Family Development System (DIF); María Cecilia Landerreche Gómez Morin, Head of the National Comprehensive Child Development System; Joaquín González Casanova, Director of Human Rights, Gender Equality and International Affairs of the Council of the Federal Judiciary; Gabino Cué Monteagudo, Constitutional Governor of the Free and Sovereign State of Oaxaca; Eréndira Cruzvillegas Fuentes, Commissioner for the Protection of Human Rights for the Oaxaca State Government; Jaime Bolaños Cacho Guzmán, Coordinator General of Financial and International Liaison; Rufino Domínguez, Director of the Oaxaca Institute for Migrant Services; Marco Tulio López López, Oaxaca State Attorney; Eufrosina Cruz Mendoza, Speaker of the Oaxaca Chamber of Deputies; Pável López Gómez, Chair of the Human Rights Commission of the LXI Oaxaca State Legislature; Alfredo Lagunas Rivera, Chief Judge of the Oaxaca State Superior Court; Guatemala's Consul in Oaxaca; officials from Beta Group in Ixtepec, Oaxaca; Juan Sabines Guerrero, Constitutional Governor of the State of Chiapas; Isabel Aguilera de Sabines, President of Chiapas State DIF; Blanca Ruth Esponda Espinosa, Coordinator General of the Chiapas State Governor's Cabinet; Andrea Hernández Fitzner,

Secretary for Southern Border Development and Liaison for Chiapas State International Cooperation; Raciél López Salazar, Chiapas State Attorney; Pedro Raúl López Hernández, Advisor to the Commission to Oversee the Human Rights of the Indigenous Peoples of Chiapas; Carlos Fabre Platas, Chiapas State Under Secretary for Migrant Services; Jorge Vázquez Salazar, Under Secretariat for Chiapas State Liaison for International Cooperation; Enrique Méndez Rojas, Chiapas State Special Prosecutor for Crimes Committed against Immigrants; Esther Almazán Torres, Chiapas State Secretary of Labor; James Gómez Montes, Chiapas State Secretary of Health; Javier Álvarez Ramos, Chiapas State Secretary of Education; Gerardo Buganza Salmerón, Veracruz State Secretary of the Interior; Antonio Nemi Dib, Director of the Veracruz State DIF; Karime Macías, President of the Veracruz State DIF; Vito Lozano Vázquez, Veracruz Special Attorney for Migrant Services; Marcelo Montiel Montiel, Secretary of Social Development; Claudia Ramón Perea, Director General de Veracruz Migrant Services; Reynaldo Gaudencio Escobar Pérez, Veracruz State Attorney General; Luis Fernando Perera Escamilla, President of the Veracruz State Human Rights Commission; Jaime Canseco Gómez, Secretary General of Tamaulipas State Government; Bolívar Hernández Garza, Tamaulipas State Attorney General, and others.

13. The Commission would like to extend special thanks to the Mexican State for all the efforts it made at the federal and state levels to make the visit by the Rapporteurship on the Rights of Migrant Workers and Their Families possible. The Commission is particularly grateful for the cooperation provided by the Secretariat of Foreign Affairs, the Secretariat of the Interior, and the governments of the states of Oaxaca, Chiapas, Veracruz and Tamaulipas, and for the information it received from various Mexican authorities, before, during, and after the visit. On July 16, 2010, the Inter-American Commission received the “Report by Mexico on abduction, extortion, and other crimes committed against migrants in transit through Mexican territory” which is the report the Mexican State had promised to provide at the hearing held on March 22, 2010.<sup>9</sup> In the course of the visit, the Rapporteur received reports from the Secretariat of the Interior,<sup>10</sup> the National Institute of Migration,<sup>11</sup> the Office of the Attorney General of the Republic,<sup>12</sup> the

<sup>9</sup> GOVERNMENT OF MEXICO – SECRETARIAT OF THE INTERIOR, *Documento de Información Complementaria en Seguimiento de la Visita a México del Relator Felipe González* [Document containing additional information to follow up on Rapporteur Felipe González’ visit to Mexico], OCU. Mexico, October 27, 2010. [Document on file with the Commission].

<sup>10</sup> GOVERNMENT OF MEXICO – SECRETARIAT OF THE INTERIOR – OFFICE OF THE UNDER SECRETARY FOR POPULATION, MIGRATION AND RELIGIOUS MATTERS, *Informe de la Secretaría de Gobernación para la Relatoría sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos (CIDH)* [Report prepared by the Secretariat of the Interior for the Rapporteurship on the Rights of Migrant Workers and Their Families of the Inter-American Commission on Human Rights (IACHR)]. Mexico, July 28, 2011. [Document on file with the Commission].

<sup>11</sup> National Institute of Migration – Center for Migration Studies, *Estadísticas migratorias básicas, Enero-mayo de 2011* [Basic migration statistics, January-May 2011]. Mexico, July 25, 2011. [Document on file with the Commission].

<sup>12</sup> Office of the Attorney General of the Republic, *Informe de la Procuraduría General de la República a la Relatoría sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos (CIDH)* [Report prepared by the Office of the Attorney General of the Republic for the Rapporteurship on the Rights of Migrant Workers and Their Families of the Inter-American Commission on Human Rights]. Mexico, August 2,

Office of the Deputy Attorney General for Research Specializing in Organized Crime,<sup>13</sup> the National Human Rights Commission,<sup>14</sup> the Federal District Human Rights Commission,<sup>15</sup> the National Comprehensive Family Development System,<sup>16</sup> the Secretariat of Health,<sup>17</sup> the National Institute of Women,<sup>18</sup> the Government of the State of Chiapas,<sup>19</sup> and others. Subsequent to the visit, the State informed the Commission of the measures it was taking to comply with the recommendations that the IACHR's Rapporteurship made at the end of its visit.<sup>20</sup> By virtue of its authorities under Article 41 of the American Convention, on

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2011. The report, which consists of 8 volumes presented by the Office of the Attorney General, covers the following: 1) Homicides of migrants in the Municipality of San Fernando, Tamaulipas (August 2010); clandestine gravesites in the Municipality of San Fernando, Tamaulipas (April 2011); attacks and abduction of Central American migrants in Oaxaca in 2010; 2) Underlying principles of the new immigration bill; 3) Measures taken to protect migrants; 4) Training of staff of the Office of the Attorney General of the Republic on the subject of migrants' human rights; 5) Attachments: a) Involvement of the Office of the Attorney General of the Republic in INTERPOL's Committee on Disaster Victim Identification; b) Protocol for removal and identification of bodies and human remains; c) Agreement A/002/10 establishing guidelines for all public servants in how to properly preserve and process a crime scene or a site where the commission of a crime is discovered, and how to properly preserve and process the indicia, trail or other evidence of a criminal act and the instruments, objects or products of the crime; d) volume of technical data from each of the bodies discovered on August 24, 2010 on the property of a ranch in the municipality of San Fernando, state of Tamaulipas (in 7 files). [Document on file with the Commission].

- <sup>13</sup> Office of the Attorney General of the Republic – Office of the Deputy Attorney General for Special Investigations into Organized Crime, *Informe sobre Fosas Clandestinas en San Fernando, Tamaulipas* [Report on clandestine graves in San Fernando, Tamaulipas]. Mexico, August 2, 2011. [Document on file with the Commission].
- <sup>14</sup> National Human Rights Commission, *Informe Especial sobre Secuestro de Migrantes en México* [Special Report on Abduction of Migrants in Mexico]. Mexico, 2011. [Document on file with the Commission].
- <sup>15</sup> Federal District Human Rights Commission, *Informe sobre los derechos de las personas migrantes en la Ciudad de México elaborado para la Relatoría sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the rights of migrants in Mexico City, prepared for the Rapporteurship on the Rights of Migrant Workers and Their Families of the Inter-American Commission on Human Rights]. Mexico, July 2011. [Document on file with the Commission].
- <sup>16</sup> National Comprehensive Family Development System, *Informe al Relator sobre Trabajadores Migratorios de la Comisión Interamericana de Derechos Humanos, Sr. Felipe González* [Report to the Inter-American Commission on Human Rights' Rapporteur on Migrant Workers, Mr. Felipe González], Mexico, July 2011. [Document on file with the Commission].
- <sup>17</sup> Secretariat of Health, *Dossier: Visita del Sr. Felipe González, Relator de la Comisión Interamericana de Derechos Humanos. Programas de la Secretaría de Salud para el migrante en Estados Unidos y en México* [Dossier: Visit by Mr. Felipe González, Rapporteur of the Inter-American Commission on Human Rights. Programs run by the Secretariat of Health for migrants in the United States and in Mexico]. Mexico, July 2011. [Document on file with the Commission].
- <sup>18</sup> National Institute of Women, *Programa para la Promoción de los Derechos de las Mujeres en las Migraciones y sus Familias: Dossier informativo para la visita del Relator sobre los Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos, Sr. Felipe González* [Program to Promote the Rights of Migrant Women and Their Families. Informative dossier prepared for the visit of the Inter-American Commission on Human Rights' Rapporteur on the Rights of Migrant Workers and Their Families, Mr. Felipe González], Mexico, July 2011 [Document on file with the Commission].
- <sup>19</sup> Government of the State of Chiapas, *Acceso a la salud de los migrantes en Chiapas* [Migrants Access to health care in Chiapas]. Mexico, July 2011. [Document on file with the Commission].
- <sup>20</sup> GOVERNMENT OF MEXICO – SECRETARIAT OF THE INTERIOR – OFFICE OF THE UNDER SECRETARY FOR POPULATION, MIGRATION AND RELIGIOUS MATTERS, *Informe del Estado Mexicano sobre secuestro, extorsión y otros delitos cometidos contra personas migrantes en tránsito por territorio mexicano* [Report of the Mexican State concerning kidnapping, extortion and other crimes committed against migrants in transit through Mexican territory] Mexico, July 16, 2010. [Document on file with the Commission].

November 22, 2011 the Commission requested information from Mexico to be used to prepare this report. On January 24, 2012, the Commission repeated that request. The State responded to those requests by communications dated February 3, May 23 and July 9, 2012.

14. It is only fitting that the Commission should recognize the open spirit of cooperation and willingness on the part of the various authorities with which the Commission's delegation had an opportunity to meet. It also appreciates the interest expressed by federal and state authorities in receiving the recommendations from the IACHR's Rapporteurship on the Rights of Migrant Workers and Their Families after its visit to Mexico. These authorities expressed the hope that the recommendations the Rapporteurship made in its preliminary observations<sup>21</sup> and those made in this Report will be carried out by the Mexican authorities to ensure that the human rights of all migrants and their families are respected and protected in Mexico and throughout the region. During the Rapporteurship's visit, high-ranking officials of the Mexican Government made assertions of great consequence to the effect that the Mexican State's objective vis-à-vis migrants living in or transiting through Mexico is to afford them the same treatment that the Mexican State demands at the international level for its own nationals, which is premised on the principle that the human rights of all migrants must be respected and guaranteed.

15. As mentioned in the Preliminary Observations made by the IACHR's Rapporteurship at the end of the visit to Mexico, the changes being introduced in the law and the enactment and enforcement of the new immigration law may well represent a paradigm shift in the observance and protection of migrants' human rights.<sup>22</sup> As a country of origin, transit, destination and return for migrants, the laws, policies and measures practiced in Mexico can serve as an example for other States to follow, in how to manage migration from a human rights perspective. A human rights-based migration policy mirrors the Mexican State's insistence at the international level that the human rights of Mexican migrants around the world be respected.

16. The IACHR Rapporteur and delegation met with Javier Hernández Valencia, the representative in Mexico of the Office of the United Nations High Commissioner for Human Rights; Fernando Protti Alvarado, the representative in Mexico of the Office of the United Nations High Commissioner for Refugees; Thomas Weiss, the representative in Mexico of the International Organization for Migration, and with other officials of those organizations. In the course of this meeting, these three organizations provided the

<sup>21</sup> For more information, see IACHR, *Preliminary Observations of the IACHR's Rapporteurship on the Rights of Migrant Workers on its Visit to Mexico*. August 2011. Available at: <http://www.oas.org/en/iachr/migrants/docs/pdf/Mexico2011.pdf> [Consulted on December 30, 2013].

<sup>22</sup> IACHR, *Preliminary Observations of the IACHR's Rapporteurship on the Rights of Migrant Workers on its Visit to Mexico*. August 2, 2011, p. 4. Available at: <http://www.oas.org/en/iachr/migrants/docs/pdf/Mexico2011.pdf> [Consulted on December 30, 2013].

Rapporteur with important information regarding the situation of migrants and refugees in Mexico. The Commission is grateful to these organizations for their cooperation. On October 19, 2011, during the IACHR's 143rd session, Commissioner Felipe González Morales, IACHR Rapporteur for the Rights of Migrant Workers and Their Families, met with Mr. Karl Mattli, Head of the Regional Delegation for Mexico, Central America and Cuba of the International Committee of the Red Cross (hereinafter "the ICRC") to get details about the activities and projects that the ICRC is conducting in Mexico to assist migrants in transit and their families.

17. During the visit, the Commission's delegation had occasion to meet with representatives of a wide array of civil society organizations and human rights defenders whose work focuses on protecting the human rights of migrants. The following are some of the organizations with which the Commission met: *i(dh)eas - Litigio Estratégico en Derechos Humanos* [Strategic Human Rights Litigation], *Centro de Derechos Humanos Miguel Agustín Pro Juárez* [Miguel Agustín Pro Juárez Human Rights Center], *Dimensión Pastoral de la Movilidad Humana (DPMH)* [Pastoral Dimension of Human Mobility], *PCS - Consejería en Proyectos* [Project Counseling Service], *Instituto para las Mujeres en la Migración (IMUMI)* [Institute for Women in Migration], *Iniciativa Frontera Norte* [Northern Border Initiative], *Centro de Derechos Humanos Fray Matías de Córdova* [Fray Matías de Córdova Human Rights Center], *Inclusión y Equidad – Consultora* [Inclusion and Equity Advisory Services], *Sin Fronteras* [No Borders], *Instituto de Estudios y Divulgación sobre Migración (INEDIM)* [Institute to Study and Report on Migration], Amnesty International (Mexico Section), the Argentine Forensic Anthropology Team (EAAF), *Centro de Derechos Humanos de la Montaña Tlachinollan* [Tlachinollan Mountain Human Rights Center], *Centro Mexicano de Derecho Ambiental (CEMDA)* [Mexican Environmental Law Center], *Centro de los Derechos del Migrante* [Migrant Rights Center], *Cohesión Comunitaria e Innovación Social* [Community Cohesion and Social Innovation], *ENLACE Comunicación y Capacitación* [LIAISON Communication and Training], *Foro Migraciones* [Migrations Forum], *Fundación para la Justicia y el Estado de Democrático de Derecho* [Foundation for Justice and the Democratic Rule of Law], *Fundar - Centro de Análisis e Investigación* [Fundar – Analysis and Research Center], *Iniciativa Ciudadana y Desarrollo Social (INCIDE Social)* [Citizen Initiative and Social Development], *Movimiento Migrante Mesoamericano* [Mesoamerican Migrant Movement], *Organización de Refugiados en México* [Organization of Refugees in Mexico], *Proyecto El Rincón de Malinalco* [The Corner Project in Malinalco], *Mesa Nacional para las Migración en Guatemala (MENAMIG)* [National Roundtable on Migration in Guatemala], Office of the Guatemalan Prosecutor for Human Rights, *Asociación Red Comités de Migrantes y Familiares de Honduras (COMIFAH)* [Network of Committees of Honduran Migrants and Relatives], *Foro Nacional para las Migraciones en Honduras (FONAMIH)* [National Forum for Migration in Honduras], *Red Regional de Organizaciones Civiles para las Migraciones* [Regional Network of Civilian-run Organizations for Migration], *Centro de Derechos Humanos del Usumacinta* [Usumacinta Human Rights Center], *Comité de Derechos Humanos de Tabasco* [Tabasco Human

Rights Committee], Doctors of the World, *Red Nicaragüense de la Sociedad Civil para las Migraciones* [Nicaraguan Civil Society Migration Network], Universidad Nacional de Lanús (Argentina), *Centro de Dignificación Humana* [Center to Promote Human Dignity], *Albergue de Migrantes de Acayucan* [Acayucan Migrant Shelter], *Albergue de Migrantes Hermanos en el Camino de Ciudad Ixtepec* [Ixtepec’s “Brothers Along the Way” Migrant Shelter], *Albergue Decanal Guadalupano de Tierra Blanca* [Guadalupan Diocesan Shelter of Tierra Blanca], *Albergue Nuestra Señora de Guadalupe de Reynosa* [Reynosa’s Our Lady of Guadalupe Shelter], *Albergue Cristiano Senda de Vida de Reynosa* [Reynosa’s Christian Way of Life Shelter], *Casa del Migrante de Saltillo* [Saltillo Migrant Center], *Centro Diocesano de Derechos Humanos Fray Juan de Larios* [Fray Juan de Larios Diocesan Human Rights Center], *Casa San Juan Diego y San Francisco de Asís de Matamoros* [Matamoros’ San Juan Diego and San Francisco de Asís Center], *Centro de Derechos Humanos del Migrante de Ciudad Juárez* [Ciudad Juárez Migrant Human Rights Center], *Red de Casas YMCA de Menores Migrantes de Baja California* [Baja California Network of YMCA Centers for Migrant Children and Youth], *Coalición Pro Defensa del Migrante de Tijuana* [Tijuana Coalition for the Defense of Migrants], *Centro Interdisciplinario de Investigación para el Desarrollo Integral Regional (CIIDIR)* [Center of Interdisciplinary Research for Comprehensive Regional Development], *Unidad Oaxaca del Instituto Politécnico Nacional (IPN)* [Oaxaca Unit of the National Polytechnic Institute], *Comité de Familiares Migrantes Fallecidos y Desaparecidos de El Salvador (COFAMIDE)* [Committee of Relatives of Diseased and Missing Migrants of El Salvador], *La 72 - Hogar Refugio para Personas Migrantes* [The 72 – Shelter for Migrants], *Grupo Civil de Honduras* [the Honduran Civilian Group], *Las Patronas de Orizaba* [Orizaba’s Women dedicated to assisting migrants], *Albergue por la Superación de la Mujer* [Women’s Recovery Shelter], *Albergue Jesús el Buen Pastor* [Jesus, the Good Shepherd Shelter], *Albergue Belén* [Bethlehem Shelter], *Colegio de la Frontera Sur* [Southern Border College], *Grupo de Trabajo de Política Pública Migratoria* [Working Group on Migration-related Public Policy].

18. For thousands of migrants, the work done by private individuals and civil society organizations in Mexico is vital to safeguarding a number of important rights, such as the rights to life and to humane treatment and personal integrity. The Commission would like to applaud the work done by civil society organizations and those that defend the human rights of migrants. Without their dedication and effort, the migrants would be much more exposed to the violence to which many fall victim to while in transit through Mexico. While the Commission regards the reforms undertaken by the Mexican State as positive steps in the right direction, many threats to the human rights of migrants in Mexico and to the individuals and organizations that work to protect migrants’ human rights still persist. The Mexican State has frequently not acted with the diligence necessary to protect migrants within its territory; worse still is the fact that at times the State authorities themselves have, directly or indirectly, violated the human rights of the migrants and their defenders.

19. The Commission is grateful for all the cooperation it received from multiple civil society organizations that helped organize and conduct the visit to Mexico. Even

before it happened, various civil society organizations were calling for and encouraging the visit to Mexico. The Commission was impressed by the coordinated effort that civil society organizations mounted in organizing the meetings they held with the IACHR's delegation in Mexico City, Ixtepec, Tapachula Tierra Blanca and Reynosa. The Commission also appreciates all the reports it received from these organizations before, during and after the visit. Civil society organizations, academics and researchers provided the IACHR's Rapporteurship on the Rights of Migrant Workers and Their Families with invaluable information and studies on the situation of migrants in Mexico, both during and subsequent to the visit. While the Commission appreciates all the reports it received, special mention must be made of the Report on the General Situation of the Rights of Migrants and Their Families in Mexico,<sup>23</sup> prepared by a coalition of 38 organizations

<sup>23</sup> The Report on the General Situation of the Rights of Migrants and Their Families was prepared by the following organizations: the American Civil Liberties Union – ACLU (New Mexico office), the *Casa del Migrante Hermanos en el Camino* [Brothers Along the Way Migrant Shelter] (Ixtepec, Oaxaca), the *Centro de Derechos Humanos de la Montaña Tlachinollan* Tlachinollan Mountain Human Rights Center] (Tlapa, Guerrero), the *Centro de Derechos Humanos del Migrante* - CDHM [Migrant Human Rights Center] (Juárez, Chihuahua), the *Centro de Derechos Humanos Fray Matías de Córdova* [Fray Matías de Córdova Human Rights Center] (Tapachula, Chiapas), the *Centro Diocesano de Derechos Humanos Fray Juan de Larios* [Fray Juan de Larios Diocesan Human Rights Center] (Saltillo, Coahuila), the *Centro de Derechos Humanos Miguel Agustín Pro Juárez – Centro Prodh* [Miguel Agustín Pro Juárez Human Rights Center – Prodh Center] (Federal District), the *Centro de Recursos para Migrantes* [Migrant Resources Center] (Agua Prieta, Sonora), the Independent Farmworkers Center (New York, U.S.), the *Coalición Pro Defensa del Migrante* [Migrant Defense Coalition] (Tijuana and Mexicali, Baja California), the *Comité de Familiares de Migrantes Fallecidos y Desaparecidos* - COFAMIDE [Committee of Relatives of Deceased and Disappeared Migrants] (El Salvador), the *Defensoría de la Población Desarraigada y Migrante* [Office of the Ombudsperson for the Displaced and Migrant Population] under Guatemala's Office of the Prosecutor for Human Rights (Guatemala), *Dimensión Pastoral de la Movilidad Humana* – DPMH [Pastoral Dimension of Human Mobility] (Federal District), *ENLACE, Comunicación y Capacitación* [LIAISON, Communication and Training] (Comitán, Chiapas), the *Foro Nacional para las Migraciones* - FONAMIH [National Forum for Migrants] (Honduras), *Frontera con Justicia* [Borders with Justice] (Saltillo, Coahuila), *Fundar - Centro de Análisis e Investigación* [Fundar –Analysis and Research Center], Global Workers Justice Alliance (New York, U.S.), *Humanidad Sin Fronteras* [Humanity without Borders] (Saltillo, Coahuila), *Iniciativa Ciudadana y Desarrollo Social*, INCIDE Social [Citizen Initiative and Social Development, INCIDE Social] (Federal District), *Inclusión y Equidad Consultora* [Inclusion and Equity Advisory Services], *Iniciativa Frontera Norte* [the Northern Border Initiative] (Tijuana, Agua Prieta and Ciudad Juárez), *I(dh)eas - Litigio Estratégico en Derechos Humanos* [Strategic Human Rights Litigation] (Federal District), the *Instituto Centroamericano de Estudios Sociales y Desarrollo* - INCEDES [Central American Institute for Social Studies and Development – INCEDES] (Guatemala), the *Instituto de Derechos Humanos Ignacio Ellacuría, S.J.* – IDHIE [Ignacio Ellacuría, S.J. Institute of Human Rights] (Puebla, Puebla), the *Instituto de Derechos Humanos de la UCA - IDHCA* (El Salvador), the *Instituto de Estudios y Divulgación sobre Migración* - INEDIM [Institute to Study and Report on Migration] (Federal District), the *Instituto para las Mujeres en la Migración* 249. IMUMI [Institute for Women in Migration] (Federal District), the *Instituto Tecnológico Autónomo de México* - ITAM (Federal District), the Internal Displacement Monitoring Center - Norwegian Refugee Council - NRC (Norway), the *Mesa Nacional para las Migraciones* - MENAMIG (Guatemala), the Project Counseling Service (PCS) Office for Central America and Mexico (Guatemala), *Pastoral de Movilidad Humana de la Conferencia Episcopal* (Guatemala), *Proyecto El Rincón* [The Corner Project] (Malinalco, Mexico), *Red Migres* (El Salvador), *Red Nicaragüense de la Sociedad Civil para las Migraciones* (Nicaragua), the Jesuit Migration Service (Federal District), *Sin Fronteras*, I.A.P. (Federal District), United Farm Workers of America - UFW (California, U.S.). The report is available at: <http://fundar.org.mx/mexico/pdf/informemigranteok.pdf> [Consulted on December 30, 2013]. This report also appears at the websites of other organizations that were instrumental in preparing it.

from six different countries.<sup>24</sup> While most of the organizations are active in Mexico, the coalition also included organizations from Guatemala, Honduras, El Salvador, the United States and Norway. This report also had the endorsement of and input from another seven specialists in migration and organizations active in this area. The Commission believes that reports of this kind carry weight and are a good practice because they represent a consensus reached by multiple organizations and individuals engaged in a collaborative effort; in future, this practice should be replicated in other countries of the region. The Commission is also grateful for the information provided subsequent to the visit by Dr. Jorge A. Bustamante, former United Nations Rapporteur on the Rights of Migrants and a professor at the University of Notre Dame; Dr. Rodolfo Casillas Ramírez of the Latin American School of Social Sciences (FLACSO), whose academic headquarters is in Mexico; and Dr. María Dolores París Pombo of the *Colegio de la Frontera Norte*.

20. The Commission delegation's activities in Mexico included a visit to two of the main migrant holding centers in the country, which are the Iztapalapa Migrant Holding Center in Mexico City and the Siglo XXI Migrant Holding Center in Tapachula, Chiapas. During the visits to the migrant holding centers, the Commission delegation observed the conditions under which migrants are held and the services they receive at the centers. The visits to the migrant holding facilities also gave the members of the Commission's delegation an opportunity to speak with the migrants being held there, and with different members of the INM who work at these facilities. The Commission's delegation also visited the DIF's Temporary Shelter for Migrant Youth in Tapachula, Chiapas.

21. In addition to the interviews with migrants at the holding facilities, on its visits to shelters and *casas del migrante*, the IACHR delegation interviewed and took testimony from many migrants who said they had been victims of human rights violations in Mexico. During the visit, the IACHR delegation visited the shelters called the *Albergue Hermanos en el Camino* in Ixtepec, Oaxaca; the *Albergue Decanal Guadalupano* in Tierra Blanca, Veracruz; and Reynosa's *Casa del Migrante* in the state of Tamaulipas. There the delegation received information from the staff working in these institutions and from the migrants being sheltered there.

22. The IACHR delegation met twice with the "*Caravana Paso a Paso hacia la Paz*", a combination of civil society organizations, migrants who have been victims of kidnapping and relatives of kidnapped or disappeared migrants from Guatemala, Honduras and El Salvador. Present for the Tierra Blanca meeting were some 400 individuals who are

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<sup>24</sup> The Report on the General Situation of the Rights of Migrants and Their Families had endorsements and input from the following: Ana Verónica Stern Leuchter, specialist in studies in gender and migration and in socioeconomic project evaluation (Federal District); the *Centro de Derechos Humanos "Fray Francisco de Vitoria, O.P.* (Federal District), *FM 4 Paso Libre* (Guadalajara, Jalisco), the *Foro Migraciones* (Federal District), Ofelia Woo, Professor-researcher from the Universidad de Guadalajara (Guadalajara, Jalisco), the *Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos,"* a coalition of 72 organizations in 22 states (Federal District), *Voces Mesoamericanas, Acción con Pueblos Migrantes* (Comitán, Chiapas).

members of the Caravan and who were seeking information concerning the whereabouts of close to 150 migrants who had disappeared as they headed north through Mexico. At the meeting, the Commission's delegation received firsthand information and heard dramatic testimony given by Central American migrants who had been the victims of kidnapping and various abuses in their travels through Mexico. It also heard from relatives who had traveled from various parts of Central America to get information about the whereabouts of their loved ones, who had either been abducted or disappeared while in transit through Mexico. While each story bore witness to a unique family drama, they had one thing in common: the last piece of news received from their now missing relatives was while they were in transit through Mexican territory.

23. The Commission regrets that the Mexican State did not take the necessary measures to arrange the visit to the pre-agreed sites in the municipality of San Fernando, Tamaulipas. During its visit to San Fernando, the IACHR delegation was able to visit a number of bus stations where, during the first months of 2011, criminal groups had abducted entire busloads of people. At the Commission delegation's insistence, a number of secondary roads were traveled, leading to ranches where some of the 47 clandestine graves were discovered between April and May of 2011, containing 193 bodies, including the bodies of Mexican migrants and migrants from other countries. Nevertheless, although it was within meters of a plot of land where some of the graves had been discovered, the delegation was not allowed access to the area because the necessary arrangements had not been made. The State authorities had been told in advance that the purpose of the visit to San Fernando was for the Commission's delegation to get a firsthand look at the sites where the graves had been discovered and to get more information about the measures taken by the state agents charged with removing the bodies and preserving the crime scene, and the subsequent steps taken to identify the bodies. One of the elements of the principle of good faith is the State's willingness to enable organizations that monitor human rights to discharge their mission and properly look into situations that are of interest to them.

24. Because Mexico's migration phenomenon takes many forms and its territory is so vast, a visit of such scope could never have been possible without the cooperation the Commission received from all parties, both the State and civil society.

25. Finally, to follow up the recommendations that the IACHR's Rapporteurship on the Rights of Migrant Workers and Their Families made at the end of its visit to Mexico, the Commission would like to highlight the Mexican State's interest in this issue, as evidenced by the fact that it requested a hearing during the Commission's 143rd session to report on the measures taken by the State in furtherance of the Rapporteurship's visit; the information it provided during the hearing was further evidence of that interest. The hearing was held at Commission headquarters on October 27, 2011. The Commission greatly appreciates the Mexican State's positive attitude and regards it as something that other states should emulate. The Commission is therefore appealing to the State to continue to be just as responsive and

receptive to the recommendations made in this report, which are aimed at promoting and protecting the human rights of all migrants in Mexico and in the hemisphere. Naturally, the Commission reiterates its willingness to provide the Mexican State with any assistance it may require to fully comply with the recommendations made in this report.

### C. Structure and methodology

26. This report is divided into four chapters. The first chapter is the report's introduction, and has five sections: the first has to do with the scope of the report; the second recounts the visit that the Rapporteurship on the Rights of Migrant Workers and Their Families made to Mexico; the third section has to do with the structure and method of the report; the fourth about how the report was prepared and approved, the fifth section is about the observations that the United Mexican States made on this report and the sixth on the mandate and work of the Commission and its Rapporteurship on the Rights of Migrants have developed over the years in the topics covered in this report.

27. The second chapter is also divided into five sections. The first is a general picture of migration in Mexico, while the second section discusses the international norms and standards that apply when migrants are victims of discrimination and violence; the third section discusses what the Commission regards as the most important positive steps the Mexican State has taken to protect the human rights of migrants; in the fourth section, the Commission will spell out its main concerns regarding the discrimination and violence that migrants in Mexico encounter. The last section is reserved for the Commission's recommendations.

28. The third chapter examines the situations created by immigration detention and due process in immigration proceedings in Mexico. This chapter, like the others, is divided into five sections, which break down as follows: the first section discusses the Commission's general observations on immigration detention and due process in immigration proceedings and deportation proceedings in Mexico; the second section examines the international norms and standards that apply when migrants are the victims of discrimination or violence and the relevant standards on immigration detention; the third part discusses what the Commission considers to be the most positive steps that the Mexican State has taken in the area of immigration detention; in the fourth section, the Commission articulates its chief concerns in this area. Finally, the fifth section is where the Commission spells out its recommendations.

29. Finally, the fourth chapter examines various situations that affect the human rights of migrants in Mexico, such as acquiring citizenship and issues related to economic, social and cultural rights, and sets out the Commission's findings and recommendations.

30. The frame of reference for the Commission's conclusions and recommendations will be the instruments of the Inter-American human rights system that Mexico has ratified,<sup>25</sup> the case law that the organs of the Inter-American system have developed and the international *corpus juris* on the subject of human rights,<sup>26</sup> the Constitution of Mexico and all relevant domestic laws.

31. The Commission hopes that the recommendations contained in this report will be used to design State interventions and measures that ensure that crimes and human rights violations committed against migrants and other persons in the context of human mobility meet with the proper judicial response, i.e., one that is swift, timely, thorough, serious and impartial. The recommendations have three specific objectives: first, States must craft a comprehensive State policy, backed by adequate public resources, to ensure that migrants who are or have been victims of crimes and human rights violations have adequate access to justice and that such acts of violence are prevented, investigated, punished, and adequately redressed. The second objective is to urge States to create the conditions necessary for migrants to be able to turn to the Mexican justice system to seek redress for the acts of violence they have endured, and to be treated respectfully when they do so. The third objective of the recommendations is that the Mexican State take measures to redefine the traditional concepts of the role of migrants in society, eradicate discriminatory socio-cultural patterns that prevent migrants from exercising their human rights to the fullest, and guarantee their unrestricted access to the justice system when they have been victims of crime or violations of their human rights.

<sup>25</sup> Mexico has ratified all the instruments of the Inter-American human rights system. It ratified the American Convention on Human Rights on February 2, 1981; the Inter-American Convention to Prevent and Punish Torture on February 11, 1987; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights—Protocol of San Salvador—on March 8, 1996; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty on June 28, 2007; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women—Convention of Belém do Pará—on June 19, 1998; the Inter-American Convention on Forced Disappearance of Persons on February 28, 2002, and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons With Disabilities, on December 6, 2000.

<sup>26</sup> Mexico has also ratified all the global instruments in the international human rights system, thereby demonstrating its firm commitment to international human rights law. Mexico ratified the International Convention on the Elimination of All Forms of Racial Discrimination on February 20, 1975; the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Political and Civil Rights and the Convention on the Elimination of All Forms of Discrimination against Women on March 23, 1981; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on January 23, 1986; the Convention on the Rights of the Child on September 21, 1990; the Convention on the Rights of Persons with Disabilities on December 17, 2007, and the International Convention for the Protection of All Persons from Enforced Disappearance on March 18, 2008. In the case of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Mexico was one of the principal proponents pushing for its preparation and approval. Indeed, Mexico was the first State to sign the Convention on May 22, 1991, and then ratified it on March 8, 1999. Mexico also ratified the Convention Relating to the Status of Refugees and its 1967 Protocol, and the Convention on the Status of Stateless Persons on June 7, 2000. Mexico has not ratified the 1961 Convention on the Reduction of Statelessness.

32. The Inter-American Commission remains steadfast in its commitment to cooperate with the Mexican State in seeking solutions to the problems identified in this report. Some of the measures already taken to deal with this situation reveal an understanding and appreciation of just how serious today's problems are, and a commitment on the part of State and non-State sectors alike to effectively clear away the main hurdles that migrants encounter when filing complaints of violence and discrimination to seeking proper redress for the wrong done to them.

33. In preparing this report, the Commission followed the method it has traditionally used when drafting reports of this type, which is the same method that other international human rights bodies employ.<sup>27</sup> The IACHR has used and honed this method over the course of its history. It should be noted that because of the duration of the visit and the IACHR's limited resources, this report is narrower in focus and therefore does not pretend to be an exhaustive analysis of every situation affecting the human rights of persons caught up in the flow of human mobility in Mexico; instead, its purpose is to highlight those situations that, in the Commission's view, represent the principal challenges and advances for the human rights of migrants and other persons in the context of human mobility. Furthermore, this type of report seeks to highlight the best practices that States are developing to protect human rights and, at the same time, to persuade other States to implement those practices.

34. The information presented in this report is drawn from primary and secondary sources. In the case of the primary sources, during the visit to Mexico and at a number of public hearings held at headquarters, the Commission has received information from migrants and their families, and from government officials at several levels of authority, the legislative branch, the judicial branch, the Office of the Attorney General of the Republic, the states' attorneys general offices, the National Human Rights Commission, state human rights commissions, civil society organizations, human rights defenders, academics and other international organizations working on the issues of Mexico's migrant population, such as the Mexico Office of the United Nations High Commissioner for Human Rights, the Mexico Office of the United Nations High Commissioner for Refugees, and the International Organization for Migration. The secondary sources the Commission used to prepare this document included a number of reports, documents and authoritative academic publications, as well as newspaper articles in the public domain that examine various aspects of international migration in Mexico. This report is the product of the

<sup>27</sup> For more information, see, LEACH, Philip, PARASKEVA, Costas & UZELAC, Gordana, *International Human Rights & Fact-Finding: An analysis of the fact-finding missions conducted by the European Commission and Court of Human Rights*. Human Rights and Social Justice Research Institute at London Metropolitan University, 2009; RAMCHARAN, B.G. (Editor), *International Law and Fact-Finding in the Field of Human Rights*. Martinus Nijhoff Publishers: The Hague/Boston/London, 1982. In this same vein, see, IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003 – Chapter V. Special Studies. Fifth Progress Report of the Rapporteurship on Migrant Workers and Their Families – V. On Site Visit to Mexico*. OEA/Ser.L/V/II.118 Doc. 70 rev. 2, December 29, 2003, paragraphs 151-153.

IACHR's follow-up of the human rights situation of migrants and other persons in the context of human mobility in Mexico, the information compiled during the visit, and other related activities, such as requests for information, hearings and working meetings.

35. To ensure the utmost equanimity and impartiality in its reports, the IACHR requests information from as many individuals and organizations as possible, and its reports endeavor to reflect the diverse positions there may be on any given topic. As a general rule, the Commission documents all the sources of information it uses to prepare its reports. Nevertheless, to protect the victims and the family members who supplied information or gave testimony during the visit, the Commission has decided to avoid any mention of their names in order to safeguard their identity.

36. The Commission also asked the Mexican State to provide additional information concerning specific situations affecting migrants. Pursuant to Article 41 of the American Convention on Human Rights, on November 22, 2011 the Inter-American Commission requested information from the Mexican State; it asked for data about the number of crimes committed against migrants (Mexican and of other nationalities), broken down by year, for the period 2008 to 2011. Specifically, it asked for information about the number of: a) complaints received by the Office of the Attorney General of the Republic (hereinafter "the PGR") whose passive subjects were migrants; b) preliminary investigations done by the PGR, and c) verdicts delivered by the federal lower courts that are final (convictions and acquittals). It also asked whether the active subject of the crime was a state agent; if so, what agency he/she was employed by; the crime; the crime alleged or charged; the investigation conducted and the verdict delivered. The Commission also asked the Mexican State to provide this same information for each of the federated states' criminal justice system. The Commission also asked for information about the number of staff of the National Institute of Migration who were dismissed in 2011 following a review to rid the Institute of corruption and incompetence; what positions the dismissed employees held, and the federated unit to which they were assigned. The Mexican State's most recent response to the Commission's requests for information was received on July 9, 2012.

#### **D. Preparation, approval and follow-up of the report**

37. The Commission considered and approved the draft version of this report on July 12, 2013. In keeping with Article 60(a) of its Rules of Procedure, it sent the report to the government of the United Mexican States on July 24, 2013 and asked it to present its observations within 30 days of that date. By a communication of August 23, 2013, the State requested a one-month extension to present its observations and comments on the draft report. On September 6, 2013, the Commission informed the State that the requested extension had been granted and asked that it kindly present its observations and comments by no later than September 30, 2013. The Mexican State filed its observations

on October 4, 2013. In keeping with its Rules of Procedure, once the Commission had analyzed the State's observations, it proceeded to include those that it deemed pertinent.

38. The Inter-American Commission on Human Rights and its Rapporteurship on the Rights of Migrants will continue to conduct a rigorous follow-up of the situation of the human rights of migrants and other persons in the context of human mobility in Mexico, and will pay particular attention to the measures the State takes to implement the recommendations set out in this report. Therefore, the IACHR is urging the State, civil society organizations and human rights defenders to use the various mechanisms that the Inter-American system affords to continue to supply whatever information they deem to be relevant regarding compliance with the recommendations and the human rights situation of migrants and other persons in the context of human mobility. Both the Rapporteurship and the Inter-American Commission are ready and willing to cooperate with the Mexican State in remedying the serious problems identified, for the sake of full observance of the human rights of migrants and other persons in the context of human mobility in Mexico and in the region.

## **E. The United Mexican States' observations on the report**

39. In its observations on this report, the Mexican State acknowledged the work done by the Inter-American Commission on Human Rights and its Rapporteurship on the Rights of Migrants to examine the complex aspects of the phenomenon of migration in Mexico, and its commitment to guaranteeing the human rights of migrant persons. The State also expressed its appreciation for the preparation of this report, following the Rapporteurship's visit to Mexico between July and August 2011. The State was also grateful for the recommendations made by the Commission in its report with a view to preventing, protecting, punishing and redressing the acts of violence and discrimination committed against migrant persons, their family members and those who defend their human rights in Mexico. The State underscored the fact that the Commission's recommendations will be very helpful in strengthening the migration policies implemented by the Mexican State so as to provide a comprehensive response to the phenomenon of international migration. The Mexican State also said that it would like to have the Commission's support to analyze specific problems associated with the migration phenomenon, so as to craft public policies and other measures that will better serve and protect the human rights of migrant persons.<sup>28</sup>

<sup>28</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 3 and 4. [Document on file with the Commission].

40. As for migrants' human rights, the State maintained that Mexico's efforts have transcended the domestic realm; in various regional and international fora, it has encouraged an appreciation for the positive contributions that migrants make and has emphasized the important role that observance of their human rights plays in the countries' development and in the lives of their migrants and their families. In this connection, it pointed out that since 1999 Mexico has sponsored a number of resolutions in various multilateral fora, such as the United Nations' former Commission on Human Rights—now called the Human Rights Council-, and the U.N. and OAS General Assemblies. It also pushed for the creation of the office of a U.N. Special Rapporteur on the Human Rights of Migrants.<sup>29</sup>

41. Mexico stated that, mindful of the need to establish a comprehensive approach to the subject of migration, it has based its domestic and foreign policy on the following principles: a) non-criminalization of migration, regardless of immigration status; b) migration policies subordinate to and premised upon universally recognized standards of human rights; c) the universality of and respect for human rights, regardless of immigration status; and d) the principle of shared responsibility, whereby the countries of migrants' origin, transit and destination must work in partnership to fully address the challenges that the migration phenomenon poses.<sup>30</sup>

42. The State underscored the fact that because Mexico is a country of origin, transit, destination and return for migrant persons, it needed a specific and coherent body of laws that fully reflected the dynamics of human mobility in the country. Following this line of thought, since 2011 the government has set in motion the measures necessary for coordinated implementation of the legal instruments in force on the subject of migration, through enactment of the Immigration Act (2011) and its Regulations (2012); the Law on Refugees and Additional Protection (2011) and various administrative provisions, such as the decision issuing the National Institute of Migration's Guidelines on protection of migrants (2012); the decision issuing the National Institute of Migration's standards for operation of immigration stations and provisional centers (2012), and the Guidelines for immigration applications and procedures (2012).<sup>31</sup>

43. The State also maintained that this body of laws has served as the basis for other regulatory instruments that are related to the migration issue, such as the General Law to Prevent, Punish and Eradicate the Crimes of Human Trafficking and to Protect and Assist the Victims of These Crimes [*Ley General para Prevenir, Sancionar, y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos*] (2012) and the General Law on Victims [*Ley General de Víctimas*] (2013). As for the General Law on Victims, the State emphasized the fact that this law, published

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<sup>29</sup> Ibidem, p. 3.

<sup>30</sup> Ibidem, pp. 3 y 4.

<sup>31</sup> Ibidem, p. 4.

in the Federation's Official Gazette on January 9, 2013, contains a long list of rights that victims enjoy and features measures to restore full exercise of their rights. Specifically, the law recognizes the right of victims and their family members to receive aid, assistance and care. It also recognizes the victims' right to be treated humanely and to have their dignity respected, to know the truth, to seek and receive justice and reparations for any harm caused, the right to be informed of any criminal proceedings against their assailants and the right of satisfaction, including searches for disappeared persons and the right to protection from the State.<sup>32</sup>

44. Mexico highlights the fact that with its new body of laws and regulations, it redefined the role of the government institutions charged with preparing and carrying out migration policy. As a result of this process, the Unit of Migration Policy was created on August 15, 2012, as part of the Secretariat of the Interior. The Unit is in charge of proposing and promoting the conclusion of cooperation agreements on migration-related matters; proposing solutions to problems that migrants within Mexican territory encounter; coordinating the planning needed to craft strategies, projects and measures in immigration policy, and coordinating the evaluation and monitoring of compliance with immigration policy.<sup>33</sup>

45. Mexico added that it also created a Special Migration Program as part of the National Development Plan 2013-2018, to develop the bases for a State policy on international migration, create mechanisms for collaboration and coordination, and serve as a tool in planning, programming, follow-up and evaluation of comprehensive migration-related measures. In preparing the Special Migration Program, among the topics considered were the following: creation of a single database to search for and identify migrant persons who disappear within the national territory; recognition of the acquired rights of aliens whose immigration status has been regularized or is in the process of being regularized; the fight against discrimination; access to justice; professionalization of immigration agents, and compensation to victims of crime.<sup>34</sup>

46. As for the vulnerability of Mexico's domestic migrants, particularly migrant farm workers, the State observed that the Farm Workers Assistance Program also provides benefits to family members of migrant farm workers. The State maintained that under this program, assistance has been provided to family members of farm workers; as an example, it cited the inducements provided to encourage family members of migrant farm workers to attend and stay in school. The Program's preliminary figures indicate that during the first quarter of 2013, 3.2 million pesos were spent for these inducements,

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<sup>32</sup> Idem.

<sup>33</sup> Ibidem, p. 5.

<sup>34</sup> Idem.

which benefited 9,911 children and adolescents.<sup>35</sup> Through this program, the State was also able to provide other kinds of support such as the following:

- ◆ Economic assistance of \$800 pesos upon arrival, granted a maximum of three times per fiscal year, per household, and given to the female or male head of the farm worker household who reports his or her migrant worker status to the Program's local services office. During the first quarter of 2013, the State reported that 14.3 million pesos were given out in this form of economic assistance, the recipients being 17,915 male and female heads of family.
- ◆ Farm Labor Assistance Services, geared to providing support to the migrant farm labor population within the day labor assistance subregions, in the form of services, information and orientation.
- ◆ Special forms of assistance for migrant farm laborers and their family members who suffer some unexpected individual or collective problem. The assistance may be in the form of transportation to their place of origin, payment of medical and health services, and funeral expenses.
- ◆ Access to housing services by signing agreements with the authorities in charge of the operation, in which the cost and characteristics of the projects are specified. Under the current Administration, an investment of 20 million pesos was approved to provide temporary housing, food, storage for personal effects and assistance, information and orientation services in the subregions where services are available for the migrant farm labor population.<sup>36</sup>

47. In wrapping up its observations, the State commented that the Commission's experience would be very helpful in crafting and implementing a comprehensive migration policy, particularly its experience with specific issues such as implementation of non-custodial models for unaccompanied migrant children and adolescents, which can be put into practice in the current social milieu in certain regions of Mexico through which migrant children and adolescents travel.<sup>37</sup>

48. To continue to improve its migration policies, the Mexican State informed the Commission that it would appreciate support in the following areas: 1) development of a diagnostic study to measure the phenomenon of the so-called "circuit children" (children and adolescents recruited by organized crime to engage in activities related to trafficking in persons, weapons and psycho-active substances) in order then to be able to design an appropriate intervention model specifically tailored to children and adolescents of this type; 2) the IACHR's development of a detailed analysis of the relationship between organized crime, human trafficking and smuggling of migrants; and 3) for the Rapporteurship specifically, step up the efforts needed to promote policies and measures that will strengthen inter-State cooperation and shared responsibility. Above

<sup>35</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 11.

<sup>36</sup> *Ibidem*, pp. 11 y 12.

<sup>37</sup> *Ibidem*, p. 21.

all, Mexico reiterated its commitment to and interest in continued cooperation with the Inter-American System in the quest for solutions that ensure full observance of the human rights of migrants and other persons in the context of human mobility.<sup>38</sup>

49. The IACHR appreciates the response and all the information provided by the State. The specific observations on the Commission's report will, wherever pertinent, be included in the corresponding sections of this document.

## F. The Inter-American Commission on Human Rights and its Rapporteurship on the Rights of Migrants

50. The Inter-American Commission on Human Rights is a principal organ of the Organization of American States (hereinafter "the OAS") whose mission is to promote the observance and protection of human rights in the Americas.<sup>39</sup> In keeping with its mandate and functions, set out in greater detail in its Statute and Rules of Procedure, the Commission follows the evolution of human rights in every OAS member State and, from time to time, finds it useful to report the findings of its study of a particular country, while making the appropriate recommendations to help that State honor its obligation to guarantee the full exercise of the protected human rights and freedoms to all persons subject to its jurisdiction.<sup>40</sup> Acting within its sphere of competence, over the years the IACHR has followed the human rights situation in Mexico.

51. Since the IACHR's early years, the protection of the human rights of persons in the context of human mobility has been one of the focal points of the Commission's work, particularly situations involving migrants and their families, asylum seekers, refugees, stateless persons and the internally displaced.<sup>41</sup> Given the heightened vulnerability of migrants and their families, who are often compelled to leave their homes in search of better opportunities and to escape poverty, and because of the ever increasing expressions of racism, xenophobia, and other forms of discrimination and inhuman and degrading treatment leveled at migrants and their families in various parts of the world, the integration

<sup>38</sup> *Ibidem*, pp. 21 y 22.

<sup>39</sup> Charter of the Organization of American States, signed in Bogotá on April 30, 1948, and amended by the Protocol of Buenos Aires in 1967, the Protocol of Cartagena de Indias in 1985, the Protocol of Washington in 1992, and the Protocol of Managua in 1993, Articles 53 (e) and 106.

<sup>40</sup> Statute of the Inter-American Commission on Human Rights, approved via resolution AG/RES. 447 (IX-O/79), which the General Assembly adopted at its ninth regular session, held in La Paz, Bolivia, October 31, 1979, Article 18 (a), (b), (c), (d) and (g) and the Rules of Procedure of the Inter-American Commission on Human Rights, which the Commission approved at its 137th session, held October 28 to November 13, 2009, and amended on September 2, 2011, Article 60.

<sup>41</sup> Since 1963, the Inter-American Commission has monitored the situation of refugees. See in this regard, IACHR, Report on the Work Accomplished during its Seventh Session, October 7 to 25, 1963 – Chapter VI. Situation of Political Refugees in America. OEA/Ser.L/V/II.8 Doc. 35, February 5, 1964. The Commission continued to devote attention to the situation of refugees in the reports of its eighth, ninth, tenth, eleventh, twelfth, sixteenth, eighteenth, twenty-second sessions, among others.

problems that migrants encounter in their countries of destination and the implications that migration has in terms of the breakup of the family, the OAS General Assembly has consistently urged the IACHR to intensify its efforts with a view to improving the lot of migrant workers and their families in the hemisphere.<sup>42</sup> In response to the requests that the OAS General Assembly made in resolutions AG/RES. 1404 (XXVI-O/96) and AG/RES. 1480 (XXVII-O/97), during its 91st session the Inter-American Commission on Human Rights decided to undertake an evaluation of the situation of migrant workers and their families in the hemisphere. This was the background that led to the 1996 establishment of the Rapporteurship on the Rights of Migrant Workers and Their Families (now “the Rapporteurship on the Rights of Migrants” or “the Rapporteurship”). The creation of this Rapporteurship reflected the OAS member States’ interest in devoting special attention to a group that, being extremely vulnerable, is therefore more exposed to human rights violations.

52. In response to the multiple challenges that human mobility in the region poses and to institutionalize what has already become common practice for the Rapporteurship in recent years, on March 30, 2012, during its 144th session, the Inter-American Commission on Human Rights decided to expand the mandate of the Rapporteurship on the Rights of Migrants. Its new mandate focuses on respect and guarantee of the rights of migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, internally displaced persons and other vulnerable groups in the context of human mobility. Since 2008, the IACHR’s Rapporteur on the Rights of Migrants (“the Rapporteur”) has been Commissioner Felipe González Morales.<sup>43</sup>

<sup>42</sup> See, *inter alia*, the following resolutions of the OAS General Assembly: AG/RES. 1404 (XXVI-O/96), AG/RES. 1480 (XXVII-O/97), AG/RES. 1717 (XXX-O/00), AG/RES. 1775 (XXXI-O/01), AG/RES. 1898 (XXXII-O/02), AG/RES. 1928 (XXXIII-O/03), AG/RES. 2027 (XXXIV-O/04), AG/RES. 2130 (XXXV-O/05), AG/RES. 2141 XXXV-O/05, AG/RES. 2224 (XXXVI-O/06), AG/RES. 2289 (XXXVII-O/07), AG/RES. 2502 (XXXIX-O/09), AG/RES. 2593 (XL-O/10), AG/RES. 2669 (XLI-O/11), AG/RES. 2729 (XLII-O/12), and AG/RES. 2790 (XLIII-O/13). Available at: <http://www.oas.org/es/cidh/migrantes/> [Consulted on December 30, 2013].

<sup>43</sup> More information about the IACHR’s Rapporteurship on the Rights of Migrants is available at: <http://www.cidh.oas.org/Migrantes/defaultmigrants.htm>.





*Among the multiple challenges that migrants face in Mexico, the main concern for the Inter-American Commission is the serious violence and discrimination faced by migrants in an irregular situation and other persons in the context of in-transit human mobility, attributable to the context of violence that grips this country today. This is not a new or heretofore unknown situation for Mexico. In recent decades, migrants in Mexico have been one group within the population that is extremely vulnerable to several violations of their human rights.*

## CHAPTER II

# Violence and Discrimination Against Migrants and Other Persons in the Context of Human Mobility in Mexico

### A. General observations concerning the migration phenomenon in Mexico

53. Mexico is today a country of origin, transit and destination for migrants, and increasingly a country to which they return. The scale of these phenomena is such that within the American hemisphere, Mexico is doubtless the country that most clearly reflects the multidimensional nature of international migration. The Commission observes that the striking economic inequities and inequalities of opportunity between the main countries of origin and the main countries of destination for migrants in the region, poverty, the difficulties they encounter in aspiring to and attaining a decent standard of living, the violence caused by organized crime and common crime, the human rights violations, the discrimination that certain vulnerable population groups suffer, the need for family reunification, natural disasters, and Mexico's geographic position are all factors that pose major challenges for the Mexican state in terms of how to negotiate the influx of mixed migration flows from a human rights perspective.<sup>44</sup>

54. Given its geographic location, Mexico is in a strategic position for migration and commercial flows of all kinds, moving from south to north and vice versa. In terms of geographic location, Mexico is bordered on the north by the United States of America, and on the south by Guatemala and Belize. Mexico's Eastern coast borders the Gulf of Mexico and the Caribbean Sea; its western coastline is on the Pacific Ocean. The fact that Mexico is on the southern border of the United States of America, the world's principal immigration destination country,<sup>45</sup> explains why the migration corridor between these countries is the most heavily traveled in the world.<sup>46</sup> Mexico is the necessary gateway of mixed migration

<sup>44</sup> Mixed migration flows are composed of economic migrants, refugees, asylum seekers, persons in need of additional protection, victims of human trafficking, migrants being smuggled, children and adolescents either unaccompanied or separated from their families, women migrants, environmental migrants, and others.

<sup>45</sup> The United States is the top migrant destination country in the world, with 46 million migrants in 2013. Of these, Mexicans account for the largest group of migrants by country. For more information, see, *inter alia*, United Nations, Department of Economic and Social Affairs, Population Division. *International Migration 2013: Migrants by origin and destination*. 2013; also see, IACHR, *Report on Immigration in the United States: Detention and Due Process*. OEA/Ser.L/V/II. Doc.78/10, approved on December 30, 2010, paragraph 2.

<sup>46</sup> THE WORLD BANK, *Migration and Remittances Factbook 2011. 2nd Edition*. p. 5. See also, IOM, *World Migration Report 2010. The Future of Migration: Building Capacities for Change*, Geneva, 2010, p. 160.

flows, which include thousands of migrants in a regular or irregular situation, asylum seekers, refugees and victims of human trafficking which have the United States of America as their main destination and, to a lesser extent, Canada.

55. In its observations to this report, the Mexican State suggested that the expression “mixed migration flows” not be used, as in its view the expression was not compatible with its own domestic laws, which establish different regimes for migrant persons, persons seeking and/or receiving asylum, and refugees.<sup>47</sup> Here, the Commission believes that some clarification is in order: mixed migration flows originate for a variety of reasons and one of their distinctive features is that they are complex population movements composed of individuals with different personal profiles, such as migrants (economic and otherwise), asylum seekers, refugees, stateless persons, victims of human trafficking and other vulnerable groups. Accordingly, the expression “mixed migration flows” is dictated by the characteristics of such population movements, which are composed of persons with differing profiles. The expression is not reflective of the State’s response to the various groups of persons within those flows in the form of the special regulatory regimes it establishes for each group. The information and figures presented throughout the present report reveal that the migration flows in Mexico are mixed. Furthermore, the fact that the Mexican State has established different regulatory regimes to address these population groups for immigration purposes is further evidence that the migration flows in Mexico are indeed mixed.

## 1. Mexico as a country of origin for migrants

56. A combination of economic, historical and geographic factors have made Mexico the second largest country of emigration in the world today, with an estimated 13 million of international migrants.<sup>48</sup> This means that more than 10% of the country’s total population lives outside Mexican territory. According to the UN Population Division, of the nearly 46 million immigrants presently living in the United States, estimates are that nearly 13 million were originally from Mexico, which means that one of every three immigrants in the United States is Mexican-born.<sup>49</sup> The PEW Hispanic Center estimates that in March 2010, there were 11.2 million migrants in an irregular situation in the United States; 6.5 million of these were Mexicans. In other words, Mexicans were the largest group of migrants in

<sup>47</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 9.

<sup>48</sup> UNITED NATIONS – DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS – POPULATION DIVISION, *International Migration 2013: Migrants by origin and destination*. 2013. Available at: <http://esa.un.org/unmigration/wallchart2013.htm>. También véase, CONNOR, Phillip, COHN, D’Vera, GONZALEZ-BARRERA, Ana and OATES, Russ, *Changing Patterns of Global Migration and Remittances: More Migrants in U.S. and Other Wealthy Countries; More Money to Middle-Income Countries*. Pew Hispanic Center: Washington, D.C., 2013, p. 8. Available at: [http://www.pewsocialtrends.org/files/2013/12/global-migration-final\\_12-2013.pdf](http://www.pewsocialtrends.org/files/2013/12/global-migration-final_12-2013.pdf) [Consulted on December 30, 2013].

<sup>49</sup> CONNOR, Phillip, COHN, D’Vera, GONZALEZ-BARRERA, Ana and OATES, Russ, *Changing Patterns of Global Migration and Remittances: More Migrants in U.S. and Other Wealthy Countries; More Money to Middle-Income Countries*. Pew Hispanic Center: Washington, D.C., 2013, p. 8. Available at: [http://www.pewsocialtrends.org/files/2013/12/global-migration-final\\_12-2013.pdf](http://www.pewsocialtrends.org/files/2013/12/global-migration-final_12-2013.pdf) [Consulted on December 30, 2013].

an irregular situation in the United States, at 58% of the total.<sup>50</sup> The percentage of Mexican migrants in an irregular situation has remained virtually unchanged for over a decade.<sup>51</sup>

57. At the same time, Mexican-born migrants in the United States produce great benefits for Mexico in the form of remittances. In 2012, Mexico continued to be the leading recipient of remittances in the American hemisphere and, together with the Philippines, the third leading recipient of remittances in the world, after India and China. That year, Mexico received an estimated 23 billion dollars in remittances.<sup>52</sup> Relatively speaking, remittances are the second major source of Mexico's foreign exchange earnings, second only to oil revenues, and accounted for just under 3.0% of Mexico's GDP in 2010.<sup>53</sup>

## 2. Mexico as a country of destination for mixed migration flows

58. Throughout the XX century, Mexico received waves of immigrants coming from various parts of the world. Mexico welcomed waves of Russian immigrants in the wake of the Bolshevik Revolution and the creation of the Union of Soviet Socialist Republics. Another wave of immigrants was swept in from Europe; these were people fleeing the authoritarian regimes that established themselves in Europe during the 1930s and 1940s, especially Republican Spanish fleeing the Franco dictatorship. The second half of the XX century in Mexico brought thousands of refugees from various countries in Latin America, who were escaping the dictatorships that had taken over their countries. Mexico thus became the principal destination for thousands of Central American refugees from the 1970s to the 1990, when a multitude of Guatemalans, Salvadorans and Hondurans fled the armed conflicts in their countries.<sup>54</sup>

59. Due to its geographic position, migrants and trans-migrants from Central America, the Caribbean, South America and places beyond this hemisphere who are bound for the United States or Canada, tend to regard Mexico more as a place of transit than as a country of destination. While this may be true for many migrants and trans-migrants, for

<sup>50</sup> PASSEL, Jeffrey and COHN, D'Vera, *Unauthorized Immigrant Population: National and State Trends, 2010*. Pew Hispanic Center: Washington, D.C., 2011, pp. 9-10. Available at: <http://www.pewhispanic.org/files/reports/133.pdf> [Consulted on December 30, 2013].

<sup>51</sup> PASSEL, Jeffrey and COHN, D'Vera, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*. Pew Hispanic Center: Washington, D.C., 2008, pp. 3-4. Available at: <http://www.pewhispanic.org/files/reports/94.pdf> [Consulted on December 6, 2011]. See also, BATALOVA, Jeanne, *Mexican Immigrants in the United States*. Migration Policy Institute: Washington D.C., 2008. Available at: <http://www.migrationinformation.org/USfocus/display.cfm?id=679#16> [Consulted on December 30, 2013].

<sup>52</sup> THE WORLD BANK, Migration and Development Brief 20. Washington, D.C., 2013, p. 2. Available at: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationandDevelopmentBrief20.pdf>. [Consulted on December 30, 2013].

<sup>53</sup> In the case of Mexico, the remittances were well in excess of the 185,490,000 dollars that Mexico received in net official development assistance in 2009. Cf. World Bank, Net oficial development assistance received.

<sup>54</sup> Ernesto Rodríguez Chávez, "Mexico", in: OAS, *International Migration in the Americas: First Report of the Continuous Reporting System on International Migration in the Americas (SICREMI)*. OAS: Washington D.C., 2011, p. 159. Available at: [http://www.migracionoea.org/sicremi/documentos/SICREMI\\_2011%20-%20Country%20Reports%20english.pdf](http://www.migracionoea.org/sicremi/documentos/SICREMI_2011%20-%20Country%20Reports%20english.pdf) [Consulted on December 30, 2013].

thousands of other migrants Mexico is their country of destination, especially in the case of Central Americans. Mexico is also the country of destination for many economic migrants who head mainly for the border states to work as day laborers on farms or as domestics in the main cities on the southern border.<sup>55</sup> In Chiapas, migrant farm workers, most of whom are Guatemalan, are common in the Soconusco region, where they work on the farms.<sup>56</sup>

60. Today, Mexico is the principal destination for hundreds of thousands of migrants who see it as a way to improve their lot in life. According to the National Institute of Statistics and Geography, in 2010 Mexico had 961,121 international immigrants.<sup>57</sup> According to the INM, between November 2008, when the 2008-2011 immigration status regularization program began,<sup>58</sup> and May 2011, 8,943 migrants in an irregular situation in Mexico regularized their status.<sup>59</sup> The vast majority of the migrants whose status was regularized were Central Americans.

61. As for refugees, the UNHCR's figures indicated that as of late 2012 there were 1,520 refugees in Mexico, 351 asylum seekers (pending cases), and 7 stateless persons.<sup>60</sup> The violence and insecurity that has surfaced in recent years in Central American countries, particularly the countries in the so-called Northern Triangle—El Salvador, Guatemala and Honduras—has triggered a surge in the number of Central American refugees. In 2012, the Mexican authorities gave permanent residency to 271 persons who had previously been granted refugee status in Mexico; of these, 200 were from Central American countries. Specifically, 78 were from El Salvador, 52 from Guatemala, 68 from Honduras and 2 from Nicaragua.<sup>61</sup> For its part, the Mexican Refugee Assistance Commission has indicated that

<sup>55</sup> i(dh) eas, *En tierra de nadie. El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco [In no man's land. The labyrinth of impunity: violations of the human rights of migrants in the Soconusco region]*. i(dh) eas: Mexico City, 2011, p. 35.

<sup>56</sup> IACHR, *Hearing on the human rights situation of migrant persons on the southern border of Mexico*. 141st Session, Washington, D.C., March 28, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=122&page=2> [Consulted on December 30, 2013].

<sup>57</sup> INEGI, *Censo de Población y Vivienda de 2010 [2010 Population and Housing Census]*. Available at: <http://www.inegi.org.mx/sistemas/sisept/Default.aspx?t=mdemo63&s=est&c=23634> [Consulted on December 30, 2013].

<sup>58</sup> The Immigration Status Regularization Program allows the individual to obtain (FM2) immigration status if he/she is a professional, in a position of trust, a scientist or technician, a family member, artist, sportsperson, or the like. This program is for foreign-born persons of any nationality, who were undocumented in Mexican territory as of January 1, 2007, and who express their interest in regularizing their immigration status. The program went into effect upon its publication in the Federation's Official Gazette, November 12, 2008 edition, and new applications were accepted until May 11, 2011.

<sup>59</sup> INM, *Centro de Estudios Migratorios [Migration Studies Center], Estadísticas migratorias básicas [Basic migration statistics]*. V. 4. Mexico, D.F., July 2011, p. 4 [Document on file with the Commission].

<sup>60</sup> UNHCR, *UNHCR Global Trends 2012: Displacement. The New 21st Century Challenge*. June 19, 2013, p. 39. Available at: <http://www.unhcr.org/51bacb0f9.html> [Consulted on December 30, 2013].

<sup>61</sup> INM, *Boletín Mensual de Estadísticas migratorias 2012: II. Documentación y legal estancia en México, Cuadro 2.6: Extranjeros documentados como residente permanente por reconocimiento de refugio, según continente y país de nacionalidad [Monthly Bulletin on Immigration Statistics 2012: II. Documentation and legal presence in Mexico, Table 2.6: Foreign nationals documented as permanent residents based on recognition of refugee status, by continent and country of nationality, 2012]*. Available [in Spanish] at: [http://www.politicamigratoria.gob.mx/Documentacion\\_y\\_condicion\\_estancia\\_2012](http://www.politicamigratoria.gob.mx/Documentacion_y_condicion_estancia_2012) [Consulted on December 30, 2013].

between 2002 and April 2012, Mexico granted refugee status to 1,221 foreign-born nationals of other states.<sup>62</sup>

### 3. Mexico as a transit country for mixed migration flows

62. According to estimates by the *Instituto Nacional de Migración* [National Institute of Migration] (hereinafter “the INM”), around 140 thousand migrants in an irregular situation enter Mexico each year;<sup>63</sup> most are from Central America. This figure does not include the local activity between the banks of the Suchiate River in Chiapas. The Suchiate River is one of the principal crossings for migrants in an irregular situation entering Mexico; many Central American migrants use this crossing to enter Mexico from Guatemala. During its visit, the IACHR delegation visited the vicinity of the Suchiate River and was able to watch the makeshift vessels ferrying people from one side of the river to the other, especially from Tecún Uman, Guatemala, to Ciudad Hidalgo, Mexico. The Commission has learned that this is one of the preferred crossing points used by many migrants to enter Mexico in an irregular manner. Also, during the visit to Mexico made by the IACHR’s delegation, State officials acknowledged that the figure could be much higher. For their part, civil society organizations estimate that the number of migrants in an irregular situation entering Mexico could be around 400,000 a year.<sup>64</sup>

63. The bulk of migrants in an irregular situation entering Mexico do so by land, across Mexico’s southern border with Guatemala; they tend to gravitate to certain crossing points in the states of Chiapas and Tabasco. Mexico’s southern border is 1,139 kilometers in length; a 952-kilometer stretch of its southern border is with Guatemala, and 176 kilometers with Belize. Of the 172 holding facilities that Mexico has, 48 are along its southern border. The majority of the migrants in an irregular situation who come across Mexico’s southern border come from Central America, particularly Guatemala, Honduras, El Salvador and Nicaragua. This is consistent with the figures on migrants being held in immigration holding facilities in Mexico; according to the INM, between 2005 and 2010 migrants from El Salvador, Guatemala, Honduras and Nicaragua accounted for between 92% and 95% of the migrants detained because of their irregular migration status in Mexico.<sup>65</sup>

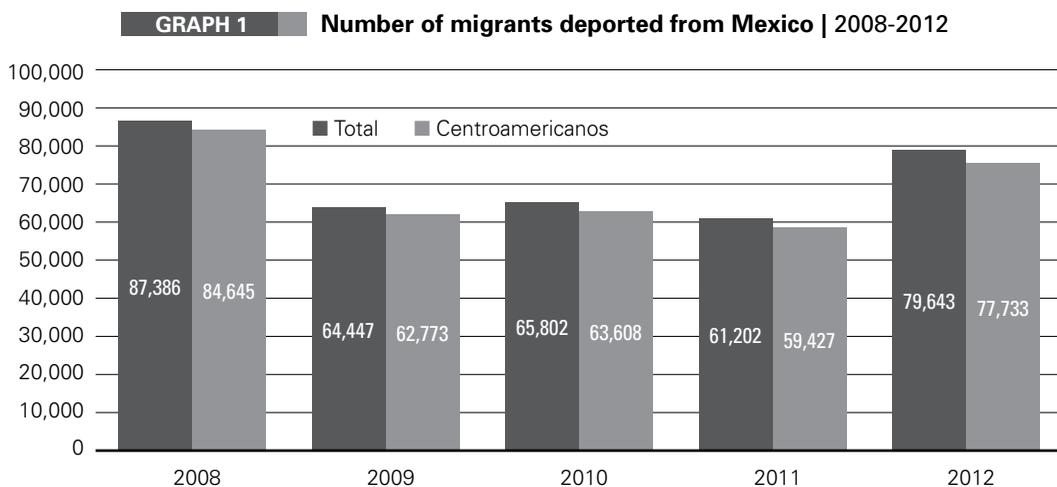
<sup>62</sup> See, ADN Político, Óscar Balderas, <http://www.adnpolitico.com/ciudadanos/2012/08/20/mexico-da-proteccion-a-mil-211-refugiados> [Consulted on December 30, 2013].

<sup>63</sup> INM, *Apuntes sobre Migración: Migración Centroamericana de Tránsito Irregular por México. Estimaciones y Características Generales* [Notes on Migration: Central American migrants in an irregular situation in transit through Mexico. Estimates and General Characteristics]. Mexico, July 2011, p. 2.

<sup>64</sup> Here, the CNDH has observed that according to civil society organizations, the figure for migrants in an irregular situation in Mexico is over 400,000. See, CNDH, *Informe Especial sobre Secuestro de Migrantes en México* [Special Report on Migrant Abduction in Mexico]. Mexico, D.F., 2011, p. 17.

<sup>65</sup> INM, *Apuntes sobre Migración: Migración centroamericana de tránsito irregular por México. Estimaciones y características generales* [Notes on Migration: Central American migrants in an irregular situation in transit through Mexico. Estimates and General Characteristics]. No. 1, July 2011, p. 1.

64. In 2012, Mexico deported 79 643 migrants in an irregular situation; 77 733 were from Central America.<sup>66</sup> This was nearly a 30% increase over the 61 202 migrants deported in 2011 (see Graph 1). A significant number of migrants from outside the hemisphere are also caught up in the transnational human smuggling networks. Although the majority of foreign-born persons deported were nationals of countries of this hemisphere, there were also some from countries in Africa, Asia and Europe.



Source: Secretariat of the Interior [*Secretaría de Gobernación*], National Institute of Migration [*Instituto Nacional de Migración*]

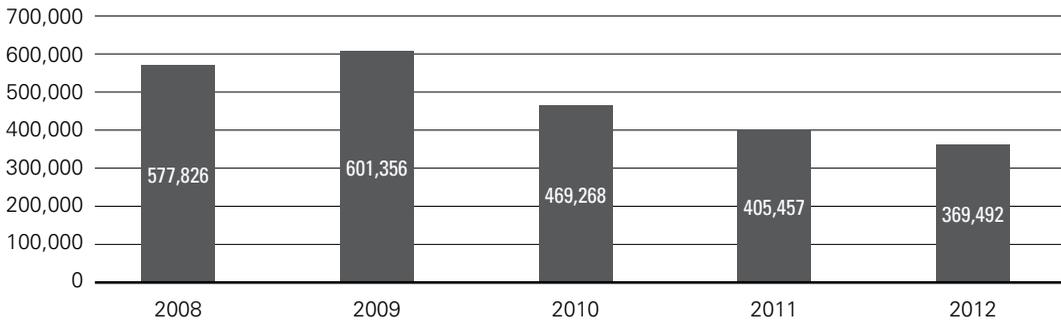
#### 4. Mexico as a country of return for migrants

65. Because of the global economic crisis in 2008 and the increased numbers of Mexican migrants being detained and deported by the United States authorities, one of the Mexican State's main challenges today is to develop policies to protect and re-assimilate the returning Mexican migrants. According to INM figures, between 2008 and 2012 there were 2,423,399 repatriations events (deportations) of Mexicans from the United States.<sup>67</sup> In 2012 alone, there were 369,492 repatriations of Mexicans from the United States between January and December of that year (see Graph 2); 17,129 of these were children and adolescents (see Graph 3).<sup>68</sup>

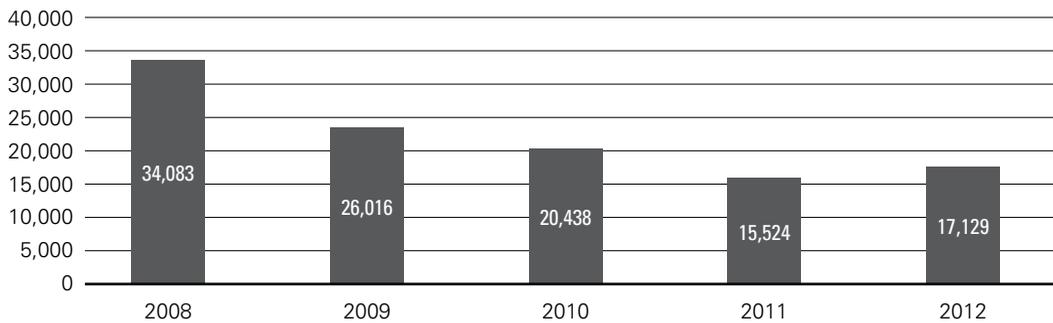
<sup>66</sup> INM, *Boletín Mensual de Estadísticas Migratorias 2012: Cuadro 3.2.1. Eventos de extranjeros devueltos por la autoridad migratoria mexicana, según continente y país de nacionalidad* [Monthly Bulletin of Migration Statistics 2012. Table 3.2.1. Returns of foreign-born nationals of other states by Mexican immigration authorities, by continent and country of nationality] Mexico, 2013. Available at: [http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines\\_Estadisticos/2012/Boletin2012.pdf](http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2012/Boletin2012.pdf) [Consulted on December 30, 2013].

<sup>67</sup> The number of events means that the same person may have been repatriated or deported more than once.

<sup>68</sup> SEGOB, *Boletín Mensual de Estadísticas Migratorias 2012: Repatriación de Mexicanos*. [Monthly Bulletin of Migration Statistics 2012: Repatriation of Mexicans] Mexico, 2013. Available at: [http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines\\_Estadisticos/2012/Boletin2012.pdf](http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2012/Boletin2012.pdf) [Consulted on December 30, 2013].

**GRAPH 2** Number of Mexican migrants deported from the United States | 2008-2012

Source: Secretariat of the [Secretaría de Gobernación], National Institute of Migration [Instituto Nacional de Migración]

**GRAPH 3** Number of Mexican children and adolescents deported from the United States | 2008-2012

Source: Secretariat of the Interior [Secretaría de Gobernación], National Institute of Migration [Instituto Nacional de Migración]

66. According to the figures of the United States Department of Homeland Security (hereinafter the “DHS”), a total of 499,777 deportations involving Mexicans occurred in fiscal year 2011;<sup>69</sup> of these, a total of 293,966 were removals of Mexican migrants based on a deportation order; there were also 205,811 incidents of Mexican migrants returned to Mexico after being detained by the United States Border Patrol.<sup>70</sup> From 2009 to 2011, United States immigration authorities conducted a total of 1,878,293 deportations of

<sup>69</sup> In the United States, fiscal year 2011 was from October 1, 2010 to September 30, 2011.

<sup>70</sup> The terminology used by the DHS distinguishes two ways in which an inadmissible or deportable alien is expelled from the United States: return and removal. Returns are the confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal. According to the DHS, most returns are of Mexican nationals who have been apprehended by the U.S. Border Patrol and are returned to Mexico. Removals are the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal. An alien who is removed has administrative or criminal consequences placed on subsequent reentry owing to the fact of the removal. See, UNITED STATES, DEPARTMENT OF HOMELAND SECURITY, *Yearbook of Immigration Statistics: 2011*. Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2012, p. 102. Available at: [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois\\_yb\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf) [Consulted on December 30, 2013].

Mexican migrants, either as removals or returns.<sup>71</sup> These figures reveal the magnitude of Mexican migration to the United States; however, they also illustrate how the tougher United States immigration control policies have created a challenge for Mexico in terms of dealing with a returning migrant population in recent years.

67. Starting in 2008, Mexican migration to the United States began to steadily taper off, to the point that the net migration flow has fallen to zero; in other words, the migrants in an irregular situation entering in any given year is offset by the number deported the same year.<sup>72</sup> Mexican migration to the United States reached its historic high in 2007, with approximately 12 million Mexican-born migrants in the United States; of these, close to 7 million were in an irregular migratory situation. By 2011, the number of Mexican migrants in an irregular situation had dropped to 6.1 million. This decline in net migration from Mexico was the first significant drop in irregular Mexican migration into the United States in the last two decades. According to the Pew Hispanic Center, the standstill in Mexican migration into the United States appears to be the result of several factors, the following among them: the weakening of the job market in the United States, particularly in the housing construction sector; reinforced border surveillance; the increase in the number of deportations; the growing dangers associated with illegal border crossings; the long-term decline in birth rates in Mexico and more favorable economic conditions in Mexico.<sup>73</sup>

68. The Commission must go on record to express its concern over the impact that the increased deportations of Mexicans from the United States has had on the separation of families. By 2010 approximately 4.5 million children born in the United States had at least one parent living in an irregular migratory situation in the United States.<sup>74</sup> The Commission observes that with the stricter enforcement of immigration laws in the first half of 2011, over 46,000 fathers and mothers of United States-born children and

<sup>71</sup> UNITED STATES, DEPARTMENT OF HOMELAND SECURITY, *Yearbook of Immigration Statistics: 2011*. Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2012, pp 104, 110 and 113.

<sup>72</sup> Pew Research Center, Pew Hispanic Center, Passel, Jeffrey, Cohn, D'Vera and Gonzalez-Barrera, Ana, *Net Migration from Mexico Falls to Zero – and Perhaps Less*. Washington D.C., 2012, pp. 6 et seq. Available only in English at: [http://www.pewhispanic.org/files/2012/04/Mexican-migrants-report\\_final.pdf](http://www.pewhispanic.org/files/2012/04/Mexican-migrants-report_final.pdf) [Consulted on April 23, 2012]. See also, *La Jornada*, Jorge Durand, “Nueva etapa migratoria” [A new stage in migration]. Mexico, August 12, 2012. Available at: <http://www.jornada.unam.mx/2012/08/12/opinion/022a2pol> [Consulted on August 13, 2012]; *The New York Times*, Julia Preston, “Mexican Immigration to U.S. Slowed Significantly, Report Says”. April 23, 2012. Available at: [http://www.nytimes.com/2012/04/24/us/mexican-immigration-to-united-states-slows.html?\\_r=1&ref=pewresearchcenter](http://www.nytimes.com/2012/04/24/us/mexican-immigration-to-united-states-slows.html?_r=1&ref=pewresearchcenter) [Consulted on December 30, 2013].

<sup>73</sup> Pew Research Center, Pew Hispanic Center, Passel, Jeffrey, Cohn, D'Vera and Gonzalez-Barrera, Ana, *Net Migration from Mexico Falls to Zero – and Perhaps Less*. Washington D.C., 2012, pp. 6 et seq. Available at: [http://www.pewhispanic.org/files/2012/04/Mexican-migrants-report\\_final.pdf](http://www.pewhispanic.org/files/2012/04/Mexican-migrants-report_final.pdf) [Consulted on December 30, 2013].

<sup>74</sup> See, Pew Research Center, Pew Hispanic Center, Taylor, Paul, Lopez, Mark Hugo, Passel, Jeffrey and Motel, Seth, *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood*. Washington D.C., 2011, p. 6. Available at: <http://www.pewhispanic.org/files/2011/12/Unauthorized-Characteristics.pdf> [Consulted on December 30, 2013]. See also, Women's Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*. New York, 2010, p. 1; Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*. 2011.

adolescents were deported.<sup>75</sup> Although an examination of this situation is not within the scope of the present report, the IACHR feels compelled to draw attention to the serious effects that the increase in deportations has had on protection of the right to a family life, the principle of family unity, and the principle of the best interests of the child and adolescent left behind. Through its various mechanisms, the Inter-American Commission will continue to monitor this situation closely.

## 5. Internal migration within Mexico

69. Another factor complicating the migration picture in Mexico is internal human mobility, whether in the form of internal migration or internal displacement. In the case of internal migration, according to the National Institute of Statistics and Geography, in 2010 Mexico had 3,290,310 internal migrants. The Commission delegation was told that a significant portion of the internal migration comes from rural areas and features a large indigenous component. According to the National Survey of Farm Day Laborers (hereinafter “the ENJO”) done by the Secretariat of Social Development (hereinafter “SEDESOL”), in 2009 Mexico had 2,040,414 persons engaging in farming activities, either on a temporary or permanent basis. Some 58.5% of the migrant farm day laborers come from very poor or poor communities. This dynamic has had the effect of impoverishing the communities of origin, particularly those in the states of origin of this migrant population, such as Guerrero, Oaxaca, Chiapas, Morelos, Hidalgo, Puebla, Michoacán, Durango, Guanajuato, Zacatecas, Nayarit, Veracruz, San Luís Potosí and the indigenous area of Chihuahua.<sup>76</sup>

70. As a way to survive the poverty in which they live, entire communities have moved elsewhere in Mexico to work as day laborers on farms.<sup>77</sup> The pay and other working conditions of the migrant indigenous day laborers tend to be far less than what the law requires.<sup>78</sup> At the same time, child labor on farms is on the rise, which means that more and more children and adolescents are dropping out of school.<sup>79</sup> In the Commission’s view,

<sup>75</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*. 2011, p. 5.

<sup>76</sup> Civil Society Organizations, *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias en México: Elaborado en ocasión de la visita a México del señor comisionado Felipe González, Relator sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the General Situation as regards the rights of migrants and their families: prepared for the visit made to Mexico by Commissioner Felipe González, Rapporteur on the Rights of Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights]. Mexico, July 2011, pp. 7-8.

<sup>77</sup> See, *Centro de Derechos Humanos de la Montaña Tlachinollan A.C.* [Tlachinollan Mountain Human Rights Center], *Migrantes somos y en el camino andamos [We are migrants and we walk the road]*. Mexico, 2011, p. 13. Available at: [http://www.tlachinollan.org/Descargas/Migrantes\\_somos\\_web.pdf](http://www.tlachinollan.org/Descargas/Migrantes_somos_web.pdf) [Consulted on December 30, 2013].

<sup>78</sup> IACHR. *Hearing on the Human Rights of Migrant Indigenous Agricultural Workers in Guerrero, Mexico*. 137th Session, November 5, 2009. Audio and video available online at <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=117&page=2> [Consulted on December 30, 2013].

<sup>79</sup> *Centro de Derechos Humanos de la Montaña Tlachinollan A.C.* [Tlachinollan Mountain Human Rights Center], *Invisible migrant day laborers. Document prepared for the visit by the Rapporteur on the Rights of Migrant Workers and Members of Their Families to Mexico*. Mexico, 2011. [Document on file with the Commission].

internal migrants in Mexico are vulnerable on many different fronts, particularly the day laborers; the Mexican State will have to adopt different types of measures to deal with their predicament.

## 6. Internal displacement in Mexico

71. The Commission was also told that in recent years the violence associated with organized crime has forcibly displaced thousands of persons in Mexico. While internal displacement will be addressed later in this chapter, the Commission would like to draw a distinction between forcible displacement and internal migration. The Guiding Principles on Internal Displacement define internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>80</sup> The Commission would emphasize the fact that the use of the expression “in particular” in the definition of internally displaced persons under the Guiding Principles on Internal Displacement means that it is not an exhaustive list; instead there may be other causes of internal displacement, such as large-scale development projects that are not justified by compelling or overriding public interests.<sup>81</sup>

### B. Principal concerns having to do with the discrimination and violence that migrants and other persons encounter in the context of human mobility

#### 1. Causes for human migration: the push and pull factors

72. To understand why hundreds of thousands of persons migrate from, through and to Mexico, it is essential to take into consideration the push and pull factors of migration occurring in the countries of the region, mainly in those found in the migration corridor between Central and North America. The socio-economic, political, environmental and security situations in the countries of the region are critical factors in explaining why people decide to migrate. The socio-economic, political, environmental and citizen security in the countries of the region are critical to understand why people migrate.

<sup>80</sup> United Nations, Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles of Internal Displacement*. February 11, 1998, E/CN.4/1998/53/Add.2, Introduction, paragraph 2. Available at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e>. [Consulted on December 30, 2013].

<sup>81</sup> Large-scale development projects are mentioned in Guiding Principle 6 (cases of arbitrary displacement). See, United Nations, Commission on Human Rights. *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles of Internal Displacement*. February 11, 1998, E/CN.4/1998/53/Add.2, Principle 6. Available at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e>. [Consulted on December 30, 2013].

73. Because of its geographic location, Mexico is a kind of crucible, where the push factors that compel people in the countries south of Mexico to uproot themselves to escape the high rates of poverty, inequality, violence and the effects of natural disasters in those countries, combine with the pull factors that attract migrants to the countries north of Mexico—the United States and Canada—in search of job opportunities, family reunification, and the chance for a better standard of living. The many factors that cause migration in the region explain why the flow of migrants traveling through Mexico is a mixed migration flow: a combination of economic migrants, asylum seekers, refugees, environmental migrants, victims of human trafficking, children or adolescents who are either unaccompanied or separated from the families, and others.

74. In telling the Rapporteur their stories, the most common reasons the migrants gave for leaving their countries was the lack of opportunity, the poverty in which they lived, and their hope for a better life for themselves and their families. Where inequality is concerned, Central America—like South America and Sub-Saharan Africa—is one of the regions of the world with the highest level of income inequality. Four Central American countries are among the countries with the highest levels of income inequality in the world. In fact, there is a strong correlation between income inequality and violence in the region, as the United Nations Office on Drugs and Crime (hereinafter “the UNODC”) reported.<sup>82</sup> In addition, poverty levels in Central America are as high as 40.4%; in Honduras, 60% of the population lives below the national poverty line; the percentage of the population living in poverty is 51% in Guatemala, 46.2% in Nicaragua and 37.8% in El Salvador.<sup>83</sup> The correlation among inequality, poverty, violence and migration explains why such a large percentage of the migrants traveling through Mexico are originally from Central America. The high levels of income inequality and poverty in some of these countries are decisive in explaining why many persons feel compelled to migrate, even knowing the dangers that migration poses to their lives and safety.

*Alicia, a Guatemalan, has an enlarged photograph of her husband Miguel hanging from her chest, as she searches for information about his whereabouts. Alicia recounted that she and her family lived a humble existence on their farm in Guatemala. Just over two years earlier, Alicia began to have health problems and required emergency hospitalization in her town, where she underwent bladder surgery. After spending 13 days trying to raise money for Alicia’s hospital treatment and expenses, Miguel told his wife that he was migrating to the United States to find work and would send money for her treatment. Alicia last heard from Miguel on June 11, 2009, when he was in Reynosa, Tamaulipas, waiting to cross the border into the United States. The last time she spoke with him, he told her that he had to*

<sup>82</sup> UNODC, *Crime and Development in Central America: Caught in the Crossfire*. 2007.

<sup>83</sup> For more information, see UNDP, *Human Development Report 2011. Sustainability and equity: A Better Future for All*. United Nations Development Programme. New York, 2011, pp. 143-145. Available at: <http://hdr.undp.org/en/reports/global/hdr2011/download/> [Consulted on December 30, 2013].

*hang up and asked her to call him later at the hotel. When she called again, he didn't answer. First, a man told her that her husband was there, but to call back later. Then another person assured her that Miguel had already left. On her last attempt, a woman told her that her husband was still at the hotel, but she couldn't hand him the phone. He would call her when he was able. Alicia thought that something bad had happened and that her husband might have been kidnapped. The coyote with whom Miguel was going to cross into the United States told Alicia that he was already in Texas. The conflicting stories about her husband worried her. Alicia said that she knew that Miguel was alive. She said that some months after Miguel's last phone call, she received a couple of odd phone calls. On the first call, no one spoke. But she said she knew it was Miguel. The next call came some months later. Alicia said she could hear people's voices, and someone screaming at other men telling them that he was giving the orders; after a few minutes of listening to the voices and the yelling, the call was cut off. As of the date on which the Rapporteur received Alicia's testimony, she had spent more than two years searching for him. Alicia had requested information from her country's embassy in Mexico and in the United States, but received no reply. She therefore applied for a loan to join the Caravana Paso a Paso Hacia la Paz, to follow Miguel's trail. Alicia and their three children are waiting for Miguel to return to Guatemala.<sup>84</sup>*

75. The widespread violence in some countries of the region is yet another hardship factor that has forced many people to migrate from their countries of origin or to become one of the internally displaced, all out of well-founded fear of persecution.<sup>85</sup> According to the UNODC, factors like the onset of armed conflict and authoritarian governments, the extreme income inequality, the ready availability of weapons, the chaotic urbanization, the high percentage of the population that is young, the high levels of impunity, the existence of *maras* (gangs or local juvenile *pandillas*), as well as organized crime and drug trafficking make the Central American countries more vulnerable to violence.<sup>86</sup> In the Central American countries, the increase in murders in recent years is associated with the lawless activity of organized crime groups, which tend to be involved in drug trafficking, but are also involved in the illicit smuggling of migrants and human trafficking.<sup>87</sup> It is no

<sup>84</sup> A Guatemalan woman's testimony to the IACHR's Rapporteur on the Rights of Migrants, given in Tierra Blanca, Veracruz, July 30, 2011.

<sup>85</sup> *Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM), Desplazamiento forzado y necesidades de protección, generados por nuevas formas de violencia y criminalidad en Centroamérica* [Forced Displacement and the kinds of protection necessitated by the new forms of violence and crime in Central America]. San José, 2012, p. 11 et seq. Available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8932.pdf?view=1> [Consulted on December 30, 2013].

<sup>86</sup> For more information, see, UNODC, *Crime and Development in Central America: Caught in the Crossfire*. 2007, pp. 27 et seq.; the World Bank, 2011 *Crime and Violence in Central America: A Development Challenge*, p. 11 et seq. Available at: [http://siteresources.worldbank.org/INTLAC/Resources/FINAL\\_VOLUME\\_I\\_ENGLISH\\_CrimeAndViolence.pdf](http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf) [Consulted on December 30, 2013].

<sup>87</sup> UNODC, *2011 Global Study on Homicide: Trends, Contexts, Data*. Vienna, 2011, p. 11.

coincidence that the murder rates are highest in areas near the national borders, close to areas where drugs are being grown or to trafficking hubs.<sup>88</sup>

76. The Commission must point out that it has also received information on how climate change—and several natural disasters in particular—has forced thousands of people to migrate to and through Mexico.<sup>89</sup> In recent years, various natural disasters like hurricanes, torrential rains, floods and droughts have struck the countries of Central America and the Caribbean, and are now figuring more prominently among the hardship factors that cause many in the region to migrate.<sup>90</sup> The following are among the many factors that have driven international forced migration and internal displacement: a) the increasing intensity of the dry seasons; b) soil degradation; c) the increase in phenomena like hurricanes, destructive storms, tropical cyclones and heavy rains and flooding; d) deforestation; e) scarcity of water; and f) the rising sea level.<sup>91</sup> These types of natural phenomena have a clear impact on various human rights, such as the right to life, the right to health, the right to food, the right to property, the right to housing, the right to work, and others. Vulnerable groups in society, like women, children, the elderly and the poor, are those hardest hit by phenomena of this type and, at the same time, are those least able to adapt to the challenges that these phenomena create.

77. The IOM has also written that although classified as economic migrants, a large percentage of the migrants in an irregular situation who cross through Mexico on their way to the United States, do so because of the worsening ecological conditions in their communities of origin.<sup>92</sup> The Commission was told that in the wake of hurricanes Mitch and Stan, many people in Chiapas decided to migrate, because their means of economic subsistence had been destroyed in the hurricanes.<sup>93</sup>

<sup>88</sup> UNODC, *2011 Global Study on Homicide: Trends, Contexts, Data*. Vienna, 2011, p. 12.

<sup>89</sup> Centro Mexicano de Derecho Ambiental [Mexican Environmental Law Center] (CEMDA), *Informe sobre Cambio Climático y Migración: Documento preparado en ocasión de la visita a México del Señor Comisionado Felipe González, Relator Sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on Climate Change and Migration: document prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on the Rights of Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights], Mexico, 2011. [Document on file with the Commission].

<sup>90</sup> See, IACHR, *Hearing on Protection of Human Rights in Natural Disasters*, 124th Session, Washington, D.C.: March 3, 2006 [Document on file with the Commission].

<sup>91</sup> Centro Mexicano de Derecho Ambiental [Mexican Environmental Law Center] (CEMDA), *Informe sobre Cambio Climático y Migración: Documento preparado en ocasión de la visita a México del Señor Comisionado Felipe González, Relator Sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on Climate Change and Migration: document prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on the Rights of Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights], Mexico, 2011. [Document on file with the Commission].

<sup>92</sup> International Organization for Migration, Oli Brown, *Migration and climate change*. Migration Research Series (no.31) Geneva, 2008.

<sup>93</sup> Centro Mexicano de Derecho Ambiental [Mexican Environmental Law Center] (CEMDA), *Informe sobre Cambio Climático y Migración: Documento preparado en ocasión de la visita a México del Señor Comisionado Felipe*

78. In this context, many migrants who do not meet the legal requirements that States set to allow them to enter or stay legally opt for the route of illegal migration. Casillas has written that “facing the mounting legal and administrative obstacles in order to obtain a visa, various windows and other spatial loopholes were opened and social, humanitarian, and trafficking operations were quickly developed that assisted, channeled, and profited, as the case may be, from international undocumented migrant flows.”<sup>94</sup> The major challenges the Commission has identified at the regional level are the limited opportunities that some countries of the region offer to enable certain groups of persons to migrate regularly, the absence of a comprehensive approach to the hardship factors and the push and pull factors that cause international migration, and the way organized crime has made irregular migration one of its main businesses, through the abduction of migrants in an irregular situation, migrant smuggling, and human trafficking.

79. Despite the mounting number of bureaucratic obstacles generated since the 1990s, Mexico continues to be a necessary transit country for Central Americans and persons of other nationalities whose ultimate destination is either the United States or Canada. Although the flow of migrants into the United States has tapered off since 2008, the push and pull factors that drive migration have not been addressed. Given Mexico’s geographic position, the push factors that have caused thousands to migrate, and the pull factors that draw migrants to the United States, one can expect Mexico to continue to experience significant migration flows. Given the history, the migration patterns, the socio-economic reality and the violence and insecurity in the region, the Commission believes that Mexico will likely continue to be a country of origin, transit and destination for mixed migration flows.

## 2. The vulnerability of migrants in an irregular situation in Mexico

80. The vulnerability of migrants as subjects of human rights has been widely recognized at the international level.<sup>95</sup> The fact that one is not a national of the country in which one lives, or is of foreign origin, exposes a migrant to the danger of falling victim

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*González, Relator Sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on Climate Change and Migration: document prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on the Rights of Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights], Mexico, 2011. [Document on file with the Commission].

<sup>94</sup> CASILLAS R., Rodolfo, “Las Rutas de los Centroamericanos por México, un ejercicio de caracterización, actores principales y complejidades”, in: *Revista Internacional de Migración y Desarrollo*. Volume 10, 2008, First Semester, p. 161. Available at: <http://rimd.reduaz.mx/revista/rev10/c7.pdf> [Consulted on December 30, 2013].

<sup>95</sup> See, *inter alia*, United Nations General Assembly resolution on “Protection of Migrants,” A/RES/66/172, October 19, 2011; General Assembly of the Organization of American States. Resolution “The Human Rights of Migrants, including Migrant Workers and Their Families”, AG/RES. 2729 (XLII-O/12), approved at the Forty-second regular session of the General Assembly, held in Cochabamba, Bolivia, at the second plenary session held on July 4, 2012; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paragraphs 112-114; and I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 98.

to violations of human rights, crime, abuse and discrimination, racism and xenophobia. Migrants face *de jure* and *de facto* discrimination and are vulnerable because of the difficulties they have in expressing themselves in the language of the country in which they find themselves; their lack of understanding of the local culture and customs; their lack of political representation; the problems they encounter in exercising their economic, social and cultural rights—particularly their right to work, their right to education, and their right to health; the difficulties they encounter in obtaining identification documents, and the problems they encounter in accessing effective judicial remedies when their human rights are violated or when seeking reparations for such violations.

81. In recent decades migrants have become even more vulnerable because the policies adopted by many states to address international migration have focused more on protecting national security than on protecting the human rights of the migrants. This is evident in immigration policies that criminalize migration; the laws and policies developed are a combination of criminal law and immigration law.<sup>96</sup>

82. Migrants in an irregular situation are even more vulnerable. The Commission has recognized that the extreme vulnerability of migrants in an irregular situation' extreme vulnerability exposes them to the danger of being victims of abuses and violations of their human rights. In the Commission's view, migrants in an irregular situation face a structural vulnerability in which they are subject to arbitrary arrest and a lack of due process; collective deportation; discrimination in access to the public and social services to which foreign-born nationals of other states are entitled by law; inhumane detention conditions; unlawful harassment by police and immigration authorities; obstacles in accessing and getting justice for crimes committed against them and an inability to defend themselves when exploited by unscrupulous employers.<sup>97</sup>

83. The Commission has confirmed how the structural vulnerability of migrants is compounded by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion or any other social condition. On the subject of migrant women, the Commission has frequently observed that they "suffer an intersection of forms of discrimination combined with their sex and their condition as migrants, such as their age, nationality, educational and economic level, among others; dimensions that should be examined by

<sup>96</sup> See, STUMPF, Juliet P, "Introduction", in GUIA, Maria João, van der WOUDE, Maartje and van der LEUN, Joanne, *Social Control and Justice: Cimmigration in the Age of Fear*. The Hague: Eleven International Publishing, 2013, pp. 8-9

<sup>97</sup> See in this regard, IACHR, *Annual Report of the IACHR, 2000, Chapter V. Special Studies. Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*, OEA/Ser./L/V/II.111, doc. 20 rev., April 16, 2001, paragraph. 64.

States in the design of interventions with the goal of better protecting their human rights in the realm of justice.”<sup>98</sup>

84. The Commission has previously observed that in many countries of the region, migrants are not only stigmatized; large sectors of the population blame them for the increase in violence and crime. They are easy targets of crime and State and private violence.<sup>99</sup> Irregular migration poses multiple dangers for the migrants themselves, their families and human rights defenders, including, *inter alia*, robbery, extortion, kidnapping, physical, psychological and sexual violence, human trafficking, murders and disappearances. Crimes such as these are committed along the migratory routes and in border areas,<sup>100</sup> as is the case currently in Mexico.

85. Migrants in an irregular situation are forced to live and move about clandestinely, to escape detection by the authorities. This exposes them to even greater dangers, in which they fall victim to various crimes and violations of their human rights, committed by criminals and authorities alike.<sup>101</sup> The violence in Mexico today, brought on by the massive violence waged by the drug cartels, the war on drugs, and the militarization of certain areas of the country, has put migrants in the crossfire, exponentially increasing the dangers they face when they travel by way of clandestine channels, by remote routes through isolated territory. These are precisely the areas where organized crime and drug cartels have a greater presence. Migrants in an irregular situation run the risk of falling into the hands of these criminal organizations, but it is a risk they take to avoid being detected, detained and subsequently deported by the Mexican authorities, or becoming victims of crimes committed by the authorities. The Commission has received abundant information about state agents, such as INM agents and municipal, state and federal police officers who, either directly or by colluding with organized crime, have committed crimes and human rights violations against migrants.

86. Here, the CNDH has observed that the extreme vulnerability of the migrants in an irregular situation who travel through Mexico is “because they travel by high-risk

<sup>98</sup> IACHR, *Report on Access to Justice for Women Victims of Sexual Violence in Mesoamerica*. OEA/Ser.L/V/II. Doc. 63 (2011), paragraph 308. Available at: <http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20eng.pdf> [Consulted on December 30, 2013].

<sup>99</sup> IACHR, *Report on Citizen Security and Human Rights*. Washington, D.C., Approved by the Inter-American Commission on Human Rights on December 31, 2009, paragraph 90.

<sup>100</sup> IACHR, *Report on Citizen Security and Human Rights*. Washington, D.C., Approved by the Inter-American Commission on Human Rights on December 31, 2009, paragraph 90. Available at: <http://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.IV.htm> [Consulted on December 30, 2013].

<sup>101</sup> See in this regard, UNDP, *Informe Nacional sobre Desarrollo Humano México 2006-2007: Migración y Desarrollo Humano*. México [Mexican National Human Development Report 2006-2007: Migration and Human Development], Mexico, 2007, pp.119-121. Available at: [http://www.undp.org.mx/IMG/pdf/Inf-\\_sobre\\_Des-\\_Hum-\\_2006-2007.pdf](http://www.undp.org.mx/IMG/pdf/Inf-_sobre_Des-_Hum-_2006-2007.pdf). See also, i(dh)eas, *En tierra de nadie. El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco [In no man's land. The labyrinth of impunity: violations of the human rights of migrants in the Soconusco region]*. i(dh)eas: Mexico City, 2011, p. 39. [Consulted on December 30, 2013].

means of transportation, such as freight trains or double-bottom trucks; they travel via secondary roads in remote and isolated areas; they spend the night in open areas; they are unfamiliar with the territory through which they travel; they avoid contact with the police or any State agent; they are unaware of their rights or prefer not to exercise them if, in doing so, they expose themselves to greater danger; they are far from home, do not know where to turn in case of need, and are unfamiliar with the country's laws."<sup>102</sup>

87. To get to the United States, migrants pay large sums for migrant smuggling services, *pasantes*, *coyotes* or *polleros*. Frequently the migrants who use these services end up becoming victims of the robbery, extortion, kidnapping, physical, psychological and sexual violence that the smugglers commit or are forced to commit criminal acts, like drug trafficking. The Commission was told that women and unaccompanied children and adolescents are more exposed to crimes of this nature.

88. A clear example of the scale of migrant trafficking and the dangers that migrants face to cross Mexico was the late May 2011 discovery in Chiapas of two tractor-trailers from Guatemala carrying 513 migrants in an irregular situation hidden in their trailers, cramped into subhuman conditions. Of the 513 migrants in an irregular situation, 481 were men and 32 were women. There were four children among them as well. Most were coming from Guatemala, although there were also migrants from El Salvador, Ecuador, China, Japan, India, Nepal, Honduras and the Dominican Republic. These people said they had paid 7,000 dollars to an organization of *polleros*<sup>103</sup> to be transported to the United States.<sup>104</sup>

89. The Commission was told that most migrants make the trip via isolated migration routes, such as the route crossing the Isthmus of Tehuantepec and the Tabasco-Tamaulipas migration corridor. On their way through Mexico, migrants in an irregular situation take a variety of routes, mainly overland and by sea. If going overland, the migrants travel on foot, atop freight cars and/or in cargo trucks. Because migrants can travel as stowaways aboard a freight train, the latter is the principal mode of transportation for many migrants who do not have the funds to travel by a safer means. The trip via the freight train through Mexico is so dangerous that migrants in an irregular situation commonly refer to it as "*La Bestia*" or "The Death Train", because of the danger of falling from or being run over by the train. These accidents have killed or maimed hundreds of migrants. In 2012, the Beta

<sup>102</sup> CNDH, *Informe Especial sobre los Casos de Secuestro en Contra de Migrantes* [Special Report on Cases of Abduction of Migrants], Mexico, D.F., June 15, 2009, p. 5.

<sup>103</sup> In Central America, "pollero" or "coyote" is a term commonly used to refer to a person who makes the necessary arrangements and transports migrants in an irregular situation from various Central American countries to the United States in exchange for money.

<sup>104</sup> *La Jornada*, *Detienen en Chiapas a 513 migrantes de América Latina y Asia*. [513 migrants from Latin America and Asia detained in Chiapas]. May 17, 2011. Available at: <http://www.jornada.unam.mx/2011/05/18/politica/005n1pol> [Consulted on December 30, 2013].

Groups<sup>105</sup> treated 1611 injured, wounded or mutilated migrants,<sup>106</sup> a 53% increase over the 753 migrants treated in 2011.<sup>107</sup>

90. Another option for migrants in an irregular situation is to enter Mexico by sea, as in the case of the Cuban boatpeople who irregularly entered Mexican territory illegally by way of the coastline on the Gulf of Mexico or the Caribbean Sea,<sup>108</sup> or the Central Americans who take to the waters of the Pacific by boat to reach the coastline of the states of Chiapas and Oaxaca. Polleros are waiting for the migrants in an irregular situation and transport them to the United States. Migrants in an irregular situation also use maritime routes to enter the United States from Mexico. Although in general the number of U.S. Coast Guard interceptions has declined markedly, the United States authorities are more closely policing overland crossings between Mexico and the United States, with the result that human smugglers are making greater use of small boats to ferry migrants in an irregular situation from Baja California, Mexico, to California in the United States.<sup>109</sup>

91. The tighter immigration control policies adopted by the United States have increased security in populated areas along the border with Mexico. In addition, a wall has been built along some stretches of the border. The Commission is concerned that these tougher immigration control methods have forced migrants in an irregular situation entered the United States to opt for more routes,<sup>110</sup> as in the case of those who cross the Arizona desert in the United States.<sup>111</sup> According to the CNDH and the ACLU, once the United

<sup>105</sup> The Beta Groups were created in Mexico back in 1990 to protect the physical integrity of migrants and to rescue and assist them, irrespective of their nationality and immigration status. They provide guidance, prevention, rescue services, as well as legal advisory services

<sup>106</sup> INM, *Boletín Mensual de Estadísticas Migratorias 2012 – IV. Grupos de Protección a Migrantes: 4.1. Acciones de Protección a Migrantes Efectuadas por los Grupos Beta, 2012* [Monthly Bulletin of Migration Statistics 2012 – IV. Migrant Protection Groups: 4.1. Actions taken by the Beta Groups to Protect Migrants]. 2012, Mexico. Available at: [http://www.inm.gob.mx/index.php/page/Grupos\\_de\\_Proteccion\\_a\\_Migrantes\\_2012](http://www.inm.gob.mx/index.php/page/Grupos_de_Proteccion_a_Migrantes_2012) [Consulted on December 30, 2013].

<sup>107</sup> INM, *Boletín Anual de Estadísticas Migratorias 2011 – IV. Grupos de Protección a Migrantes: 4.1. Acciones de Protección a Migrantes Efectuadas por los Grupos Beta, 2011* [Annual Bulletin of the Migration Statistics – IV. Migrant Protection Groups: 4.1. Actions taken by the Beta Groups to Protect Migrants]. Available at: [http://www.inm.gob.mx/index.php/page/Grupos\\_de\\_Proteccion\\_a\\_Migrantes\\_01](http://www.inm.gob.mx/index.php/page/Grupos_de_Proteccion_a_Migrantes_01) [Consulted on December 30, 2013].

<sup>108</sup> The Commission received information concerning the sinking of a homemade raft carrying 23 Cubans, which went down near the Isla Mujeres in Mexico on October 12, 2012. According to information in the public record, one man and one woman died and another 11 people on board the raft disappeared. The survivors said that they were hoping to be able to reunite with their families in the United States. For more information see, BBC World, *Cuban refugees' raft sinks off Mexico's Isla Mujeres*. October 13, 2012. Available at: <http://www.bbc.co.uk/news/world-latin-america-19933634> [Consulted on December 30, 2013].

<sup>109</sup> For more information, see UNODC, *Issue Paper: Smuggling of Migrants by Sea*. 2011, pp. 16-17.

<sup>110</sup> See in this regard, DÍAZ, Gabriela and KUHNER, Gretchen, "Mexico's role in promoting and implementing the ICRMW", in: DE GUCHTENEIRE, Paul, PÉCOUD, Antoine and CHOLEWINSKY, Ryszard (Eds.), *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights*. Cambridge University Press: Cambridge, 2009, p. 224.

<sup>111</sup> See in this regard, *Informe del Estado Mexicano sobre secuestro, extorsión y otros delitos cometidos contra personas migrantes en tránsito por territorio mexicano* [Report of the Mexican State on kidnapping, extortion and

States began to implement Operation Gatekeeper, which is designed to protect the border with Mexico, estimates are that in the period from 1994 to 2009, anywhere from 3,861 to 5,607 migrants died trying to cross into the United States.<sup>112</sup> Between 2000 and 2011, the bodies of 2,287 migrants were found; these persons died crossing the border by way of the Arizona desert. In fiscal year 2011,<sup>113</sup> 183 migrants died in the desert.<sup>114</sup> The most common causes of death in these cases were exposure to the sun and dehydration from the hot summer temperatures, particularly in inhospitable areas such as deserts, canyons and mountainous regions.

92. In addition to the factors cited above, the vulnerability of migrants in an irregular situation is compounded by the extreme climate conditions along the route<sup>115</sup> and the fact that migrants in an irregular situation are persons of little means who embark upon their journey with a small amount of money, which they lose if they fall victim to robbery or extortion.

93. The Commission also observes that the *de jure* and *de facto* impediments put justice out of reach to migrants in an irregular situation. Most of the crimes and human rights violations committed against them go unpunished, which reveals just how vulnerable they are and how unprotected they are by the system of justice.

94. The Commission will now turn its attention to what it considers to be the major human rights challenges faced by migrants and other persons in transit in Mexico, such as asylum seekers, refugees, applicants for and beneficiaries of additional protection, victims of human trafficking, migrant children and adolescents, and women migrants.

### **3. The various forms of discrimination and violence that migrants in an irregular situation experience in Mexico**

95. Although migrants in Mexico face many challenges, the Inter-American Commission is most concerned by the serious violence and discrimination that migrants in an irregular situation and other persons experience in the context of in-transit human mobility, attributable to the violence that grips Mexico today. This is not a new or heretofore unknown situation for Mexico. In recent decades, migrants in Mexico have

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other crimes committed against migrants in transit through Mexican territory]. Mexico, July 16, 2010, pp. 10-11. [Document on file with the Commission].

<sup>112</sup> Comisión Nacional de los Derechos Humanos de México and the American Civil Liberties Union (ACLU), *Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border*. September 2009, p. 8. Available at: <http://www.aclu.org/files/pdfs/immigrants/humanitariancrisisreport.pdf>. [Consulted on December 30, 2013].

<sup>113</sup> Fiscal years in the United States start on October 1 in any given year, and go until September 30 of the following year.

<sup>114</sup> Arizona Human Rights Coalition, *Arizona Recovered Human Remains Project*. Available at: <http://derechoshumanosaz.net/projects/arizona-recovered-bodies-project/> [Consulted on December 30, 2013].

<sup>115</sup> See, *inter alia*, El Universal, *Rescatan a 10 migrantes de morir por calor [10 migrants on the verge of dying from the heat are rescued]*. Mexico, July 12, 2012. Available at: <http://www.eluniversal.com.mx/notas/858817.html> [Consulted on December 30, 2013].

been extremely vulnerable to violations of their human rights. In the course of the last decade, the CNDH, civil society organizations<sup>116</sup> and other international organizations like the Inter-American Commission on Human Rights,<sup>117</sup> the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families,<sup>118</sup> the Special Rapporteur on the Human Rights of Migrants,<sup>119</sup> the Committee against Torture,<sup>120</sup> the Committee on the Elimination of Discrimination against Women,<sup>121</sup> the Working Group on Enforced or Involuntary Disappearances,<sup>122</sup> and others have been uncovering the multiple crimes and serious human rights violations to which migrants in an irregular situation from other countries are exposed while in transit in Mexico, as well as Mexican migrants headed for the United States.

96. After its first visit to Mexico in 2002, the IACHR's Rapporteurship on the Rights of Migrant Workers and Members of Their Families [now the "Rapporteurship on the Rights of Migrants"] warned of the crimes and serious human rights violations that criminals and unscrupulous authorities commit against migrants in Mexico.<sup>123</sup> Ten

<sup>116</sup> See, *inter alia*, *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias* [Report on the General Situation of the Rights of Migrants and Their Families]. Mexico, 2011, pp. 25 et seq; Centro de Derechos Humanos "Miguel Agustín Pro Juárez" (Centro Prodh) and Washington Office on Latin America (WOLA), *A dangerous trek through Mexico: Human Rights Violations Committed against In-Transit Migrants*. Mexico, 2010; Fundación para el Debido Proceso Legal [Foundation for Due Process of Law] (DPLF), El Centro de Derechos Humanos "Fray Matías de Córdova" ["Fray Matías de Córdova" Human Rights Center] and El Hogar de la Misericordia [Charity House], *La crisis de derechos humanos en la frontera sur de México* [The human rights crisis along Mexico's southern border], 2008; Red Regional de Organizaciones Civiles para las Migraciones [Regional Network of Civilian Organizations for Migration] (RROCM), Document presented at the meeting of the Regional Consultation Group on Migration (GCRM) of the Regional Conference on Migration (CRM). San Salvador, 2006

<sup>117</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003 – Chapter V. Special Studies: Fifth Progress Report of the Rapporteurship on Migrant Workers and Their Families. V. On Site Visit to Mexico*. OEA/Ser.L/V/II.118 Doc. 5 rev. 2, December 29, 2003.

<sup>118</sup> United Nations. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding Observations to Mexico*. May 3, 2011.

<sup>119</sup> See, United Nations, Commission on Human Rights, *Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in conformity with resolution 2002/62 of the Commission on Human Rights, Addendum, Visit to Mexico*, E/CN.4/2003/85/Add.2, October 30, 2002, and United Nations, Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, Addendum, Mission to Mexico*. A/HRC/11/7/Add.2, March 24, 2009.

<sup>120</sup> United Nations, Committee against Torture, *Final observations on the combined fifth and sixth reports from Mexico*. December 11, 2012, paragraph 21.

<sup>121</sup> CEDAW Committee, *Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*. Combined seventh and eighth periodic report of States parties. Mexico, July 27, 2012, paragraphs 20-21. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/455/39/PDF/N1245539.pdf?OpenElement> [Consulted on December 30, 2013].

<sup>122</sup> United Nations, Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico*. December 20, 2011. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf) [Consulted on December 30, 2013].

<sup>123</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003 – Chapter V. Special Studies: Fifth Progress Report of the Rapporteurship on Migrant Workers and Their Families. V. On Site Visit to Mexico*. OEA/Ser.L/V/II.118 Doc. 5 rev.2. December 29, 2003, paragraphs 202-203.

years ago, in the report published after the visit, the IACHR Rapporteurship wrote the following:

202. In the course of its work, the Rapporteurship has observed a very worrisome phenomenon: Increasingly, border areas, especially cities with large floating populations (both persons who arrive to cross the border and others who are deported and do not have the means to return to their communities of origin or decide to remain to attempt to cross again) have become extremely dangerous. These places also attract persons who seek opportunities for work generated by the informal industry of services for migrants, and draw criminals who come intending to victimize migrants and profit from their presence. The lack of capacity or decision, or the open collusion of the authorities with criminal elements, help increase the dangerousness of these areas, since the crimes are committed with absolute impunity. At the same time, the presence of migrants attracts individuals and organizations dedicated to the conveyance, smuggling, and trafficking of persons. Many of the individuals or gangs dedicated to this business commit serious abuses against migrants in these areas (the problem of the trafficking, smuggling, and conveyance of persons is developed in section V of this report). A related problem has to do with the additional burden on basic government services created by the presence of a large floating population, which often lives in poverty and marginality. This phenomenon has been described as the increasing criminalization of border areas.

203. Given the massive presence of migrants, both Mexicans who seek to cross the border with the United States and foreign-born nationals of other States who enter Mexico for the purpose of crossing over to the United States, this increase in crime is a widespread problem. Migrants who enter Mexico not only suffer the rigors of the demanding trip to the U.S. border, but also they are often victimized by common criminals and some unscrupulous authorities on their way to the northern border. While the victimization of migrants at the hands of criminals and unscrupulous officials occurs throughout Mexico, the problems tend to be concentrated in the border areas where there are most migrants, and where they are more noticed. In this sense, numerous points of the border with high traffic, both in the south along the border with Guatemala and Belize, and along the lengthy border with the United States, are affected by such situations. In these areas, criminal elements and gangs operate with a high degree of impunity. This situation is aggravated by the attitude of certain State agents who extort migrants, or other agents who fail to take adequate measures to prevent, investigate, and punish crimes against migrants.<sup>124</sup>

97. In her report on the 2002 on site visit to Mexico, the United Nations Special Rapporteur on the Rights of Migrants, Ms. Gabriel Rodríguez Pizarro, also underscored the vulnerability of migrants traveling through Mexico. The Rapporteur observed a general climate of harassment and exploitation of the vulnerability of migrants. In that report, she wrote that criminal gangs that engaged exclusively in assaulting migrants frequently attacked, mistreated and even executed them if they offered any resistance. There were

<sup>124</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003 – Chapter V. Special Studies: Fifth Progress Report of the Rapporteurship on Migrant Workers and Their Families. V. On Site Visit to Mexico*. OEA/Ser.L/V/II.118 Doc. 5 rev. 2, December 29, 2003, paragraphs 202-203.

also cases in which migrants were swindled and abducted by their coyotes or polleros and in which criminals threatened, sexually abused and even raped migrant women in the presence of their husbands and children. The report also points out that even public officers committed abuses of this kind, and rape and extortion. The Rapporteur also noted that impunity predominated in the crimes and human rights violations committed against migrants.<sup>125</sup>

98. In 2008, six years after the United Nations Rapporteur's first visit, the following Special Rapporteur on the Human Rights of Migrants, Dr. Jorge Bustamante, made a second visit to Mexico, and again underscored the fact that the violence and human rights violations committed against migrants continued unabated, and had even increased. In his report, the United Nations Rapporteur wrote that

Transnational migration continues to be a business in Mexico, largely operated by transnational gang networks involved in smuggling and trafficking in persons and drugs, with collaboration of the local, municipal, state and federal authorities. These practices are directly related to the rise in cases of violence against women and children, especially along the northern and southern borders, and at transit points. As such, impunity for human rights abuses against migrants is rampant. With the pervasiveness of corruption at all levels of government and the close relationship that many authorities have with gang networks, incidences of extortion, rape and assault of migrants continue. The majority of the cases seem to be against migrants from Guatemala, El Salvador, Honduras and Nicaragua.<sup>126</sup>

99. During the course of his visit to Mexico in 2011, the IACHR's Rapporteur on the Rights of Migrants and his delegation heard multiple stories from persons who said they had been victims of crimes and violations of their human rights, committed by members of criminal organizations and public officials. The information received from the State, from civil society organizations and the testimony given by migrants and members of their families are consistent in reporting that the migrants in transit through Mexico were victims of robbery, extortion, kidnapping, human trafficking, murder, forced disappearance, and various forms of physical, psychological and sexual violence.

100. As for the violence and discrimination that migrants in an irregular situation experience while in transit through Mexico, the Commission observes with great concern that the robberies, extortion, kidnappings and physical and psychological assaults, sexual abuse, murders and disappearances to which they fall victim, and that were already in evidence when the Rapporteurship first visited Mexico in 2002, have not only continued but have taken a dramatic turn for the worse with the passing of the years. The Commission

<sup>125</sup> See United Nations, Commission on Human Rights, *Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in conformity with resolution 2002/62 of the Commission on Human Rights, Addendum, Visit to Mexico*. E/CN.4/2003/85/Add.2, October 30, 2002, paragraphs 17-27.

<sup>126</sup> United Nations, Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Mr. Jorge Bustamante. Addendum: Mission to Mexico*. A/HRC/11/7/Add.2, March 24, 2009, paragraph 65.

observes that the migrant smuggling networks operating in the region have grown and now span an area ranging from the migrants' countries of origin, transit and destination. However, the main difference that distinguishes the present situation from the situation in 2002 is the full involvement of organized crime groups, especially drug cartels, in activities associated with migrant abduction, human trafficking, smuggling of migrants, and the other crimes and human rights violations that they commit in the process. In recent years, the criminal activity of transnational organized crime has increased in Mexico and in Central America, particularly the drug cartels and *pandillas*. By now, various organizations engaged in organized crime are the parties most to blame for the violence and crime that migrants suffer, which heretofore had mainly been the work of common criminals and agents of the State.<sup>127</sup>

101. Criminal organizations are involved in the business of irregular migration because of the high returns it offers for the small risk that these organizations run in committing crimes against migrants. At the present time, irregular transnational migration represents one of the main sources of revenue for organized crime in Mexico and in the region. These organizations have long tentacles. This, combined with the overlapping migration, drug- and arms-trafficking routes and the collusion of various public officials, have made it easier for organized crime to make inroads into a business that reportedly brings in millions of pesos and dollars each year by exploiting undocumented migration. The areas hardest hit by the breakdown in security in Mexico are along the borders and in the areas surrounding the routes that migrants in an irregular situation use to cross Mexican territory.

102. The territory that these criminal organizations control and the extreme violence that is the trademark of their activities, have combined to create a situation in which migrants in an irregular situation who dare to cross the territory in which these organizations operate are running a terrible risk and are extremely vulnerable. Migrant abduction, human trafficking, and the smuggling of migrants in an irregular situation is such a lucrative business that many of these crimes and human rights violations are the product of collusion between various public officials and criminal organizations. Apart from the financial profits that criminal organizations make from kidnapping, extortion and stealing from migrants in an irregular situation, they can also use the migrants in an irregular situation for other purposes, such as carrying drugs into the United States or as forced labor when migrants cannot pay their ransom or are forcibly recruited into these organizations' ranks.

103. The crime syndicates that profit from irregular migration include hired smugglers (known as *pasantes*), drivers, guides, forgers to prepare identification papers,

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<sup>127</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003 – Chapter V. Special Studies: Fifth Progress Report of the Rapporteurship on Migrant Workers and Their Families. V. On Site Visit to Mexico*. OEA/Ser.L/V/II.118 Doc. 5 rev.2, December 29, 2003, paragraph 203.

and certain public officials. As the United Nations Special Rapporteur on the Human Rights of Migrants wrote, “[t]he sensitive task of dismantling criminal organizations of this size poses a huge challenge to Mexico, especially given the large amounts of money involved in the activity.”<sup>128</sup>

104. While the Commission appreciates the serious challenges that the Mexican State confronts and the efforts it has made to keep all persons in the Union’s 32 states safe and secure, the Commission is deeply concerned over the information it has received time and time again to the effect that migrants in an irregular situation, asylum seekers, and refugees are victims of continuous abuses and acts of violence committed by organized crime groups, common criminals and Mexican authorities or with the acquiescence, tolerance or omission of those authorities that allows non-State actors to engage in acts such as extortion, abduction, physical, psychological and sexual violence, human trafficking, murders and even forced disappearances that victimize the migrants. The fragile institutional infrastructure, corruption by public officials, and the impunity that attends crimes committed against migrants in an irregular situation have nurtured the growth of the criminal activity and human rights violations committed against these persons.

105. In this context, the Commission observes that criminal violence is not only affecting in-transit migrants in an irregular situation, but also triggering forced migration and the internal displacement of large numbers of people in Mexico.

**a. *Robberies and extortion of migrants in an irregular situation***

106. The Commission was told that in their travels through Mexico, migrants in an irregular situation face a number of challenges and serious problems. They may fall victim to robbery and extortion by common criminals, organized crime groups, and even some public officials, who demand their money and any belongings they are carrying, either as a condition for allowing them to continue on their way or as another crime to which they fall victim during their abduction. The Commission was told that frequently migrants are assaulted by their *coyotes*, who then leave them abandoned in the desert, with no clothes.

107. Along the northern border, organized crime groups position themselves at the main border crossings, so that they not only control the routes they use for trafficking drugs and weapons, but also control the smuggling of migrants and human trafficking.<sup>129</sup> The evidence of the control that criminal organizations exercise over migration flows along the northern border is the fees that many migrants seeking to cross the border have to pay. Along a number of sections of the Río Bravo, migrants are forced to pay the criminals upwards of 300 to 400 dollars to cross the river. The Commission has also been

<sup>128</sup> United Nations, Commission on Human Rights, *Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in conformity with resolution 2002/62 of the Commission on Human Rights. Addendum. Visit to Mexico*. E/CN.4/2003/85/Add.2, October 30, 2002, paragraph 22.

<sup>129</sup> *El Colegio de la Frontera Norte*, Working paper: Colloquium on “Border Security Policies and the Human Rights of Migrants,” Tijuana, 2011, p. 2 [Document on file with the Commission].

informed of situations in which criminal organizations take advantage of the migrants crossing into the United States and use them as mules to carry drugs across the border.

108. It bears repeating that as with other fundamental rights, effective protection of the right to property requires ensuring that the right to the use and enjoyment of property is guaranteed in law and other instruments, and that there is a simple and rapid recourse to a competent court for protection against acts that violate that right.<sup>130</sup>

### ***b. Kidnapping of migrants in an irregular situation***

109. In recent years, the Commission has observed the massive and systematic abductions of migrants in transit through Mexico, perpetrated by organized crime groups operating with the tolerance or even involvement of certain public officials. The victims tend to be Central American migrants. The purpose of their abduction is to extort money from their relatives in Central America or in the United States in exchange for their loved ones' release, or to force the migrants to work for the organized crime groups. The thousands of stories recounted by migrants paint a brutal picture of the humanitarian tragedy that migrants in an irregular situation have experienced in recent years in their attempts to make their way across Mexico. The large-scale abductions of migrants serve as harsh testimony of the level of degradation and insecurity that migrants in an irregular situation endure in their journey across Mexico. During their abductions, the migrants often become victims of acts of physical, psychological and sexual violence, human trafficking, homicide and even forced disappearance.

110. In general terms, the *modus operandi* of the migrants' abduction is as follows: once the migrants are abducted at some point in their journey to Mexico's northern border, the kidnappers ask for the telephone number of some family member in the United States or in the migrants' country of origin. Organized crime groups are more interested in abducting children and women, as these abductions tend to bring more money. As soon as the kidnappers make contact with a relative of the abducted migrant, they demand payment of sums that can range from 5,000 dollars up. The release of the abducted migrants and the continuation of their journey northward will depend upon payment of the amount demanded. The payments tend to be made through international businesses that arrange money transfers, such as Western Union and similar agencies. According to civil society organizations, abduction is a threat to all migrants in an irregular situation.

*I entered Mexico by way of Tenosique, in mid April of this year. On April 16, I traveled by combi [bus] as far as Palenque, where I boarded the train. There weren't many people with me, only about 15 migrants. We arrived in Tierra Blanca, where we took another train. In the last tunnel after Orizaba, we were assaulted on top of the train.*

<sup>130</sup> See, IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12.271, *Benito Tide Méndez et al. (Dominican Republic)*. March 29, 2012, paragraph 326, citing I/A Court H.R., *Case of Awas Tingni v. Nicaragua*. Judgment on the Merits, Reparations and Costs of August 31, 2001. Series C No. 79, paragraphs 111-115.

*The assailants were dressed in blue and had shotguns; one had a knife. We were about 20 migrants atop the train and were later told that the ones who attacked us were the train guards [...] In Apizaco, there were about 200 people on the train; 4 people from below the train began firing on it and claimed that the passengers were to going to be searched. The train was going slow, so everyone scattered. The four armed men below rounded up about 17 migrants and boarded us onto a black pick-up. It was around one in the morning. From there they took us to San Luis Potosí, to a locked house inside the city. I realized that I was in the city because I could hear the noise of traffic [...] The 17 of us were held captive there for three days. They demanded ransom of 7,000 dollars each. They also demanded that each of us give them the family phone number and told us that if the money wasn't sent, we'd be killed. My father sent the money. After that, they released me outside the city. From there I went by train to Huehuetoca [in the state of Mexico]. There, I turned myself in to Immigration. I wanted to explain what had happened, but they never gave me the chance. They told me that I would leave Mexico the way I came in. I tried to turn myself in again in Lechería, but they told me the same thing. You don't know what it is. I cried the entire way. I'm sorry I ever came. I just want to return to my country.<sup>131</sup>*

111. The payment of the ransom money is no guarantee that the kidnap victims will be released. The Commission knows of cases in which relatives have paid the ransom and wait for their relative's release, which never actually happens. While the kidnapped migrants are held captive, their kidnappers subject them to every kind of harassment and abuse. The fate of migrants whose ransom is never paid can vary; some end up becoming victims of sexual exploitation; others are forced to work for the organizations that kidnapped them, while still others end up dead. The delegation received testimony from one Salvadoran youth in Tierra Blanca, Veracruz, who said the following:

*They abducted me near Coatzacoalcos, along with more than 200 other persons. When they kidnapped us, they killed over 40 people. From there they took us to Reynosa, Tamaulipas, They gave me 72 hours for my family to pay 3,000 dollars in ransom for my release, or they would kill me. My family paid what they had demanded for my release, but they kept me for 40 days [...] I just wanted to die, so that I wouldn't have to continue to witness the atrocities that those people committed [...] We migrants are not out to hurt anyone; we just want to be on our way. We don't hurt anyone [...] I filed a complaint after I was released, but they never said whether they were investigating what happened. I am afraid for my children, I'm afraid that something's going to happen to us.<sup>132</sup>*

<sup>131</sup> Testimony from a Honduran migrant (José Luis) as told to the IACHR's Rapporteur on the Rights of Migrants, in Tierra Blanca, July 30, 2011.

<sup>132</sup> Testimony from a Salvadoran youth, told to the IACHR's Rapporteur on the Rights of Migrants, in Tierra Blanca, Veracruz, July 30, 2011.

112. Another testimony described the case of an abducted migrant whose family was forced to sell the land on which they lived in order to pay the ransom. The victim's sister told the IACHR delegation that after her brother's release, the family continued to pay the kidnappers a monthly sum of money, since they kept them under threat. In many cases, the people who gave the Commission this testimony said that they had not reported what happened to the authorities for fear of reprisals by organized crime or state agents. The delegation also received testimony from persons who said they had been detained by officials of the National Immigration Institute and/or by police who had handed them over to the criminal gangs. For their part, the migrants and the families who filed complaints with the competent authorities, expressed skepticism about the possibility that investigations might go forward and that the persons responsible for the events would be brought to trial and punished.

113. As no data or official figures were available to illustrate the magnitude of the migrant-abduction problem in Mexico, back in 2008 the CNDH<sup>133</sup> began to document the problem in order to draw attention to the high kidnapping rate among migrants in an irregular situation throughout Mexican territory, as well as the state authorities' failure to take action on the problem. In its first report on the kidnapping of migrants, over the six-month period between September 2008 and February 2009, the CNDH was able to document at least 198 cases of collective kidnappings of migrants, involving a total of 9,758 victims in Mexico.<sup>134</sup> However, it is important to point out, as the CNDH did, that the report represents the minimum figure and is in no way an exhaustive accounting of all the kidnappings, given the nature of the crime and the limitations of the report. Ultimately, the actual but unknown figure for migrant abductions may be much higher.<sup>135</sup>

114. Of the 9,758 migrants whose abductions the CNDH documented in 2009, 9,194 were directly attributed to criminal organizations; 35 were blamed on state officials and 56 were attributed to criminals and officials in the three levels of government.<sup>136</sup> The involvement of criminal organizations like the Los Zetas Cartel, the Gulf Cartel and others in the massive abductions of migrants across Mexican territory has been amply documented by a number of organizations.<sup>137</sup> In its report, the CNDH said that the ransom

<sup>133</sup> The National Human Rights Commission is the principal public, autonomous agency charged with the protection, observance, promotion, study and dissemination of the human rights protected under Mexico's legal system. See, Constitution of the United Mexican States, Article 102, paragraph (b), and the National Human Rights Commission Act, Article 2.

<sup>134</sup> CNDH, *Informe especial sobre los casos de secuestro en contra de migrantes* [Special report on abductions of migrants]. Mexico, D.F., June 15, 2009, pp. 9 et seq. Available at: [http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2009\\_migra.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2009_migra.pdf) [Consulted on December 30, 2013].

<sup>135</sup> CNDH, *Informe especial sobre los casos de secuestro en contra de migrantes* [Special report on abductions of migrants]. Mexico, D.F., June 15, 2009, pp. 9 et seq.

<sup>136</sup> CNDH, *Informe especial sobre los casos de secuestro en contra de migrantes* [Special report on abductions of migrants]. Mexico, D.F., June 15, 2009, pp. 9 et seq.

<sup>137</sup> See, among others, Comisión Nacional de los Derechos Humanos: *Informe Especial sobre los Casos de Secuestro de Migrantes*. México D.F.: 15 de junio de 2009, pp. 9 y ss.; Amnistía Internacional, *Víctimas Invisibles: Migrantes en Movimiento en México*. Amnistía Internacional: Madrid, 2010, pp. 11 y ss.; Belén Posada del Migrante, *Frontera*

demanded for victims ranged from 1,500 to 5,000 dollars. The average amount demanded for the victims identified in that report was 2,500 dollars per person. This means that for the kidnappers, the 9,758 identified victims represented a profit of close to 25 million dollars over a six-month period.<sup>138</sup>

115. In response to the massive and systematic abductions of migrants in transit through Mexico, on March 22, 2010, during its 138th Session, the IACHR held a public hearing on the “Human Rights Situation of Migrants in Transit through Mexican Territory.” The civil society organizations that requested the hearing explained the various challenges that the problem of the abduction of migrants in transit through Mexico represents in terms of protection of their human rights.<sup>139</sup> As Father Pedro Pantoja, General Advisor to the organizations *Humanidad sin Fronteras*, *Frontera con Justicia* and *Belén Posada del Migrante* explained during the session, if the CNDH’s estimates are used as the baseline, there may have been over 18,000 migrants abducted in Mexico in 2009; this means that these crimes could bring in around 50 million dollars a year for the organized crime groups that engage in smuggling migrants, human trafficking, and drug trafficking.<sup>140</sup>

116. In February 2011, the CNDH published a second report on abduction of migrants. In that report, the CNDH documented 214 collective abductions of migrants, involving a total of 11,333 migrants abducted in the period between April and September 2010. According to the bulk of the testimony from victims of and witnesses to these abductions, the states where the peril is greatest are Veracruz, followed by Tabasco, Tamaulipas, San Luis Potosí and Chiapas.<sup>141</sup> As for the nationality of the victims and

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con Justicia A.C. y Humanidad sin Fronteras A.C., *Sexto Informe sobre la Situación de los Derechos Humanos de las Personas Migrantes en Tránsito por México*. Saltillo Coahuila: Junio de 2010; CNDH, *Informe Especial sobre Secuestro de Migrantes en México*. México, 2011; and Brigadas Internacionales de Paz, *Panorama de la Defensa de los Derechos Humanos en México: Iniciativas y Riesgos de la Sociedad Civil Mexicana*. México, 2013, pp. 23 y ss.

<sup>138</sup> CNDH, *Informe especial sobre los casos de secuestro en contra de migrantes* [Special report on abductions of migrants]. Mexico, D.F., June 15, 2009, p.

<sup>139</sup> The hearing on the human rights of migrants in transit through Mexican territory was requested by the Centro de Derechos Humanos Agustín Pro Juárez [Agustín Pro Juárez Human Rights Center] (Centro Prodh), the Servicio Jesuita a Migrantes en México [Jesuit Migration Service in Mexico], Centro Diocesano para los Derechos Humanos Fray Juan de Larios [Fray Juan de Larios Diocesan Human Rights Center], *Dimensión Pastoral de la Movilidad Humana – DPMH* [Pastoral Dimension of Human Mobility], *Casa del Migrante Hermanos en el Camino* [Brothers Along the Way Migrant Shelter], Albergue de Nuestra Señora de Guadalupe [Our Lady of Guadalupe Shelter], Albergue Guadalupano de Tierra Blanca [Tierra Blanca Guadalupan Shelter], Servicio Jesuita de Jóvenes Voluntarios [Jesuit Youth Volunteers Service], Centro de Derechos Humanos Fray Matías de Córdoba [Fray Matías de Cordova Human Rights Center], *Frontera Con Justicia* [A Border with Justice] and *Humanidad Sin Fronteras* [Humanity without Borders]. For more information, see IACHR, *Hearing on the human rights situation of migrants in transit through Mexican territory*. 138th Session, Washington, D.C., March 22, 2010. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=118>. [Consulted on December 30, 2013].

<sup>140</sup> Cf. IACHR, *Hearing on the human rights situation of migrants in transit through Mexican territory*. 138th Session, Washington, D.C., March 22, 2010. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=118>. [Consulted on December 30, 2013].

<sup>141</sup> CNDH, *Informe especial sobre los casos de secuestro en contra de migrantes* [Special report on abductions of migrants]. Mexico, D.F., June 15, 2009, p. 27.

witnesses who gave testimony, the majority were Hondurans, Salvadorans, Guatemalans and, to a lesser extent, Mexicans and persons of other nationalities. The CNDH report highlights the involvement of public officials in the abductions of migrants. According to that report, government authorities were involved in 8.9% of the documented abductions. The figures in this report show an increase in the number of migrants being abducted, and greater involvement by state agents in the commission of these crimes.<sup>142</sup>

117. For its part, in April 2011 the Foreign Ministry of El Salvador presented its first “Report on Human Rights Violations and Serious Crimes Committed against Salvadoran Migrants in Mexico,” in which it observed that El Salvador’s network of consulates in Mexico and the Foreign Ministry’s Office of the General Director of Human Rights recorded various serious crimes and human rights violations committed against 250 migrants of Salvadoran origin in 2010. The Salvadoran Foreign Ministry’s report was consistent with other reports in concluding that abduction was one of the principal crimes to which Salvadoran migrants fell victim in Mexico. According to the report, the network of Salvadoran consulates recorded 12 cases of mass kidnappings in which 55 victims were abducted (42 men—four of whom were minors—and 13 women). As the Foreign Ministry observed, this report is limited by the fact that the network of Salvadoran consulates operates mainly in southern Mexico, which means that the figures could be even higher.<sup>143</sup>

118. The harrowing insecurity that migrants in Mexico face was such that in May 2011, the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed its concerns in its Concluding Observations to Mexico.<sup>144</sup> It wrote the following:

The Committee is deeply concerned by the alarming number of cases of kidnapping and extortion of undocumented migrant workers coming up from the southern border and by the acts of torture and cruel, inhuman and degrading treatment, disappearances and killings of these migrants, primarily at the hands of national and international organized crime groups. The Committee is also concerned by allegations that public authorities participate in these human rights violations, or that they are carried out with the complicity, consent and/or collusion of federal, state and municipal authorities. It is also concerned that violence against migrants has extended beyond the border areas and spans the main transit routes used by the migrant population. The Committee notes the various actions which the authorities have taken to combat the kidnapping of migrants. However, it is concerned that impunity for these crimes

<sup>142</sup> CNDH, *Informe especial sobre los casos de secuestro en contra de migrantes* [Special report on abductions of migrants]. Mexico, D.F., June 15, 2009, p. 26.

<sup>143</sup> See, Foreign Ministry of El Salvador, *Informe sobre Violaciones de los Derechos Humanos y Delitos Graves en Perjuicio de Personas Salvadoreñas Migrantes en México* [Report on Human Rights Violations and Serious Crimes Committed against Salvadoran Migrants in Mexico]. El Salvador, 2011, pp. 18 et seq. [Document on file with the Commission]. Executive Summary of the report. Available at: [http://www.rreee.gob.sv/index.php?option=com\\_k2&id=1336&lang=es&view=item&print=1&tmpl=component](http://www.rreee.gob.sv/index.php?option=com_k2&id=1336&lang=es&view=item&print=1&tmpl=component) [Consulted on December 30, 2013].

<sup>144</sup> United Nations, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Concluding Observations to Mexico, May 3, 2011, p. 6, paragraphs 29-30.

prevails, especially in paradigmatic cases such as the abduction and murder of 72 Central American and South American migrants in August 2010 in Tamaulipas and the kidnapping of 40 migrant workers in the State of Oaxaca in December 2010.<sup>145</sup>

119. In late March 2011, massive abductions were reported involving dozens of persons traveling on bus lines from various parts of Mexico to stations in San Fernando, Tamaulipas. The victims included Mexican migrants and migrants of other nationalities, headed for the United States. During its visit to San Fernando, the IACHR delegation visited the Oriente, Transpaís and Noreste bus stations. It interviewed a number of persons who were working at the stations, who said that they knew nothing about the abductions.

120. An official with the Tamaulipas Attorney General's Office said that people tend not to report these events for fear of reprisals. The bus companies did not file any complaint concerning the hijacking of the buses. Only two drivers made statements about the events, and were subsequently given protection in their homes, but not at their workplace. As for the passengers, the official with the Tamaulipas Attorney General's Office said that only three complaints of disappearances had been received, and that none of the disappeared persons had as yet been located. As for the abduction and disappearances of individuals in Tamaulipas, the official stated that while he did not have exact figures at that time, there were virtually no complaints of kidnapping in any given month; on the other hand, he said, a considerable number of missing persons report were filed every month.

121. Although the IACHR delegation's visit came just months after the bus hijackings, it observed that no special surveillance measures had been adopted at the stations. On this issue, the officer in command of the Marines in the area said that the Marines were performing public safety functions throughout the San Fernando municipality, because the recent episodes of violence in San Fernando had left the municipality without any police officers for around three months. As for security at the bus stations and on the buses themselves, the Marine commander said that the measures implemented included patrols of the urban areas and constant checkpoints set up in different parts of the municipality for periods of 10 to 15 minutes. He also said that the Marine post nearest to the downtown area was some 39 minutes away.

122. On April 19, 2011, 68 migrants in an irregular situation were released in Reynosa, Tamaulipas, among them 12 Central Americans (8 Guatemalans, 2 Hondurans, 1 Salvadoran and 1 Panamanian) who said that they were abducted while traveling on passenger buses, both on the route leading to Reynosa's main bus station and at the bus station itself. The persons released said that their abductors claimed to be members of the Gulf Cartel.<sup>146</sup>

<sup>145</sup> United Nations, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Concluding Observations to Mexico, May 3, 2011, p. 6, paragraph 29.

<sup>146</sup> Secretariat of Public Safety, Press Release No. 248 – *Federal Police free 68 people, including 12 undocumented migrants, all victims of abduction in Reynosa, Tamaulipas*. Mexico, D.F. – April 20, 2011.

123. On May 9, 2011, the Federal Institute of Public Defenders issued a public announcement to the effect that it had assisted 120 migrants, 81 of whom were Mexican and 39 migrants from other countries (most were from Central America). The migrants had been abducted while en route to the United States and were rescued by members of the Armed Forces in several operations conducted in the state of Tamaulipas. One group of Central American migrants identified INM agents as being the persons who had ordered them off a bus as they were headed to the border and then handed them over to men carrying weapons that the authorities from the prosecutor's office identified as members of organized crime. The foreign-born migrants felt that having identified the INM agents, they would not be safe at the migrant holding facilities. The PGR therefore decided to send them elsewhere.<sup>147</sup>

124. During the visit made to Mexico by the IACHR Rapporteur on the Rights of Migrants, the authorities of the PGR reported that the corruption of some police units and INM agents has exacerbated the situation of the migrants. The Commission points to the observation by the CNDH to the effect that with matters as they now stand, "the chief obstacle to full exercise of human rights in Mexico could well be the combination of corruption and impunity, which poses the greatest threat to the rule of law."<sup>148</sup>

125. During the visit to Mexico by the IACHR Rapporteur on the Rights of Migrants, testimony was received from migrants who had been kidnapped and either managed to escape or were released. The migrants spoke of cases of migrant abduction in different states across Mexico, especially in the states of Veracruz, Tamaulipas, Tabasco, Oaxaca, San Luis Potosí, Coahuila, Chiapas, and others. The IACHR Rapporteur also took testimony from migrant women who said they had been kidnapped and held along with hundreds of persons; one woman said that she had been held captive in a house located in a rural area, with about 200 other people; another said that after her abduction, she was held captive with some 400 other people.

126. On July 9, 2012, the Secretariat for Public Safety (hereinafter "the SSP") reported that, in the course of an operation against a group of alleged human traffickers, the Federal Police rescued 85 migrants from a safe house located outside Reynosa, Tamaulipas. The migrants found in the safe house included 44 Salvadorans, 27 Hondurans and 14 Guatemalans. There were also 10 minors in the group. The SSP reported that this operation led to the arrest of two subjects—ages 18 and 20—who were handed over to the

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<sup>147</sup> Judicial Branch of the Federation, Council of the Judiciary, Federal Institute of Public Defenders, *Press Release No. 17: Federal Institute of Public Defenders assists 120 migrants who were victims of abduction*. Mexico, D.F., May 9, 2011. Available at: <http://www.cjf.gob.mx/documentos/comunicados%20prensa/docsComunicadosPrensa/2011/comunicado17.pdf> [Consulted on December 30, 2013].

<sup>148</sup> CNDH, *Data on precautionary measures taken to protect the defenders of migrants' human rights: 2005 to April 2012*. Mexico, D.F., May 2012. [Document on file with the Commission].

Federal Public Prosecutor's Office.<sup>149</sup> In late August 2012, the Army rescued 77 migrants in an irregular situation, who were concealed inside a home in Reynosa, Tamaulipas. This operation led to the arrest of two people, who were handed over to the PGR for probable violation of the General Population Act.<sup>150</sup>

127. Concerning the recurrence of these events in places that have already been identified as high-risk areas for migrants, the Commission is deeply troubled by the fact that events of this kind continue to be repeated over and over again in the very places that have already been identified as high-risk areas or municipalities for migrants, such as San Fernando and Reynosa in Tamaulipas. According to the CNDH, these municipalities are two out of the 71 municipalities in which migrants run the risk of falling victim to crime.<sup>151</sup>

128. The Commission received information to the effect that on October 2, 2012, approximately 40 migrants were abducted in Medias Aguas, Veracruz, by a group of men traveling in pick-ups. These events came to the public's attention thanks to the testimony of one migrant who survived, despite the fact that his abductors had struck him on the head with a machete.

129. The abductions perpetrated by criminal organizations like the Los Zetas Cartel or the Gulf Cartel are also taking aim at the migrants deported from the United States. The Commission has received information indicating that in many cases, the Mexican migrants who are deported from the United States to cities on Mexico's northern border are highly vulnerable to becoming the victims of kidnapping, extortion and other crimes. They are in even greater danger when deported in the early morning hours, without advance notice to officials at Mexico's INM.

130. During its visit to Reynosa, Tamaulipas, the Commission was told of cases of Mexican migrants who, after being deported, were abducted by criminal organizations like the Los Zetas Cartel or the Gulf Cartel, who locked them in safe houses, cemetery vaults and elsewhere. During their captivity the migrants are beaten severely and their entry into the United States will at times depend on whether they are willing to carry drugs into United States territory. This problem is particularly severe in the state of Tamaulipas (see Table 1).

131. The Commission was told that heavily armed persons—associated with drug trafficking, abduction, migrant smuggling and human trafficking—have entered

<sup>149</sup> Secretariat of Public Safety. Press Release No. 175 – *Federal Police arrest two alleged traffickers of undocumented migrants and rescue 89 migrants in the state of Tamaulipas*. Mexico, D.F., July 9, 2012.

<sup>150</sup> *Milenio*, 77 undocumented migrants rescued in Reynosa. Mexico, D.F., August 19, 2012. Available at: <http://www.milenio.com/cdb/doc/noticias2011/5f85dc37bae584f7f6e9502242e46d2b> [Consulted on December 30, 2013].

<sup>151</sup> CNDH, *Press Release: CNDH identifies areas that are high-risk for migrants*. Mexico, D.F., April 18, 2011. CGCP/092/11.

**TABLE 1** Total number of repatriation events involving Mexicans deported from the United States, and total number of repatriations events involving Mexicans deported into Tamaulipas, by age and sex | 2012

Age and sex	January	February	March	April	May	June	July	August	September	October	November	December	Total
<b>Total</b>	28 740	32 064	42 418	38 408	35 877	29 797	26 357	28 682	26 155	30 039	27 005	23 950	369 492
<b>Total of 18 years old and more</b>	27 235	30 458	40 195	36 642	34 515	28 687	25 232	27 330	24 964	28 597	25 703	22 805	352 363
Men	24 885	27 620	36 590	33 042	31 378	26 067	22 711	24 643	22 382	25 558	23 142	20 562	318 580
Women	2 350	2 838	3 605	3 600	3 137	2 620	2 521	2 687	2 582	3 039	2 561	2 243	33 783
<b>Total under 18 years</b>	1 505	1 606	2 223	1 766	1 362	1 110	1 125	1 352	1 191	1 442	1 302	1 145	17 129
Men	1 268	1 382	1 887	1 514	1 172	907	889	1 105	970	1 232	1 082	932	14 340
Women	237	224	336	252	190	203	236	247	221	210	220	213	2 789
<b>Tamaulipas</b>	8 541	9 009	13 121	13 370	13 583	10 423	9 302	9 952	9 549	9 428	8 288	7 470	122 036
<b>Total of 18 years old and more</b>	8 143	8 626	12 522	12 885	13 193	10 062	8 980	9 432	9 131	8 996	7 947	7 254	117 171
Men	7 553	7 903	11 537	11 823	12 213	9 285	8 189	8 488	8 290	8 002	7 173	6 628	107 084
Women	590	723	985	1 062	980	777	791	944	841	994	774	626	10 087
<b>Total under 18 years old</b>	398	383	599	485	390	361	322	520	418	432	341	216	4 865
Men	321	328	504	397	313	271	232	398	315	356	255	166	3 865
Women	77	55	95	88	77	90	90	122	103	76	86	50	1 009

Source: Monthly Bulletin of Migration Statistics 2012  
Secretaría de Gobernación, Instituto Nacional de Migración

the shelters and migrant homes in border communities in the state of Tamaulipas on the pretext that they are looking for members of rival organized crime groups. On two different occasions, dozens of migrants were taken from the shelters and were never heard or seen again. Another common occurrence are abductions committed by these criminal organizations at the Matamoros bus station, where they kidnap arriving migrants or deported migrants trying to return to their place of origin. Since its visit, the Commission has continued to receive information showing that the abduction of Mexican deportees is a common occurrence in Reynosa, Matamoros and Nuevo Laredo. However, these kidnapping generally go unreported because the people living in these communities are afraid of becoming victims of reprisals by organized crime.<sup>152</sup> An article published in the September 8, 2012 edition of the Los Angeles Times illustrates this point:

U.S. immigration authorities have sharply increased deportations to one of Mexico's most fiercely contested drug-war battlegrounds, the northeastern state of Tamaulipas, where few migrants have any connections or family.

Repatriations to the besieged border cities of Matamoros, Reynosa and Nuevo Laredo jumped nearly fivefold to 124,729 last year from 25,376 in 2006, according to Mexico's National Institute of Migration. More than one-fourth of all deportees from the U.S. are sent to Tamaulipas, even as violence here escalates.

Deportees arriving in Matamoros are schooled quickly about the dangers they will face. The moment these 20 men crossed Gateway International Bridge from Brownsville, orange-shirted agents from Grupo Beta, the Mexican migrant safety force, gathered them for a lecture:

*Criminal gangs consider you rich targets.*

*They will try to get phone numbers of your relatives in the U.S. for ransoms.*

*Dial 0 after making calls on public phones so previously dialed numbers can't be accessed....*<sup>153</sup>

132. Given the generalized violence in the state of Tamaulipas and the massive violations committed there against the human rights of migrants deported from the United States, the Commission believes that the deportations of Mexican migrants to Tamaulipas and to other states previously identified as being high-risk areas for migrants, expose the deportees to danger and to threats to their lives, personal integrity, security and liberty. Although States have the authority to deport migrants in an irregular situation, they must exercise this authority without violating their obligations in the area of human rights. The

<sup>152</sup> *Dimensión Pastoral de la Movilidad Humana, Síntesis de la situación de las personas repatriadas de origen mexicano por el estado de Tamaulipas* [Summary of the situation of Mexican-born persons repatriated by way of the state of Tamaulipas]. Document sent to Commissioner Felipe González, IACHR Rapporteur on the Rights of Migrants. Mexico, D.F., September 21, 2012. [Document on file with the Commission].

<sup>153</sup> Los Angeles Times, *Deportees to Mexico's Tamaulipas preyed upon by gangs*. Los Angeles: September 9, 2012. Available at: <http://www.latimes.com/news/local/la-me-deportee-danger-20120909,0,3634417.story> [Consulted on December 30, 2013].

Commission therefore considers that their human rights obligations make it incumbent upon States to refrain from deporting people to those areas where there is a greater risk that their rights to life, personal integrity and liberty will be violated. The Commission observes that given the current violence and insecurity in the state of Tamaulipas and the danger that migrants deported into that state face, deporting a person to Tamaulipas would expose him/her to the risk of irreparable violation of his/her rights to life, personal integrity and personal liberty.

133. The Commission observes that some of the entry points in the state of Tamaulipas are in the municipalities that have been repeatedly identified as high-risk areas for migrating or deported Mexican nationals and for migrants in an irregular situation. Given this situation, the Commission is urging the Mexican State to redouble its efforts to make arrangements with the U.S. authorities to have deportations effected in places and at times that do not put the lives, physical safety and liberty of the Mexican deportees at risk. The Commission is also urging the State to work with the United States to find a mechanism to carry out the repatriation of Mexican nationals to their places of origin or as close thereto as possible, and to avoid deportations to areas that are high risks for these persons.<sup>154</sup> Until such measures are in place, the Commission believes that the Mexican State will have to establish or step up security measures at the points where Mexican nationals deported or repatriated from the United States are received.

134. The Mexican State highlighted the fact that, with the intent of offering a safe, humane and orderly repatriation of Mexican nationals to Mexico, the State conducted the Mexican Interior Repatriation Program [*Procedimiento de Repatriación al Interior de México*] (PRIM) from October 2 to November 29, 2012. Under the program the United States Department of Homeland Security could repatriate Mexican nationals by air, from El Paso, Texas, to Mexico City in the Federal District. From there, the INM, working in coordination with other appropriate authorities and agencies, provided overland transportation to the places of residence of the repatriated persons, while offering them alternative ways to become part of their community's economic and social life. Mexico reported that during that period, a total of 18 flights were received, benefitting a total of 2,364 repatriated Mexicans. Mexico underscored the support received from the IOM, which handled the logistics involved in the local transportation and in printing the PRIM Handbook and then distributing it to the repatriated persons. The PRIM Handbook contained information on the People's Insurance and work options available in the repatriated persons' states. The Mexican State reported that on February 13, 2013, it held a meeting with officials of the U.S. Government, in which it expressed its interest in making the PRIM program permanent. Out of this meeting came the *Memorandum of Coordination on Repatriation Procedures between the Secretariat of Governance of the United Mexican States and the*

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<sup>154</sup> See, Memorandum of Understanding between the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States and the Department of Homeland Security of the United States on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals. Signed in Mexico City, February 20, 2004..

*Department of Homeland Security of the United States of America concerning the Safe, Humane and Orderly Repatriation of Mexican Nationals to the Interior of Mexico.* Mexico added that the PRIM program resumed on July 11, 2013, and 11 flights have been received carrying a total of 1,483 participants. The State also observed that it expect the PRIM program to end on December 31, 2013.<sup>155</sup>

135. The Mexican State also reported that it has a Humane Repatriation Program [*Programa de Repatriación Humana*] (PRH) under which Mexicans repatriated from the United States are received and the conditions are created to enable them to become part of the national development process with dignity and with options enabling their full personal development within their own communities. Mexico reported that between January and December 2012, 331,496 repatriation events were recorded in various modules of the PRH. Some 82% of those repatriated requested one or more of the types of assistance offered. Mexico reported that in 2012 two agreements were signed: 1) the *Agreement on Cooperation between the Secretariat of the Interior through the National Institute of Migration and the State Coordination Office for International Affairs and Assistance to Puebla Migrants* [*Convenio de Colaboración entre la Secretaría de Gobernación a través del Instituto Nacional de Migración y la Coordinación Estatal de Asuntos Internacionales y de Apoyo a Migrantes Poblanos*] to provide, through the PRH, bus tickets to repatriated persons; and 2) the *Agreement on Cooperation between the INM and the National Institute for Senior Adults* [*Convenio de Colaboración entre el INM y el Instituto Nacional para las Personas Adultas Mayores*](INAPAM) to provide repatriated adults over sixty years of age the assistance and benefits that INAPAM offers.<sup>156</sup>

136. In addition to the situations described above, the Commission is concerned by, and indeed rejects, the fact that some state officials deny the violence and insecurity that migrants in Mexico face. The Commission was particularly disturbed by the kinds of statements made by the Special Prosecutor for Migrant Affairs of the Office of the Attorney General of Veracruz, Vito Lozano Vázquez, in which he denied the Rapporteurship's preliminary observations and said that "Rapporteur Felipe González has seen and reported that Veracruz is the state where the migrants receive the best treatment", and his statement to the effect that "there's no double-talk here; the fact is that there are no abductions in Veracruz and the Inter-American Court's [sic] Rapporteur left very happy and found quite the opposite."<sup>157</sup> During the field visits and at the meetings that the Rapporteur and the delegation had in Tierra Blanca and Veracruz, Veracruz, abundant information and testimony were received from migrants recounting abductions of migrants in the

<sup>155</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 9 and 10 [Document on file with the Commission].

<sup>156</sup> *Ibidem*, pp. 10 and 11.

<sup>157</sup> *La Jornada* – Veracruz, *Niega el fiscal especial Vito Lozano secuestros de migrantes en el estado* [Special prosecutor Vito Lozano denies abductions of migrants in the state]. September 12, 2011. Available at: [http://www.jornadaveracruz.com.mx/Noticia.aspx?ID=110912\\_124624\\_940](http://www.jornadaveracruz.com.mx/Noticia.aspx?ID=110912_124624_940) [Consulted on December 30, 2013].

state of Veracruz. This information is consistent with various reports, among them two CNDH reports on the abduction of migrants. All these reports and testimony cite various municipalities in Veracruz as high-risk areas for migrants.<sup>158</sup> Even more troubling for the Commission is the fact that these statements come from one of institutions charged with investigating the kidnappings and other crimes committed against migrants.

### c. *Human trafficking*

137. Because Mexico is a country of origin, transit, destination and return for migrants, many migrants could fall victim to international human trafficking at any point in the migration process.<sup>159</sup> The UNODC has observed that over 50% of the victims of trafficking in Mexican territory are foreign-born.<sup>160</sup>

138. Grabbing, transporting, luring and exploiting victims of human trafficking in Mexico happens in multiple ways. The migrants crossing Mexico's southern border include women migrants who have been lured there by deception or false promises of work or marriage, and are then forced to work as prostitutes in bordellos, bars, and dumps because they do not have economic resources or are victims of human trafficking. Women migrants, especially the girls and adolescent girls, are more vulnerable to becoming victims of human trafficking for purposes of sexual exploitation or the prostitution of others. The Commission has also learned of cases of trafficking in male and female children and adolescents for sexual exploitation, including infants.<sup>161</sup>

139. The IACHR delegation received complaints to the effect that in a significant number of cases, the victims of this type of crime are Central American women—and particularly Guatemalan women—who are forced to work as sex workers. This problem occurs with greater frequency—although not exclusively—in Chiapas, Oaxaca, Tabasco and Veracruz. During the visit, the Rapporteurship received information concerning migrant women whose *coyotes*, *polleros* or kidnappers sell them to other organized crime groups, which then force the women into prostitution or to work as domestics in safe houses or other places where abducted migrants are held captive.

*I crossed into Mexico at the beginning of the year, by way of El Ceibo in Tenosique, Tabasco. We were a group. A group of assailants grabbed us. They stripped me and wanted to rape me, but I was having my period. They let us go. We reached the train station in Tenosique and at 11:00 a.m some people who were in a pick-up kidnapped us. They took us to Tamaulipas, where there were over 400 people [...] Because I behaved myself, they offered me a job in the kitchen [...] They forced me to spank my*

<sup>158</sup> See, CNDH Reports on Abduction of Migrants (2009 and 2011).

<sup>159</sup> See in this regard, United States of America, Department of State, *Trafficking in Persons Report*. 2012, p. 247.

<sup>160</sup> UNODC *Global Report on Trafficking in Persons*. New York, 2009, p. 137. Available at: [http://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/Global_Report_on_TIP.pdf) [Consulted on December 30, 2013].

<sup>161</sup> SHELLEY, Louise, *Human Trafficking. A Global Perspective*. New York: Cambridge University Press, 2010, p. 279.

*traveling companions with a piece of wood, while some of the other women hit me. I always did everything they wanted. After several weeks, they themselves took me across the border, but Immigration picked me up and sent me back to my country.*<sup>162</sup>

140. The Commission has also learned of the impact that human trafficking has had on cities along Mexico's northern border, where one finds bordellos with women and girls, both from Mexico and from other parts of the region, who are victims of human trafficking for purposes of prostitution.<sup>163</sup>

141. Migrant women are not the only victims of human trafficking in Mexico. The Commission received information about migrant men forced to work in various capacities for organized crime groups, as gunmen, to murder other migrants, or to move drugs toward the border with the United States. Migrant boys and adolescent males are forced to work as lookouts for organized crime groups, and are also called *halcones* [falcons].

142. For its part, the IOM has observed that the detection of victims of human trafficking increased in Mexico between 2005 and 2009. In that period, the IOM assisted more than 165 people who were victims of human trafficking or attempted trafficking; girls and women accounted for over half the assisted victims. The IOM report showed that the number of trafficking or attempted trafficking cases increased by the year. The most common form of human trafficking detected in Mexico is international trafficking, which meant that in 76.7% are cases in which international borders were crossed. Central America—and more specifically Guatemala—is the region where most of the victims of human trafficking were from. The remaining are victims of domestic trafficking, in which the victims are Mexican born and the crime begins and unfolds within Mexico. An IOM report points out that “the most recognizable types of exploitation are labor and sexual exploitation, although the study also identified exploitation in the form of recruitment to commit lesser or low-level crime, servitude in matrimony and false adoption of children. During exploitation, the traffickers used various methods to control their victims, the most common being physical, sexual and psychological violence, deprivation of freedom, pressure about supposed debts and withholding of identification documents.”<sup>164</sup> Although the figure may seem small, one has to consider the characteristics of human trafficking; this is one of the most underreported crimes, which means that the true dimensions of the crime in Mexico are unknown.

143. On this problem, the CEDAW Committee expressed concern over the information received indicating a connection between the increased numbers of disappearances of women and the phenomenon of human trafficking. It was concerned that victims of

<sup>162</sup> Testimony of a Honduran migrant woman, as told to the IACHR Rapporteur on the Rights of Migrants, at Tierra Blanca, Veracruz, July 30, 2011.

<sup>163</sup> SHELLEY, Louise, *Human Trafficking. A Global Perspective*. New York: Cambridge University Press, 2010, p. 288.

<sup>164</sup> IOM, *La Trata de Personas en México: Diagnostico sobre la Asistencia a Víctimas* [Human Trafficking in Mexico: A Study of Assistance Provided to Victims]. Mexico, August 2011, pp. 12-13.

human trafficking are being subjected not only to sexual and labor exploitation, but are also forced to serve, *inter alia*, as mules and sexual slaves.<sup>165</sup> It again expressed its concern at the lack of uniformity in criminalizing trafficking at the state level. It noted that the Office of the Special Prosecutor for Crimes of Violence against Women and Trafficking in Persons (hereinafter “FEVIMTRA”) did not have a mandate to follow up on complaints of trafficking in persons when the crime is committed by organized criminal groups. The CEDAW Committee also made reference to the fact that the State does not have a system in place to record disaggregated data on the incidence of trafficking and has failed to fully address internal trafficking.

144. The civil society organizations pointed out that because of the unique circumstances and dangers surrounding victims of human trafficking and persons whom human smugglers are transporting across borders, it is difficult to provide victims with assistance. They also observed that there is no organized body of information about victims of human trafficking and migrant smuggling that could be used to craft public policies to prevent these violations. Although a number of organizations pointed to the enormous toll that human trafficking takes on migrants, especially women who are sexually exploited or forced to work long hours as unpaid domestics, one of the principal constraints in dealing with the human trafficking problem at the present time is the lack of information about the perpetrators’ and victims’ profiles.<sup>166</sup>

145. According to the information supplied by civil society organizations, efforts to train State agents in how to identify victims of human trafficking have been inadequate. In many places, there are no formal protocols by which to identify victims of human trafficking, which means that state agents are unable to distinguish between migrants in an irregular situation, persons involved in the sex trade, migrants who are being smuggled across Mexican borders and territory and migrants who are victims of human trafficking.<sup>167</sup> The result is that victims of human trafficking cannot be protected by the mechanisms in place at the present time. Having regard to the fact that in some cases victims of human trafficking are forced to commit crimes, the weaknesses in existing identification procedures, rather than protect victims, actually expose them to persecution by the authorities.

146. During the visit, the Commission delegation was told that the bulk of the assistance and welcome given to victims of human trafficking is provided and funded by civil society organizations. The Commission has learned that shelter for victims of human trafficking is not among the services that PROVICTIMA offers. As for the shelters operated

<sup>165</sup> CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women, Mexico*. CEDAW/C/MEX/CO/7-8, July 27, 2012, paragraph 20. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-MEX-CO-7-8.pdf> [Consulted on December 30, 2013].

<sup>166</sup> UNODC, *World Report on Human Trafficking*. New York, 2009, p. 53. Available at: [http://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/Global_Report_on_TIP.pdf) [Consulted on December 30, 2013].

<sup>167</sup> United States of America, Department of State, *Trafficking in Persons Report*. 2012, p. 248.

by FEVIMTRA, the Commission has learned that these shelters take in women victims of violent crime, but do not specialize in providing assistance to victims of human trafficking; in fact the Commission does not know whether victims of human trafficking are even referred to these shelters. Furthermore, the Commission knows of situations in which the shelters have refused to take in victims of human trafficking for fear of reprisals by organized crime. The civil society organizations also told the Commission that the State has not provided shelters for men who are victims of human trafficking.

147. As for investigations and convictions for the crime of human trafficking, the Commission observes that while the convictions have increased since 2010, from 3 to 24,<sup>168</sup> these figures are still very low when one considers the magnitude of the problem in Mexico. This is in part due to the fact that victims are hesitant to report the crime for fear of reprisals and do not trust the authorities.

148. The UNODC maintained that in the period between 2007 and 2010, the percentage of victims of trafficking for forced labor in Mexico was over 65% of the total number of victims found.<sup>169</sup> The Commission does not have information regarding the measures taken to reduce the demand for forced labor or to punish those who employ and recruit migrants for forced labor.

#### **d. Murder of migrants**

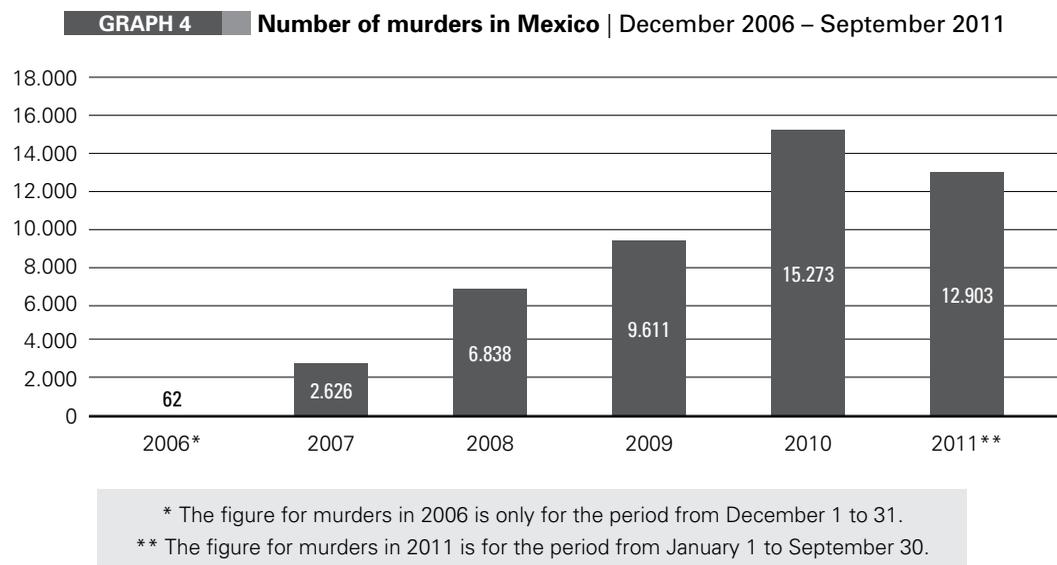
149. According to the PGR, between December 2006 and September 2011, 47,515 murders associated with criminal activities were recorded for Mexico as a whole. The count reported by the media in Mexico suggests that the number could be much higher. According to the official figure, disaggregated by year, in December 2006 a total of 62 murders were recorded; in 2007, 2,626 murders were recorded; in 2008, 6,838 were recorded; 9,614 murders were recorded in 2009; in 2010 the number recorded was 15,273, and between January and September of 2011, a total of 12,903 murders were recorded (see Figure 4).<sup>170</sup> These figures demonstrate that murders committed as a result of criminal violence have increased exponentially in recent years in Mexico. It is criminal violence that has a predilection for migrants.

<sup>168</sup> Procuraduría General de Justicia del Distrito Federal. Subprocuraduría de Averiguaciones Previares Centrales Fiscalía Central de Investigación para la Atención de Delitos Sexuales [Office of the Attorney General of the Federal District. Office of the Deputy Attorney General for Preliminary Inquiries, Central Prosecution Office for Sexual Crimes], Memorandum 200/203/SP/907/2012-04 and SUPERIOR COURT OF THE DF TSJDF/P/DIP/0704/2012.

<sup>169</sup> UNODC, *Global Report on Trafficking in Persons 2012*. United Nations publication, Sales No. E.13.IV.1, New York, 2012, p. 63. Available at: [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf) [Consulted on December 30, 2013].

<sup>170</sup> Office of the Attorney General of the Republic, *Database on deaths allegedly caused by rivalries between crime groups: Total Number of Deaths from Alleged Criminal Rivalries.. Mexico - January - September 2011*. Available in Spanish at: [http://www.pgr.gob.mx/temas%20relevantes/estadistica/FALLECIMIENTOS%20POR%20PRESUNTA%20RIVALIDAD%20DELINCUENCIAL%202011%20\(Enero-Septiembre\).pdf](http://www.pgr.gob.mx/temas%20relevantes/estadistica/FALLECIMIENTOS%20POR%20PRESUNTA%20RIVALIDAD%20DELINCUENCIAL%202011%20(Enero-Septiembre).pdf) [Consulted on December 30, 2013].

150. Loss of life is one of the main dangers that migrants in Mexico face, either as a result of accidents or because of the multiple perils to which they are exposed. As previously observed, during their kidnapping, many migrants have been murdered because they were unable to pay ransom or because they refused to work for the criminal organizations that abducted them. The information the Commission has includes testimony given by migrants who said they had witnessed mass killings in which several dozen people were murdered and that they had been held in captivity with upwards of 400 people. Some migrants told of having witnessed mutilations, decapitations, migrants who were hammered to death; there were even stories of bodies being dissolved in barrels of acid. The degree of cruelty and barbarism described by the migrants reflect an utter insensitivity to migrants' human dignity.



Source: Office of the Attorney General of the Republic

151. Although the dangers that migrants face when they become victims of abduction and other serious human rights violations during their journey through Mexico have been widely documented, the State's failure to take effective measures to protect migrants has allowed the violence against migrants to climb to one of its highest recorded levels with the massacre of 72 migrants in August 2010. Between August 22 and 23, 2010, 72 migrants—58 men and 14 women—were executed on a ranch in San Fernando, Tamaulipas, by members of the Los Zetas Cartel. This massacre once again brought home the dangers that thousands of migrants face as they make their way through Mexico.<sup>171</sup>

152. According to the testimony of one of the two persons who survived the massacre, an Ecuadorian youth age 17, the migrants were kidnapped by armed subjects

<sup>171</sup> IACHR, *Press Release No. 86/10 – IACHR Condemns Killing of Immigrants in Mexico*, Washington, D.C., August 27, 2010.

who demanded that they work for them. When some of the migrants refused to work for them, they were thrown on the ground and shot in the back.<sup>172</sup> The statement given by the young Ecuadorian reveals much about how the kidnapping and subsequent massacre was carried out.

*I traveled from Ecuador to Honduras. From Honduras I went to Guatemala. Everything was fine. I spent about 15 days in Guatemala. I was okay. From there I went to Santa Elena where I crossed the Mexican border by boat [...] At around ten Saturday night, three cars surrounded us; out stepped 8 well-armed men. They rounded all of us up, took us out of the car and put us in another car. They were traveling in two vehicles. They took us to a house, where they tied us up in groups of four, with our hands behind our back. They kept us tied up all night. Then they turned us over, face down. I heard a noise that sounded like gunfire. I thought they were firing to the side. But no, I heard him shoot my friends. Then he got to me and fired. But he killed everyone else. He finished firing his weapon and they left. They killed everyone else. When they left, I waited a couple of minutes and then got up and left the house. I walked all night. I got as far as that lamp, which was a long way off. I asked for help. Two men came out but didn't want to help me. I had a friend who was still alive; he was okay was in hiding. I left with my friend. I went outside and saw a lamp off in the distance. I looked toward the lamp and ran. I ran about 10 kilometers and my friend got separated from me. He thought I was going to die and I wasn't going to make it. So he left me. I walked, I walked with pain, asking for help. No one wanted to help me. As I was walking, the sun came up and I continued walking. At around 7 a.m. I saw the marines there. The immigration people. I walked up to them and asked them to help me. 76 traveled with me [...] [the kidnappers] didn't ask us for anything, anything at all. They said only: "Do you want to work for us?" No one wanted to work for them. Just that, and they didn't speak to us again [...] I didn't get anywhere. I was trying to get to where my father was, but I was unable. And now I'm returning to my Ecuador... I asked the Ecuadorian consult if he could get me get to my father; but they said they couldn't do that; we would have to return to Ecuador [...] There were 6 Ecuadorians traveling with me and they killed five of them. I wanted to get to my father, to my mother, but I wasn't able. [...] It's been four years [they are in the United States]. I wanted to see my father.<sup>173</sup>*

<sup>172</sup> In memory of the 72 migrants killed in August 2010, in San Fernando, Tamaulipas, a group of Mexican artists, intellectuals, computer programmers and innovators created the "Altar Virtual 72migrantes.com", to commemorate the persons killed in the massacre. This virtual monument is also an acknowledgement of the thousands of migrants —identified and unidentified—who have perished in their journey to the United States. It is also a recognition of the pain that the victims' families suffer. This monument can be visited at: <http://72migrantes.com/inicio2.php> [Visited on December 30, 2013].

<sup>173</sup> Excerpts from the testimony of a 17-year-old migrant who survived the massacre of 72 migrants in San Fernando, Tamaulipas, in August 2010.

153. Events like the kidnapping and subsequent massacre of 72 migrants—most of whom were Central and South Americans—, the disappearance and subsequent assassination of the agent from the Office of the Attorney General of Tamaulipas State who had launched the preliminary inquiry into these events, Roberto Javier Suárez Vázquez,<sup>174</sup> and the mass abduction of 40 migrants in the state of Oaxaca in December 2010, again focused international attention on the violence and discrimination that migrants in an irregular situation endure during their travel through Mexico.<sup>175</sup> The brutality of these events and others alike illustrate the dehumanization and exploitation that migrants endure on their journey through Mexico. The Commission is deeply concerned that the massacre of the 72 migrants was not an isolated event; instead it was part of the violence and discrimination that migrants in an irregular situation in transit through Mexico suffer.

154. In the wake of the massacre of the 72 migrants, Guatemala’s Prosecutor for Human Rights sent a communication to the IACHR requesting that the Commission use the mechanisms it has available to urge the States in the region to put mechanisms into place that will ensure that the human rights of migrants in transit are respected and protected; and to urge the States to recognize the invaluable work being done by those who defend the human rights of migrants.<sup>176</sup>

155. The IACHR also learned that between April and May 2011, the remains of another 157 people were discovered on various pieces of land in the state of Durango. The Commission has also been informed of the discovery of graves in other states, among them Sinaloa, Sonora, Guerrero, Querétaro, Nuevo Leon, Hidalgo, Coahuila, Chihuahua, and Zacatecas.

### ***e. Disappearances of migrants***

156. One of the Commission’s chief concerns at the present time is the disappearance of migrants in Mexico, along the migration routes that lead to the United States. The Commission has received information about a number of situations in which migrants have lost contact with their families as they made their way to the United States. The circumstances vary. There are cases in which the migrants have not contacted their family members while in the State’s custody at immigration holding facilities; in other cases, the migrants have not contacted family because they are being criminally prosecuted or are serving a sentence; in still other cases, migrants have lost touch with family because they

<sup>174</sup> *La Jornada, Confirman asesinato del MP que indagaba matanza en Tamaulipas* [Assassination of Prosecutor investigating slaughter in Tamaulipas confirmed], Mexico, D.F., August 28, 2010, p. 5. Available at: <http://www.jornada.unam.mx/2010/08/28/politica/005n1pol> [Consulted on December 30, 2013].

<sup>175</sup> Ministry of Foreign Affairs of El Salvador, *El Salvador solicita a México más acciones de combate al crimen organizado contra migrantes* [El Salvador asks Mexico for more action to combat organized crime against migrants]. El Salvador, December 22, 2010. Available at: [http://www.rree.gob.sv/index.php?option=com\\_k2&view=item&id=1151:el-salvador-solicita-a-m%C3%A9xico-m%C3%A1s-acciones-de-combate-al-crimen-organizado-contra-migrantes](http://www.rree.gob.sv/index.php?option=com_k2&view=item&id=1151:el-salvador-solicita-a-m%C3%A9xico-m%C3%A1s-acciones-de-combate-al-crimen-organizado-contra-migrantes) [Consulted on December 30, 2013].

<sup>176</sup> Guatemala’s Prosecutor for Human Rights, September 2010. [Document on file with the Commission]

have no money, or have been kidnapped, murdered or disappeared by organized crime, or have died as a result of the inclement weather and extreme climate conditions along their journey to the United States.

157. Against the backdrop of the violence that has seized Mexico in recent years, the Commission has been informed that one of the most troubling phenomena has to do with the lack of attention to cases of disappearances. The situation is particularly severe in the case of migrants.<sup>177</sup> Here, the Mexican State has acknowledged the complex situation posed by the problem of migrants who have disappeared and are never located and the problem of unidentified remains.<sup>178</sup>

158. The Commission is greatly concerned that the disappearance of persons has become common practice, and exacts a very heavy toll on migrants, on Mexicans crossing Mexico on their way to the United States, and Mexicans who are deported from the United States to certain border areas. Based on the information compiled, the Commission observes that the migrants abducted by organized crime groups are often victims of physical, psychological and sexual violence, prostitution of others, sexual and labor exploitation, murders and disappearance.

159. At the meetings in Ixtepec and Tierra Blanca, the Rapporteur received testimony from mothers looking for their disappeared children, and from wives, brothers and sisters all in search of the loved ones, who had disappeared during their journey through Mexico and from whom they had had no news for months and even years. The IACHR delegation met with hundreds of persons who traveled from El Salvador, Honduras and Guatemala in the Step-by-Step to Peace of Mind Caravan, which was composed of around 500 persons, among them 150 relatives of disappeared migrants, and migrants who had been kidnapped. The testimony received revealed the tragedy of the migrants who disappeared on their sojourn through Mexico, and the impact their disappearance has had on their families.

*When [our daughter] migrated, heading to Maryland, in the United States, she was 39. She left on March 17, 2009, with a coyote and a number of other people we didn't know. Eleven days after she left, our daughter called a relative in Maryland to say that everything was fine. She said that they were in Matamoros or about to arrive there. That was the last contact with her. One of the coyotes who accompanied her*

<sup>177</sup> IACHR, *Hearing on Citizen Security and Human Rights in Mexico*, 143rd Session. Washington, D.C., October 27, 2011. Audio and video available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=123&page=2> [Consulted on December 30, 2013].

<sup>178</sup> Interventions by the Director of Human Rights and Democracy of SER, Ambassador Alejandro Negrín; by the SEGOB Deputy Secretary of Legal Affairs and Human Rights, Lic. Max Diener Salas; and by the Coordinator of Advisors of the PGR Office of the Deputy Prosecutor of International Affairs, Lic. Leopoldo Velarde Ortiz at the *Hearing with the Inter-American Commission on Human Rights on the situation of missing migrants and unidentified remains in Mexico*. Washington, March 23, 2012. Audio and video available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=125> [Consulted on December 30, 2013].

*[...] told us that the car they were traveling in had turned over near the border and that the Immigration people had picked them up. The coyote didn't say whether it was U.S. Immigration or Mexican Immigration; nor did he explain how it was that the Immigration people had caught the other migrants but not the coyote [...] Three months after our daughter's disappearance, around June of 2009, we went to the Foreign Ministry where they took down our information and asked us to call frequently to inquire about progress. We did as we were instructed, and they were very nice about telling us, invariably, that there was no information. They never said what type of measures they had taken to find her; all they did was to repeat that they had nothing new to tell us. In 2010, a neighbor of ours, who also had a case of a family member disappearing, took us to the Foreign Ministry because this was when the EAAF was there taking DNA samples. We found it odd that even though they had the case in the Foreign Office, they were not the ones to summon us to have DNA samples taken; instead, we learned about it through a neighbor [...] The impact that our daughter's disappearance has had is not easy to describe; every night we wonder where she is, what happened to her. We cannot sleep. If we go to work, we can't concentrate on what we have to do. We suffer constant anxiety and physical sickness, but we will not relent in our struggle to find her. As for the justice system in El Salvador, we've decided not to file a complaint, because the system does not guarantee us any security, and we have other children to protect. We are afraid of being massacred, as happened to other families. We have another daughter who left with another coyote six years ago; a few years back, he was killed in his home. We have a son who while in the Civilian Police Force was machine gunned in a police operation. We have had painful experiences before, involving losses and violence. All this makes us fearful of justice in El Salvador.<sup>179</sup>*

160. Apart from the danger that it poses to migrants, disappearance along the migration routes in Mexico is having a harsh impact on the family members left behind in their countries of origin, or the family members with whom the victims were hoping to be reunited in the countries to which they were headed. The testimony received by the Rapporteur included one story recounted by a Salvadoran mother, who said the following:

*I have four children [...] Luis Roberto, the youngest, was disappeared here in Mexico. He had completed his high school degree in April 2009 and told me that he was going to the United States to get ahead. He wanted to go to Los Angeles [...] Some time back, our house had collapsed from the rain. Before leaving, I gave my son a hundred dollars; then he left with a coyote from the town [...] I loaned him one thousand dollars to pay the coyote to take him to the United States. When he was in Mexico City, I sent another 1,100 dollars to the coyote. I was to pay the coyote another 2,500 dollars when they reached the United States. The coyote told me that*

<sup>179</sup> Testimony given by the parents of a Salvadoran migrant woman and members of the Committee of Relatives of Deceased and Disappeared Migrants of El Salvador (COFAMIDE).

*he had left my son in Nuevo Laredo, on the border between Tamaulipas, Mexico and Texas in the United States. The last time I had news from Luis and from the coyote was in May 2009; I've been looking for him ever since. I've done everything to find him, but here [in Mexico] no one tells me where he is.*<sup>180</sup>

161. As previously observed the Commission has received reliable information about cases in which INM agents and federal, state and municipal police agents have participated in or collaborated with organized crime groups in the abduction of migrants. When these authorities fail to provide relevant information or deny that the events ever happened, these abduction cases become cases of forced disappearance. The Commission deems it necessary to point out that not all disappearances of migrants fit the definition of forced disappearance given in Article II of the Inter-American Convention on Forced Disappearance of Persons. By that definition, a forced disappearance is one in which a person or persons is deprived of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person.

162. After its visit to Mexico in March 2011, the United Nations Working Group on Enforced or Involuntary Disappearances (hereinafter “the WGEID”) stated that migrants are one of the most vulnerable groups that have the greatest risk of falling victim to forced disappearance.<sup>181</sup> The report of the WGEID observed that according to civil society organizations’ estimates, more than 3,000 people had been disappeared in Mexico since 2006.<sup>182</sup> The WGEID also said that it had information from various sources indicating that INM officers and federal, state and municipal police had in some case collaborated with the criminal organizations in the abduction of migrants, which would constitute a forced disappearance *strictu sensu*.<sup>183</sup> Here, the WGEID concluded that

Many cases of abduction and offences similar to enforced disappearances are committed by organized criminal groups. However, apparently, not all disappeared persons were abducted by independent organized criminal groups; the State is also involved in enforced disappearances in Mexico. The Working Group received specific,

<sup>180</sup> Testimony given by a Salvadoran mother to the IACHR’s Rapporteur on the Rights of Migrants, in Tierra Blanca, Veracruz, July 30, 2011.

<sup>181</sup> United Nations, Working Group on Enforced or Involuntary Disappearances. *Preliminary Observations on the Visit to Mexico*. March 31, 2011, p. 13. Available at: <http://www.hchr.org.mx/files/informes/GTDFI.pdf> [Consulted on December 30, 2013].

<sup>182</sup> United Nations, Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico*. December 20, 2011. Paragraph 20. . Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf) [Consulted on December 30, 2013].

<sup>183</sup> United Nations, Working Group on Enforced or Involuntary Disappearances. *Preliminary Observations on the Visit to Mexico*. March 31, 2011; and Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico*. December 20, 2011, paragraph 69.

detailed and reliable information on enforced disappearances carried out by public authorities, criminal groups or individuals with direct or indirect support from public officials.<sup>184</sup>

163. On the subject of the collusion of state agents as perpetrators of human rights violations committed against migrants, the Commission was told that

The collusion of federal and state officials has been established in many cases. In the San Fernando case, the Attorney General herself acknowledged that a number of municipal police officers were involved as perpetrators of these executions. The San Fernando case and others illustrate the collusion. We have a number of cases, like the case of the disappeared hunters in Zacatecas, who are natives of Guanajuato and who were disappeared by municipal police officers from Joaquín Amaro, Zacatecas, and handed over to organized crime. There are a number of officials in this state being prosecuted, but we have no information that would help us locate the disappeared persons. We have other similar cases that follow the same pattern: municipal police officers arrest persons and hand them over to organized crime in the state of Coahuila; there, too, we have municipal police under arrest, but the same situation: no information leading to the whereabouts of the thus-far disappeared persons. Recently, a number of public complaints have been filed seeking the arrest of federal and state officials for collusion with organized crime. These are basically in the state of Coahuila. One of them involves the former PGR Delegate and various officials in the delegation, as well as state officials in the prosecutor's office, who had been meeting with family members of the disappeared persons for more than two years, taking down information on their cases; even so, no investigation ever came to pass. To date, not a single relative of any person on FUNDEC's list of the disappeared has seen any progress made on the investigations to locate the disappeared relative. At the same time, aware that there investigations underway against a number of federal and state officials, the PGR suggested to us that we continue to talk to the officials now being prosecuted. Obviously this is a troubling situation for us, because of the risk to families who have filed complaints and have provided very sensitive information on their cases. Now, unfortunately, we have confirmation of something we already knew and suspected and that was reported in due course: the collusion of various authorities in these serious crimes against humanity.<sup>185</sup>

164. The Commission notes there is no consistency in the way in which cases of forced disappearance are investigated. Indeed, some authorities did not consider that abduction of migrants could end up being classified as a case of forced disappearance. In various meetings, civil society organizations highlighted cases of forced disappearances

<sup>184</sup> United Nations, Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico*. December 20, 2011. Paragraph 17. . Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf) [Consulted on December 30, 2013].

<sup>185</sup> Remarks by Blanca Martínez, from the "Fray Juan de Larios" Diocesan Human Rights Center and advisor to the United Forces for Our Disappeared in Mexico (FUNDEM) at the *Hearing with the Inter-American Commission on Human Rights on the Situation of Missing Migrants and Unidentified Remains in Mexico*. Washington, March 23, 2012. Audio and video available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=125> [Consulted on December 30, 2013].

of migrants in which investigation of the case as one of forced disappearance was not considered an option; instead, if a case was ultimately investigated at all, it would be for a difference offense, such as abduction, illegal deprivation of freedom, as a missing or lost person case, or an abuse of authority case. Many of these terms are not crimes under Mexican law, which precludes an effective investigation of the facts; instead the facts of the case are simply entered into the record. In other cases, these people are regarded as simply missing or lost, and the kind of effective investigation that would discount the possibility of the case being one of a forced disappearance is never conducted. In those cases in which a criminal investigation was conducted, it tended to focus on finding the accused guilty, but not finding the disappeared migrant. The Commission is also troubled by the fact that authorities mistakenly labeled many of these cases as “levantones”<sup>186</sup>, when they might well have been cases of forced disappearance. Relatives of disappeared migrants said they were afraid to report these facts for fear of reprisals or because there was evidence of involvement by state agents, such as INM officials, federal, state and municipal police, and even members of the PGR or of the state attorneys general offices.

165. Despite the magnitude of the problem, it is unclear how many persons have been disappeared, have gone missing or are absent, nor is it clear which agency is responsible for keeping these records. The figures in the hands of the different State authorities are not consistent with respect to the persons registered as disappeared, missing or absent. The Secretariat of Public Safety had 2,044 cases listed, while the PGR had a list of 4,800 cases. The Office of the Attorney General of the Federal District, which has a record for the entire country, lists 5,229 persons missing or disappeared nationwide.<sup>187</sup> On the other hand, the figures that the CNDH released in the second half of 2012 showed that from 2005 to 2011, a total of 24,091 persons had been registered as disappeared, lost or missing; it also listed 15,921 unidentified bodies.<sup>188</sup> In February 2013, the SEGOB said that between December 1, 2006 and November 30, 2012 there were 26,121 cases of people not located in Mexico. In this universe of cases, 20,915 were related to preliminary investigations, circumstantial proceedings and folders of investigations while the remaining 5,206 were pending of data

<sup>186</sup> While “*levantón*” is not a legal term, the Mexican authorities commonly use “*levantón*” to refer to the abductions committed by organized crime. With this kind of deprivation of liberty, there is often no negotiation and the victims are tortured, subjected to physical, psychological and sexual violence, are murdered and in some cases disappeared. See, *La Jornada*, *Levantones, secuestros sin negociación que generalmente terminan en asesinato* [Levantones, abductions with no negotiations and that generally end in murder]. Mexico: August 11, 2008. Available at: <http://www.jornada.unam.mx/2008/08/11/index.php?section=politica&article=005n1pol> [Consulted on December 30, 2013].

<sup>187</sup> See, ANIMAL POLÍTICO, *Cifras oficiales de SSP y PGR sobre desaparecidos discrepan por más del doble* [SSP and PGR official statistics on the disappeared could be less than half the actual figures]. Paris Martínez. Mexico, March 7, 2012. Available at: <http://www.animalpolitico.com/2012/03/cifras-oficiales-de-ssp-y-pgr-sobre-desaparecidos-discrepan-por-mas-del-doble/> [Consulted on December 30, 2013].

<sup>188</sup> See, REFORMA, *Acusan desden a desapariciones* [Disappearances blamed on indifference]. Mexico, August 30, 2012. Available at: ANIMAL POLÍTICO, *Los 49 cuerpos abandonados en Cadereyta podrían ir a la fosa común* [The 49 bodies abandoned in Cadereyta might go to a common grave], Mexico, July 24, 2012. Available at: <http://www.animalpolitico.com/2012/07/los-49-cuerpos-abandonados-en-cadereyta-podrian-ir-a-la-fosa-comun/> [Consulted on December 30, 2013].

validation. The database from which these figures shed was built by the National Center for Combating Crime (CENAPI) of the PGR, from information provided by local prosecutors<sup>189</sup>. The Commission observes that Mexico does not have a centralized, reliable register of disappeared, lost or missing, nor of cases of forced disappearance of persons.

166. According to the information provided during the hearing on the situation of missing migrants and unidentified remains in Mexico, the petitioner organizations pointed out that FUNDEM had 250 cases of disappeared Mexicans, not one of whom has been located as the result of a criminal investigation. In cases involving Central American migrants, the majority of those in which there have been results were because the mothers and family members of the disappeared migrants have organized caravans to search for their loved ones throughout Mexico.<sup>190</sup> The Commission has also been told that before the cases will be taken family members are virtually forced to prove whether organized crime is involved. Given the lack of coordination between and among the states and the absence or dearth of information on the progress made in investigations, the family members themselves have investigated the cases and supplied information to the prosecutor's office, despite all the risks that this entails. The Commission observes that Central American families have greater difficulty in accessing the justice system, because there are no regional coordination mechanisms to keep families informed, involve them in the investigation process and provide them the assistance they need.

167. The IACHR delegation was also told that there are no established mechanisms by which to search for disappeared persons, nor is there any specific office to which family members can turn for assistance in their search for their loved ones. The problem is compounded when the family comes from one state in Mexican and the events occurred in another, as there is no way that they can get access to the authorities at the scene of the events, and there is no coordination between federal agencies or with the authorities in Central American countries or elsewhere. In its observations on this report, the Mexican State reported that with Agreement A/066/13, published in the Federation's Official Gazette of June 21, 2013, the Specialized Search Unit for Missing Persons was created and its authorities established. It was to serve as a specific office to which persons can turn in their search for missing persons.<sup>191</sup>

#### ***f. Disappeared and missing migrants and unidentified remains***

168. The massacres of migrants and the discoveries of hundreds of bodies near migration routes and in border areas have also exposed the failings and flaws in the

<sup>189</sup> See, EL UNIVERSAL, Lista oficial de desaparecidos es de 26 mil 121: Segob. México, 26 de febrero de 2013. Available at: <http://www.eluniversal.com.mx/notas/906200.html> [Consulted on December 30, 2013].

<sup>190</sup> Intervention by Blanca Martínez, FUNDEM, at the *Hearing with the Inter-American Commission on Human Rights on the situation of missing migrants and unidentified remains in Mexico*. Washington, March 23, 2012. Audio and video available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=125> [Consulted on December 30, 2013].

<sup>191</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 13.

handling and identification of bodies and in the assistance and protection afforded to the victims' family members. Based on information compiled during the visit and subsequent thereto, the Commission observes that in cases involving the murder of migrants, no standardized protocols are followed to disinter the bodies, preserve and guard the crime scene, maintain the chain of custody, conduct autopsies, etc. The IACHR received a complaint filed by the mother of a Honduran migrant who continued to search for her son's body.

*On August 17, 2010, I received notification from San Miguel, Tamaulipas, Mexico, that [my son, age 31,] had been killed, having sustained a bullet wound to the head [...] A tightly-sealed coffin arrived in San Miguel on November 28, 2010, and supposedly contained my son's body. They handed over the coffin to us, and we took it to the city of Olanchito, Yoro, and another [sic] On November 29, 2010, as we were about to bury the coffin in Olanchito's General Cemetery, we decided to open it. All that was inside was a black case running the length of the coffin. And there were seventeen plastic bags in various colors—black, pink, white—and a piece of meat weighing about five pounds, which was full of dirt and worms. We also discovered that the only things inside were bags with dirt and more bags that appeared to contain something else, but certainly not the body [...] I was expecting them to help me find my son's body. Everyone in the family has been the victim of a deception; the coffin that we received did not contain my son's body. And why the deception, when one considers the anguish that a family suffers when it receives such tragic news.*

169. As of the date of approval of this report, of the 72 victims of the massacre in San Fernando, Tamaulipas, 23 have been identified as nationals of Honduras, 14 as nationals of El Salvador, 13 as nationals of Guatemala, 4 as nationals of Brazil, 4 as nationals of Ecuador, and one as a national of India. The Mexican State notified the Commission that of the 72 bodies discovered in San Fernando, 60 had been fully identified, and their identification was not in doubt; it said that only 12 bodies had not yet been identified. The State said that the bodies could not be identified because there were no DNA samples to compare in order to identify the bodies.<sup>192</sup> However, it is public knowledge that only 59—not 60—of the 72 bodies were identified; the remaining 13 bodies that could not be identified were buried in a common grave in Mexico's City's Public Cemetery on June 22, 2011.<sup>193</sup>

<sup>192</sup> Remarks by Lic. Leopoldo Velarde Ortiz, Coordinator of Advisors of the Office of the Deputy Attorney General for International Affairs of the Office of the Attorney General of the Republic (PGR) at the hearing held by the Inter-American Commission on Human Rights on the situation of missing migrants and unidentified remains in Mexico, Washington, March 23, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=125> [Consulted on December 30, 2013].

<sup>193</sup> See, *El Universal, San Fernando: un número "identifica" a 13 víctimas* [San Fernando: 13 victims "identified" by a number]. Mexico, September 7, 2012. Available at: <http://www.eluniversal.com.mx/nacion/199823.html> [Consulted on December 30, 2013].

170. In July 2011, the Office of the Prosecutor for Human Rights of Guatemala published the report on Guatemalan Migrants in Transit through Mexico and the United States in which it said that Mexico's post mortem identification services had not followed proper procedure for identifying the remains and preserving the chain of custody after the San Fernando massacre that claimed the lives of 72 migrants. The Report states that the information that Mexico's PGR sent to Guatemala's Prosecutor for Human Rights on the identity of each body discovered after the massacre was insufficient to make a reliable identification of the victims; it also observed that the victims' fingerprints were not taken properly or were incomplete, which made it difficult to match the fingerprints to those on the identification documents of Guatemalans reported missing in Mexico. Other problems mentioned in the report included the delay in retrieving the identified bodies. This report also emphasized that in order to identify possible Guatemalan victims of the massacres that occurred in April 2011 and thereafter, Mexico's PGR should act quickly to file an urgent request with the Guatemalan Public Prosecutor's Office seeking reciprocal assistance in legal matters, based on the Bilateral Treaty between Guatemala and Mexico in force since 1997.<sup>194</sup>

171. On the occasion of the first anniversary of the massacre of the 72 migrants in San Fernando, Guatemala's Ministry of Foreign Affairs issued a public statement in which it pointed out that on three different occasions it had asked the Mexican authorities not to close the investigations into the case, in order to be able to determine whether other Guatemalans were among the 13 bodies whose remains were not identified. However, its requests were not heeded and the remains of the 13 unidentified victims went to a common grave. At the request of the Ministry of Foreign Affairs of Guatemala, the burial of the still unidentified remains was postponed, which allowed the body of Nancy Pineda to be identified in March 2011.<sup>195</sup> The press release observed that the safety of the Guatemalan community in transit to the United States by way of Mexico had deteriorated significantly, as evidenced by the mass kidnappings that happened in Oaxaca in December 2010 and the death of a still undetermined number of Guatemalans in the massacres in March and April 2011 in northern Mexican states; for identification purposes, Guatemala had sent the Mexican authorities the records of 51 Guatemalans who might be among the victims. The press release also pointed to the flaws in the identification of remains, delays in delivering the findings and in repatriating the victims' bodies.

172. Between April and May 2011, in the wake of the mass kidnappings of persons traveling on passenger buses in various parts of Tamaulipas in March of that year, the

<sup>194</sup> Prosecutor for Human Rights of Guatemala, *Informe de Migrantes Guatemaltecos en su Tránsito por México y Estados Unidos de América* [Report on Guatemalan Migrants in Transit through Mexico and the United States]. Guatemala, July 7, 2011. pp. 15-16. [Document on file with the Commission].

<sup>195</sup> Ministry of Foreign Affairs of Guatemala, *Comunique 377-201. Al cumplirse un año de la masacre que costó la vida de 72 migrantes en Tamaulipas, México* [One year since the massacre that claimed the lives of 72 migrants in Tamaulipas, Mexico], Guatemala, August 22, 2011. Available at: <http://www.minex.gob.gt/Noticias/Noticia.aspx?ID=1242> [Consulted on December 30, 2013].

bodies and remains of 193 people were discovered in 47 clandestine graves in San Fernando, Tamaulipas, known to be a stop-off for migrants headed for the United States. The clandestine graves were discovered 8 months after the massacre of the 72 migrants, and San Fernando was again the scene of atrocities. The Commission was informed that the victims were Mexican and Central American migrants. The Commission has learned that 10 of the 193 bodies have been identified as Guatemalan migrants in transit through Mexico on their way to the United States.<sup>196</sup> The victims also included Mexican migrants headed for the United States.

173. In March 2012, during the hearing on the situation of missing migrants and unidentified remains in Mexico, the Commission heard testimony from the father of a young Mexican who disappeared after one of the mass abductions of passengers aboard buses in March 2011. He said the following:

*I am here representing the 21 missing migrants from San Luis de la Paz, Guanajuato, one of whom is my son. He left along with 20 other migrants, headed for the United States by way of Tamaulipas. They disappeared on March 21 [2011] when the buses on which they were traveling were hijacked. We never heard from or about them again. We had to take action to contact the driver of the business. We went to northern Mexico to see if we could locate them. We did not have the Mexican Government's support in our search. The authorities closed their doors to us. They don't want to give us any information; simply said, they're not looking for them. In one family's case, they were notified that the authorities had their son's remains but would not allow the family to see them. The family had doubts and did not receive the remains of their relative. When they went to pick up the remains, they were told: there's been a bureaucratic mistake about the young man's death and his remains cannot be handed over. The remains were finally handed over a week later. They were prevented from bringing in their lawyers to help, and were not given copies of the DNA forms. One of their sons insisted that he wanted them to take DNA samples, but the reply from the Public Prosecutor's Office was that he would have to do that at his own expense, and it would be very costly. Another woman was told*

<sup>196</sup> A joint communiqué issued by the Ministry of Foreign Affairs, the Public Prosecutor's Office and the Embassy of Mexico in Guatemala on February 8, 2012, reported that the remains of 10 Guatemalan citizens were identified in early 2012. The communiqué states that on May 30, 2011, the consular office in the Ministry of Foreign Affairs of Guatemala received a complaint filed by family members concerning the disappearance in Mexico of 53 undocumented Guatemalan migrants headed for the United States. The Human Trafficking Unit took samples from 51 family members of the 53 disappeared persons and sent them to the PGR in Mexico, under the terms of an agreement on mutual assistance in legal matters. The PGR matched the samples to the genetic profiles of the remains discovered in a grave in San Fernando, Tamaulipas. See, Joint Communiqué prepared by the Ministry of Foreign Affairs, the Public Prosecutor's Office and the Embassy of Mexico in Guatemala: *Identifican cadáveres de connacionales guatemaltecos, asesinados en San Fernando, Tamaulipas, México [Bodies of Guatemalan nationals murdered in San Fernando, Tamaulipas Mexico identified]*. February 8, 2012. Available at: [http://embamex.sre.gob.mx/guatemala/index.php?option=com\\_content&view=article&id=442:comunicado-051-2012&catid=58:February-2012&Itemid=166](http://embamex.sre.gob.mx/guatemala/index.php?option=com_content&view=article&id=442:comunicado-051-2012&catid=58:February-2012&Itemid=166) [Consulted on December 30, 2013].

*that her husband had been identified, and then they denied it. There are 21 families who are members of this commission, and we have doubts about what happened to our children. They may be among those buried in the clandestine graves in San Fernando. After what happened to us, we don't trust the PGR. We don't want the PGR to reopen the investigations, because any outcome will be questionable [...] because of the way they have treated us. My son and 20 others from San Luis de la Paz are missing and the Mexican authorities have done absolutely nothing.<sup>197</sup>*

174. During the visit, the PGR gave the Rapporteur 8 binders containing general information about the discovery of 193 human remains in 47 graves discovered in the municipality of San Fernando, Tamaulipas in April 2011, and the autopsy reports of 121 of those remains; 112 of those were bodies retrieved from 8 graves; no information was provided concerning the other 9.<sup>198</sup> The documents provided indicated that the Public Prosecutor's Office retrieved the human remains of a total of 193 individuals, discovered in 47 graves at the following locations in the municipality of San Fernando, Tamaulipas: El Arenal— graves discovered in a gap on April 2, 2011; La Joya Ranch— graves discovered on April 5, 2011; La Noria, a grave discovered on April 7, 2011 and Col. Américo Villareal— grave discovered on April 7, 2011. Twenty-five of the 121 remains are listed as identified. The general documentation indicates that of the 193 remains discovered, 120 were sent to Mexico City. Although no date is given, judging by the dates on which the remains were embalmed by a funeral home in Mexico City, it would have been in April 2011. However, a review of the specific data supplied by the PGR turned up 120 bodies and the skeletal remains of one person, for a total of 121 persons.<sup>199</sup>

175. Most of the forensic reports on the 121 remains produced by the autopsy services in the state of Tamaulipas and by the Office of the Attorney General of the Republic in Mexico City, list the sex, age at time of death, height, dental information, genetic profile, fingerprints, time and cause of death. However, the information on some of the remains is incomplete. Of the 121 bodies, 116 were listed as male, 4 as female, and 1 as a possible male. As for the age at time of death, 62 were deemed to be between 19 and 29 years old;

<sup>197</sup> Testimony of Candelario Castillo given to the IACHR during the hearing on the situation of missing migrants and unidentified remains in Mexico. See, IACHR, *Hearing on the situation of missing migrants and unidentified remains in Mexico*. March 23, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=125> [Consulted on December 30, 2013].

<sup>198</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *8 binders containing information pertaining to the case of the migrants murdered in the municipality of San Fernando, Tamaulipas (August 2010), location of the clandestine graves in the municipality of San Fernando, Tamaulipas (April 2011); attacks on and abduction of Central American migrants in Oaxaca in 2011 (hereinafter "PGR binders")*. Documents handed over during the working meeting held with Rapporteur Felipe González. Mexico, D.F., July 2011. [Document on file with the Commission].

<sup>199</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *PGR Binders. Documents handed over during the working meeting held with Rapporteur Felipe González*. Mexico, D.F., July 2011. [Document on file with the Commission].

39 were found to be between 30 and 45; 8 were listed as over 45 years old; no approximate age is given in the case of 12 individuals.<sup>200</sup>

176. In 24 of the 25 cases in which the remains were listed as identified, the genetic profiles of the supposed relatives of the deceased victims were attached to the profile of the remains. These profiles were put together using the samples taken and/or processed by the state forensic services in Guanajuato, Querétaro, Oaxaca, Michoacán and Coahuila, collected from possible relatives of the victims. In the documentation reviewed, no information was found concerning the conditions in which the bodies were found or about how the bodies were disinterred. However the forensics reports do list the grave number for 112 of the 121 remains. They also provide the preliminary findings in all 121 cases. In 14 of the 25 identified cases, the DNA results produced by the PGR's experts are also listed.<sup>201</sup>

177. The Commission notes that at the time of the discoveries, some of the deceased were carrying wallets with currency in Quetzales,<sup>202</sup> a photocopy of a Guatemalan identification document, number 9127805, in the name of William Rodríguez Alejandro and another Guatemalan identification document in the name of Feliciano Tagual Ovalle. The fact that Guatemalan money and identification papers were found with the remains strongly suggests that Central Americans were among the remains recovered.<sup>203</sup>

178. In the case of 84 of the 121 remains, the principal cause of death was listed as encephalic cranial trauma caused by blows to the head; the principal cause of death for 24 of the victims was determined to be a bullet from a firearm; in four other cases, the principal cause of death was listed as a stab wound; in four more cases the cause of death was listed as a combination of stab wounds and blows with a blunt instrument. The cause of death in the case of five of the remains was undetermined. In 7 cases, a bullet wound was listed as the principal cause of death, as well as blunt *peri mortem* injuries that may have also contributed to the cause of death.<sup>204</sup>

179. As for the abductions of passengers from several bus stations, even fully-loaded passenger buses, and the appearance of the clandestine graves in San Fernando, the PGR's Office of the Deputy Prosecutor Specializing in Organized Crime (hereinafter "SIEDO") provided information about two victims who managed to escape their kidnappers. When

<sup>200</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *PGR Binders. Documents handed over during the working meeting held with Rapporteur Felipe González*. Mexico, D.F., July 2011. [Document on file with the Commission].

<sup>201</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *PGR Binders. Documents handed over during the working meeting held with Rapporteur Felipe González*. Mexico, D.F., July 2011.

<sup>202</sup> The quetzal is the official unit of currency of the Republic of Guatemala.

<sup>203</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *PGR Binders. Documents handed over during the working meeting held with Rapporteur Felipe González*. Mexico, D.F., July 2011. [Document on file with the Commission].

<sup>204</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *PGR Binders. Documents handed over during the working meeting held with Rapporteur Felipe González*. Mexico, D.F., July 2011. [Document on file with the Commission].

they appeared before the representative of the Federal Public Prosecutor's Office, they stated the following:

On March 25, 2011, they boarded a bus in Tejupilco, state of Mexico, headed for Reynosa, Tamaulipas. The bus was part of the *Ómnibus de México* busline (they would cross the border into the United States as undocumented migrants). The bus driver stopped in San Fernando, Tamaulipas, where 9 people were taken off the bus by men carrying weapons; they were abducted and taken to different places. The 2 survivors witnessed three people being killed; they were told that they would have to work for the "Los Zetas" cartel; they managed to escape from the place where they were being held captive.<sup>205</sup>

180. According to the information supplied by the Mexican State, the people on board the bus had allegedly been abducted and then executed by members of the Los Zetas Cartel. When they committed these crimes, they were operating with the acquiescence and even cooperation of San Fernando municipal police officers. The State informed the IACHR that:

As a result of this effort [a combined effort of the Secretariat of National Defense, the Secretariat of the Navy and Marines of Mexico, the Federal Police attached to the Public Prosecutor's Office and the Federal Public Prosecutor's Office], 74 persons implicated in these acts were apprehended, among them 17 police officers from the municipality of San Fernando, who had provided protection and assistance to the organized crime group known as "Los Zetas". All those taken into custody were investigated for the crimes of organized crime, unlawful deprivation of liberty, homicide, violation of the Federal Firearms and Explosives Act, violation of the Law on Burial and Exhumation of Bodes and resulting crimes.<sup>206</sup>

181. The information in the binders that the PGR handed over to the Commission's delegation in connection with the 193 human remains discovered in the San Fernando gravesites, indicates that 35 of the 43 remains recovered from Grave 1<sup>207</sup> were estimated to have died 7 to 14 days earlier; the estimated time of death for 19 remains discovered in Grave 4<sup>208</sup> was also 7 to 14 days earlier. The Commission believes that the combination of elements described above suggests that these two graves contained the remains of the passengers on board the buses that appear to have been hijacked in Tamaulipas and may be connected to the remains found in the graves discovered in San Fernando, Tamaulipas,

<sup>205</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC – OFFICE OF THE DEPUTY ATTORNEY FOR INVESTIGATIONS, SPECIALIZING IN ORGANIZED CRIME, Clandestine Graves. San Fernando, Tamaulipas. Document handed over during the working meeting with Rapporteur Felipe González Morales. Mexico, D.F., July 2011, p. 3. [Document on file with the Commission].

<sup>206</sup> GOVERNMENT OF MEXICO. *The Mexican State's reply to the IACHR's Article 41 request for information in connection with the bodies discovered in clandestine graves*. Permanent Mission of Mexico OEA-01975, September 7, 2011, p. 20. [Document on file with the Commission].

<sup>207</sup> Preliminary Inquiry AP 1173.

<sup>208</sup> Preliminary Inquiry AP 197.

in April 2011. Those buses were headed to Tamaulipas, possibly Reynosa; in at least one case, the bus likely originated from or at least made a stop in Querétaro.<sup>209</sup>

182. Concerning the 14 clandestine graves found in San Fernando, Tamaulipas, the Commission received information from the Office of the Attorney General of Tamaulipas to the effect that the exhumations of the bodies in the clandestine graves had been handled in a highly irregular manner, without the human and material resources necessary. Some graves were exhumed before photographs were taken, which made identification of the victims more difficult. In some cases, the exhumations were done at night, by the workers at the nearest local cemeteries who not only used shovels to dig up the graves but also had no technical expertise in how to disinter and protect the bodies.

183. In related events, on May 13, 2012, 49 human torsos—43 men and 6 women—were discovered in the area of Cadereyta, Nuevo León, along a highway connecting Monterrey in Nuevo León with Reynosa in the state of Tamaulipas. The torsos had been decapitated and the limbs dismembered; alongside the remains was a piece of cloth on which the Los Zetas Cartel claimed responsibility for the events.<sup>210</sup> The Attorney General of Nuevo León, Adrián de la Garza, said that migrants in an irregular situation might be among the victims of the Cadereyta massacre.<sup>211</sup> After performing the DNA tests, no positive identifications had been made.<sup>212</sup> The government of El Salvador asked the Mexican authorities to share the DNA information from the bodies, so that it could compare that information with the genetic profiles of family members of disappeared Salvadoran migrants. The Commission believes that until those bodies are identified, the working hypothesis that migrants may be among the victims is still valid.

184. The authorities from the Federal District State Human Rights Commission told the IACHR delegation that one of the main difficulties in the identification of migrants killed in San Fernando, Tamaulipas, was that the chain of custody was not followed in a manner that would guarantee the integrity of the remains and the crime scene, nor had the proper forensic protocols been followed. The problems caused by this lack of rigor made it impossible to identify some of the bodies, which ended up in common graves.

<sup>209</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *PGR Binders. Documents handed over during the working meeting held with Rapporteur Felipe González*. Mexico, D.F., July 2011. [Document on file with the Commission].

<sup>210</sup> *Proceso, Se atribuyen Los Zetas masacre de 49 en Cadereyta* [Los Zetas claims responsibility for the massacre of 49 in Cadereyta]. Nuevo León, May 14, 2012. Available at: <http://www.proceso.com.mx/?p=307395> [Consulted on December 30, 2013].

<sup>211</sup> BBC World, *Mexico: ¿quiénes son los muertos de Cadereyta?* [Mexico: Who died in the Cadereyta massacre?] Mexico City, May 22, 2012. Available at: [http://www.bbc.co.uk/mundo/noticias/2012/05/120521\\_cadereyta\\_mexico\\_ao.shtml](http://www.bbc.co.uk/mundo/noticias/2012/05/120521_cadereyta_mexico_ao.shtml); The New York Times, *Numb to Carnage, Mexicans Find Diversions, and Life Goes On*. Cadereyta Jiménez, 15 de mayo de 2012. Available at: <http://www.nytimes.com/2012/05/16/world/americas/mexicans-unflinching-in-face-of-drug-wars-carnage.html?pagewanted=all> [Consulted on December 30, 2013].

<sup>212</sup> CNN Mexico, *Nuevo León entrega a la PGR el ADN de los 49 cuerpos hallados en Cadereyta* [Nuevo León delivers DNA of the 49 bodies discovered in Cadereyta to the PGR], May 31, 2012. Available at: <http://blogs.cnnmexico.com/ultimas-noticias/2012/05/31/nuevo-leon-entrega-a-la-pgr-el-adn-de-los-49-cuerpos-hallados-en-cadereyta/> [Consulted on December 30, 2013].

185. In this regard, the PGR authorities told the Commission's delegation that because Mexico was a federation, the coordination between federal and state authorities was more complicated, each one of which had its own areas of competence and different procedural protocols. As for the situation of the disappeared and missing migrants and unidentified remains, the Commission was told that the protocols needed to be standardized, particularly in the area of forensics, chain of custody and searches for the missing and disappeared. Another obstacle they mentioned in this area is that at the present time, only some 10% of officials with the public prosecutor's offices, experts and police were certified in procedures of this kind. Later, in the observations it presented in October 2013, the Mexican State added that Agreement A/002/10, published on February 3, 2010, sets out rules that all public servants who come into contact with indicia or evidence must observe to preserve the scene of the events and/or in the discovery or processing of indicia or evidence. The State also pointed out that at its XXV Plenary Assembly, the National Conference on the Pursuit of Justice, held in July 2011 by prosecutors and district attorneys from across Mexico, approved the Chain-of-Custody Protocol. According to the State, the purpose of the Protocol is to standardize the criteria for the regulation and instrumentation of the chain of custody in all the Offices of the Prosecutors General or their counterparts in the federative entities and the Office of the Prosecutor General of Military Justice.<sup>213</sup>

186. The PGR authorities maintained that errors were committed when the bodies were exhumed from the graves in Tamaulipas, as the authorities who conducted the exhumations did not take photographs of the scene of the events, even though "these days any cell phone can be used to take pictures." At that point in time, the PGR indicated that 23 of the bodies had been identified, and had already been handed over to the next of kin; in some cases, the PGR had paid the cost of shipping the remains. The PGR authorities also pointed out that after the experience with the first graves discovered in Tamaulipas, they realized that the bodies had not been properly handled. As a result, an agreement was concluded setting out the chain of custody; identification albums were created in order to be able to establish the victims' identity and were sent to the prosecutor's offices in the other states of the region. However, not one of the family members of the disappeared migrants who offered to give testimony to the IACHR Delegation knew of the existence of the identification albums. The PGR officials said that because of the lack of protocols in this area, bodies had been exhumed from graves in Durango using excavator cranes; in the Tamaulipas case, the wrong bodies had been sent.

187. The PGR authorities also reported that most of the state agencies do not have the testing laboratories and forensics studios available to the PGR in Mexico City has. Jalisco, too, has laboratories of this type, and victims can be sent there directly. The PGR makes its

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<sup>213</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 13. [Document on file with the Commission].

own forensics laboratories available to those states that do not have them, which means that the bodies are sent to Mexico City. As for providing information to family members of the disappeared or missing Central American migrants, the authorities said that under Mexican law, no information on preliminary inquiries can be provided to persons who are not parties to the case, which means that in order to get information, the Central American family members would have to become interveners in the case.

188. The Commission's delegation received conflicting information during the visit and thereafter, on the question of the existence of protocols for handling the bodies and the graves and on the establishment of procedures to maintain the chain of custody. In response to the Rapporteurship's request, the State provided documentation setting out a number of general guidelines on the subject, which were developed especially for the Tamaulipas situation, but that would not constitute an official, nationwide protocol to ensure that any graves and bodies discovered would be handled according to standardized procedures. As previously mentioned, the Federal District Human Rights Commission and civil society organizations told the Rapporteur that there were no protocols for these procedures.

189. The documents received did not include a chain-of-custody form about the transfer of the remains or samples of the remains.<sup>214</sup> The Commission feels compelled to point out that the lack of information concerning the chain of custody that the remains followed makes it difficult to track the remains, samples and related evidence when there are no written records or photographs of the evidence being sent, of who requested that the evidence be sent, when the request was made and where the evidence was to be sent; or when there is no record of who received the evidence, when and where the evidence was received, and who has the evidence in safekeeping. Here, the Commission is recommending that chain-of-custody forms be used to ship or send the remains, samples taken from the remains and/or evidence, as illustrated in the Protocol for Exhuming and Identifying Bodies and Human Remains, approved in June 2011 at the XXV Plenary Assembly of the National Conference to Seek and Secure Justice, held in Tuxtla Gutiérrez, Chiapas.<sup>215</sup> This would standardized the techniques and methods used in criminal investigation.

190. The above is consistent with the information the IACHR Rapporteur and delegation received from civil society organizations, which pointed out that in previous massacres like the one involving the 72 migrants and the 193 remains discovered in San Fernando, Tamaulipas, there were shortcomings in the procedures the Mexican State used in the investigation and identification of remains, the handling of the evidence and in the way in which the family members of the disappeared migrants were treated.

<sup>214</sup> OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, *PGR Binders. Documents handed over during the working meeting held with Rapporteur Felipe González*. Mexico, D.F., July 2011. [Document on file with the Commission].

<sup>215</sup> Closing of the XXV Plenary Assembly of the National Conference to Seek and Secure Justice. Mexico, June 10, 2011. Available at: <http://www.cnpj.gob.mx/prensa/2007/fich11/Jun/f10062011.shtm> [Consulted on December 30, 2013].

191. The Mexican State also told the Commission that to address the problem of the missing migrants and unidentified remains and bodies, mechanisms were developed by which to collaborate with the Central American States, to gather as much information as possible so as to make matches and be able to make identifications. They also said that Mexico has a large forensic database, which has been built using the data from all the bodies discovered and that the database could be and has been shared through mechanisms set up with the Central American countries to find answers to the fate of the missing migrants and unidentified remains.<sup>216</sup>

192. Based on the information the Commission has received from the State and from various governments in the region and civil society organizations, it has concluded that the mechanisms the Mexican State has established with the Central American States have proven to be ineffective tools of collaboration, coordination and information sharing. All this has compounded the suffering of the family members of the disappeared migrants in their search to find their loved ones.

193. The Commission was also told of cases of relatives of disappeared migrants who traveled from their home countries in Central America after the discovery of the graves in San Fernando in April 2011. The authorities told them to go from one morgue to the next to see if they could identify their loved ones among the bodies in the morgues. The information regarding the State's treatment of the migrants who were the victims of the crimes and the victims' family members reveals that in many cases, the State's response ranged from indifference to reticence.

194. In this context, another issue of major concern to the Commission is the lack of assistance or the uncoordinated assistance that the Mexican State has offered to family members of disappeared migrants, and how it has dealt with family members who assume that their loved ones might be among the persons whose remains were found in the clandestine graves discovered in recent years. After the discovery of the 193 bodies in 47 clandestine graves in San Fernando, Tamaulipas, the Commission received reports of cases of relatives of disappeared Mexican and Central American migrants who, because of the authorities' lack of organization and coordination, had to visit every one of the SEMEFOS and morgues in different states. The Commission even heard stories in which the authorities had allegedly asked for the relatives to pay to see the bodies and determine whether their loved ones were there. Civil society organizations said that a priority concern was that PROVICTIMA should have the budget it needs.<sup>217</sup>

<sup>216</sup> Remarks by Lic. Leopoldo Velarde Ortiz, Coordinator of Advisors of the Office of the Deputy Attorney General for International Affairs of the Office of the Attorney General of the Republic (PGR) at the hearing held by the Inter-American Commission on Human Rights on the situation of missing migrants and unidentified remains in Mexico, Washington, March 23, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=125> [Consulted on December 30, 2013].

<sup>217</sup> IACHR, *Hearing on Citizen Security and Human Rights in Mexico*. 143rd Session. Washington, D.C., October 27, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2>

195. The Commission is reminded that the victims' family members have a right to the truth, to know where their loved ones' remains are, as this is an essential element of the right to the truth and a measure of reparation. This right creates an obligation incumbent upon the State, which is to satisfy these just expectations.<sup>218</sup> Knowing the whereabouts of the disappeared migrants or locating the bodies of those who perished is of the utmost importance to their families, as it enables them to bury their loved ones according to their beliefs and get closure to the mourning they experienced as a consequence of these events.

196. The civil society organizations told the Commission that at both the federal and state levels, there were a number of different systems containing information on disappeared persons in Mexico. They also pointed out that there are no standardized criteria for compiling forensic information with the result that crosschecks may produce inaccurate or erroneous results. These systems and the institutions responsible for them do not share information with one another and show different figures. The civil society organizations said that the lack of investigation into these cases was the product of structural discrimination, because in Mexico, disappearances among the poor and disenfranchised are not investigated.

197. The Commission is also troubled by the lack of coordination among authorities at the municipal, state and federal levels with regard to the identification of bodies and the chain of custody that must be followed once clandestine graves are discovered, and regarding the treatment that must be accorded to family members of disappeared migrants. Based on the information the Rapporteurship gathered during the visit and subsequent to it, there are no standardized protocols in Mexico for the procedures to follow when exhuming bodies. Some officials with the prosecutors offices in charge of these procedures are woefully under-prepared and under-resourced.

198. The Commission believes that nationwide implementation of the Protocol for Exhuming and Identifying Bodies and Human Remains is a very important first step for the Mexican State. Based on the available information, the Commission observes that despite certain tangible progress, there are serious problems with the methods and analyses used in gathering and analyzing remains, including their identification and use of forensic genetics. It has also observed a problem with the chain of custody, loss of remains and, in some extreme cases, substitution of remains.

199. Given the many migrants who have disappeared on their migration route to the United States, in recent years organizations and committees have been forming in El

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[Consulted on December 30, 2013].

<sup>218</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. (Only in Spanish) Series C No. 251, para. 115; I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 245, y I/A Court H.R., *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 241, para. 73.

Salvador and Honduras, composed of relatives of disappeared migrants. In the last two years, the Commission has seen civil society organizations in El Salvador, Honduras, the state of Chiapas in Mexico and Guatemala, put together forensic databanks on disappeared migrants. The purpose of the databanks is to help identify disappeared migrants by sharing information on the remains of migrants whose bodies have been found along migration routes. The databanks contain information on the background to each case of disappearance (date of departure, date and place of the most recent phone call, the route, and other information), *ante mortem* data (a physical description of the person when he/she was alive) and genetic samples and profiles of family members.

200. At the present time, the forensic databanks on missing or disappeared migrants contain information on 449 migrants that their family members have reported as disappeared in Mexico, the United States and Central America. As of late September 2012, a total of 1253 family members of disappeared migrants had supplied their genetic samples to the forensic databanks. In El Salvador, there are currently 168 cases of disappeared migrants with 456 samples from family members; in Honduras there are 168 cases and 78 samples from family members; in Guatemala, 80 cases with 297 samples from family members; and in the state of Chiapas, 25 cases with 78 samples.

201. Governmental and non-governmental actors are instrumental in putting these databanks together. Region-wide, the national forensic databanks are part of the “Border Project,” developed by the Argentine Forensic Anthropology Team, the Foundation for Justice and the Democratic Rule of Law, the Committee of Relatives of Deceased and Disappeared Migrants of El Salvador (COFAMIDE), and the Saltillo Migrant Home—Border with Justice, A.C., and MesoAmerican Voices, Action with Migrant Peoples.

202. As of the date of publication of this report only a limited amount of information has been exchanged among the databanks. Nevertheless, in the last year this mechanism has been instrumental in identifying 13 migrants, 10 of whom were found in Arizona, two in Texas and one in Mexico. At the present time, another 13 cases are awaiting confirmation. Of the 13 migrants who have thus far been identified, 10 were Salvadorans—including three women-, one was Mexican, one was Honduran and one was Costa Rican.<sup>219</sup> By crosschecking forensic data on the bodies found in the Pima County Forensic Science Center in Arizona in the United States<sup>220</sup> with the data and genetic profiles of relatives

<sup>219</sup> *Animal Político*, 435 migrantes centroamericanos y mexicanos reportados como desaparecidos [435 Central American and Mexican migrants reported disappeared]. Mexico: August 31, 2012. Available at: <http://www.animalpolitico.com/2012/08/435-migrantes-centroamericanos-y-mexicanos-reportados-como-desaparecidos/> [Consulted on December 30, 2013].

<sup>220</sup> According to the *Pima County Forensic Science Center*, calendar year 2010 saw the highest number of migrant deaths (230) recorded at the FSC while 2011 saw a return to average (184). 184 deaths per year is the average number of deaths per year since 2002. The FSC has recorded 1,911 migrant deaths since 2001. In 2011, 87% (61) of identified migrants were of Mexican nationality, followed by Guatemalans (9%, 6) and Hondurans (3%, 2). See, Pima County Forensic Science Center – Office of the Medical Examiner. *Annual Report 2011*. 2012, p. 27. Available only in English at: [http://www.pima.gov/cmo/OME/documents/pdfs/2011\\_OME\\_annual\\_report.pdf](http://www.pima.gov/cmo/OME/documents/pdfs/2011_OME_annual_report.pdf)

of disappeared migrants in the Salvadoran and Honduran forensic databanks on missing persons, 8 migrants who disappeared have been identified. Here, the Commission must underscore how important it is to create forensic databanks on disappeared persons; the databanks should be located in the migrants' countries of origin, transit and destination. The exchange of forensic information among the databanks is equally important.

203. The impact that national forensic databanks have and the impact they will eventually have on the search for and discovery and identification of missing or disappeared migrants in the region makes it incumbent upon all states—from Central America to North America—to have mechanisms of this kind and to fully share the information they have. The Commission believes that the creation of national forensic databanks and the sharing of information with other forensic databanks is a best practice that other States must replicate, particularly those States—Mexico being one of them—that are on the migration route between Central and North America.

204. The Commission recognizes the importance of the work that the state of Chiapas is doing through the Chiapas State Forensic Migrant Database, to seek and identify disappeared migrants.<sup>221</sup> The Commission has learned that between August and September 2012, the bodies of 73 unidentified persons—presumably Central American migrants—were exhumed. These were the bodies of persons who died crossing Mexico's southern border into Chiapas and who, being unidentified, were buried in common graves in the Jardín de Tapachula Cemetery in Chiapas.<sup>222</sup> The remains were those of 61 men, 10 women and two migrants whose sex was not determined. Following the exhumations, samples were taken from the recovered remains to undergo genetic analysis for identification purposes. The profiles obtained from these analyses will be compared with the profiles of family members of missing migrants in the forensic databanks of Honduras, El Salvador, Chiapas state and Guatemala. A second stage is planned during which bodies will be exhumed at the Ciudad Hidalgo Cemetery in Chiapas.<sup>223</sup>

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[Consulted on December XX, 2013]. See also, BINATIONAL MIGRATION INSTITUTE, *A Continued Humanitarian Crisis at the Border; Undocumented Border Crosser Deaths Recorded by the Pima County Office of the Medical Examiner, 1990-2012*. June 2013, p. 12. Available only in English at: [http://bmi.arizona.edu/sites/default/files/border\\_deaths\\_final\\_web.pdf](http://bmi.arizona.edu/sites/default/files/border_deaths_final_web.pdf) [Consulted on December 30, 2013].

<sup>221</sup> Los Angeles Times, *Sifting for answers in a mass grave in Tapachula, Mexico*. Septiembre 12 de 2012. Available only in English at: <http://articles.latimes.com/2012/sep/12/world/la-fg-mexico-mass-grave-20120912> [Consulted on December 30, 2013].

<sup>222</sup> Chiapas State Human Rights Council, *Boletines 2012: Inician exhumación de personas no identificadas en el panteón municipal de Tapachula* [2012 Bulletins: Exhumation of the unidentified persons buried in the Tapachula Cemetery gets underway]. August 21, 2012. Available at: <http://www.cedh-chiapas.org/portal/consejo/informacion/sala-de-prensa/130-inician-exhumacion-de-personas-no-identificadas-en-el-panteon-municipal-de-tapachula.html> [Consulted on December 30, 2013].

<sup>223</sup> Chiapas State Human Rights Council, *Boletines 2012: Se prevé segunda etapa de exhumación de restos recuperados en fosas comunes: CEDH*. [2012 Bulletins: A second stage is planned to exhume remains in common graves: CEDH] *September 25, 2012*. Available at: <http://www.cedh-chiapas.org/portal/consejo/informacion/sala-de-prensa/155-se-preve-segunda-etapa-de-exhumacion-de-restos-recuperados-en-fosas-comunes-cedh.html> [Consulted on December 30, 2013].

205. At the hearing on the situation of missing migrants and unidentified remains in Mexico, the delegation from Mexico told the Commission that the State has made headway with its forensic database. They pointed out that despite the complications created by Mexico's federal structure—with its three levels of government-, at the national level 70% of the records have been entered into databases. As for the exchange of forensic information with other forensic databanks in the region, the delegation of Mexico reported that through PROVICTIMA, meetings have been held with the consuls of all the Central American countries, in order to put together a database that can be shared or to exchange information.<sup>224</sup> The Commission appreciates the statements made by the representatives for the Mexican State expressing its willingness to study the proposals that the civil society organizations suggested during the hearing and its readiness to address this serious problem.

206. The Commission is therefore urging the State of Mexico to create a national forensic databank, like those in El Salvador, Honduras and Guatemala and any others that may eventually be created. The Commission believes that these measures are a legitimate and reasonable response to the need to identify disappeared migrants.

207. When remains and/or bodies are discovered and the evidence on them suggests that they may be migrants, the Commission is recommending that the unidentified remains be preserved. The Commission has learned that of the 193 bodies found in graves in Tamaulipas in April 2011, more than 150 have not yet been identified. The information supplied by representatives from the forensic databanks in El Salvador and Honduras suggests that Central American migrants may be among those remains. The Commission is therefore recommending that the remains that have already been sent to a common grave be protected from any disturbance, and those remains still with SEMEFOS not be cremated or buried in a common grave.

208. The Commission is recommending the creation of a national mechanism in Mexico to facilitate the exchange of information on unidentified remains and Mexican and Central American persons who disappeared in Mexico. This national mechanism should be integrated with a similar mechanism of regional scope and spanning Mexico and all of Central America, thus enabling the exchange of forensic data across that entire area. Civil society organizations should play a role in running both mechanisms: the national and the regional. The Commission is confident that the creation of these mechanisms will be an asset in the search for missing migrants and unidentified remains, and serve to modernize forensic protocols and best practices.

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<sup>224</sup> See, Statements by the SER's Director of Human Rights and Democracy, Ambassador Alejandro Negrín, and by SEGOB's Under Secretary for Legal Affairs and Human Rights, Lic Max Diener Salas, at the Hearing of the Inter-American Commission on Human Rights on the Situation of missing migrants and unidentified remains in Mexico, Washington, D.C., March 23, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=125> [Consulted on December 30, 2013].

### **g. Sexual violence against migrant women**

209. The discrimination toward migrant women and girls by reason of their gender greatly increases the likelihood that they will be victimized on the journey through Mexico. The Commission has received abundant information about the sexual abuse to which migrant women and girls are subjected in Mexico. In its report titled “Invisible Victims: Migrants on the Move in Mexico”, Amnesty International pointed out that “women and children—particularly unaccompanied children—are especially vulnerable. They face serious risks of trafficking and sexual assault by criminals, other migrants and corrupt public officials.”<sup>225</sup>

210. Sexual violence has become part of the journey for many migrant women in transit to the United States. The Commission was told that the sexual violence against migrant women has reached the point that it is common for Central American women to get an injection of a contraceptive called Depo-Provera before embarking on their journey. Depo-Provera stops ovulation for three months, so that if they are raped, they will not end up pregnant. Among migrants this contraceptive method is known as the “anti-Mexico shot”. As previously noted, many migrant women who gave testimony to the Rapporteur said that they had been raped and sexually abused frequently when they were kidnapped or deprived of their liberty. In the testimony given to the Rapporteur, one woman and her companion recounted how a number of men had attacked a train and then gang-raped a group of women with extreme brutality.

211. The Commission learned of one case of a 15-year-old adolescent migrant from Honduras who was sexually assaulted by the local INM representative in Tenosique, Tabasco, who offered to legalize her immigration status if she would have sexual relations with him. Although she refused, the local INM representative performed sexual acts on the girl’s body without her consent, such as sexual fondling. As a result of these events, in its Recommendation No.54/12 the CNDH found that it had sufficient evidence to prove that the local INM representative and four other INM officials had committed human rights violations, violations of the law and of the rights to legal security, to physical and mental integrity, to freedom and to decent treatment, to the detriment of adolescent girl V1, by virtue of their conduct, which it summed up as follows: violations of the girl’s sexual freedom; failing to provide protection to persons in need of protection; obstructing their access to justice; violating the law, their sense of honor, loyalty, impartiality and efficiency in the performance of their functions; and the commission of acts that violate the rights of migrant persons, especially unaccompanied children and adolescents.<sup>226</sup> The officials that the CNDH blamed for these acts were the Coordinator of Professions that Specialize in

<sup>225</sup> Amnesty International, *Invisible Victims: Migrants on the Move in Mexico*. Amnesty International, Madrid, 2010, p. 5.

<sup>226</sup> CNDH, *Recomendación No. 54/2012, Sobre el caso de agresión sexual a la menor migrante V1*. [Recommendation No. 54/2012, On the sexual assault case involving migrant minor V1], Mexico, D.F., September 28, 2012. Available at: [http://www.cndh.org.mx/Recomendaciones\\_1990\\_2012](http://www.cndh.org.mx/Recomendaciones_1990_2012) [Consulted on December 30, 2013].

Migration Services, the head of the department of Immigration Regulation in Tenosique, the Deputy Regional Representative at the Tabasco Office, the official in charge of the office, and one agent with the Beta Group. According to the information the Commission has in its possession, as of the date of approval of this report, some of these officials are still employees of the INM and continue to work in the same area.

212. As previously noted, human trafficking for the purpose of sexual exploitation or prostitution of others is another threat that migrant women face. In one piece of testimony that the Rapporteur received, a young woman recounted how, during her abduction, she had been gang-raped by 8 men. The testimony received from migrant women who had been abducted tended to recount episodes in which the women, during their captivity, were gang-raped. In Reynosa, Tamaulipas, the Rapporteur received testimony from a Honduran migrant woman who was with her two small daughters. She said the following:

*They held me kidnapped here [in Reynosa] up until about 15 days ago. They abducted me some months ago, just as I arrived at the Reynosa bus terminal. I was traveling with my two daughters. The elder is three years old now, and the younger is not yet six months old [...] Some men driving a white truck stopped and told me to get in, that they were going to help me. From there they took me and my daughters to a house where many people were being held captive. I later learned that they were from the Los Zetas Cartel. They had me doing the cleaning and working in the kitchen, to prepare their meals and the meals for the other people in the house. There, the men in that house raped me almost every day. What hurt me the most, however, is that they raped me in the presence of my daughters. The first time they raped me, I tried to put up resistance, but they almost beat me to death. That rape left me with bruises everywhere; they cut my lip and hit me in the eye. And after that, they came for me, one after the other, whenever they wanted [...] The house had four rooms that I was not allowed to enter. At times I could hear the screams of other women from those rooms and saw their bodies being dragged out, wrapped in something (dead) [...] One day I escaped. I noticed that the door to a pick-up that was used every day was half open. Since I was the one who cleaned the pick-up, I seized the opportunity and escaped with my daughters [...] I went to the DIF and INM offices to ask for help in getting back to my country, but they told me they couldn't help me because the person in charge was on vacation [...] My elder daughter is frightened whenever men are nearby.<sup>227</sup>*

213. The Commission observes with concern that, as with the other crimes committed against migrants, there are no figures on the crimes committed against women by virtue of their gender. Amnesty International has written that 6 of every 10 migrant

<sup>227</sup> Testimony of a migrant woman, as told to the IACHR's Rapporteur on the Rights of Migrants, in Reynosa, Tamaulipas, August 1, 2011.

women and girls will fall victim to sexual violence during their journey through Mexico.<sup>228</sup> Civil society organizations pointed out that although sexual violence against women is widespread in Mexico and takes multiple forms, it is difficult to get reliable statistics since women tend to hide the fact that they have been sexually abused or raped. Compounding the problem is the social stigma that attaches to those women who report these crimes. The problem is even worse for migrant women, because they are afraid of being deported if they report the crime; their desire to get to the United States might also cause them to hide and remain silent about the crimes committed against them.<sup>229</sup>

214. The Commission must again underscore its concern over the various forms of violence and discrimination to which migrant women in Mexico are exposed. In keeping with what the CEDAW Committee observed, the Commission believes that the integration of a gender perspective is essential to the analysis of the position of women migrants and the development of policies to counter discrimination, exploitation and abuse.<sup>230</sup> The Commission would remind Mexico that under Article 9 of the Convention of Belém do Pará—read in conjunction with the duty under Article 7(b) of that instrument, which is to apply due diligence to prevent, investigate and punish violence against women— Mexico has a duty to give special consideration to factors that can make women more vulnerable to violence, such as their status as migrants, refugees or displaced persons, especially in the case of girls. This creates immediate obligations incumbent upon the States, to investigate the priorities and needs of this group of women; to gather information and relevant statistics; to instruct their immigration officials, police and officers of the court about women’s needs and realities, and to create the conditions necessary so that they are fully able to exercise their human rights. The justice system must respect their integrity and dignity as victims, and rapidly and thoroughly prosecute the cases of sexual violence committed against them.<sup>231</sup>

#### **h. Migrant children**

215. During the visit the Rapporteurship received information and confirmed firsthand how very vulnerable boys, girls and adolescents (hereinafter “BGA”) are within the mixed migration flows that arrive in and cross Mexico. The Commission notes that among the BGA in the mixed migration groups in Mexico, two subgroups can be

<sup>228</sup> See in this regard, Amnesty International, *Invisible Victims: Migrants on the Move in Mexico*. Amnesty International, Madrid, 2010, p. 5 Available at: <http://www.amnesty.org/es/library/asset/AMR41/014/2010/es/1345cec1-2d36-4da6-b9c0-e607e408b203/amr410142010es.pdf> [Consulted on December 30, 2013].

<sup>229</sup> See M. Bronfman and R. Leyva (1999) *Migración y SIDA en Centroamérica, México y EEUU* [Migration and AIDS in Mexico, Central America and the United States], Mimeo, Cuernavaca, Mexico; *Pastoral de la Movilidad Humana* (1998) Para los que no llegaron. Un sueño hecho cenizas [For those who didn’t make it. A dream turned to ashes], Serviprensa, Guatemala; *Mujeres que Cruzan Fronteras* (2006) [Women Who Cross Borders], UNIFEM. Documents of Gretchen Kuhner.

<sup>230</sup> United Nations, Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation 26 on Women Migrant Workers, 2008, p. 4. Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>231</sup> *ibíd.*

distinguished: those who live and work in Mexico and those who are in transit to the United States. The Commission observes that the factors compelling BGA to migrate vary, but can mainly be summed up as a search for better opportunities in life, family reunification, an effort to get international protection from persecution, violence and exploitation, and natural disasters. Other factors include the mistreatment and neglect that BGA suffer in their home countries, persecution by organized crime groups, such as gangs, *pandillas*, or drug cartels, and the proliferation of transnational human trafficking networks.<sup>232</sup>

216. As is true of the general migrant population in transit through Mexico, the bulk of the migrant BGA in Mexico are Central Americans, especially Guatemalans. The Commission delegation was told that in many cases, rural Guatemalan families send their adolescent children to work in the border state of Chiapas; from there, the BGA are expected to send remittances to contribute to the upkeep of the rest of the family. The Commission has been told that a significant percentage of BGA migrants labor under exploitative conditions in the farm sector of the Soconusco region and in Tapachula, Chiapas, in informal commercial activities or domestic work; others become victims of sexual exploitation.<sup>233</sup> The majority of the child farm labor comes from the department of San Marcos and are *Mam* indigenous people, almost all from the municipality of Concepción de Tutuapan. Some begin working in the Soconusco region together with some family member; however, when they develop certain skills, they become independent. According to the report titled “The Human Rights of Boys, Girls and Adolescents along the Mexico/Guatemala Border”, prepared by the “Fray Matías de Córdova” Human Rights Center and the Human Rights Center of the *Universidad Nacional de Lanús*, unaccompanied child migrants are not allowed access to immigration forms for border laborers; hence, they always work as migrants in an irregular situation.<sup>234</sup>

217. The civil society organizations informed the Rapporteur that, according to the information compiled by Catholic Relief Services, some 47% of the BGA migrants report having experienced some form of abuse between the time they left home and the time they were repatriated. The most common abuses to which BGA migrants are subjected are verbal and physical abuse; however, they are also victims of robbery, extortion and

<sup>232</sup> “Fray Matías de Córdova” Human Rights Center and the Human Rights Center of the *Universidad Nacional de Lanús*, *Los Derechos Humanos de Niños, Niñas y Adolescentes en la Frontera México Guatemala* [The Human Rights of Boys, Girls and Adolescents along the Mexico/Guatemala Border]. Mexico, 2012, p. 9.

<sup>233</sup> Idem. See, GONZALES CARILLO, ADRIANA “*Frontera sur y niños migrantes no acompañados en México: un análisis bajo la perspectiva de los derechos humanos (2006-2008)*” [The Southern Border and Unaccompanied Migrant Children in Mexico: an analysis from the human rights perspective (2006-2008)]. FLACSO, Mexico Office, Masters Thesis in Human Rights and Democracy, March 2009; *SIN FRONTERAS “México y su Frontera Sur” [Mexico and its Southern Border]*. Mexico City (2005); *SIN FRONTERAS “Situación de los derechos humanos de la población migrante en las estaciones migratorias de la Ciudad de México y de Tapachula, Chiapas”* [The human rights of the migrant population at the migration holding facilities in Mexico City and in Tapachula, Chiapas], 2005-2006 (2007)”; LOUISE SHELLEY “*Human Trafficking*” Cambridge University Press (2010), p. 265 et seq.

<sup>234</sup> See, Centro de Derechos Humanos Fray Matías de Córdova y Centro de Derechos Humanos Universidad Nacional de Lanús, *Los Derechos Humanos de Niños, Niñas y Adolescentes en la Frontera México Guatemala* [The Human Rights of Children and Adolescents in Guatemala Mexico Border] Mexico, 2012, p. 8.

intimidation. Although most of the abuses the BGA migrants experience occur while in transit through Mexico, the Rapporteur was also told that BGA migrants face danger when immigration authorities arrest them and hold them in custody. Although the immigration authorities were singled out as the parties mainly to blame for these abuses, the police authorities were also mentioned, although less frequently. Young Guatemalans are particularly vulnerable to situations of this type, followed by the Hondurans and Salvadorans.<sup>235</sup>

218. The IACHR delegation observed and was informed that a significant number of BGA migrants who cross Mexico face situations of extreme danger, such as the perils associated with their train travel or becoming victims of crime and of violations of their human rights by organized crime, common crime, and in some cases violations committed by public officials. Throughout their journey, BGA migrants encounter extreme climate and weather conditions, and other risks associated with their age and level of physical and mental growth and development. With violence so widespread in some areas along Mexico's northern border, the BGA tend to be used by organized crime to perform activities associated with human or drug trafficking.<sup>236</sup> Given this situation, the Commission is concerned that the States' response to these situations will be to criminalize these children and sentence them to time in prison.<sup>237</sup>

219. In Ixtepec, Oaxaca, the IACHR delegation witnessed the arrival of the train coming from Arriaga, Chiapas. Atop and between the train cars were hundreds of migrants, among them migrant children exposed to extreme dangers to their lives and personal safety. The Rapporteur witnessed the same situation in Tierra Blanca, Veracruz, where children were lying alongside the train tracks awaiting the arrival of the train, without any type of protection.

220. The Rapporteur also observed that much of the assistance that BGA migrants in transit through Mexico receive is from shelters run by the Catholic Church, private individuals and civil society organizations. BGA migrants were a constant presence during the visits that the Commission's delegation made to the "Hermanos en el Camino" Shelter in Ixtepec, the Shelter "Decanal Guadalupano" of Tierra Blanca and the "Nuestra Señora de Guadalupe" Shelter in Reynosa.

221. For his part, the Under Secretary for Population, Migration and Religious Affairs told the Rapporteur of a number of measures that the Mexican State had taken

<sup>235</sup> Civil Society Organizations, Report on the General Situation of the Rights of Migrant Workers and their Families in Mexico: Prepared on the occasion of the visit to Mexico of Commissioner Felipe González, Rapporteur on Migrant Workers and Members of Their Families of the Inter Human Rights. Mexico, July 2011p. 36.

<sup>236</sup> *El Colegio de la Frontera Norte*, Working paper: Colloquium on "Border Security Policies and the Human Rights of Migrants," Tijuana, 2011, p. 2 [Document on file with the Commission].

<sup>237</sup> See, CNDH, *Recommendation 74/2009*. Available at: <http://www.cndh.org.mx/node/32>. [Consulted on December 30, 2013].

to protect BGA migrants. The Commission appreciates the importance of measures like designing the Model for Protection of the Rights of Unaccompanied Migrant and Repatriated Boys, Girls and Adolescents, done in conjunction with UNICEF, and the creation of Comprehensive Child Protection Officers (hereinafter the “OPIS”) who work in the INM. The Commission was also informed that modules have been put into practice on the treatment of unaccompanied BGA migrants at immigration holding facilities. These measures have improved the detection of at-risk BGA migrants, victims of human trafficking or BGA migrants being smuggled across the borders and territories of other countries. The Commission was also told that applications for asylum filed by BGA migrants have increased.

222. On the Service Modules at the Immigration Stations for unaccompanied migrant children and adolescents, the Mexican State added that in addition to identification of potential candidates for international protection, the SNDIF staff conducts recreational and non-formal educational activities and offers children and adolescents housed at the immigration stations along Mexico’s southern border ways to cope with their emotions. It also pointed out that the OPIs are federal immigration agents dedicated to ensuring observance of the rights of migrant children and adolescents; immediately providing them the basic health services, food, clothing and rest; affording children and adolescents contact with their family members through telephone calls free of charge; keeping the children and adolescents informed of their immigration status, using age-appropriate, friendly conversation; and accompanying the migrant children and adolescents through their repatriation process. According to the information supplied by the State, as of October 2013 the INM had 493 OPIs in the 31 states and the Federal District.<sup>238</sup>

223. Given the context, the Commission is troubled by the fact that the INM, civil society organizations and international organizations have all found that the number of unaccompanied BGA migrating to or through Mexico has increased.<sup>239</sup> The Commission is also concerned that there are no systematic data being compiled on crimes and human rights violations committed against migrant BGA. The Commission is therefore recommending to the State that disaggregated data be compiled to provide a picture of the situation of migrant boys, girls and adolescents and the dangers they face, so as to enable the State to craft public policies geared to preventing the dangers that migrant BGA face and protecting them from such dangers.

224. A considerable number of the migrants who have been victims of various crimes and human rights violations in Mexico were BGA. Under Article 19 of the American

<sup>238</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 13-14 [Document on file with the Commission].

<sup>239</sup> Civil Society Organizations, *Report on the General Situation of the Rights of Migrant Workers and their Families in Mexico: Prepared on the occasion of the visit to Mexico of Commissioner Felipe González, Rapporteur on Migrant Workers and Members of Their Families of the Inter Human Rights*. Mexico, July 2011, p. 36.

Convention and the United Nations Convention on the Rights of the Child, Mexico has an obligation to adopt special measures to protect children and adolescents within their jurisdiction. Such measures must recognize children and adolescents as the *titulaires* of rights and must also adequately address the special needs that children have and their vulnerability.

***i. Discrimination, abuses of authority and excessive use of force against migrants***

225. The Commission has learned of various situations in which migrants are stereotyped and stigmatized. For example, they tend to be blamed for crime. In many cases, once they arrive in certain communities, migrants tend to be blamed for any increase in crime and accused of begging, drug addiction, alcoholism and the commission of crimes. Implicitly or explicitly, these stereotypes are reflected in policies and practices, particularly in the reasoning and language of the authorities. Once created and in use, stereotypes become one of the principal causes and consequences of violence against migrants.

226. The IACHR delegation also received information on migrant families whom the Mexican authorities mistreated or discriminated against—on economic grounds—while the families were searching for their loved ones. The Delegation also learned that in cases where migrants are victims of crime, the authorities rationalize the crimes by arguing that the migrants “are illegal” or they blame the victims, telling family members that if something happened to them it was because they were associated with organized crime, when there is ample information indicating that many migrants are forced to work for organized crime against their will.

227. As to the discrimination that migrants suffer, the 2010 National Survey on Discrimination in Mexico (hereinafter “ENADIS”), prepared by the National Council for the Prevention of Discrimination in Mexico (hereinafter “CONAPRED”), found that migrants ranked third among the sectors that were targets of discrimination in Mexico, following homosexuals and indigenous persons. Nearly 41% of the Mexican public believed that the rights of migrants were not respected in Mexico;<sup>240</sup> this opinion was more widely held in border cities like Tenosique and Juárez, where the percentage of the public who felt that migrants’ rights were not respected was ten percentage points higher than the national average.<sup>241</sup> Some 27% of those surveyed admitted that they would not be willing or would

<sup>240</sup> CONAPRED, *Encuesta Nacional sobre Discriminación en México (ENADIS 2010): Resultados sobre personas migrantes* [National Survey on Discrimination in Mexico (ENADIS 2010: Results for migrant persons)]. Mexico, 2011, p. 25. Available at: [http://www.conapred.org.mx/userfiles/files/Enadis-MIGRANTES-Web\\_Accss.pdf](http://www.conapred.org.mx/userfiles/files/Enadis-MIGRANTES-Web_Accss.pdf) [Consulted on December 30, 2013].

<sup>241</sup> CONAPRED, *Encuesta Nacional sobre Discriminación en México (ENADIS 2010): Resultados sobre personas migrantes* [National Survey on Discrimination in Mexico (ENADIS 2010: Results for migrant persons)]. Mexico, 2011, p. 29.

not allow foreign-born persons to live in their home; 7 out of 10 believed that migrants to some extent caused division within communities.<sup>242</sup>

228. CONAPRED pointed out that the ENADIS findings on migrant persons “reveal discriminatory habits and attitudes and intolerance that affect migrants’ exercise of their rights. The data reveal the contrast between the rhetoric and the self-perception of a country that calls itself multicultural, welcoming, and generous with those who come from elsewhere.”<sup>243</sup> According to the CONAPRED study, 21% of Mexicans are in favor of building walls to keep out migrants in an irregular situation; 46% viewed irregular migration as a serious threat.

229. For its part, the Committee for the Elimination of Racial Discrimination (hereinafter “CERD”) expressed concern about the situation of migrant workers, most of whom come from indigenous communities in Guatemala, Honduras and Nicaragua, and migrants in transit, especially with regard to women who are the victims of abuse. The Committee expressed deep concern at the vulnerability of these communities to kidnapping, torture and murder, and was also extremely concerned that their fear of being subjected to discrimination and xenophobia might prevent them from seeking assistance and protection when needed.<sup>244</sup>

230. The Commission received reports of abuses committed against migrants in Mexico by INM agents and by federal, state and municipal police. During the visit, migrants and various civil society organizations told the Rapporteur that immigration agents frequently use immigration control and verification operations as an opportunity to abuse migrants. The migrants maintained that during the course of these immigration operations, state agents stop the trains on which the migrants are traveling and rob them of their belongings, confiscate or destroy their documents, and physically and psychologically mistreat them. However, the abuses committed against migrants do not stop with the abuses that occur while they are aboard trains or buses or traveling the migration routes.

231. On this point, the State indicated that directives on the use of force have been issued and are observed by the Armed Forces and the Federal Police. It also reported that a Federal Law on the Use of Force is in draft form. Furthermore, on February 21, 2013, the Mexican State and the International Committee of the Red Cross (ICRC) signed two

<sup>242</sup> CONAPRED, *Encuesta Nacional sobre Discriminación en México (ENADIS 2010): Resultados sobre personas migrantes* [National Survey on Discrimination in Mexico (ENADIS 2010: Results for migrant persons)]. Mexico, 2011, p. 55.

<sup>243</sup> CONAPRED, *Encuesta Nacional sobre Discriminación en México (ENADIS 2010): Resultados sobre personas migrantes* [National Survey on Discrimination in Mexico (ENADIS 2010: Results for migrant persons)]. Mexico, 2011, p. 7.

<sup>244</sup> CERD, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*. CERD/C/MEX/CO/16-17, March 9, 2012, paragraph 20. Available at: [http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.MEX.CO.16-17\\_sp.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.MEX.CO.16-17_sp.pdf) [Consulted on December 30, 2013].

cooperation agreements whose purpose is to provide technical advisory services and share best practices for proper implementation of international standards on human rights and the promotion of international humanitarian law. Those agreements are as follows: 1) the Agreement on the use of force and protocols for the search for missing persons, which makes provision for ICRC technical advisory services to the Mexican government to create and strengthen a body of laws and institutions on the use of force; search for and location of missing persons, and assistance to relatives of the victims, and 2) the Agreement on international humanitarian law, to lobby for the inclusion and promotion of international humanitarian law and the rules of the international law of human rights that apply to the use of force.<sup>245</sup>

232. In response to these excesses, the Commission would remind the Mexican State that under the standards governing the Inter-American system, the use of force by State security forces must be exceptional in nature and must be planned by the authorities to be proportionate to the situation. The authorities may only resort to force or instruments of coercion when all other means of control have been exhausted or have failed. Likewise, the use of force must be limited by the principles of proportionality, need and humanitarianism. The Inter-American Commission reminds the Mexican State that when allegations are made claiming excessive use of force and any other type of abuse by its agents, the State's duty is to conduct a serious, independent, impartial and effective investigation to clarify the facts and punish any human rights violation in accordance with the aforementioned standards.

233. The Commission therefore concludes that the violence besetting migrants is a form of discrimination by virtue of their status as migrants. The Commission believes that in all three levels of government, the Mexican State must take all the measures necessary to prevent and combat any form of racial discrimination and xenophobia, so as to foster understanding between the inhabitants of the Mexican State and the migrants who cross it. It also believes that the State should conduct campaigns to promote inter-cultural understanding.

#### ***j. Access to justice and impunity***

234. Other issues that are deeply troubling to the Commission have to do with the obstacles that migrants and members of their families encounter when attempting to get access to justice, which frequently means that the crimes and human rights violations committed against migrants go unpunished. The information the Commission has received indicates that migrants and their family members do not trust the institutions for the pursuit and administration of justice in Mexico.

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<sup>245</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 14-15 [Document on file with the Commission].

235. The obstacles that migrants encounter when attempting to get the justice system are related to its extreme vulnerability. The result is that they often do not even bother to report the crimes committed against them. The United Nations Special Rapporteur on the Human Rights of Migrants has observed that the result of the widespread violence and the collusion of municipal, state and federal authorities with organized crime groups has been absolute impunity in the case of human rights violations committed against migrants.<sup>246</sup> The Rapporteur wrote that “[...], impunity for human rights abuses against migrants is rampant. With the pervasiveness of corruption at all levels of government and the close relationship that many authorities have with gang networks, incidences of extortion, rape and assault of migrants continue.”<sup>247</sup>

236. Other obstacles that migrants encounter where access to justice is concerned, and which explain why so few crimes and human rights violations committed against them are reported, include, *inter alia*, the fact that migrants are unaware of their rights, of the procedures they have to follow, and the authorities and agencies with competence to investigate and punish the perpetrators, their lack of sufficient information about the mechanisms for the protection of human rights and where they can turn when their human rights are violated, and the lack of time needed to file a complaint. Compounding this set of problems is the fact that migrants opt not to file a complaint because of their fear of being mistreated by the authorities, of being deported, or of suffering reprisals at the hands of their assailants.<sup>248</sup> Another obstacle where access to justice is concerned is the fact that migrants are by definition on the move.

237. Generally speaking, the individuals who offered testimony during the Commission’s visit said that they had not reported the crimes committed against them to the authorities because they feared reprisals on the part of organized crime groups or state agents who were in collusion with those groups. The migrants and their family members who filed complaints expressed skepticism about the possibility of any progress being made in the investigation of their cases and doubted that the guilty parties would be prosecuted and punished. To make matters worse, there are no measures to protect those who file complaints or give testimony.

238. On the whole, the Commission observes that there is little reliable information about crimes and human rights violations committed against migrants, which blurs the picture of the crime and violence they suffer. The Commission also has no reliable information on the course of the investigations that the PGR or the offices of the state attorneys general are conducting into the crimes committed against migrants.

<sup>246</sup> *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante. Addendum. Mission to Mexico.* A/HRC/11/7/Add.2, March 24, 2009, paragraph 65. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/125/79/PDF/G0912579.pdf?OpenElement> [Consulted on December 30, 2013].

<sup>247</sup> *Ibid*, paragraph 65.

<sup>248</sup> CNDH, *Special Report of the Human Rights National Commission over kidnapping against migrants*, 2011, p. 7; and CNDH, *General Recommendation No. 13, On the Practice of Illegal Immigration Checks*.

239. Here the Commission believes that the Mexican State must take measures to ensure that migrant persons have access to justice and are able to report the human rights violations committed against them and their family members without fear of reprisals. The amendment of Article 67 of the General Population Act represents progress in this direction, as does the creation of Offices of Special Prosecutors for Crimes against Migrants. However, urgent measures need to be taken to strengthen the state attorneys general offices, ensuring that they have security measures in place and the necessary human and material resources. One immediate measure that can be taken to correct the problem of migrants' lack of security, and that was proposed by the federal and state authorities and civil society organizations, is to act quickly to comply with the provisions of the new Immigration Law and provide migrants with documentation.

240. The Inter-American Court has held that impunity means the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and leaves victims and their relatives totally defenseless.<sup>249</sup>

241. While there is consensus on the part of the State and civil society that violence against migrants in Mexico is a problem of serious proportions, in the Commission's view the State has not undertaken measures that match the seriousness of the situation. The fact that the vast majority of crimes and human rights violations committed against migrants go unpunished demands a prompt and thorough response. All sectors—the federal, state and municipal governments, in partnership with civil society—must be fully and immediately engaged to ensure that those responsible for crimes committed against migrants are held fully accountable and that the harm done to the migrants is redressed. While the federated states may have criminal jurisdiction over many of these crimes, under international law the federal government is responsible for ensuring, either directly or through the proper local authorities, that the rights of all persons subject to its jurisdiction—which includes migrants—are protected and guaranteed. The federal government has the resources and specialized capabilities, which must be put to use. In addition to technical assistance and support, the federal government can make this situation a priority by assigning it additional material resources.

242. On the question of coordination between and among government authorities, the collaboration among authorities at the federal, state and municipal levels must be more effective. For example, the PGR and the offices of the states' attorneys general must collaborate in the investigation and prosecution of abductions, homicides, and

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<sup>249</sup> I/A Court H.R., *The "Panel Blanca" v. Guatemala Case* (Paniagua Morales et al). Preliminary Objections. Judgment of January 25, 1996. Series C No. 23., para. 173; I/A Court H. R., *Myrna Mack Chang v. Guatemala Case*. Judgment of November 25, 2003. Series C No. 101, para. 272.

disappearances that migrants have suffered, by providing expert support in criminology, forensic photography, forensic genetics, technical-legal assistance, and the procedures necessary to request the cooperation of various authorities of other States in the region.

243. Training and instruction, especially for those charged with responding to violent crimes committed against migrants, is an important means of instilling technical expertise and an understanding of the dimensions of the problem. While the State has taken some measures in this area, it is apparent that more training is needed for routine investigators; officials who deal with the public also need training in how to relate to the victims and their family members, while fully respecting their dignity. Training activities should also feature supervision and an evaluation of results; penalties should be enforced in the case of agents who fail to live up to their commitments under the law. Training is one side of the coin; responsibility and accountability are the other.

244. The response to cases of crime and human rights violations committed against migrants, and the way migrants and their families are treated by INM agents and by federal, state and municipal police and judicial authorities, lead the Commission to conclude that the violence and discrimination that migrants endure are tolerated by various authorities in Mexico. The Commission is deeply concerned about the fact that most acts of violence and discrimination against migrants are never punished, thereby perpetuating society's acceptance of this phenomenon. The Commission therefore again urges the Mexican State to improve the judicial response in these cases, so as to be in full compliance with its obligation to investigate, prosecute and punish these acts with the necessary due diligence. The Commission believes that the next step to be taken to advance the rights of migrant victims of violence and discrimination and their effective access to justice, is to make the transition from formal recognition of their rights to actual and effective enforcement and observance of those rights.

245. While the Commission recognizes the importance of the tests for trustworthiness and the training programs for INM officials, the Commission notes that the results have been uneven. The Commission is therefore recommending that the Mexican State design and strengthen training programs for INM agents, officers of the court and police at all levels of government, to provide instruction on the problem of discrimination and the various forms of violence that affect migrants, so that they perceive these as serious human rights violations. The training should also emphasize their obligation to afford dignified and humane treatment to victims and their family members when they attempt to avail themselves of the judicial and administrative remedies provided for migrant persons in Mexico.

246. In the Commission's view, the obligation to guarantee equality and nondiscrimination is inherently related to the prevention of violence and discrimination against migrants. Events like criminal violence, repeated violation of migrants' human rights, corruption on the part of some public officials, the fact that the vast majority of the

crimes and human rights violations committed against migrants in Mexico go unpunished, and the prevailing social opinions, have all been factors contributing to the massive and systematic violation of the human rights of migrants in Mexico. The many individual cases that the CNDH, state human rights commissions and civil society organizations have documented in recent years, and the testimony that migrants and their families gave during the Commission's visit reveal a structural situation of violence and discrimination that takes its toll on migrants, their families and the defenders of migrants' human rights in Mexico.

247. In the Commission's view, there is an obvious relationship between violence, the inefficacy of the Mexican judicial systems, their inadequate enforcement of national and international law, and discrimination. Migrants who fall victim to crime also end up falling victim to discrimination because of the ineffectiveness of the judicial systems in Mexico and the inadequate enforcement of national and international principles and laws. In the Commission's view, the fact that the organs of the State routinely tolerate the judicial systems' inadequate performance merely serves to perpetuate and reinforce the root causes and psychological, social and historical factors that maintain and feed the violence against migrants. The lack of due diligence to investigate, prosecute and punish these crimes and prevent their repetition is a reflection of the fact that they are not considered a serious problem. Allowing these crimes to go unpunished sends the message that violence is tolerated, which only serves to perpetuate it.

248. In conclusion the Commission would remind the States of their obligation to organize the structure of their government so as to prevent, investigate, prosecute, punish and redress acts of violence and discrimination against migrants. While the Mexican government has changed its rhetoric and has gradually been adopting measures that concern migrants who have been victims of crime and human rights violations because of the violence that grips Mexico, effective measures have not yet been taken to protect the rights of migrants in Mexico and to prevent attacks on those who defend the migrants' human rights.

### ***k. Internal displacement in Mexico***

249. The violence rampant in certain areas of Mexico in recent years has forced increasing numbers of persons to uproot themselves.<sup>250</sup> In October 2011, during the hearing on citizen security and human rights, Javier Sicilia, a member of the Movement for Peace with Justice and Dignity maintained that the number of displaced persons in Mexico was now 120,000. At the hearing, the Commission also heard testimony given by

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<sup>250</sup> IACHR, *Hearing on Citizen Security and Human Rights in Mexico*. 143rd Session. Washington, D.C., October 27, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2> [Consulted on December 30, 2013].

the mother of a young Mexican who had disappeared. The mother was forced to move by the threats she received. She said the following:

*My name is Julia Alonzo and I'm the mother of Julio Alberto José López Alonzo, who disappeared on January 12, 2008. Thus far, we have been unable to find him... Not even with the government... He has disappeared [...] We have been in the state of Nuevo León looking for him. There's no sign of either him or his three friends. We lived in Acapulco, but had to migrate elsewhere to hide, because for all practical purposes the government has not .... It has given us no answers to [sic]. Where's my son? We have no idea where to live because we are being threatened. We have moved about for a long time, 3 years, 11 months and 15 days spent searching for my son. There are thousands of mothers just like me, in the same predicament. I'm here because this is the only place left for me to turn to make my plea. Where is my son? I want to know where he ended up? Where are they? What's happening in Mexico with the federal and municipal authorities? What I see here are the faces of Mexico's representatives, and I would like to ask them, where is my son? Where are the children of the thousands of mothers who cry for them? ... Excuse me... I would like to ask... I'm here in... I had to come all the way to Washington to see if there was anything you could do to help us. Otherwise.... Three days ago, the mothers had a meeting because we're going out in search of our children, no matter where they are, we want them back...<sup>251</sup>*

250. According to the estimates of the *Internal Displacement Monitoring Centre* (hereinafter “the IDMC”), in 2011 there were approximately 160,000 internally displaced persons in Mexico.<sup>252</sup> As to the causes of internal displacement, the IDMC found that the main causes of displacement within Mexico are the violence and human rights violations, especially the violence created by the drug cartels whose activities have displaced around 140,000 people since 2007.<sup>253</sup> The authorities of the state of Chiapas estimate that around 20,000 of the people displaced during the Zapatista uprising are still living in displacement. The surge in violence in recent years has driven thousands of people from the places that they have traditionally called home. The IDMC and the *Instituto Tecnológico Autónomo de México* (hereinafter the “ITAM”) have said that it is obvious that the pattern of individual or invisible displacement would account for the vast majority of all displacements, whereas

<sup>251</sup> Statement by Julia Alonzo at the *Hearing on Citizen Security and Human Rights in Mexico*. 143rd Session. Washington, D.C., October 27, 2011.

<sup>252</sup> Internal Displacement Monitoring Centre & Norwegian Refugee Council, *Global Overview 2012: People internally displaced by conflict and violence*. Ginebra, Abril de 2013, p. 39. Disponible en: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/DB8A259305B071A8C1257B5C00268DDC/\\$file/global-overview-2012.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/DB8A259305B071A8C1257B5C00268DDC/$file/global-overview-2012.pdf). [Consulted on December 30, 2013].

<sup>253</sup> Internal Displacement Monitoring Centre & Norwegian Refugee Council, *Global Overview 2011: People internally displaced by conflict and violence*. Geneva, April 2012, pp. 59-60. Available at: <http://www.internal-displacement.org/publications/global-overview-2011.pdf> [Consulted on December 30, 2013].

isolated events of massive displacements—which are more visible—would account for a much smaller percentage of total displacements.<sup>254</sup>

251. Although the Commission has learned of cases of internal displacement in Mexico<sup>255</sup> and the impact that the violence generated by drug cartels has had on the displacement of thousands of people in Mexico, as of the date of approval of this report there has been no comprehensive documentation and analysis of internal forced displacement, which is one of the main obstacles standing in the way of the response that the State must undertake to deal with this problem. Apart from the figures mentioned above, it is virtually impossible to get the real figures on internal displacements caused by cartel violence and other factors in Mexico. According to the information the Commission has received, at the present time some authorities in Mexico prefer to minimize or ignore the problem as an inconvenient consequence of the violence or on the pretext that these are not cases of internal displacement, but rather population shifts caused by internal migration.<sup>256</sup> The Commission notes that, as happened in the case of the figures that the CNDH released on the number of migrants kidnapped, the representatives of the Mexican State have discredited the figures available on internal displacement in Mexico by saying that they cannot be deemed to be reliable because one does not know how the figures were obtained and how the reports now available on internal displacement in Mexico were prepared.

252. The Commission is particularly disturbed by the lack of official information as to how extensive internal displacement may have become in Mexico. That lack of information points up the invisibility that surrounds this problem. The fact that no data exist on the scale and characteristics of internal displacement in Mexico does not mean that the State need not conduct a serious analysis of the situation; quite the contrary, it makes it incumbent upon the State to conduct a nationwide examination of this problem, one that looks at the causes and effects of internal displacement in Mexico, so that the State can take the necessary measures to address the problem, recognize it and come up with lasting solutions for those who have been victims of forced displacement. Both the

<sup>254</sup> Norwegian Refugee Council (NRC), the Internal Displacement Monitoring Centre (IDMC) and the *Instituto Tecnológico Autónomo de México* (ITAM), Briefing paper on forced displacement in Mexico due to drug cartel violence, prepared for the Inter-American Commission on Human Rights' Rapporteur on Migrant Workers. Mexico, July 2011, p. 8 [Document on file with the Commission.]

<sup>255</sup> See, IACHR, Precautionary Measure No. 60/12, *Members of the Triqui Indigenous Community in the San Pedro River Valley, San Juan Cópala, Putla de Guerrero, Oaxaca, Mexico*. May 29, 2012; Precautionary Measure No. 197/10, *135 Inhabitants of San Juan Copala, Oaxaca, Mexico*. October 7, 2010; Precautionary Measure No. 151/05, *Andrés Quintana Roo Community, Sabanillas Municipality, Chiapas, Mexico*.

<sup>256</sup> See, BBC World, Alberto Nájar, *Los desplazados de la guerra contra el narcotráfico en México* [Those displaced by the war on drug trafficking in Mexico]. Mexico, October 19, 2012. Available at: [http://www.bbc.co.uk/mundo/noticias/2012/10/121018\\_desplazados\\_desplazamiento\\_forzado\\_victimas\\_guerra\\_narcotrafico\\_mexico\\_an.shtml](http://www.bbc.co.uk/mundo/noticias/2012/10/121018_desplazados_desplazamiento_forzado_victimas_guerra_narcotrafico_mexico_an.shtml); *Animal Político*, Francisco Saldoval Alarcón, *Los Desplazados del narco en México: El Triángulo Dorado* [Those Displaced by Drug Trafficking: the Golden Triangle]. Mexico, October 1, 2012. Available at: <http://www.animalpolitico.com/2012/10/especial-los-desplazados-por-el-narco-en-mexico/>; InSight Crime, *Los Desplazados* [The Displaced]. Mexico, D.F., September 30, 2012. Available at: <http://es.insightcrime.org/investigaciones/los-desplazados> [Consulted on December 30, 2013].

President of the CNDH, Raúl Plascencia, and the Fifth “Visitador” [Principal Investigator] of the CNDH, Fernando Batista, have underscored the impact that internal displacement has had on Mexico and the need for a national study to describe it and help steer public policies that acknowledge the problem and enable the adoption of prevention and protection measures for the internally displaced.

253. Notwithstanding the difficulties in distinguishing between internal displacement and internal migration, especially in the case of displacements that are not large-scale events in response to some intense episode of violence, the State has an obligation to “describe” the phenomenon and come up with a response consistent with international standards on the subject, particularly the Guiding Principles of Internal Displacement.<sup>257</sup> Passage of the Internal Displacement Prevention and Assistance Act in the state of Chiapas was an important step. However, the Commission observes that faced with a number of situations that have forced the internal displacement of people, thus far Mexico has not passed a law on internal displacement that makes the Guiding Principles of Internal Displacement part of its own system of laws<sup>258</sup> nor does it have a federal institution or focal point responsible for protecting the internally displaced. In fact, the Commission has learned that in 2011 and 2012, a bill was introduced in the Chamber of Deputies of the Congress of the Union for a law to assist and protect persons displaced by the federal government’s war on organized crime.<sup>259</sup> The bill was reportedly shelved.

### ***I. Defenders of migrants’ human rights***

254. Because of the violence and discrimination targeted at migrants in Mexico, those who defend migrants’ rights have to work in a somewhat hostile environment, which on numerous occasions has had a direct impact on the defenders’ lives, person, liberty, security and honor. The Commission was concerned by the CNDH’s observation to the effect that the work that individuals and civil society organizations do to defend human rights increasingly exposes them to threats, abuse, harassment, intimidation, attacks on their fundamental rights and freedoms, perpetrated by state and non-state

<sup>257</sup> United Nations, Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles of Internal Displacement*. February 11, 1998, E/CN.4/1998/53/Add.2. Available at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e>. [Consulted on December 30, 2013].

<sup>258</sup> A bill introduced in Mexico in 1998 for an Internal Displacement Law died in the Senate.

<sup>259</sup> Deputy Arturo Santana Alfaro introduced the bill to provide assistance and protection to persons displaced by the federal government’s war on organized crime. For more information on the bill see, *Congreso de la Unión, Cámara de Diputados LXII Legislatura, Gaceta Parlamentaria, Número 3474-VI*. Mexico, March 20, 2012. Available in Spanish at: <http://gaceta.diputados.gob.mx/Black/Gaceta/Anteriores/61/2012/mar/20120320-VI/Iniciativa-6.html>. See also, *Congreso de la Unión, Cámara de Diputados, Boletín N°. 4977: Analizan comisiones crear un fideicomiso para atender y proteger a desplazados por lucha contra el crimen* [Bulletin No. 4977: Commissions study creation of trust fund to assist and protect those displaced by war on crime]. Mexico, April 8, 2012. Available in Spanish at: [http://www3.diputados.gob.mx/camara/005\\_comunicacion/a\\_boletines/2012\\_2012/004\\_abril/08\\_08/4977\\_analizan\\_comisiones\\_crear\\_un\\_fideicomiso\\_para\\_atender\\_y\\_proteger\\_a\\_desplazados\\_por\\_lu](http://www3.diputados.gob.mx/camara/005_comunicacion/a_boletines/2012_2012/004_abril/08_08/4977_analizan_comisiones_crear_un_fideicomiso_para_atender_y_proteger_a_desplazados_por_lu) [Consulted on December 30, 2013].

actors alike. As a result, human rights defenders have now become a highly vulnerable group.<sup>260</sup> The Mexico Office of the United Nations High Commissioner for Human Rights has expressed similar concerns in its reports on the situation of human rights defenders in Mexico, published in 2009 and 2010.<sup>261</sup>

255. At the present time, Mexico has 61 migrant shelters and homes the length and breadth of the national territory. Most are run by the Catholic Church's *Pastoral de la Movilidad Humana* [Human Mobility Ministry]. The Commission is greatly concerned that the CNDH has had to grant 16 precautionary measures for the shelters and migrant homes in the Human Mobility Ministry in Mexico. The situation has become so serious that even the CNDH's precautionary measures have been ineffective in guaranteeing the life, person and security of those who work in the shelters. Since 2009 the Commission has received a number of requests seeking precautionary measures for human rights defenders who work in migrant shelters, migrant homes and migrant human rights centers in Mexico. Since 2010, the IACHR has granted precautionary measures for the members of 5 shelters,<sup>262</sup> migrant homes and migrant human rights centers in Mexico, 4 of which are still in effect<sup>263</sup>. The precautionary measures the IACHR granted are evidence of just how serious and urgent the need is to protect the human rights of migrants. The violence being perpetrated against them threatens to cause irreparable harm to the rights of those who defend migrants in Mexico.

On April 23, 2010, the IACHR granted precautionary measures for Father Pedro Pantoja Arreola and his team of collaborators at the Belén Migrant Shelter in Saltillo, in the

<sup>260</sup> CNDH, *El derecho a defender. Informe Especial sobre la Situación de las y los Defensores de los Derechos Humanos en México* [The right to defend. Special Report on the Situation of Human Rights Defenders in Mexico]. Mexico, 2011. Available in Spanish at: <http://www.cndh.org.mx/sites/all/fuentes/documentos/Gacetas/252.pdf> [[Consulted on December 30, 2013].

<sup>261</sup> See, Mexico Office of the United Nations High Commissioner for Human Rights, *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las y los defensores de derechos humanos en México* [Defending human rights: between commitment and peril. Report on the situation of human rights defenders in Mexico]. Mexico, 2009. Available in Spanish at: <http://www.hchr.org.mx/documentos/libros/informepdf.pdf> and *Actualización 2010: Informe sobre la situación de las y los defensores de derechos humanos en México* [2010 Update: Report on the situation of human rights defenders in Mexico]. Mexico, 2010. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf> [[Consulted on December 30, 2013].

<sup>262</sup> See, IACHR, Precautionary Measure 273-11, *Fray Tomas Gonzalez, Ruben Figueroa, staff of the House for migrants "La 72" as well as migrants who are housed there, Tenosique municipality, state of Tabasco, Mexico*. April 19, 2013; IACHR, Precautionary Measure 152-11, *Members of the House for Migrants "Frontera Digna", Municipality of Piedras Negras, Coahuila, Mexico*, August 17, 2012; IACHR, Precautionary Measure 270-10, *Nazareth Migrant House and Human Rights Center, Nuevo Laredo, Mexico*. May 16, 2011; Precautionary Measure 312-09 *Father Pedro Pantoja Arreola and his Team of Collaborators at the Belén Migrant Shelter, Mexico*, April 23, 2010; Precautionary Measure 250-09- *José Alejandro Solalinde Guerra and Members of the Hermanos en el Camino Migrant Shelter, Mexico*, April 23, 2010.

<sup>263</sup> The IACHR granted precautionary measures in favor of members of the Nazareth Migrant House and the Center for the Human Rights of Migrants "Beato Juan Bautista Scalabrini" in Nuevo Laredo, Tamaulipas, Mexico, on May 16, 2011. In early 2012, the Commission received a communication from applicants of these precautionary measures requesting the lifting of the precautionary measures given that although risk persisted they had opted to change their strategy. See IACHR, Precautionary Measure 270-10, *Nazareth Migrant House and Human Rights Center, Nuevo Laredo, Mexico*. May 16, 2011.

state of Coahuila, Mexico. In the request for precautionary measures and in information provided during a working meeting held on March 20, 2010, during the Commission's 138th period of sessions, it is alleged that the beneficiaries had been subject to acts of intimidation and harassment, an unsuccessful break-in attempt at the shelter's facilities, and surveillance by individuals in vehicles who take photographs of those who enter and leave the shelter. The Inter-American Commission asked that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of Father Pedro Pantoja Arreola and his team of collaborators at the Belén Migrant Shelter in Saltillo, in the state of Coahuila, Mexico. The IACHR also asked that the planning and implementation of the protection measures be done in agreement with the beneficiaries and their representatives, and that the Commission be informed about the measures adopted to remove the risk factors for the beneficiaries.<sup>264</sup>

256. At the meetings held with a number of civil society organizations during the Rapporteur's visit to Mexico, he was told that because the State failed to act promptly to respond to the violence and insecurity, the number of dangerous incidents, aggression and threats against human rights defenders had increased from 18 incidents recorded from 2004 to 2009, to 46 incidents between 2010 to mid 2011.

257. With this current context of violence, the defenders of migrants' human rights have become victims of threats, harassment, and physical assault; two defenders have been murdered. This was the case of Raúl Ángel Mandujano Gutiérrez, Director of Services of the Secretariat for Development of the Southern Border of Chiapas State, who was abducted by four armed persons on April 2, 2008; five months later his body was discovered in a rural area of the municipality of Mazatán, Chiapas; there was evidence that he had been tortured.<sup>265</sup> The Commission was also informed of the murder of Santiago Rafael Cruz on April 9, 2007; his body was discovered in the office of the Farm Worker Labor Forum in Monterrey, Nuevo León; his hands and feet were tied and his body bore the evidence of a brutal beating. This murder is connected to the investigations that the Farm Worker Labor Forum is conducting into acts of corruption by farm labor recruiters.<sup>266</sup>

258. Their defense of migrants' human rights has meant that some defenders have been branded criminals, and have been brought up on criminal charges for having denounced violations of human rights. Because they are not afforded any protection, some of those who defend the rights of migrants have been forced into exile; in other cases, the shelters themselves have been shut down, as happened in the case of the Migrant Home in Palenque, Chiapas, in 2009; the Human Rights Center of Nuevo Laredo,

<sup>264</sup> IACHR, PM 312-09, *Father Pedro Pantoja Arreola and his Team of Collaborators at the Belén Migrant Shelter, Mexico*.

<sup>265</sup> See, IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66, approved in December 31, 2011, para. 343.

<sup>266</sup> See, *Dimensión Pastoral de Movilidad Humana, Informe sobre la Situación de las y los Defensores de las Personas Migrantes en México* [Report on the Situation of Defenders of Migrants' Rights in Mexico], 2011, p. 6. [Document on file with the Commission]. See also, Civil Society Organizations, Report on the General Situation of the Rights of Migrant Workers and their Families in Mexico: Prepared on the occasion of the visit to Mexico of Commissioner Felipe González, Rapporteur on Migrant Workers and Members of Their Families of the Inter Human Rights. Mexico, July 2011, p. 67.

Tamaulipas, in 2011; and the San Juan Diego Migrant Home in Tultitlán, state of Mexico in 2012. Having just opened in 2009, the Palenque Migrant Home was forced to shut down because of constant attacks by organized crime, which entered the shelter on multiple occasions to kidnap the migrants staying there. The Commission notes with concern that the harassment and aggression targeted at the work of the defenders at the “Blessed Juan Bautista Scalabrini” Migrant Human Rights Center in Nuevo Laredo, Tamaulipas, led to its closing, even though it had been the beneficiary of IACHR precautionary measures.

On May 16, 2011, the IACHR granted precautionary measures on behalf of the members of the Nazareth Migrant House and of the Human Rights Center of Nuevo Laredo, in Mexico. The request for precautionary measures claims that the members of Nazareth Migrant House and the Human Rights Center of Nuevo Laredo, in the state of Tamaulipas, have been followed and threatened. The Commission asked the State to take the steps necessary to ensure the lives and persons of the members of Nazareth Migrant House and the Human Rights Center of Nuevo Laredo, to agree on the measures to be adopted with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.<sup>267</sup>

259. The Rapporteur was also informed that state agents from the three levels of government have been responsible for many of the dangerous incidents, aggression and threats targeted at defenders of migrants’ human rights, and have taken measures calculated to intimidate them into not reporting the crimes and human rights violations that migrants in Mexico have suffered.

On April 23, 2010, the IACHR granted precautionary measures for José Alejandro Solalinde Guerra, David Álvarez Vargas, Areli Palomo Contreras, Mario Calderón López, and Norma Araceli Doblado Abrego, who work or can be found at the Hermanos en el Camino Migrant Shelter in Ixtepec, in the state of Oaxaca, Mexico. In the request for precautionary measures and in information provided during a working meeting held on March 20, 2010, during the Commission’s 138th period of sessions, it is alleged that the beneficiaries had been subject to acts of intimidation and that in February 2010, Father Solalinde Guerra was detained and held at gunpoint by the Federal Police when he went to the Office of the Public Prosecutor of Oaxaca state in the context of investigations underway for the alleged murder of three migrants. The petitioners indicate that the protection measures implemented by the authorities turned out to be ineffective, and they inform the Commission that the acts of harassment continue. The Inter-American Commission asked that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of José Alejandro Solalinde Guerra, David Álvarez Vargas, Areli Palomo Contreras, Mario Calderón López, and Norma Araceli Doblado Abrego; that the planning and implementation of the protection measures be done in agreement with the beneficiaries and their representatives; and that the Commission be informed about the measures adopted to remove the risk factors for the beneficiaries.<sup>268</sup>

<sup>267</sup> IACHR, PM 270/10, *Nazareth Migrant House and Human Rights Center, Nuevo Laredo, Mexico*. May 16, 2011

<sup>268</sup> IACHR, PM 250-09, *José Alejandro Solalinde Guerra and Members of the Hermanos en el Camino Migrant Shelter, Mexico*. April 23, 2013

260. The Commission is deeply concerned about the situations of those who defend the human rights of migrants in Mexico. Even though they are the beneficiaries of precautionary measures granted on their behalf by either the IACHR or the CNDH, they continued to be the targets of threats and harassment. Indeed, it was death threats that forced Father Alejandro Solalinde to leave Mexico for a time and on whose behalf the Commission had ordered precautionary measures on April 23, 2010. The Commission was informed that Father Alejandro Solalinde received six death threats between April and May because of his work defending the human rights of migrants in Mexico. As a consequence of those death threats, Father Solalinde had to leave Mexico to protect his life and person and until such time as his security arrangements were finalized.<sup>269</sup> Given the special danger to Father Solalinde and to the staff of the “Hermanos en el Camino” Shelter because of their work defending migrants’ human rights, they have been the target of multiple threats and acts of harassment. This prompted the IACHR to request precautionary measures on their behalf in 2010. The Commission is troubled by the commentary made on the program “El Calabozo” carried by Radio Punto Crítico on Friday, July 13, 2012. It was a harangue against Father Alejandro Solalinde and Sister Leticia Gutiérrez, after Father Solalinde’s return to Ixtepec. The following is some of what was aired on the program that day:

*That idiot Solalinde is back in Ixtepec. The Shelter, the biggest hotbed of crime on the Isthmus of Tehuantepec. So the granddaddy of all polleros is back on the Isthmus. And if you happen to be listening, that’s all you’ll ever be: a pollero in a priest’s vestments. We’ll be bringing flowers to the big pollero. He came accompanied by the UN, the CNDH and Bishop [Sister] Leticia Gutiérrez, his new lover, etc. What a dumb thing the federal government did with him (referring to Father Solalinde). To the Municipal President of Ixtepec: what about the little girls who’ve been raped, the people who’ve been murdered? Don’t they matter? Take that doctor, that woman who was assaulted and dared to report it; and then the idiot Solalinde goes and gets that migrant released. What matters least here are the rights of Mexicans; what matters most are the rights of migrants. That imbecile Solalinde is receiving huge sums of money. Asshole people always use religion to hide something bad. Hangers on. The arrival of that simpleton. The idiots who welcomed him, “the Cabildo”, “El CEBETIS91” who forced all the students to be there to receive him. Something we need to look at is the closing of the Lechería shelter. The neighbors complained “We’re fed up with this situation.” And I say this: Can’t we do the same in Ixtepec? What can we ask of the authorities? If the same idiot Gabino Cue Monteagudo redoubles security. The old man they attacked in the eighth section of Cheguigo. 99% of the migrants come here just to beg, to assault, to rape. They don’t give a rat’s ass about human rights. Alejandro Solalinde ran out of money, and that’s why he’s back in Ciudad Ixtepec. He’s here to make more money, and then he’ll be off again.*

<sup>269</sup> IACHR, Press Release No. 54/12, *IACHR Condemns Threats to Father Alejandro Solalinde in Mexico*, Washington, D.C., May 22, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/054.asp> [Consulted on December 30, 2013].

261. The Commission has also learned of incidents in which police agents have entered shelters and homes for migrants without a court order, for the purpose of arresting trans-migrants.<sup>270</sup> During the visit, the Rapporteur learned that at around 9:00 p.m. on July 26, 2011, around 30 heavily armed police with the Federal Agency of Investigation (AFI), part of the PGR, tried to enter the Migrant House in Tijuana, Baja, California, without a court order. Because they had no court order, Father Luiz Kendzierski, Director of the Migrant House, asked the police to leave, whereupon the police starting yelling at him, hurling insults. They called him a pedophile, and said he was making money off the migrants. The police also threatened and insulted a female attorney from the legal area of that institution, telling her that “people who defend human rights are protecting criminals.” Matters go so out of hand that the media and the CNDH Delegate in Tijuana went to the Migrant Home. When the CNDH Delegate and the Prosecutor for Human Rights in Baja California intervened, one unarmed agent—accompanied by the CNDH Delegate—was allowed inside the Home, who reportedly found that the person they were looking for wasn’t there. That same day, heavily armed agents of the Federal Police entered the YMCA Home for migrant youth in Tijuana, Baja California, again without a court order, saying that they were investigating a murder. The moment they were inside, the Federal Police agents threatened the staff on duty. After inspecting the facilities at the YMCA Home, the agents left.<sup>271</sup>

262. Throughout the Rapporteur’s visit, he heard testimony from human rights defenders who described the many perils that the defense of human rights implies amid the violence in Mexico today, especially the violence in plazas or areas where organized crime has a strong presence, or areas in the vicinity of the routes through which migrants or deportees travel. Such was the case of the “Frontera Digna” Home for Migrants, which provides humanitarian services to Mexican-born migrants deported from the United States, and migrants traveling through the area headed for the United States. The “Frontera Digna” Home for Migrants is in Piedras Negras, Coahuila, on the border with the United States.

On August 17, 2012, the IACHR granted precautionary measures in favor of the members of the House for Migrants “Frontera Digna”, Municipality of Piedras Negras, Coahuila, Mexico. Initially, the IACHR requested information to the State and took

<sup>270</sup> See, IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66, approved in December 31, 2011, para. 347; See also, Civil Society Organizations, Report on the General Situation of the Rights of Migrant Workers and their Families in Mexico: Prepared on the occasion of the visit to Mexico of Commissioner Felipe González, Rapporteur on Migrant Workers and Members of Their Families of the Inter Human Rights. Mexico, July 2011, p. 58.

<sup>271</sup> See, *Coalición Pro Defensa del Migrante*, *Boletín de prensa: La Coalición Pro Defensa del Migrante condena la actitud de la policía federal al intentar allanar las instalaciones de la Casa del Migrante en Tijuana y el ingreso ilegal a la Casa YMCA para menores migrantes* [The Migrant Defense Coalition critical of federal police’s attempted search of the Migrant Home in Tijuana and the YMCA Home for Migrant Youth]. Mexicali, July 27, 2011 [Document on file with the Commission]. See also, Amnesty International, *Police Threaten Staff at Migrants’ Shelter*. Mexico, July 29, 2011. Available at: <http://www.amnesty.org/en/library/asset/AMR41/049/2011/en/6fd17050-2755-4616-97f5-399bcbb2d5a0/amr410492011en.html> [Consulted on December 30, 2013].

note of the implementation of protection measures in favor of the members of the organization on the part of the competent authorities. Notwithstanding, the IACHR has continued to receive information that indicates that the threats and harassment against them have continued. The IACHR requested the State of México to adopt the necessary measures to guarantee the life and physical integrity of the members of the House for Migrants “Frontera Digna”, to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.<sup>272</sup>

263. At a meeting with the human rights defenders working in a shelter for migrants, they told the Rapporteur how they had chosen not to file complaints about the aggression and threats they had received from the Los Zetas Cartel, and not to seek precautionary measures from the CNDH for fear of the reprisals that such measures might trigger and because they believed the local authorities were in collusion with the very people who had threatened them. The Commission observes with concern that other shelters and homes for migrants have reportedly opted for this strategy as a way to protect themselves and not jeopardize the lives of the very migrants they are helping. Civil society organizations said that the violence, the corruption by the authorities and the impunity problem prevent them from being able to keep a record of or document the violations of the migrants’ human rights; this combination of circumstances also prevents them from seeking national or regional precautionary measures for their protection.

264. The Commission also knows of situations in which private individuals and state officials are vilifying the work of those who defend the human rights of migrants, claiming that they are protecting criminals or are involved in migrant smuggling. The pressure and harassment have reached the point that many shelters have had to close, as in the case of the San Juan Diego shelter in Colonia Lechería, municipality of Tultitlán, state of Mexico.

265. The constant tension surrounding the San Juan Diego Home for Migrants reached the point that in July 2010 the CNDH stepped in to grant precautionary measures for the human rights defenders who worked at the shelter. The Commission received information to the effect that the demonstrations staged by the Lechería locals to protest the home for migrants were often expressions of xenophobia and hatred of migrants, who were blamed for the lack of security and crime in the municipality, accused of being drug addicts, and of taking away the locals’ jobs. They also accused the State of allocating resources to care for migrants, which they claimed should be spent on their community. They refused to believe the authorities’ claims that the migrants themselves were victims of crime, that the drug trafficking was the work of criminal gangs and individual criminals, and that there were safe houses where the migrants were being held captive.<sup>273</sup>

<sup>272</sup> IACHR, Precautionary Measure 152-11, *Members of the House for Migrants “Frontera Digna”, Municipality of Piedras Negras, Coahuila, México. August 17, 2012.*

<sup>273</sup> See, Secretariat of Public Security, *En el estado de México, la Policía Federal rescata a 31 indocumentados y asegura a 7 presuntos integrantes de una banda delictiva dedicada al tráfico de personas* [In the state of Mexico, Federal Police rescue 31 undocumented migrants and take seven alleged members of a human trafficking ring into

266. During the second half of 2011, the Commission learned that three migrants had been killed near the Home for Migrants. Six days after the conclusion of the visit to Mexico by the Rapporteur on the Rights of Migrants, the Commission was informed that on August 8, 2011, Julio Fernando Cardona, a young Guatemalan age 19 and part of the *Caravana Paso a Paso Hacia la Paz*, had been killed near the Home for Migrants. According to the press release issued by the Ministry of Foreign Affairs of Guatemala, “Guatemala’s Embassy in Mexico filed the respective complaint with officials of the Tultitlán Public Prosecutor’s Office, asking that a murder investigation be launched to ascertain the civil and criminal responsibilities of the people involved in this atrocious event. It particularly asked that the Public Prosecutor’s Office establish the identity of the members of the Tultitlán municipal police force who had a hand in the events and punish them accordingly.”<sup>274</sup>

267. The tensions, disturbances and attempted lynchings of the staff of the home for migrants continued until the home eventually had to be closed in July 2012. According to information received by the IACHR, on July 7, 2012, disturbances reportedly broke out outside the San Juan Diego Home for Migrants, after which the staff there decided to close the shelter because the pressure from the locals had become too much.<sup>275</sup> Pressure from locals also forced the closing of the tent that had been set up temporarily in Colonia Independencia to provide humanitarian assistance to migrants after the shelter was shut down.

268. The Commission has also learned of other situations in which human rights defenders are branded criminals for defending the human rights of migrants, when unfounded criminal investigations against them are opened. This is what happened in the case of Fray Tomas González in Tenosique, Tabasco, to whom the IACHR granted precautionary measures in April 2013<sup>276</sup>:

*On January 9, 2012, two leaders of the campesino community of Nueva Esperanza, Petén, Guatemala were arrested. In August 2011, these two and some 300 other members of their community were forced to migrate to Nuevo Progreso, Tabasco,*

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custody]. Mexico, D.F., February 23, 2011. Available at: [http://www.ssp.gob.mx/portalWebApp/appmanager/portal/desk?\\_nfpb=true&\\_windowLabel=portlet\\_1\\_1&portlet\\_1\\_1\\_actionOverride=%2Fboletines%2FDetalleBoletin&portlet\\_1\\_1id=3065](http://www.ssp.gob.mx/portalWebApp/appmanager/portal/desk?_nfpb=true&_windowLabel=portlet_1_1&portlet_1_1_actionOverride=%2Fboletines%2FDetalleBoletin&portlet_1_1id=3065) [Consulted on December 30, 2013].

<sup>274</sup> Ministry of Foreign Affairs of Guatemala, *Comunicado No. 370-2011: Acciones Realizadas por el Ministerio de Relaciones Exteriores en el Caso del Asesinato del Guatemalteco Julio Fernando Cardona Agustín en México* [Press Release No. 370-2011: Measures taken by the Ministry of Foreign Affairs in the Case of the Murder of Guatemalan Citizen Julio Fernando Cardona Agustín in Mexico]. Guatemala, August 16, 2011. Available at: <http://www.minex.gob.gt/Noticias/Noticia.aspx?ID=1235> [Consulted on December 30, 2013].

<sup>275</sup> See, IACHR, *Press Release No. 98/12: IACHR urges the State to guarantee conditions of security in shelter for migrants in Mexico*. Washington, D.C., August 2, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/054.asp> [Consulted on December 30, 2013].

<sup>276</sup> See, IACHR, Precautionary Measure 273-11, *Fray Tomas Gonzalez, Ruben Figueroa, staff of the House for migrants “La 72” as well as migrants who are housed there, Tenosique municipality, state of Tabasco, Mexico*. April 19, 2013.

*Mexico. The leaders were arbitrarily detained on a road just outside Nuevo Progreso, where various members of the police force were waiting. The police then took the two men into town and subsequently handed them over to the PGR in Tenosique. After several hours they were anonymously told that they had been accused of human smuggling. They were also questioned at length about Brother Tomás González, Director of the Usumacinta Human Rights Center and of “La 72, Hogar-Refugio para Personas Migrantes” [The 72 – Home-Shelter for Migrant Persons]. They were told that he, too, had been accused of human smuggling. The Office of the Coordinator of PGR Delegations stated that an anonymous complaint had been filed with the Office of the Director General for Oversight of Preliminary Inquiries, and that Investigation # AP/PGR/DCACAP/2ZNOXIV/04/2012 had been launched as a result. This was why community leaders Maynord Morales López and Mr. Elder Valdomero Pelico Chun were detained and where the name of Brother Tomás González was mentioned. The two people were released that same day, and Brother Tomás González was not summoned, as he had not been accused of any criminal acts.*

269. According to information that the CNDH provided to the Commission, from 2005 to April 2012, the CNDH Program to Address Wrongs to Journalists and Civilian Human Rights Defenders had 233 cases involving violations of defenders’ human rights on file; of these, 107 were received in the period from 2005 to 2009, which is an average of 21 cases per year; but in 2010 alone, 48 cases were recorded, which was more than double the average of previous years. The number of cases continued to increase in 2011, when 59 cases were filed with the CNDH. As for precautionary measures, in the period from 2005 to 2012, the CNDH asked federal and state authorities to order precautionary measures in 46 cases involving human rights defenders; 16 of these were in the period from 2005 to 2009, an average of three per year. But in 2010, the number of requests seeking precautionary measures for human rights defenders rose to 13; just in the first half of 2011, the CNDH granted precautionary measures in 12 cases. The CNDH also reported that 13 of the precautionary measures granted in the period from 2010 to 2011 were for persons defending the human rights of migrants and represented 41.9% of all precautionary measures granted to human rights defenders during that period.<sup>277</sup>

270. These figures are also consistent with what the CDHDF told the Rapporteur at a meeting held during the visit to Mexico. The CDHDF said that the aggression targeted against those who defend migrants’ rights had increased exponentially in recent years. The CDHDF presented more detailed information in the report it presented to the IACHR Rapporteurship on the Rights of Migrants, where it noted that in the period between January 2006 and August 2009, the CDHDF had documented only 3 cases of aggression

<sup>277</sup> CNDH, *Datos sobre medidas cautelares de defensores de los derechos humanos de migrantes: 2005 a abril de 2012* [Data on precautionary measures ordered for defenders of migrants’ human rights: 2005 to April 2012]. Mexico, D.F., May 2012. [Document on file with the Commission].

against defenders of migrants' rights; just in the first half of 2011 that figure rose to 7. The CDHDF pointed out that in 2 of the 7 cases of aggression in 2011, the targets were civil society organizations for which the IACHR had granted precautionary measures, which the CDHDF said was evidence of the authorities' involvement or acquiescence in these events.<sup>278</sup>

271. In addition, Amnesty International told the Rapporteur that in the period between October 2009 and June 2011, it had issued 13 urgent actions on the threat to the life and person of human rights defenders working in shelters or homes for migrants throughout Mexico, who had been threatened and harassed.<sup>279</sup>

272. The CNDH has observed that the human rights that tend to be most often violated are the right to legal security, the right to the integrity of one's person, the right to personal liberty and security, the principle of legality and the right to property. Mexican civil society organizations observed that defenders of the human rights of migrants are in danger of falling victim to murder, unlawful and arbitrary deprivation of freedom, physical assaults, attacks on their personal integrity, harassment, abuse of the criminal justice system, theft of information, searches of their offices, threats and measures aimed at discrediting and delegitimizing their work.<sup>280</sup>

273. According to the CNDH, the main obstacles when the time comes to implement precautionary measures to protect human rights defenders in Mexico have to do with specialized training for the members of the police force who guard the aggrieved parties, the lack of coordination between federal and state agencies, the delay in implementing precautionary measures and the lack of budget to put them into practice.<sup>281</sup> For their part, civil society organizations mentioned that there tends to be no protection protocol or strategy to assure that the precautionary measures are properly implemented and effective. Instead, implementation of precautionary measures depends on whether federal,

<sup>278</sup> Comisión de Derechos Humanos del Distrito Federal, *Informe sobre los derechos de las personas migrantes en la Ciudad de México elaborado para la Relatoría sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the rights of migrant persons in Mexico City, prepared for the Rapporteurship on the Rights of Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights]. Mexico, July 2011, p. 14. [Document on file with the Commission].

<sup>279</sup> Amnesty International, *Information provided by Amnesty International prior to the Rapporteur's visit to Mexico*. 7 de julio de 2011. [Document on file with the Commission].

<sup>280</sup> Civil Society Organizations, *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias en México: Elaborado en ocasión de la visita a México del señor comisionado Felipe González, Relator sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the General Situation of the Rights of Migrants and Their Families. Prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on the Rights of Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights]. Mexico, July 2011, pp. 67-68.

<sup>281</sup> CNDH, precautionary measures Data defenders human rights of migrants: 2005 to April 2012. Mexico, DF, May 2012. [Document on file with the Commission].

state and municipal governments have the political will to put together and enforce the security measures necessary to protect human rights defenders.<sup>282</sup>

274. Here, the Commission is reminded of an observation it made in its Second Report on the Situation of Human Rights Defenders in the Americas where it noted the particularly disturbing situation facing those who work to defend and assist migrant workers of various nationalities in transit through Mexico on their way to the United States, given the current context of militarization and organized crime in some areas of the country.<sup>283</sup> The Commission also wrote that the acts of violence and other attacks perpetrated against human rights defenders not only affect the guarantees of every human being, but can undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenseless. The Commission recalls that the work of human rights defenders is essential to building a solid and lasting democratic society and they play a leading role in the process of pursuing the full attainment of the rule of law and the strengthening of democracy. The Commission would remind the State of its obligation to offer human rights defenders in Mexico the protection that they require.<sup>284</sup>

275. The Commission echoes what its Rapporteur on the Rights of Migrants has said concerning the pivotal importance of protecting human rights defenders. Any person or organization dedicated to protecting the rights of migrants fits the definition of a human rights defender. Defenders' right to protect human rights is of central importance, not just because of their right as persons, but also because of the multiplier effect it has for the human rights of others, in this case migrants.<sup>285</sup>

276. In view of these considerations, the Commission is deeply concerned over the violence and stigmatization with which those who defend the human rights of migrants have to contend. One of the main challenges for the defense of human rights in Mexico is the fact that neither the authorities nor society in general properly appreciate and recognizes the work that defenders perform. Because the authorities do not properly recognize their work, defenders have been left in a vulnerable situation. This situation inevitably has a direct impact on the protection of migrants' rights and a chilling effect on other defenders of migrants' human rights in Mexico. The Commission is therefore urging the State to publicly acknowledge the importance of the work that the individuals and civil society organizations dedicated to defending the human rights of migrants in

<sup>282</sup> Civil Society Organizations, Report on the General Situation of the Rights of Migrant Workers and their Families in Mexico: Prepared on the occasion of the visit to Mexico of Commissioner Felipe González, Rapporteur on Migrant Workers and Members of Their Families of the Inter Human Rights. Mexico, July 2011, p. 57.

<sup>283</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc . 66, approved in December 31, 2011, para. 338.

<sup>284</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc . 66, approved in December 31, 2011.

<sup>285</sup> IACHR, Hearing on the Human Rights Situation of Migrants in Transit through Mexican Territory. 138th Session, Washington, D.C., March 22, 2010. Available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=118> [Consulted on December 30, 2013].

Mexico perform, and to conduct campaigns to raise awareness among the authorities and the general public, highlighting the importance of the work done by the individuals and organizations that defend the human rights of migrants in Mexico. The Commission is also recommending to the State that it conduct campaigns that teach the distinction between the crime of migrant smuggling and the humanitarian assistance provided by shelters, homes for migrants, other organizations and individuals who defend the human rights of migrants.

277. In its Preliminary Observations, the IACHR Rapporteurship on the Rights of Migrants highlighted the “work being done by civil society organizations and individuals in this area, by providing shelter, food, drinking water and other services to the migrants transiting through Mexican territory. The shelters provide security, food and information to thousands of people who pass through Mexico every year. These individuals and organizations are performing a vital social service, filling a void that the State has left for many years.” Institutions like the migrant homes, shelters, soup kitchens or grassroots community organizations like the *Patrones* and many others, provide services of vital importance to the migrants. The work being done by those who defend the human rights of migrants is of the utmost importance; despite the risks inherent in their work, they remain committed to defending the dignity and human rights of migrants. The Rapporteurship therefore recommended to the Mexican State that it “[e]nsure the security of defenders of migrants’ human rights.”<sup>286</sup>

278. The Commission has pointed to the enactment of the Law for the Protection of Human Rights Defenders and Journalists as a positive step in the right direction, and urges the State to implement this law with the participation of civil society organizations and national and international agencies for the protection of human rights. The Commission is urging the Mexican State to adopt all measures necessary to protect human rights defenders and journalists until such time as the regulations governing the protection mechanism are instituted and the mechanism takes effect. It also calls upon the State to make certain that the resources are made available to ensure that the mechanism functions efficiently.

279. The civil society organizations also told the Rapporteur that organized crime has managed to silence journalists and the media, which refrain from running certain stories and instead publish only those that serve the criminal organizations’ interests. This situation is most in evidence in the state of Tamaulipas. As noted in the Commission’s Special Report on Freedom of Expression in Mexico, acts of violence and intimidation against journalists—particularly assassinations, threats and physical attacks against the

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<sup>286</sup> IACHR, Preliminary Observations of the IACHR’s Rapporteurship on the Rights of Migrant Workers on Its Visit to Mexico. August 2011.

media—end up limiting free speech and have a chilling effect on the unfettered flow of information.<sup>287</sup> The report wrote the following in this regard:

In this high-risk situation, it is extremely difficult for journalists to carry out research and publish material on issues such as organized crime, corruption, public security and similar matters. Self-censorship or the impossibility of undertaking investigative journalism in these areas affects all of Mexican society, which remains in the dark about what goes on in these places, and reduces the ability of the authorities and indeed of society to take action, as they are deprived of information essential to combating criminal activity such as corruption or organized crime. According to the information received from numerous sources, in some states where there is a major organized crime presence such as Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa, and Tamaulipas, self-censorship has reached such serious levels that the local press has been reduced to silence, and does not report on events of extreme violence that occur in their locality, which, if they are reported at all, appear in the national or international press.<sup>288</sup>

280. The Commission is also deeply troubled that the many threats, acts of harassment and aggression targeted at those who defend the human rights of migrants go unpunished, which reveals just how unprotected these people are by the authorities, particularly when it comes to the investigation, prosecution and punishment of assaults committed against those who defend the human rights of migrants. The CNDH reported that assaults on those who defend the rights of migrants are underreported by the states' attorneys general offices; the latter told the CNDH that between January 2005 and May 2011, it had received reports of slightly over 100 cases of crimes committed against defenders of migrants' human rights; in that same period, the CNDH and other organizations for the protection of human rights in Mexico received a total of 523 cases involving alleged human rights violations whose victims were human rights defenders.

281. The Commission would remind the Mexico State that it has an obligation to investigate, on its own initiative, any threats or aggression against human rights defenders, and to prosecute and punish the material and intellectual authors of those crimes. The IACHR is therefore urging the State to immediately take effective protective measures to guarantee the rights to life, personal integrity and security of those who defend migrants' rights in Mexico.

<sup>287</sup> IACHR, *Special Report on Freedom of Expression in Mexico, 2010*. OEA/Ser.L/II.CIDH/RELE/INF8/12. March 7, 2011, paragraphs 175-181. Available at: [http://www.oas.org/en/iachr/expression/docs/reports/countries/2010%20FINAL%20CIDH%20Relator%20C3%ADa%20Informe%20Mexico%20Libex\\_eng.pdf](http://www.oas.org/en/iachr/expression/docs/reports/countries/2010%20FINAL%20CIDH%20Relator%20C3%ADa%20Informe%20Mexico%20Libex_eng.pdf). See also, IACHR, *Special Rapporteurship on Freedom of Expression*, Press Release R101/12— The Office of the Special Rapporteur Expresses Concern over Attacks against *El Norte* Newspaper and Threats against Journalists in Mexico. Washington D.C., August 3, 2012. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=909&lID=1> [Consulted on December 30, 2013].

<sup>288</sup> IACHR, *Special Report on Freedom of Expression in Mexico 2010*. OEA/Ser.L/II.CIDH/RELE/INF8/12. March 7, 2011, para. 176.

282. The Commission must also underscore the need to legitimize, protect and support the work of civil society organizations that provide services to migrants who are victims of crime and human rights violations, in the form of financial resources and public policies, especially as regards humanitarian assistance and information on how to file complaints about crimes committed against migrants and on how to get effective judicial protection.

## **C. The Mexican State's response to the discrimination and violence against migrants and other persons in the context of human mobility**

### **1. The legislative response**

283. In recent years, Mexico has witnessed an unprecedented wave of violence, which has taken a particularly heavy toll on migrants. For its part, the Mexican State has made important strides in the area of human rights. The Commission is grateful for the statements made by the representatives of the Mexican State concerning the need to break the existing dichotomy between the human rights protection that Mexico seeks for Mexican migrants abroad, and the protection that the Mexican authorities provide to migrants from other countries who are either living in or are in transit through Mexico. The Commission must emphasize the recent constitutional, legal and administrative reforms that the Mexican State has undertaken to better protect the human rights of those persons who are caught up in the flow of human mobility in Mexico, such as migrants, refugees, persons in need of additional protection, and victims and survivors of human trafficking. The Commission applauds the commitment that the Mexican State has demonstrated at the international level to promoting international and regional human rights treaties, and the fact that the Mexican State has ratified every Inter-American treaty for the protection of human rights.

284. As previously noted, the Commission observes that some of the principal advances made in the protection of the human rights of migrant persons and others in the context of human mobility, have been embodied in law. The historic importance of these measures notwithstanding, the Commission finds that, in general, the Mexican State's response is far from what it should be if it is to protect migrants and other persons in the context of human mobility in Mexico and prosecute, punish and redress the crimes and human violations committed against them.

285. In the Commission's view, the 2011 Human Rights Amendment to Mexico's Constitution represented a paradigmatic change in the promotion and protection of human rights in Mexico and was of fundamental importance, not just for migrants but

for all persons living in Mexico.<sup>289</sup> Through this amendment, the international human rights treaties ratified by Mexico were elevated to the rank of constitutional law. The amendment also established the State's duty to prevent, investigate, punish and redress violations of human rights in accordance with secondary law. As was noted at the end of the Commission's visit to Mexico, "[t]he changes introduced based on the constitutional reform mark the beginning of a process of human rights reform that is unprecedented in recent Mexican history."<sup>290</sup> In related developments, the Commission also appreciates the effort that Mexico's Supreme Court is making to train federal magistrates and judges so that their decisions take these important advances into account and are in compliance with the Mexican State's obligations in the area of human rights. The Commission hopes that this effort will be replicated at the state level.

286. On July 22, 2008, a decree took effect that decriminalized undocumented persons' unlawful or unauthorized entry into Mexican territory. It also repealed other provisions of the General Population Act that had ordered sentences ranging from 18 months to 10 years for migrants in an irregular situation convicted of crimes such as illegal entry or presence in the country, falsification of documents, claiming an immigration status other than one's actual status, violation of the legal time period that one is authorized to stay in the country, engaging in activities that are not authorized on one's legal entry permit, marriage with a Mexican citizen for the sole purpose of establishing one's residence in the country, and other crimes.<sup>291</sup> By this decree, the penalty of imprisonment was eliminated for the above actions and fines were established in lieu of imprisonment. The Commission also applauds the 2010 amendment of the article that established a penalty for undocumented migrants who entered Mexican territory more than once. The Commission observes that these reforms represent compliance with the recommendation made by the Rapporteurship in its 2003 report.<sup>292</sup> Taken together, these measures represent an about-face to decriminalize migration.

287. In 2010, the Mexican State approved the amendment of Article 67 of the General Population Act. That amendment took effect on November 23, 2010. Under its terms, if a foreign-born national of another state, no matter what his/her immigration status, files

<sup>289</sup> Executive Branch, Secretariat of the Interior, *Decreto por el que se modifica la denominación del Capítulo I del Título Primero y reforma diversos artículos de la Constitución Política de los Estados Unidos Mexicanos* [Decree changing the title of Chapter I of Title One and amending several articles in the Political Constitution of the United Mexican States]. Published in the Federation's Official Gazette of June 10, 2011. Available at: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_194\\_10jun11.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_194_10jun11.pdf) [Consulted on December 30, 2013].

<sup>290</sup> IACHR, *Press Release No. 105/11, IACHR Wraps Up Visit to Mexico*. Mexico City, D.F., September 30, 2011. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2011/105.asp> [Consulted on December 30, 2013].

<sup>291</sup> Executive Branch, Secretariat of the Interior, *Decreto por el que se reforman y derogan diversas disposiciones de la Ley General de Población* [Decree amending and repealing several articles of the General Population Act], published in the Federation's Official Gazette of July 21, 2008. Available at: [http://www.diputados.gob.mx/LeyesBiblio/proceso/lx/105\\_DOF\\_21jul08.pdf](http://www.diputados.gob.mx/LeyesBiblio/proceso/lx/105_DOF_21jul08.pdf) [Consulted on December 30, 2013].

<sup>292</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003— Chapter V. Special Studies: Fifth Progress Report of the Rapporteurship on Migrant Workers and Their Families - V. On-site Visit to Mexico*. OEA/Ser.L/V/II.118 Doc. 70 rev. 2, December 29, 2003, paragraph 378.

a human rights complaint or a claim seeking justice, said complaint/claim can be neither declined nor restricted, and must be addressed. This amendment guaranteed, in law, that migrants would be given equal protection under the law and equal access to justice. It also added the right of foreign-born nationals of another State, no matter what their immigration status, to be assisted in the event of a disaster and to receive the medical treatment they require in the event of an illness or accident that puts their life in peril.<sup>293</sup>

288. The 2011 Human Rights Amendment to Mexico's Constitution and the above-mentioned reforms were of fundamental importance. Nonetheless, the Commission must also underscore the importance of the legislative reforms recently introduced in Mexico on the subject of immigration, on the protection of refugees, and the protection of victims and survivors of human trafficking. The Commission appreciates the importance of the enactment of the Law on Refugees and Additional Protection, the Immigration Act, and the General Law to Prevent, Punish and Eradicate Crimes Associated with Human Trafficking.

289. The Mexican State advised the Commission that the Law on Refugees and Additional Protection<sup>294</sup> and its Implementing Regulations<sup>295</sup> took effect in early 2011. In addition to regulating refugee status, this law stipulates the grounds for assistance to refugees within Mexican territory. The law also recognizes the principle of *non-refoulement*, the principle of non-discrimination, the principle of no punishment for unauthorized entry, the principle of family unity, the principle of the best interests of the child and the principle of confidentiality. Among the main changes that this law introduces are that it eliminates the previous restriction under which refugees were not allowed to change their place of residence at will; it also grants permanent residency rights. Additional protection was another important feature that the law introduced. Under the provisions of Article 2 (iv), Mexico will grant additional protection to those foreign-born nationals of other States who have not been granted refugee status under the terms of this law, but who require protection in the sense that they must not be returned to the territory of the other country where their life would be threatened or where they would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

290. Given the times and the violence rampant in some Central American countries today, Mexican refugee law uses a broad definition of refugee, consistent with the 1984 Cartagena Declaration on Refugees. Article 13 of the Law on Refugees and Additional

<sup>293</sup> Executive Branch, Secretariat of the Interior, *Decreto por el que se adicionan un segundo y tercer párrafo al artículo 67 y una fracción VI al artículo 113 de la Ley General de Población* [Decree adding a second and third paragraph to Article 67 and a subsection VI to Article 113 of the General Population Act]. Published in the Federation's Official Gazette of November 22, 2010. Available at: [http://www.diputados.gob.mx/LeyesBiblio/ref/lgp/LGP\\_ref13\\_22nov10.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lgp/LGP_ref13_22nov10.pdf) [Consulted on December 30, 2013].

<sup>294</sup> Law on Refugees and Additional Protection. Published in the Federation's Official Gazette of January 27, 2011. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LRPC.pdf> [Consulted on December 30, 2013].

<sup>295</sup> Regulations Governing the Law on Refugees and Additional Protection. Published in the Federation's Official Gazette of February 21, 2012. Available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5234592&fecha=21/02/2012](http://dof.gob.mx/nota_detalle.php?codigo=5234592&fecha=21/02/2012) [Consulted on December 30, 2013].

Protection accords refugee status to any foreign-born national of another State who has fled his/her country of origin because his/her life, safety or freedom has been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order. The Commission also appreciates the importance of the refugee status accorded by reason of gender-motivated persecution. The Commission understands how important a broad definition of the concepts of refugee and additional protection are, and therefore urges other States of the region to follow the example set by Mexico in this law.

291. The Commission was also informed that the Immigration Act entered into force on May 26, 2011.<sup>296</sup> The principal advances recognized under this law are, *inter alia*, the right of migrants to move about freely, the best interests of the child and family unity as guiding principles, recognition of the rights to justice, education, health and civil registry for migrants and their family members, irrespective of their immigration status, expansion of the immigration regularization process, the definition of statelessness and the issuance of visas to persons in need of special protection, such as applicants for refugee status, applicants for additional protection and stateless persons. While many of these rights are already constitutional law, their incorporation into a special law will enable them to be enjoyed in practice more fully and effectively. The Commission believes that proper implementation of the Immigration Act may come to represent a paradigmatic change in the recognition and protection of the human rights of migrant persons.

292. In addition to the latter, the Commission also received information to the effect that in June 2011 a procedure was approved which the INM must follow in detecting, identifying, and providing service to foreign-born nationals of other States who are victims of crime, including victims of human trafficking. According to this procedure, no matter what the victims' immigration status, all measures necessary to guarantee their protection and assistance and to protect their human rights shall be taken; therefore, they will be given the necessary services for medical and psychological attention, information on their rights, especially their right of access to justice and the respective procedures to follow, protection of their identity and personal particulars, and immigration assistance.

293. In September 2011, the Office of the Public Prosecutor for Victims of Crime (hereinafter "PROVICTIMA") was created, geared to providing assistance to crime victims and to relatives of disappeared or missing persons.<sup>297</sup>

<sup>296</sup> Immigration Act. Published in the Federation's Official Gazette of May 25, 2011. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf> [Consulted on December 30, 2013].

<sup>297</sup> United Mexican States. Office of the President of the Republic. *Decreto por el que se crea la Procuraduría Social de Atención a las Víctimas de Delitos, como un organismo descentralizado de la Administración Pública Federal* [Decree creating the Office of the Public Prosecutor for Victims of Crime]. Published in the Federation's Official Gazette of September 6, 2011. Entered into force on September 7, 2011. Available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5207985&fecha=06/09/2011](http://dof.gob.mx/nota_detalle.php?codigo=5207985&fecha=06/09/2011) [Consulted on December 30, 2013].

294. On the subject of the search for missing or disappeared persons, the Commission was informed that the Law on the National Data Registry on Missing or Disappeared Persons entered into force on April 19, 2012.<sup>298</sup> This law establishes the National Data Registry on Missing or Disappeared Persons, its operating guidelines, functions and administration. The purpose of the National Data Registry is to have single computerized database that centralizes all information on missing or disappeared persons; information on persons in treatment facilities, custodial facilities, detention facilities or internment facilities, and persons whose family, identity and domicile are unknowns. The Registry is to be used to provide help in investigations to find and locate a person's family and place of residence. The Commission notes that this law makes it incumbent upon any administrative or judicial authority who has knowledge of a missing person or who receives a complaint reporting a person's disappearance to report that information to the National Registry. The Commission is urging the State to establish a national forensic databank that can be used to identify disappeared or missing migrants or unidentified remains. A mechanism of this kind should be combined with the mechanisms already being developed or in operation in other States of the region, such as the forensic databanks of El Salvador, Honduras, Guatemala and the state of Chiapas.

295. The Commission was also informed that the General Law to Prevent, Punish and Eradicate Crimes Associated with Human Trafficking and for Protection and Assistance to Victims of These Crimes was approved and entered into force on June 15, 2012.<sup>299</sup> The provisions of this law: 1) establish the jurisdictions of the federal, state, Federal District and municipal governments and how they are to coordinate; 2) criminalize human trafficking and related offenses and establish the penalties for these crimes; 3) require the PGR to create a witness and victim protection program; 4) redefine the membership, organization, functioning and authorities of the Inter-Secretarial Commission; 5) include a chapter on the prevention of this crime, policies and programs, detection of areas and groups most at risk and policies under which they will receive priority attention; 6) classifies crimes associated with human trafficking as serious offenses that are the work of organized crime; 7) establishes warning systems and rapid action protocols to search for and locate minors who are victims of kidnapping, in coordination with members of the system, emergency services, the media, telecommunication-service providers, nongovernmental organizations and the general public.

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<sup>298</sup> Permanent Mission of Mexico to the OAS, *Comunicación OEA01171: Información sobre Ley del Registro Nacional de Personas Desaparecidas en México* [Communication OEA01171: Information on the National Registry of Missing or Disappeared Persons in Mexico]. Washington DC, April 26, 2012 [Document on file with the Commission].

<sup>299</sup> *Ley General para Prevenir, Sancionar y Erradicar los Delitos en materia de Trata de Personas y para la protección y Asistencia a las Víctimas de estos Delitos* [General Law to Prevent, Punish and Eradicate Crimes Associated with Human Trafficking and for Protection and Assistance to Victims of These Crimes]. Published in the Federation's Official Gazette of June 14, 2012. Entered into force on June 15, 2012. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPSEDMTP.pdf> [Consulted on December 30, 2013].

296. The Mexican State also reported that the Law for the Protection of Human Rights Defenders and Journalists had been approved and entered into force.<sup>300</sup> The purpose of that law is to establish cooperation between the federal and state governments to put into practice and operate the preventive measures and urgent protective measures that will guarantee the life, safety, liberty and security of persons who are vulnerable because of their defense and promotion of human rights and their practice of freedom of expression and journalism.<sup>301</sup> The law also created the Mechanism to Protect Human Rights Defenders and Journalists. In the Commission's view, this law is a positive step toward responding to the extreme vulnerability to which defenders of migrants' rights in Mexico are exposed and toward the establishment of legal mechanisms through which the State can comply with its obligation to protect, promote and guarantee the human rights of human rights defenders. The Commission must again underscore how significant it is that this law was drafted in consultation with civil society organizations, taking into account the technical input that the Mexico Office of the United Nations High Commissioner for Human Rights provided during the drafting process.<sup>302</sup> The Commission is convinced that this consultative process enabled multiple interested parties to play a vital role in drafting the bill. In the Commission's view, this law represents partial compliance with one of the Rapporteurship's recommendations in its preliminary observations concerning the adoption of measures to guarantee safety for defenders of the human rights of migrants.

297. As Mexico is a federal State, the Commission believes that measures must be adopted at the State level to protect the human rights of persons within the context of human mobility. The measures adopted at the State level must complement and reinforce the protection that the measures implemented by the State at the federal level afford; therefore mechanisms are needed to coordinate the policies, laws and practices developed at the different levels of government with a view to effectively protecting the human rights of persons within the context of human mobility in Mexico.

298. The Commission was informed that the Law on Inter-Culturalism, Migrant Services and Human Mobility in the Federal District took effect on April 8, 2011.<sup>303</sup> This law recognizes human mobility as the exercise of every person's human right to migrate, which

<sup>300</sup> Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas [Law for the Protection of Human Rights Defenders and Journalists]. Published in the Federation's Official Gazette of June 25, 2012. Entered into force on June 26, 2012. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LPPDDHP.pdf> [Consulted on December 30, 2013].

<sup>301</sup> Law for the Protection of Human Rights Defenders and Journalists, Article 1.

<sup>302</sup> IACHR, UN Special Rapporteurs, Press Release No. 47/12: Mexico: International and Regional Experts Urge Swift Action to Protect Human Rights Defenders and Journalists. Geneva and Washington, D.C., May 14, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/047.asp> [Consulted on December 30, 2013].

<sup>303</sup> Federal District, *Ley de Interculturalidad, Atención a Migrantes y Movilidad Humana en el Distrito Federal* [Law on Inter-culturalism, Migrant Services and Human Mobility in the Federal District]. Approved February 24, 2011 by the Federal District's Legislative Assembly. Law published by decree in the Federal District's Official Gazette for April 7, 2011. Entered into force effective April 8, 2011. Available at: [www.aldf.gob.mx/archivo-e800ffd58570472c879df856002040c5.pdf](http://www.aldf.gob.mx/archivo-e800ffd58570472c879df856002040c5.pdf) [Consulted on December 30, 2013].

helps bring about positive change that reduces inequalities, inequities and discrimination. One of most important provisions of this law is that no human being shall be identified or recognized as illegal because of his/her immigration status.<sup>304</sup> In the context of human mobility, the law protects a person's right to freedom of movement and to choose his/her place of residence; to have a suitable quality of life in which his/her rights to housing, education, health, work, food, equality and non-discrimination are guaranteed; to avoid any form of slavery; to denounce any form of domination or exploitation; and the right of access to justice to assert one's rights. The Commission believes that this law is in the vanguard of recognizing the human rights of persons in human mobility. It therefore urges other states in Mexico to follow this law as a good practice in lawmaking.

299. The Commission was also informed that the Law to Prevent and Address Internal Displacement was approved and entered into force in the state of Chiapas.<sup>305</sup> The purpose of this law is to prevent, address, and find lasting solutions for internally displaced persons in the state of Chiapas and was developed on the basis of the Guiding Principles of Internal Displacement. This law is of fundamental significance, as it is the first to address the predicament of internally displaced persons in Mexico. The legal framework that the law creates gives meaning and content to the obligations to protect the human rights of internally displaced persons in Chiapas and to provide assistance to those persons during their displacement and in the search for lasting solutions.

300. Moreover, the Commission also recognizes the fundamental role that Mexico has played in the adoption and promotion of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families at the international level, and congratulates the State for its decision to recognize the jurisdiction of the Committee for the Protection of All Migrant Workers and Members of Their Families to receive and consider individual communications. It urges other States in the region to follow Mexico's lead.

301. Taken together, all these changes are the start of a reform process that is unprecedented in Mexico's recent history, as they address the various phenomena at work in human mobility. Carrying these changes further through additional legal and regulatory reforms that have been discussed with Mexican civil society and that are widely implemented and disseminated throughout the country, will bring about a meaningful paradigm shift in the approach to migration, and will have a significant impact on Mexico and the world.

<sup>304</sup> Federal District, *Ley de Interculturalidad, Atención a Migrantes y Movilidad Humana en el Distrito Federal* [Law on Inter-culturalism, Migrant Services and Human Mobility in the Federal District]. Article 5.

<sup>305</sup> Chiapas State, *Ley para la Prevención y Atención del Desplazamiento Interno en el Estado Chiapas* [Law to Prevent and Address Internal Displacement in the State of Chiapas], Law published by Decree Number 158, in the State's Official Newspaper No. 355, February 22, 2012. Entered into force February 23, 2012. Available in Spanish at: <http://www.congresochiapas.gob.mx/images/legislacion/leyes/90.pdf> [Consulted on December 30, 2013].

## 2. The judicial response

302. During the public hearing on the “Situation of the human rights of migrants in transit through Mexico,” the representation of the Mexican State maintained that “there are no INM agents implicated in kidnappings. There are agents under arrest and on trial for trafficking in persons. Last week an operation was conducted in Cancún in which 10 agents were detained; several months ago other agents were detained in another [operation]. Several other operations were staged in Baja California.”

303. Following up on the visit and with preparation of this report in mind, on November 22, 2011, the Commission made a request of the Mexican State asking for information on federal crimes whose passive subjects have or may have been migrants, either Mexican migrants or migrants of other nationalities. To be more specific, the Commission asked to be informed of the number of complaints that the PGR had received, the total number of preliminary inquiries that the PGR was conducting, the number of convictions in first instance and the total number of final verdicts of conviction. The information was requested for the period from 2008 to 2011. The Commission requested information concerning the following:

Total number of complaints the PGR received.	2008	2009	2010	2011
Forced disappearance (Article 215 of the CPF*)				
Rape, statutory rape and aggravated rape (articles 265, 266 and 266 bis of the CPF)				
Sexual abuse (Article 260 of the CPF)				
Aggravated sexual abuse (Article 261 of the CPF)				
Felonious assault (Article 315 of the CPF)				
Aggravated homicide (Article 315 del CPF)				
Kidnapping crimes (articles 9 to 12 and 17 LGPSDMS**)				
Illegal deprivation of liberty (Article 364 of the CPF)				
Extortion (Article 390 of the CPF)				
Human trafficking (Articles 5 and 6 of the LPSTP***)				
Smuggling of undocumented persons (Article 138 of the LGP****)				
Immigration crimes (articles 159, 160 and 161 of the LM*****)				
Smuggling of minors (Article 366 of the CPF)				
Organ trafficking (Article 461 of the LGS*****)				
Bribery (Article 222 of the CPF)				

Total number of preliminary investigations with the PGR	2008	2009	2010	2011
Forced disappearance (Article 215 of the CPF*)				
Rape, statutory rape and aggravated rape (articles 265, 266 and 266 bis of the CPF)				
Sexual abuse (Article 260 of the CPF)				
Aggravated sexual abuse (Article 261 of the CPF)				

Total number of preliminary investigations with the PGR	2008	2009	2010	2011
Felonious assault (Article 315 of the CPF)				
Aggravated homicide (Article 315 del CPF)				
Kidnapping crimes (articles 9 to 12 and 17 LGPSDMS**)				
Illegal deprivation of liberty (Article 364 of the CPF)				
Extortion (Article 390 of the CPF)				
Human trafficking (Articles 5 and 6 of the LPSTP***)				
Smuggling of undocumented persons (Article 138 of the LGP****)				
Immigration crimes (articles 159, 160 and 161 of the LM*****)				
Smuggling of minors (Article 366 of the CPF)				
Organ trafficking (Article 461 of the LGS*****)				
Bribery (Article 222 of the CPF)				

Total number of convictions in first instance	2008	2009	2010	2011
Forced disappearance (Article 215 of the CPF*)				
Rape, statutory rape and aggravated rape (articles 265, 266 and 266 bis of the CPF)				
Sexual abuse (Article 260 of the CPF)				
Aggravated sexual abuse (Article 261 of the CPF)				
Felonious assault (Article 315 of the CPF)				
Aggravated homicide (Article 315 del CPF)				
Kidnapping crimes (articles 9 to 12 and 17 LGPSDMS**)				
Illegal deprivation of liberty (Article 364 of the CPF)				
Extortion (Article 390 of the CPF)				
Human trafficking (Articles 5 and 6 of the LPSTP***)				
Smuggling of undocumented persons (Article 138 of the LGP****)				
Immigration crimes (articles 159, 160 and 161 of the LM*****)				
Smuggling of minors (Article 366 of the CPF)				
Organ trafficking (Article 461 of the LGS*****)				
Bribery (Article 222 of the CPF)				

Total number of convictions that became final	2008	2009	2010	2011
Forced disappearance (Article 215 of the CPF*)				
Rape, statutory rape and aggravated rape (articles 265, 266 and 266 bis of the CPF)				
Sexual abuse (Article 260 of the CPF)				
Aggravated sexual abuse (Article 261 of the CPF)				
Felonious assault (Article 315 of the CPF)				
Aggravated homicide (Article 315 del CPF)				
Kidnapping crimes (articles 9 to 12 and 17 LGPSDMS**)				
Illegal deprivation of liberty (Article 364 of the CPF)				
Extortion (Article 390 of the CPF)				

Total number of convictions that became final	2008	2009	2010	2011
Human trafficking (Articles 5 and 6 of the LPSTP***)				
Smuggling of undocumented persons (Article 138 of the LGP****)				
Immigration crimes (articles 159, 160 and 161 of the LM*****)				
Smuggling of minors (Article 366 of the CPF)				
Organ trafficking (Article 461 of the LGS*****)				
Bribery (Article 222 of the CPF)				

\* CPF: Federal Penal Code

\*\* LGPSDMS: Ley General para Prevenir y Sancionar los Delitos en Materia de Secuestro (General Law to Prevent and Punish Kidnapping-related Crimes)

\*\*\* LPSTP: Ley para Prevenir y Sancionar la Trata de Personas [Law to Prevent and Punish Human Trafficking]

\*\*\*\* LGP: Ley General de Población [General Population Act]

\*\*\*\*\* LM: Ley de Migración [Immigration Act]

\*\*\*\*\* LGS: Ley General de Salud [General Health Act]

304. The Commission also asked the following of the Mexican State:

- a) Please provide disaggregated data for the years 2008, 2009, 2010 and 2011 for the following: the number of complaints that the PGR received in which the passive subjects of the alleged crime were migrants and the active subjects were State agents, indicating the institution that employs the active subject and the crime alleged.
- b) Please provide disaggregated data for the years 2008, 2009, 2010 and 2011 for the following: the number of preliminary inquiries launched by the PGR in which the passive subjects of the alleged crime were migrants and the active subjects were State agents, indicating the institution that employs the active subject and the crime under investigation.
- c) Please provide disaggregated data for the years 2008, 2009, 2010 and 2011 for the following: the number of convictions in first instance delivered by the federal criminal courts in cases in which the passive subjects of the crime were migrants and the active subjects were agents, indicating the institution that employed the convicted State agent and the crime of which said State agent was convicted.
- d) Please provide disaggregated data for the years 2008, 2009, 2010 and 2011 for the following: the number of final convictions handed down by the federal criminal courts in cases in which the passive subjects of the crime were migrants and the active subjects were State agents, indicating the institution that employed the convicted State agent and the crime of which said State agent was convicted.

305. Finally, the Commission asked the State, wherever pertinent, to provide the information listed above for the criminal courts at the state level.

306. The Commission repeated its request for information, whereupon it received the State's reply on July 9, 2012. The information provided by the authorities appears below:

### **Additional information regarding the situation of migrant persons in Mexico**

Between January 1, 2008 and December 31, 2011, the district courts, as the courts charged with handing out federal (civil, criminal, administrative and labor) justice, decided criminal cases involving migrants, as follows:

CRIME	TOTAL
Forced disappearance	1
Rape	0
Aggravated sexual abuse	0
Felonious assault	29
Aggravated homicide	4
Kidnapping crimes	0
Illegal deprivation of liberty	5
Extortion	1
Human trafficking	0
Smuggling of undocumented persons	5
Immigration crimes	0
Smuggling of minors	0
Organ trafficking	0
Bribery	11
<b>TOTAL</b>	<b>56</b>

The following are the 2008, 2009, 2010 and 2011 figures for the crimes contemplated in the General Population Act, such as sheltering or transporting undocumented persons, and bringing migrant persons in and out of the country:

YEAR	Preliminary inquiries instituted	Preliminary inquiries that led to prosecutions
2008	1553	1111
2009	1412	1076
2010	1402	1011
2011	1220	860
2008-2011	5587	4058

307. Given the Mexican State's response to this request for information, and the information heard from various sources regarding the impunity that surrounds the crimes and human rights violations committed against migrant persons, the Commission is compelled to express its deep concern at what is clearly the State's patently inadequate response in terms of the investigation, prosecution and punishment of such crimes. Given all the documentation now available about crimes and human rights violations committed

against migrants and the many pieces of testimony given by migrants and their family members, both to the Commission and to other human rights organizations like the CNDH, it defies logic that the figures the State has given are the actual figures it has for crimes committed against migrant persons.

308. The response given by the State in its first table is so imprecise that it is impossible to determine whether the migrants were the active or passive subjects of the crime. On the other hand, the Commission notes that the figures that appear in the second table, where the number of preliminary inquiries instituted and the number of cases that went to trial are much higher, are crimes associated with the smuggling of migrants, such as sheltering or transporting undocumented persons and taking undocumented persons in and out of the country. These kinds of crime are not considered to affect migrants' rights; instead, they are violations of other, more general legally protected interests.

309. One of the major problems that the Commission identified in this area is the preferential attention paid to crimes associated with the smuggling of migrants, as opposed to the more widespread and more serious problem of violence against migrants, which is the underlying factor in many extortions, robberies, kidnappings, human trafficking, murders and disappearances. The Commission is disturbed by the fact that crimes of this nature are mainly classified under smuggling of migrants, without regard for the fact that they may well be cases of migrant kidnapping, given the pattern of mass abductions of migrants that has emerged in recent years. Amnesty International told the Commission that time and time again it has observed that the PGR tends to investigate cases in which migrants are kidnapped as the crime of smuggling persons or as violations of the General Population Act. In such cases, victims are treated as voluntary participants and potential witnesses, but not as victims of serious human rights violations. The migrants end up being denied justice and redress and the cases are dealt with as a plain criminal matter where the protection of migrants' rights is not at stake.<sup>306</sup>

310. In the issue at hand, the Commission reminds the Mexican State that migrants who have been smuggled across borders or across Mexican territory should be not be criminalized for doing so Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Mexico on October 22, 2002, provides that “[m]igrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.”<sup>307</sup>

<sup>306</sup> Amnesty International, *Information provided by Amnesty International prior to the Rapporteur's visit to Mexico*. July 7, 2011. [Document on file with the Commission].

<sup>307</sup> The Protocol against the Smuggling of Migrants by Land, Sea and Air in its Article 6 states that:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:
  - (a) The smuggling of migrants;

311. As the Rapporteurship observed in its Preliminary Observations, the arrest of 17 municipal police officers in San Fernando, Tamaulipas, as part of the investigations into the discovery of the clandestine graves, is a positive signal of the State's readiness to investigate, prosecute and punish those responsible for these crimes. On this very point, Max Diener, SEGOB's Under Secretary for Legal Affairs and Human Rights told the Commission that

*As to the references concerning collusion on the part of public officials, I would like to emphatically deny that the Mexican State tolerates this type of collusion. The Mexican State will take action when it learns of any irregularities taking place at the federal, state and municipal levels. It will take legal action. It will take criminal legal action. The Mexican State neither tolerates nor accepts the premise that acts are being systematically committed that have, shall we say, the backing of the Mexican State; instead, these are irregularities that occur. They are public servants who betray the system, the country, the system of justice; therefore, these specific cases will be prosecuted accordingly. However, this is not something that the Mexican State would ever allow.<sup>308</sup>*

312. However, the Commission cannot remain silent in the face of the many crimes and human rights violations committed against migrants, and must express its deep

- 
- (b) When committed for the purpose of enabling the smuggling of migrants:
    - (i) Producing a fraudulent travel or identity document;
    - (ii) Procuring, providing or possessing such a document;
  - (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
    - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
    - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;
    - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.
  3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:
    - (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
    - (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.
  4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

<sup>308</sup> Remarks by SEGOB's Under Secretary for Legal Affairs and Human Rights, Lic. Max Diener Salas, at the Hearing of the Inter-American Commission on Human Rights on the Situation of missing migrants and unidentified remains in Mexico, Washington, D.C., March 23, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=125> [Consulted on December 30, 2013].

concern over watershed cases like the massacre of the 72 migrants in San Fernando. And while the authorities have apprehended members of the Los Zetas Cartel alleged to have been directly involved in the commission of those events, more than two years have passed and none of the accused has been convicted.

### 3. Other measures taken by the Mexican State

313. As one response to the events that implicated INM agents in the commission of crimes and human rights violations against migrant persons, the Commission was informed that an agreement had been approved creating the INM Center for Assessing and Monitoring Trustworthiness<sup>309</sup> to determine whether individuals fit the profiles required for joining, remaining in and being promoted within that institution. The agreement stipulates that public servants with the immigration service shall be required to undergo the certification process, which means they must fit the personality, ethical, socioeconomic and medical profiles needed to perform the functions of those jobs.

314. Dr. René Zenteno, Under Secretary for Population, Immigration and Religious Affairs, told the Commission the following about the results of the profiling process:

*[The Mexican Government is] taking important institutional steps to guarantee the rights and safety of migrants. Specifically, we are conducting a complex screening process and institutional strengthening of the National Institute of Immigration. The Mexican Government is determined to wipe out any injustice in this institution. Accordingly, we have been working on the following measures: 1) The Constitutional President of the Mexican Republic, Lic. Felipe Calderón Hinojosa, has given instructions that rigorous tests are to be administered to check the trustworthiness of all Institute employees. At least 1500 public servants attached to the offices in the states within the so-called “migrant route” (Chiapas, Quintana Roo, Tabasco, Veracruz, the state of Mexico, San Luis Potosí and Tamaulipas) are being evaluated. As a result, last year alone over 200 employees of the Institute were dismissed, either for irregularities—in which case they faced criminal prosecution—or for failing the tests for trustworthiness. The over 200 employees dismissed include the seven agents that the migrants identified as the ones who handed them over to organized crime groups like Los Zetas, in one of the most notorious cases of extortion and kidnapping of undocumented persons; 2) last October 14, 121 employees in positions of trust in the regional offices in the Federal District, Chiapas, Sonora, Tabasco, Tamaulipas, Quintana Roo and Veracruz were notified that their appointments were being terminated [...] The Mexican Government is sending a resounding message: nowhere,*

<sup>309</sup> Secretariat of the Interior, *Acuerdo por el que se crea el Centro de Evaluación y Control de Confianza del Instituto Nacional de Migración* [Agreement under which the INM Center for Assessing and Monitoring Trustworthiness is created]. Published in the Federation’s Official Gazette of February 25, 2011. Available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5179426&fecha=25/02/2011](http://dof.gob.mx/nota_detalle.php?codigo=5179426&fecha=25/02/2011) [Consulted on December 30, 2013].

*in any institution, will there be any tolerance for authorities who violate the rights of the migrant persons that those same authorities are duty-bound to protect.*<sup>310</sup>

315. The Commission was also informed of the measures the Mexican State is taking to instruct INM agents about human rights, the treatment of migrant children, crimes against migrants, treatment of victims, and the like.

316. It is important to acknowledge the measures that have been taken in the context of the process in which the Commission, the Mexican State, various civil society organizations in Mexico and other countries of the region and other international agencies have been engaged in connection with the human rights situation of migrant persons in Mexico. As a result of the hearing on kidnapping of migrants in Mexico, held at IACHR headquarters on March 22, 2010, the government of Mexico offered to present the Commission a report on kidnapping of migrants, so as to make available to the public some general information on the measures the government of Mexico has undertaken to address the phenomenon of the abduction of migrants and the protection of their human rights. That report was received at the Commission on July 16, 2010. To draft the report, the State formed a technical working group, headed by the Office of the President of the Republic and composed of the Secretariat of the Interior, the Secretariat of Foreign Affairs, the National Institute of Statistics and Geography, the INM and the National Population Council; institutions that the *Colegio de la Frontera Norte* and the Latin American School of Social Sciences (FLACSO-Mexico) helped by providing advice.

317. The reports the CNDH published on kidnapping of migrants in Mexico in 2009<sup>311</sup> and 2011<sup>312</sup> deserve special mention. With no reliable data for an accurate picture of what was happening in Mexico with the constant and egregious abductions of migrants traveling through the country, the CNDH set about collecting information on this phenomenon, starting with the complaints filed by migrants who had been the victims of kidnapping or the complaints that the CNDH had filed on its own initiative. The information on which these reports are based is backed up by testimony taken at shelters, migrant holding facilities, places where migrants tended to congregate or migrant transit points; another source used were newspaper articles published by various media outlets. The method developed to prepare the CNDH reports also took advantage of the invaluable data compiled by the shelters and homes for migrants that are part of the Network of

<sup>310</sup> Remarks by the Under Secretary for Population, Immigration and Religious Affairs, Dr. René Zenteno, at the Hearing of the Inter-American Commission on Human Rights on the Follow-Up to the Visit to Mexico by the Office of the Rapporteur on the Rights of Migrants. Washington, October 27, 2011, pp. 11-12.

<sup>311</sup> CNDH, *Informe Especial sobre Secuestro en contra de Migrantes en México* [Special Report on Migrant Abduction in Mexico]. Mexico, D.F., June 15, 2009.

<sup>312</sup> CNDH, *Informe Especial sobre Secuestro en contra de Migrantes en México* [Special Report on Migrant Abduction in Mexico]. Mexico, D.F., June 15, 2009; CNDH, *Informe Especial sobre Secuestro de Migrantes en México* [Special Report on Migrant Abduction in Mexico]. Mexico, D.F., February 22, 2011. Available only in Spanish at: [http://www.cndh.org.mx/Informes\\_Especiales](http://www.cndh.org.mx/Informes_Especiales) [Consulted on December 30, 2013].

National Records of Assaults on Migrants,<sup>313</sup> organized by the *Dimensión Pastoral de la Movilidad Humana* [Pastoral Dimension of Human Mobility] of the Mexican Conference of Bishops. These reports represented an unprecedented effort on the part of a state agency to expose the mass abductions of migrant persons and to draw attention to the dimensions and various topologies of migrant abduction, and assess the measures taken to address and combat them. These reports have made federal, state, and municipal authorities, civil society organizations, the general public and the international community more aware of just how urgent and serious migrant abduction is in Mexico, and of the need to take measures to prevent it, to protect migrants and to make full reparations to victims and their family members.

318. The work being done by the Forensic Medical Services (hereinafter “FEMEFO”) and the Federal District Superior Court, in partnership with the International Committee of the Red Cross, to prepare a draft single protocol and forms for identification of bodies, especially those of migrants who die while on route to the United States, is of critical importance.<sup>314</sup>

319. The Commission welcomes the creation of the Specialized Search Unit for Missing Persons, established under Agreement A/066/13, published on June 21, 2012 in the Federation’s Official Gazette. That unit’s purpose is to assist with other areas of the PGR when a complaint has been brought by relatives of a migrant who has fallen victim to disappearance.<sup>315</sup>

320. Another important step was the creation of the Office of the Special Prosecutor for Crimes Committed against Migrants, which is part of the Office of the Chiapas State Attorney General. According to the information that the IACHR delegation received, the mandate of this Prosecutor’s Office is to address all complaints filed by migrant persons alleging a violation of their rights anywhere in the state of Chiapas.

321. The Commission applauds the signing of the Convention to Cooperate toward Creation of a Forensic Commission for Identification of Remains, which was signed on August 22, 2013 by the Office of the Attorney General of the Republic of Mexico, the Argentine Team of Forensic Anthropology, the Committee of Relatives of Deceased and Disappeared Migrants of El Salvador (COFAMIDE), the *Casa del Migrante* in Saltillo (Coahuila, Mexico), the Foundation for Justice and the Democratic Rule of Law, Guatemala’s

<sup>313</sup> The Network of National Records of Assaults on Migrants is a collaborative tool created by the CNDH and a group of migrant shelters and homes for migrants; its purpose is to compile information on assaults committed against migrants as they cross Mexican territory.

<sup>314</sup> ICRC, *Mexico: establishing the fate of missing migrants in the region*, May 9, 2012. Available at: <http://www.icrc.org/eng/resources/documents/interview/2012/mexico-interview-2012-05-09.htm> [Consulted on December 30, 2013].

<sup>315</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 5-6.

National Committee for Migrations, the Association of Scalabrini Missionaries of San Carlos, Guatemala, the Fray Juan de Larios Diocesan Human Rights Center, MesoAmerican Voices and Honduras' National Forum for Migrations (FONAMIH). The purpose of this agreement is to work with the Office of the Attorney General of the Republic on identifying remains and establishing the cause of death in the case of the 72 murdered migrants whose remains were discovered in San Fernando (Tamaulipas) on August 23, 2010; at least 193 remains discovered between April and May 2011 in clandestine graves in San Fernando (Tamaulipas) and the 49 remains discovered on May 14, 2012, in Cadereyta (Nuevo León). The Forensic Commission is currently working to identify the remains. Since the hearing held on the situation of migrant persons not yet located and unidentified remains in Mexico, held in March 2012, the Inter-American Commission on Human Rights and its Rapporteurship on the Rights of Migrants have monitored the process that led up to the establishment of the Forensic Commission.

322. The Commission was also informed of the establishment of the Chiapas State Forensic Databank on Migrants, created to share information that can be used to identify the remains of unidentified migrants or disappeared migrants and found with forensic services, municipal cemeteries and elsewhere within the territory of the United Mexican States and/or the United States of America; it also promotes measures to improve the mechanisms used to search for disappeared migrants. The Chiapas State Forensic Databank on Migrants is composed of the State Human Rights Council (CEDH), through its Commission to Address the Human Rights of Migrants, the Argentine Forensic Anthropology Team (EAAF), *Voces Mesoamericanas Acción con Pueblos Migrantes A.C.* and the Migrants Support Network. The Commission appreciates how important it is that various interested parties are involved and participate in the Chiapas State Forensic Databank on Migrants, such as state authorities, organizations of relatives of disappeared migrants, organizations dedicated to the application of forensic sciences and civil society organizations that protect migrants' human rights. This mechanism is a best practice that is highly useful in the search for disappeared migrants. The Commission therefore hopes that it will be replicated by the other Mexican states, and at the federal level through the creation of the National Forensic Databank on Disappeared Migrants.

323. As for the measures taken by the Beta Groups to provide assistance and protection, according to information provided by the State, as of October 2013 there were 21 Beta Groups, composed of 150 members from the three levels of government (112 federal agents, 6 state agents and 32 municipal agents). These group members work in 9 states: Baja California, Chiapas, Chihuahua, Coahuila, Oaxaca, Sonora, Tabasco, Tamaulipas and Veracruz. During the seasons of extreme temperatures, the Beta Groups step up their work by increasing patrols to locate migrants in danger, and the actions taken to rescue

them and protect their physical safety.<sup>316</sup> The following table presents the statistics on the services that the Beta Groups provided between 2011 and June 2013:

**TABLE 2 Assistance by the Beta Groups, in figures**

	2011	2012	January-June 2013
Orientation	286,868	323,604	181,102
Migrants located	220	128	62
Humanitarian assistance	250,833	2,933,429	164,035
Legal aid	264	251	296
Patrols	16,167	16,424	9,118

Source: Government of Mexico, October 2013

324. The State informed the Commission that to comply with the guiding principles of migration policy, inter-institutional committees were created to prevent, publicize, detect, identify and assist victims of the crime of trafficking in persons, so as to raise the public's awareness of the crime, develop programs to prevent it, circulate information, provide assistance, and help wipe out the crimes committed in human trafficking. According to the information provided, in the period between January 1, 2012 and July 31, 2013, the Inter-institutional Committees held 93 sessions and 155 events, such as conferences, workshops and distribution of informative materials.<sup>317</sup>

325. Finally, in recognition of the important role that the Judicial Branch plays in protecting the human rights of migrants and other persons in the context of human mobility, the Commission must highlight the importance of the September 2013 publication of the "Protocol of Conduct for Those Who Impart Justice in Cases that Affect Migrant Persons and Subjects of International Protection."<sup>318</sup> Based on the domestic and international legal framework, the purpose of this protocol is to provide tools that those who impart justice can use to identify the norm that most fully protects the human rights of migrant persons and subjects of international protection.

<sup>316</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 12 and 13.

<sup>317</sup> *Ibidem*, p. 13.

<sup>318</sup> Mexico's Supreme Court entrusted coordination and preparation of the Protocol of Conduct for Those Who Impart Justice in Cases that Affect Migrant Persons and Subjects of International Protection to *Sin Fronteras I.A.P.* To broaden the scope of its content, *Sin Fronteras* convened an Advisory Board, composed of the United Nations High Commissioner for Refugees (UNHCR), the Rapporteurship on the Rights of Migrants of the Inter-American Commission on Human Rights (IACHR), the Center for Legal and Social Studies [*Centro de Estudios Legales y Sociales*] (CELS), the Center for Economic Research and Teaching [*Centro de Investigación y Docencia Económica*] (CIDE), the Fourteenth Administrative Law Tribunal of the First Circuit of the Federation in Mexico, as members of the Board of Trustees of *Sin Fronteras I.A.P.* The Protocol is available [in Spanish] at: [http://www.sitios.scjn.gob.mx/codhap/sites/default/files/archivos/paginas/protocolo\\_migrantesISBN.pdf](http://www.sitios.scjn.gob.mx/codhap/sites/default/files/archivos/paginas/protocolo_migrantesISBN.pdf) [Consulted on December 30, 2013].

## D. International norms and standards that apply to the violence and discrimination against migrants.

326. In response to the violence and discrimination affecting migrants and other persons in the context of human mobility in Mexico, this part of the report will examine the principal standards developed within the Inter-American human rights system apropos the States' obligations to respect, protect and not discriminate in the exercise of human rights, and specifically in relation to States' obligations to respect and ensure the exercise of human rights and the obligations that those rights create for the Mexican authorities to act with due diligence in preventing, investigating, punishing and redressing violations committed against migrants.

327. By way of preliminary observations, the Commission has recognized that, while States are entitled to control their borders, establish the requirements for entry and stay within its territory and the grounds for deporting non-nationals from its territory and, in general, establishing its immigration policies, those policies, laws and practices must be respectful of and protect the human rights of all migrants, who are right holders by virtue of their human dignity. These rights and freedoms have been widely recognized by the States in the international human rights treaties they have signed and ratified.<sup>319</sup>

328. This chapter has described a series of incidents of violence and discrimination committed against migrants and other persons in the context of human mobility, many of which were the result of the action or omission of agents of the Mexican State, thereby engaging the international responsibility of the State for its failure to respect and guarantee the rights recognized in the American Convention and other Inter-American instruments, such as the right to life,<sup>320</sup> the right to personal integrity,<sup>321</sup> the prohibition of torture

<sup>319</sup> See, in general, IACHR, *Annual Report 1991, Chapter V, Situation of Haitians in the Dominican Republic*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992; IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000, paragraph 166; IACHR, *Annual Report of the Inter-American Commission on Human Rights, 2000: Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*. OEA/Ser.L/V/II.111 doc. 20 rev., April 16, 2000, paragraph 6; IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, paragraph 377; IACHR, *Report on Immigration in the United States: Detention and Due Process*. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 32; IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12,688, *Nadège Dorzema et al.: Guayubín Massacre (Dominican Republic)*. February 11, 2011, paragraph 208; IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12,271, *Benito Tide Méndez et al. (Dominican Republic)*. March 29, 2012, paragraph 260. See also, I/A Court H.R., *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding the Dominican Republic*. Provisional Measures. Order of the Inter-American Court of August 18, 2000, *Consideranda* four; I/A Court H.R., *Judicial Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series No. 18, paragraph 168; I/A Court H.R., *Case of Vélez Looz v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 218, paragraphs 97 and 169.

<sup>320</sup> American Convention on Human Rights, Article 4.

<sup>321</sup> American Convention on Human Rights, Article 5.1.

and other cruel, inhuman or degrading treatment or punishment,<sup>322</sup> the prohibition of slavery, servitude and human trafficking,<sup>323</sup> the rights to the liberty and security of one's person,<sup>324</sup> the right to recognition as a person before the law,<sup>325</sup> protection of one's honor and dignity,<sup>326</sup> freedom of expression,<sup>327</sup> protection of the family,<sup>328</sup> the rights of the child,<sup>329</sup> the duties that follow from women's right to a life free of violence,<sup>330</sup> the right to private property,<sup>331</sup> the principle of equal treatment and non-discrimination,<sup>332</sup> the right of access to justice and the quest for justice.<sup>333</sup>

329. The rights recognized in the American Convention notwithstanding, it is an international treaty and therefore must be interpreted according to the rules of interpretation established in the 1969 Vienna Convention on the Law of Treaties. Article 29 of the American Convention provides that none of its provisions shall be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is party. This analysis, therefore, takes into account Mexico's other international obligations in the area of human rights, specifically those arising out of the United Nations instruments that Mexico has ratified. The provisions that make up the international *corpus juris* on the rights of migrants, the provisions of international refugee law and those of the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children, are relevant to this report and will therefore be taken into account.

330. Article 1 of the Constitution of the United Mexican States is important in this regard. It reads as follows:

In the United Mexican States, all persons shall enjoy the rights recognized by this Constitution and the international treaties to which the Mexican State is party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended, except in the cases and under the conditions established by this Constitution.

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<sup>322</sup> American Convention on Human Rights, Article 5.2.

<sup>323</sup> American Convention on Human Rights, Article 6.

<sup>324</sup> American Convention on Human Rights, Article 7.1.

<sup>325</sup> American Convention on Human Rights, Article 3.

<sup>326</sup> American Convention on Human Rights, Article 11.

<sup>327</sup> American Convention on Human Rights, Article 13.

<sup>328</sup> American Convention on Human Rights, Article 17.

<sup>329</sup> American Convention on Human Rights, Article 19.

<sup>330</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para", Article 7.

<sup>331</sup> American Convention on Human Rights, Article 21.

<sup>332</sup> American Convention on Human Rights, Articles 1.1 and 24.

<sup>333</sup> American Convention on Human Rights, Article 25.

Human rights norms shall be interpreted in accordance with this Constitution and with the international treaties on the subject, at all times favoring the broadest protections for individuals.<sup>334</sup>

## 1. The characteristics of the international responsibility of the State in human rights matters

331. The international responsibility of the State is based on the acts or omissions of any branch or entity of the State, irrespective of its hierarchy, that violate the American Convention.<sup>335</sup> In effect, any violation of the human rights recognized in the American Convention that can, under the rules of international law, be attributed to the acts or omissions of any public authority, is an act imputable to the State that engages its international responsibility in the terms set out in the Convention and under general international law.

332. What the Commission wrote in a previous ruling still applies:

the American Convention is applicable in all the territory of the United States of Mexico because “a treaty is obligatory for each one of the parties with respect to the totality of its territory, except if a different intention is inferred from it or is obvious in another way.” (Vienna Convention, doc, CJI-18, cit. p. 14). So, the provisions of the Convention are applicable in all the States of the Mexican Union as “supreme law of the Union,” in the spirit of Article 133 of the Mexican Constitution, because Mexico ratified the American Convention without amendments or interpretations applicable in this matter. Therefore, what is stated by Article 28 of the federal clause is applicable in this matter.<sup>336</sup>

333. Under international law, the concept of the international responsibility of the State in human rights matters means that any abridgment of the human rights recognized by the Convention that may be attributed, according to the rules of international law, to actions or omissions by any public authority constitutes an act attributable to the State, even when said public authority is acting outside the limits of his/her sphere of competence.<sup>337</sup> The international responsibility is thus based on acts or omissions that any State power or organ, irrespective of its hierarchy, commits in violation of the American

<sup>334</sup> United Mexican States, *Political Constitution of the United Mexican States*, published in the Federation's Official Gazette of February 5, 1917. Most recent amendment published in the Federation's Official Gazette of August 9, 2012, Article 1. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf> [Consulted on December 30, 2013].

<sup>335</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. *para. 234*. I/A Court H.R., *Cantoral-Huamani and García-Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, párr 79 y I/A Court H.R., *Kawas-Fernández v. Honduras Case*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, *para. 72-73*.

<sup>336</sup> IACHR, Resolution No.01/90, *Cases 9768, 9780 and 9828 (Mexico)*, May 17, 1990. Available at: <http://www.cidh.org/annualrep/89.90eng/Mexico9768.htm> [Consulted on December 30, 2013].

<sup>337</sup> I/A Court H. R., *"Mapiripán Massacre" v. Colombia Case*. Judgment of September 15, 2005. Series C No. 134, *para. 108*; I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, *para. 111*.

Convention; such acts immediately become an international crime attributed to the State. In order to establish whether a violation of the human rights recognized in the Convention has been committed, it is not necessary to determine, as it is in domestic criminal law, the guilt of the perpetrators or their intent; nor is it necessary to individually identify the agents to whom the acts that violate the human rights embodied in the Convention are attributed. It is sufficient that a State obligation exists and that the State failed to comply with it.<sup>338</sup>

334. Given the situation in Mexico today, where many acts of violence and discrimination committed against migrants are perpetrated by third parties or private individuals, such as organized crime groups or common criminals, it is critical to point out that the State's international responsibility can also be triggered when acts committed by third parties or private individuals that violate human rights are attributed to the State, because of the State's obligations to ensure that those rights are respected among individuals.

335. On the matter of the international responsibility of the State for acts committed by private individuals or non-state actors, the Inter-American Court has written that:

[s]aid international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein [...] The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.<sup>339</sup>

336. The Inter-American Court has issued a ruling that goes directly to those situations in which the violation of migrants' human rights has been caused by the action of third parties. In its Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants, the Court wrote the following:

[...]the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness

<sup>338</sup> IACHR, *Report on Citizen Security and Human Rights*. Washington, DC, approved by the Inter-American Commission on Human Rights on December 31, 2009, para. 39.

<sup>339</sup> I/A Court H. R., "*Mapiripán Massacre*" v. *Colombia Case*. Judgment of September 15, 2005. Series C No. 134, para. 111-112; I/A Court H. R., *Moiwana Community v. Suriname Case*. Judgment of June 15, 2005. Series C No. 124, para. 211; I/A Court H. R., *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110, para. 91; I/A Court H.R., *19 Merchants v. Colombia Case*. Preliminary Objection. Judgment of June 12, 2002. Series C No. 93, para. 183; I/A Court H. R., *Maritza Urrutia v. Guatemala Case*. Judgment of November 27, 2003. Series C No. 103, para. 71; I/A Court H. R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, para. 111. It did likewise when ordering provisional measures to protect members of groups or communities from acts and threats by state agents and private third parties.

of the protected human rights gives rise to effects in relation to third parties (*erga omnes*). This obligation has been developed in legal writings, and particularly by the *Drittwirkung* theory, according to which fundamental rights must be respected by both the public authorities and by individuals with regard to other individuals.<sup>340</sup>

## 2. Protection of the migrants' right to life and their right to humane treatment

337. The Mexican State's failure to respond effectively to protect the life, personal integrity and liberty of migrants has been an enabling factor in the kidnappings, torture, cruel, inhuman and degrading treatment, murders, rapes and other sexual abuse, trafficking in persons, and disappearances of migrants. Here, the Commission feels compelled to reaffirm what the Inter-American Court held where it wrote that the rights to life and to personal integrity are essential in the Convention and form part of the core of non-derogable rights since, under Article 27(2) of the Convention, they may not be suspended in cases of war, public danger or other threats.<sup>341</sup>

338. As for forced disappearance of persons, the Inter-American Convention on Forced Disappearance of Persons has defined it as the "act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees." Within the Inter-American human rights system, forced disappearance of persons constitutes a continuing or permanent violation of multiple rights protected by the American Convention and places the victim in a state of complete defenselessness, implying other related violations, especially grave when it forms part of a systematic pattern or practice applied or tolerated by the State.<sup>342</sup> Because forced disappearance is such an egregious violation of multiple rights, the Inter-American Court has held that the absolute prohibition of forced disappearances and the corollary obligation to investigate them and punish the material and intellectual authors, have become *jus cogens*.<sup>343</sup>

<sup>340</sup> I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrant*. Advisory Opinion OC-18 of September 17, 2003. Series A No. 18, para. 140.

<sup>341</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 244.

<sup>342</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 139.

<sup>343</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 139. Citing, I/A Court H.R., *Goiburú et al. v. Paraguay Case*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 84; I/A Court H.R., *Tiu-Tojín v. Guatemala Case*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 91, and I/A Court H.R., *Case of Anzualdo-Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 59.

339. The acts that constitute forced disappearance are permanent so long as the victim's whereabouts are unknown or his/her remains are not found. The Inter-American Court has written that States have an obligation to identify the remains of a victim of forced disappearance. It wrote the following:

a State's obligation is not limited merely to the act of finding the remains of a particular person; logically, this act must be accompanied by evidence or analyses to corroborate that, in fact, those remains belong to that person. Therefore, in cases of alleged forced disappearance where there are indications that the alleged victim has died, the determination of whether a forced disappearance existed and has ceased, if applicable, necessarily entails irrefutably establishing the identity of the individual to whom the remains belong. Thus, the appropriate authorities must carry out a prompt exhumation of mortal remains so that they may be examined by a competent professional. Exhumations must be carried out in a manner that protects the integrity of the remains collected so as to establish, if possible, the identity of the deceased, the date on which he or she passed away, the manner and cause of death, and the existence of possible injuries or signs of torture.<sup>344</sup>

340. As for torture, the Inter-American Convention to Prevent and Punish Torture defines it as follows:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.<sup>345</sup>

341. Article 3 of the Inter-American Convention to Prevent and Punish Torture provides that a public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so commits the crime of torture. It also states that a person who, at the instigation

<sup>344</sup> I/A Court H.R., *Case of Ibsen-Cárdenas and Ibsen-Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 82. Citing, I/A Court H.R., *La Cantuta v. Peru Case*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 114; y I/A Court H.R., *Heliodoro-Portugal v. Panama Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 34. The legal texts that informed these judgments were the "Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions," recommended by the United Nations Economic and Social Council in its Resolution 1989/65/ of May 24, 1989. See also the "Model Protocol for Disinterment and Analysis of Skeletal Remains" of the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/.12 (1991).

<sup>345</sup> Inter-American Convention to Prevent and Punish Torture, Article 2.

of a public servant or employee, orders, instigates, or induces the use of torture, directly commits it or is an accomplice thereto.

342. In order to distinguish torture from other cruel, inhuman or degrading treatment or punishment, paramount consideration has to be given to the intensity of the suffering inflicted.<sup>346</sup> The Commission has written that this should be done on a case-by-case basis, taking into account the peculiarities of each case, the duration of the suffering, the physical and mental effects on each victim and the victim's personal circumstances.<sup>347</sup> The Commission has held that inhuman treatment is that which deliberately causes severe mental or psychological suffering which, given the particular situation, is unjustifiable and that treatment or punishment of an individual may be degrading if he or she is severely humiliated in front of others or he is compelled to act against his or her wishes or conscience.<sup>348</sup> For treatment to be "inhuman or degrading" it has to attain a minimum level of severity. The determination as to what that "minimum" level is, is relative and depends on the circumstances in each case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age, and health of the victim,<sup>349</sup> his/her race, color, nationality, immigration status, and other factors. The Commission shares the view expressed by the European Commission of Human Rights to the effect that "inhuman treatment" includes "degrading treatment".

343. For its part, the Inter-American Court has written that degrading treatment is characterized by fear, anxiety and the sense of inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance.<sup>350</sup> The situation is exacerbated by the vulnerability of a person who is unlawfully detained.<sup>351</sup> To illustrate this point, the Commission has pointed out that confiscation and arbitrary and deliberate destruction of identification papers by the authorities is part of the discrimination that Haitians and Dominicans of Haitian descent suffer in the Dominican Republic. The Commission held that the destruction of identification papers by the

<sup>346</sup> IACHR, Merits Report No. 35/96, Case 10.832, *Luis Lizardo Cabrera (Dominican Republic)*. February 19, 1998, paragraph 80, citing the European Court of Human Rights, *Irlanda vs. Reino Unido*. paragraph 167. A more detailed analysis by the European Court of the concept of "inhuman treatment" is available at ECHR, Case of Tyrer, paragraphs 28 et seq. See also, IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), paragraph 158.

<sup>347</sup> IACHR, Report on Merits No. 35/96, Case 10.832, *Luis Lizardo Cabrera (Dominican Republic)*. February 19, 1998, para. 83.

<sup>348</sup> CIDH, Report on Merits No. 35/96, Case 10.832, *Luis Lizardo Cabrera (Dominican Republic)*. February 19, 1998, para. 77, citing the European Court of Human Rights, the Greek Case, 1969, 12 *Y.B. Eur. Conv.on H.R.* 12 [here in after the Greek Case] 186. In that regard, also see, IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), para. 156.

<sup>349</sup> IACHR, Report on Merits No. 35/96, Case 10.832, *Luis Lizardo Cabrera (Dominican Republic)*. February 19, 1998, para. 78, citing the European Court of Human Rights, *Irlanda vs. Reino Unido*. paras. 162-163. In that regard, also see, IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), para. 157.

<sup>350</sup> I/A Court H.R., *Loayza Tamayo v. Peru Case*. Judgment of September 17, 1997. Series C No. 33, para. 57.

<sup>351</sup> I/A Court H.R., *Loayza Tamayo v. Peru Case*. Judgment of September 17, 1997. Series C No. 33, para. 57, citing the European Court of Human Rights, *Ribitsch c. Austria*, Sentencia de 4 de diciembre de 1995, Serie A N° 336, para. 36.

State authorities constituted inhuman and degrading treatment.<sup>352</sup> More specifically, the Commission wrote that

In some cases, identification documents are destroyed in order to strip an individual of his legal status or legal capacity; in other cases, the purpose is to break the bond of nationality that links the individual with the State, in the mistaken belief that if he is undocumented he becomes, *de facto*, deportable. The fact that the confiscation or destruction of identification documents has consequences like those just described inevitably leads to mental or psychological suffering which, given the situation of Haitians and Dominicans of Haitian descent cannot be justified and inflicts terrible humiliation by refusing to recognize them as subjects of laws.<sup>353</sup>

### 3. The prohibition against trafficking in persons

344. The American Convention affirms the absolute and non-derogable prohibition on slavery, servitude, trafficking in women and slaves, in whatever form. Article 6(2) provides that no one shall be required to perform forced or compulsory labor. In addition, Article 27(2) of the American Convention establishes that the prohibition on slavery and servitude is one of those fundamental human rights that cannot be suspended by the States in “time of war, public danger, or other emergency that threatens the independence or security of a State Party.”<sup>354</sup>

345. At the international level, a number of instruments have addressed trafficking in persons. The first was the 1904 International Agreement for the Suppression of the White Slave Traffic. Other instruments were later adopted, including the 1910 International Convention for the Suppression of the “White Slave Traffic”, the 1921 League of Nations’ International Convention for the Suppression of the Traffic in Women and Children, the League of Nations 1933 International Convention for the Suppression of the Traffic in Women of Full Age, the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which is a protocol to the United Nations Convention on Transnational Organized Crime, also adopted in 2000.

346. One of the instruments that make up the Universal Human Rights System is the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), Article 6 of which provides that “States Parties shall take all appropriate

<sup>352</sup> IACHR, Report on Merits No. 64/12, Case 12.271, *Benito Tide Méndez et al. (Dominican Republic)*. February 19, 1998, paras. 208-209.

<sup>353</sup> IACHR, Report on Merits No. 64/12, Case 12.271, *Benito Tide Méndez et al. (Dominican Republic)*. February 19, 1998, para. 207.

<sup>354</sup> In that regard, also see, CIDH, *Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*. OEA/Ser.L/V/II. Doc. 58, 2009, para. 55. Available at: <http://www.cidh.org/pdf%20files/COMUNIDADES%20CAUTIVAS.pdf> [Consulted on December 30, 2013].

measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

347. To get at the meaning of human trafficking within the Inter-American system, the Commission believes a good starting point is the definition established in the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which is also known as the “Palermo Protocol”. Mexico ratified this Protocol on March 4, 2003.

348. The definition of trafficking in persons under the Palermo Protocol consists of three elements: 1) acts, 2) the means used to commit the acts, and 3) motives. The Protocol defines trafficking in persons as recruitment, transportation, transfer, harbouring or receipt of persons (acts), by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (means), for the purpose of exploitation (motive). Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>355</sup>

349. The Palermo Protocol also provides that the consent of a victim of trafficking in persons to the intended exploitation set forth in Article 3(a) shall be irrelevant where any of the means set forth in that article have been used. As for trafficking in children and adolescents, the Protocol states that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if none of the means set forth in Article 3(a) is involved. The Commission therefore understands that the provision in Article 6 of the American Convention must be interpreted in relation to the definition of trafficking in persons that appears in Article 3(a) of the Palermo Protocol.

350. Trafficking in persons, bondage and forced labor often involve violations of other basic rights recognized in the American Convention, the Convention of Belém do Pará and other instruments in the universal human rights system, such as the right to life, the right to personal integrity, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, the right to personal liberty and security, the protection of one’s honor and dignity, freedom of expression, the rights of the child, and obligations that follow from the right of women to a life free of violence, the right to private property, equality before the law and access to justice.<sup>356</sup>

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<sup>355</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against transnational organized crime, Article 3.a.

<sup>356</sup> See IACHR, Report on Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia. OAS / Ser.L / V / II. Doc 58, 2009, para. 58. Available at: <http://www.cidh.org/pdf%20files/COMUNIDADES%20CAUTIVAS.pdf> [Consulted on December 30, 2013].

351. Trafficking in persons is a violation of multiple human rights and an offense to the dignity and integrity of its victims. It remains a continuing violation until such time as the victim is free. The means through which human trafficking is perpetrated leave the victim utterly defenseless, which leads to other related violations. Human trafficking is particularly serious when it is part of a systematic pattern or a practice that is applied or tolerated by the State or its agents. The Palermo Protocol underscores the need for a holistic approach to combat the trafficking in persons, one that includes measures to prevent trafficking and to protect victims and survivors, as well as measures to punish the traffickers.

#### 4. The right of migrant women to a life free of violence and discrimination

352. The Commission has previously expressed concern over the grave situation that migrant women face. As a group, women are particularly at risk of having their human rights violated because of the discrimination and violence that women have historically endured by virtue of their gender. The Commission has observed that the violence and discrimination that migrant women face are often nonfactors on the public agenda and within the system for the administration of justice in the countries of Mesoamerica.<sup>357</sup> This is particularly the case in Mexico.

353. The Convention of Belém do Pará is important because of the protection it provides for the human rights of migrant, refugee and displaced women, where it provides that “States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons.”<sup>358</sup> In other words, the authors who drafted the Convention of Belém do Pará recognized that one of the factors that could make women even more vulnerable would be precisely their migrant, refugee or displaced status. To protect women’s right to a life free of violence and discrimination, Article 7(b) of the Convention of Belém do Pará establishes States Parties’ obligation to apply due diligence to prevent, investigate and impose penalties for violence against women.

354. The definition of violence against women in the Convention of Belém do Pará is particularly relevant in the case of migrant women, as it includes, *inter alia*, rape, sexual abuse, torture, trafficking in persons, forced prostitution, abduction and sexual harassment.<sup>359</sup> This definition also states that any physical, sexual and psychological violence perpetrated or tolerated by the State or its agents shall be understood to be a

<sup>357</sup> CIDH, *Report on the Access to Justice for Women Victims of violence in Mesoamerica*. OEA/Ser.L/V/II.Doc.63 (2011), para. 307. Available at: <http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20eng.pdf> [Consulted on December 30, 2013].

<sup>358</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Para”, Article 9.

<sup>359</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Para”, Article 2.b.

form of violence against women, no matter where it occurs.<sup>360</sup> Under this treaty, Mexico undertook a commitment to take measures to prevent, punish and eradicate violence against women in both the public and private spheres, which include the home, the workplace and the community.<sup>361</sup>

355. The Inter-American Court recognized the expansive definition of sexual violence against women. In keeping with the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women and international jurisprudence on the subject, the Inter-American Court held that sexual violence consists of actions of a sexual nature committed with a person without his/her consent; it is more than physical penetration of the body and includes acts that do not involve penetration or any physical contact at all.<sup>362</sup>

## **5. The obligations to respect, ensure and not discriminate in the exercise of human rights**

356. The human rights obligations of the OAS member States follow from the OAS Charter, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the regional human rights treaties they have ratified. Article 1(1) of the American Convention provides that the States Parties to the Convention undertake to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. The principle of non-discrimination is reinforced in Article 24 of the American Convention, which recognizes the right to equal protection of and before the law. Finally, all persons subject to the jurisdiction of a State have the right to have their human rights protected, without discrimination.

357. In the Americas, the binding principles of equality and non-discrimination are the axis of the Inter-American Human Rights System, and of the binding instruments that apply to Mexico's situation, such as the American Convention on Human Rights, the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (also known as the Convention of Belém do Pará), and the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities. This factor and the priority that the IACHR and its Rapporteurship on the

<sup>360</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para", Article 2.c.

<sup>361</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para", Article 3.

<sup>362</sup> I/A Court H.R., *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 305, citing, the International Criminal Tribunal for Ruanda, *Case of Prosecutor v. Jean-Paul Akayesu*. Judgment of September 2, 1998. Case No. ICTR-96-4-T, para. 688.

Rights of Migrants attach to equality and non-discrimination reflect the importance that the member states themselves attach to this subject.

358. The Commission has established that in the enforcement of immigration laws, the basic right to equal protection before the law and non-discrimination requires that States ensure that their immigration law enforcement policies and practices do not unfairly target certain persons based solely on ethnic or racial characteristics, such as skin color, accent, ethnicity, or a residential area known to be populated by a particular ethnic group. Furthermore, international human rights law not only prohibits policies and practices that are deliberately discriminatory in nature, but also those whose effect is to discriminate against a certain category of persons, even when discriminatory intent cannot be shown.<sup>363</sup>

359. In addressing the situation of migrants in an irregular situation, the Inter-American Court emphatically held that States must respect and ensure human rights in light of the general basic principle of equality and non-discrimination. Any discriminatory treatment with regard to the protection and exercise of human rights engages the international responsibility of the State.<sup>364</sup>

360. Summarizing, on the subject of the duty to respect and guarantee the principle of equality before the law and non-discrimination, the Inter-American Court has written that the obligation to respect and ensure the principle of the right to equal protection and non-discrimination is irrespective of a person's immigration status in a State. In other words, States have the obligation to ensure this fundamental principle to its citizens and to any foreigner within its territory, without any discrimination based on authorized or unauthorized presence within the country, nationality, race, gender or any other consideration.<sup>365</sup>

361. At the international level, the rights of migrants to live free of discrimination and violence are expressly recognized in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 7 of which provides that States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind. Article 16 of that Convention is of the utmost importance, and provides that irrespective of their immigration status, migrant workers and members of their families shall be entitled to effective protection

<sup>363</sup> IACHR, Report on Immigration in the United States: detention and due process, OEA / Ser.L / V / II., Doc 78/10, December 30, 2010, para. 95.

<sup>364</sup> I/A Court H. R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18 of September 17, 2003. Series A No. 18, para. 96.

<sup>365</sup> I/A Court H.R., *Yean and Bosico Girls v. Dominican Republic Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 155.

by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

### **a. *Obligation to respect***

362. Under Article 1(1) of the American Convention, the first obligation of the States parties is to respect the rights and freedoms recognized in the Convention. The obligation to respect human rights implies the States' duty not to violate, either by action or omission, the rights recognized in the American Convention and in other relevant instruments. Here the Inter-American Court has written that "any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention."<sup>366</sup>

363. The Court also wrote that the exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State.<sup>367</sup> The Court has also held that the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power.<sup>368</sup> This means that any action or omission on the part of a Mexican public official that violates any of the rights or freedoms recognized in the American Convention is unlawful and can engage the State's international responsibility if not redressed at the domestic level.

### **b. *Obligation to guarantee***

364. In addition to the obligation to respect, implicit in the rights recognized in the American Convention and other relevant Inter-American instruments, is the obligation to guarantee. The Court has held that States should not merely abstain from violating rights, but must adopt positive measures to be determined based on the specific needs of protection of the subject of law, either because of his or her personal situation or because of the specific circumstances in which he or she finds himself or herself.<sup>369</sup>

365. The obligation to guarantee implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of

<sup>366</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, para. 169.

<sup>367</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, para. 165.

<sup>368</sup> I/A Court H.R., *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21.

<sup>369</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 243. Citing, I/A Court H. R., *Baldeón García v. Peru Case*. Judgment of April 6, 2006. Series C No. 147, para. 81; I/A Court H. R., *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 154; I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 111.

human rights of all persons subject to their jurisdiction.<sup>370</sup> Under international case law, States have an obligation to act with due diligence to protect human rights. This obligation also includes four basic obligations: prevention, investigation, punishment and reparation of human rights violations.<sup>371</sup>

366. Both the Commission and the Court have on several occasions addressed the scope of the Mexican State's obligation to guarantee the rights of at-risk persons or groups.<sup>372</sup> In those cases, the IACHR has examined the differential impact that widespread practices of discrimination and violence by State agents or non-State actors has had on certain social groups.<sup>373</sup> The IACHR has taken special account of the structural inequality in which specific groups or sectors find themselves, as in the case of migrants.<sup>374</sup>

367. In the *Case of González et al. (Cotton Field) v. Mexico*, the Court addressed the issue of the State's obligation when faced with systematic discrimination and violence. The Inter-American Court reaffirmed the Mexican State's legal duty to "to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishments on them, and to ensure the victim adequate compensation."<sup>375</sup> What matters most, according to the Court is to determine "whether a violation [...] has occurred with the support or the acquiescence of the government or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible."<sup>376</sup> That obligation requires that States adopt all appropriate measures to protect and preserve the

<sup>370</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 166; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 236.

<sup>371</sup> See, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Merits. Judgment of July 29, 1988. Series C No. 4. Other instruments of the Inter-American Human Rights System also establish the State's obligation to act with due diligence to protect human rights. Examples would be Article 6 of the Inter-American Convention against Torture and Article 7(b) of the Convention of Belém do Pará.

<sup>372</sup> IACHR. *The Situation of the Rights of Women in Ciudad Juárez, México: The Right to be Free from Violence and Discrimination*. OEA/Ser.L/V/II.117 Doc. 1 rev. 1 7 marzo 2003; I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205; I/A Court H.R., *Case of Fernández-Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R., *Case of Rosendo-Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216.

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 174; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 236.

<sup>376</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 173; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 236.

rights of all persons subject to their jurisdiction (positive obligation), in keeping with their duty to guarantee the free and full exercise of those rights.<sup>377</sup>

368. The right to life plays a fundamental role in the American Convention as it is the condition *sine qua non* for the exercise of all other rights. States have an obligation to create the conditions required to ensure that there are no violations of this inalienable right and, in particular, the obligation to prevent their agents from violating the right to life or from allowing, by their acquiescence, tolerance or omission, private parties to violate that right.<sup>378</sup> Elaborating, the Court has written that:

Observance of Article 4, related to Article 1(1) of the American Convention, not only presupposes that no one shall be arbitrarily deprived of his/her life (negative obligation), but also requires that the States adopt all the appropriate measures to protect and preserve the right to life (positive obligation),<sup>379</sup> in keeping with the duty to guarantee the full and free exercise of the rights of all persons within its jurisdiction.<sup>380</sup>

369. The general obligation to guarantee the right to personal integrity, and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, recognized in Article 5 of the American Convention, implies the State's duty to prevent and investigate possible acts of torture or other cruel, inhuman or degrading treatment. Elaborating, the Court has held that when a complaint has been filed or there is well founded reason to believe that an act of torture has been committed, States have an obligation to immediately launch, on their own initiative, an effective investigation that leads to the identification, prosecution and punishment of those responsible.<sup>381</sup>

370. As for the obligation to guarantee the right to personal liberty recognized in Article 7(1) of the American Convention, the Court has written that liberty is always the rule and its limitation or restriction is always the exception.<sup>382</sup> Consequently, the State has

<sup>377</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 236.

<sup>378</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 245.

<sup>379</sup> I/A Court H.R., *The "Street Children" v. Guatemala Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 144; I/A Court H.R., *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 75.

<sup>380</sup> I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 120; *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 237; I/A Court H.R., *Vargas-Areco v. Paraguay Case*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 75.

<sup>381</sup> I/A Court H. R., *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160 para. 345; I/A Court H.R., *Vargas-Areco v. Paraguay Case*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 79; I/A Court H.R., *Bueno-Alves v. Argentina Case*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 89.

<sup>382</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 247; I/A Court H.R., *Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 53.

an obligation to prevent the liberty of the individual being violated by the actions of public officials and private third parties, and must also investigate and punish acts that violate this right.<sup>383</sup>

371. Article 6 of the Palermo Protocol establishes a series of obligations incumbent upon the States apropos the assistance and protection they are to afford to victims and survivors of trafficking in persons. The text reads as follows:

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
  - (a) Information on relevant court and administrative proceedings;
  - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
  - (a) Appropriate housing;
  - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
  - (c) Medical, psychological and material assistance; and
  - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

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<sup>383</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 247.

372. To reinforce this, Article 7 of the Palermo Protocol provides that each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

373. The Commission would also draw attention to the European Court of Human Rights' judgment in the *case of Rantsev v. Cyprus and Russia*, where it referenced the States' obligations to guarantee the rights of survivors and potential victims of trafficking in persons. The ECHR wrote that:

the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking.<sup>384</sup>

**i. Obligation to prevent acts that violated migrants' rights to life, to personal integrity and to liberty, and the prohibition of slavery, servitude and trafficking in persons**

374. The Court has established that the obligation of prevention encompasses all those measures of a legal, political, administrative and cultural nature that ensure the protection of human rights, and that any possible violation of these rights is considered and treated as an unlawful act, which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences. It is also clear that the obligation to prevent is one of means or conduct, and failure to comply with it is not proved merely because the right has been violated.<sup>385</sup>

375. The Inter-American Court has written that the State and its agents have an obligation to take measures of prevention and protection for private individuals in their relations with each other and is conditional on their awareness of a situation of real and imminent danger for a specific individual or group of individuals and the reasonable possibility of preventing or avoiding that danger.<sup>386</sup> Obviously, the State cannot be blamed

<sup>384</sup> ECHR, *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04, January 7, 2010. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96549> [Consulted on December 30, 2013].

<sup>385</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 252. Citing, I/A Court H.R., *Perozo et al. v. Venezuela Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 149; I/A Court H.R., *Case of Anzualdo-Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 63.

<sup>386</sup> I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 140, para. 123; /A Court H. R., *Indigenous Community Sawhoyamaya v. Paraguay Case*.

for every violation of human rights committed between private individuals within its jurisdiction.<sup>387</sup> However, the State may be found responsible for acts of private individuals in cases in which the State fails to fulfill its obligation of protection owing to the actions or omission of its agents, but only in those specific cases in which the State agents are deemed to be serving as guarantors vis-à-vis the actions of private individuals.<sup>388</sup>

376. The Commission must underscore the point that as guarantors of human rights, States have a legal obligation vis-à-vis persons subject to their jurisdiction, to prevent violation of their human rights from becoming the inevitable. When the State fails in that obligation and that failing leads to human rights violations that might otherwise have been prevented, it has neglected its responsibility as guarantor.

377. As for the duty to prevent, the Commission considers that in the face of systematic discrimination and violence that jeopardizes the effective exercise of human rights, the measures that States must adopt and put into practice must be of two kinds: 1) general measures and 2) specific measures. Where a State is aware of a widespread problem of discrimination and violence against a specific group, its obligation to prevent demands that it have a comprehensive strategy of prevention aimed at avoiding the occurrence of the risk factors and at the same time strengthening the institutions that can effectively respond to cases of discrimination and violence against a specific group. The general measures of prevention include all those legal, political, administrative and cultural measures that serve to protect human rights, such as a suitable body of protective laws by which to carry out the actions necessary to ensure that it is effectively enforced, and prevention policies and practices that enable it to respond effectively to complaints, and awareness campaigns. In those cases where it is obvious that certain persons are at real and imminent risk of falling victim to violence and discrimination, the State has an obligation to take specific measures with respect to those individuals, to prevent those threats from materializing.

378. In its judgment in the *Case of González et al. ("Cotton Field") v. Mexico*, the Inter-American Court distinguished two crucial moments where the obligation to prevent must be

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Judgment of March 29, 2006. Series C No. 146, para. 155; I/A Court H.R., *Valle-Jaramillo and et al. v. Colombia Case*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 78. See Also, ECHR, *Case of Kiliç v. Turkey*, Judgment of 28 March 2000, paras. 62 and 63 and ECHR, *Case of Osman v. the United Kingdom*, Judgment of 28 October 1998, paras. 115 and 116.

<sup>387</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 280.

<sup>388</sup> I/A Court H. R., *"Mapiripán Massacre" v. Colombia Case. Preliminary Objections*. Judgment of March 7, 2005. Series C No. 122, para. 111-112; I/A Court H. R., *Moiwana Community v. Suriname Case*. Judgment of June 15, 2005. Series C No. 124, para. 211; I/A Court H. R., *Tibi v. Ecuador Case*. Judgment of September 7, 2004. Series C No. 114; I/A Court H. R., *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110, para. 91; I/A Court H. R., *19 Merchants v. Colombia Case*. Judgment of July 5, 2004. Series C No. 109, para. 183; I/A Court H. R., *Maritza Urrutia v. Guatemala Case*. Judgment of November 27, 2003. Series C No. 103, para. 71; I/A Court H. R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, para. 111; I/A Court H. R., *Juan Humberto Sánchez v. Honduras Case*. Judgment of June 7, 2003. Series C No. 99, para. 81.

analyzed.<sup>389</sup> The first moment happens before the victim's disappearance, while the second happens before the victim's lifeless body is found. The Court wrote that in the first moment—before the victim disappeared—the failure to prevent the disappearance does not *per se* result in the State's international responsibility if it has not been established that the State knew of a "real and imminent danger for the victims." As for the second moment—before the discovery of the body—by that time the State is aware of the context and therefore knows that there is a real and imminent risk that the victim might fall victim to additional violations of his/her human rights.<sup>390</sup> Given the context, the Court found that there was a duty of strict due diligence with respect to reports of disappearances, involving a search within the first few hours and days of the disappearance. Since this obligation of means is more rigorous, it requires that exhaustive search activities be conducted. Above all, the Court held that

it is essential that police authorities, prosecutors and judicial officials take prompt immediate action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may have been retained. Adequate procedures should exist for reporting disappearances, which should result in an immediate effective investigation. The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about her fate.<sup>391</sup>

379. In the *Case of González et al. ("Cotton Field") v. Mexico*, the Court held that the Mexican State's responsibility derived from its failure to act with the required due diligence to prevent that kind of violence and to avoid it being committed again against a certain group.<sup>392</sup>

380. As for the measures to prevent trafficking in persons, Article 9 of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, provides that:

1. States Parties shall establish comprehensive policies, programmes and other measures:
  - (a) To prevent and combat trafficking in persons; and
  - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

<sup>389</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 281-286.

<sup>390</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 281-286.

<sup>391</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

<sup>392</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 284.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

381. The European Court has written that as with the right to life and the prohibition of torture, the prohibition of servitude and forced labor—and by extension trafficking in persons—may require a State to take operational measures to protect victims or potential victims of trafficking.<sup>393</sup> The European Court elaborated by holding that:

[i]n order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk.<sup>394</sup>

**ii. The obligation to conduct an effective investigation of the facts, in accordance with articles 8(1) and 25(1) of the Convention, derived from the obligation to guarantee against acts that violate migrants' rights to life, humane treatment and personal liberty and the prohibition of slavery, servitude and trafficking**

382. The obligation to investigate cases of violations of the rights to life, personal integrity, personal liberty and the prohibition of slavery, servitude and trafficking in persons arises from the general obligation to guarantee; in other words, Article 1(1) of the Convention, together with the substantive right that must be protected or ensured.<sup>395</sup>

<sup>393</sup> ECHR, *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04, January 7, 2010, para. 286. Citing, *mutatis mutandis*, ECHR, *Case of Osman v. the United Kingdom*, Judgment of 28 October 1998, para. 115; ECHR *Case of Mahmut Kaya v. Turkey*, no. 22535/93, March 28, 2000, para. 115.

<sup>394</sup> ECHR, *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04, January 7, 2010, para. 286. Citing, *mutatis mutandis*, ECHR, *Case of Osman v. the United Kingdom*, Judgment of 28 October 1998, para.116-117, y ECHR *Case of Mahmut Kaya v. Turkey*, no. 22535/93, March 28, 2000, para.115-116.

<sup>395</sup> I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*, Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 140, para. 142; I/A Court H.R., *Heliodoro-Portugal v. Panama Case*. Preliminary Objections,

The Inter-American Court has categorically held that the duty to investigate “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.”<sup>396</sup> The Court has also written that the State’s obligation to investigate must be complied with diligently in order to avoid impunity and the repetition of this type of act, and that “impunity encourages the repetition of human rights violations.”<sup>397</sup>

383. In its judgment in the *Case of Radilla Pacheco v. Mexico*, the Inter-American Court held that the duty to investigate means that whenever there are reasonable motives to suspect that a person has fallen victim to a forced disappearance, a serious, impartial and effective investigation must be launched *ex officio* and without delay, using all available legal means and aimed at ascertaining the truth and pursuing, apprehending, trying and punishing all the intellectual and material authors of the events, especially when agents of the State are or may be involved.<sup>398</sup> The investigation and process must have a purpose and be undertaken by the State as its own legal duty, and not simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.<sup>399</sup>

384. The obligation to investigate is one of means and not results, which means that it must be undertaken by the State as an inherent legal obligation and not as a mere formality preordained to be ineffective.<sup>400</sup> The Court has held that the State’s obligation to investigate must be complied with diligently in order to avoid impunity and the repetition of this type of act.<sup>401</sup> Here, the Court recalled that impunity encourages the repetition of human rights violations.<sup>402</sup>

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Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 115; I/A Court H.R., *Perozo et al. v. Venezuela Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 298.

<sup>396</sup> I/A Court H.R., *Case of Anzualdo-Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 123; I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 113

<sup>397</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 289.

<sup>398</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 129; I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 192.

<sup>399</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 129; I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 192.

<sup>400</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 289. I/A Court H.R., *Case of Anzualdo-Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 123; I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 113.

<sup>401</sup> *Id.*

<sup>402</sup> I/A Court H.R., *Case of Anzualdo-Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 179; I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 141.

385. Given the nature and gravity of the acts, especially when the context is one of systematic human rights violations, States are obligated to put to use all the means they have at hand to conduct a serious, impartial and effective investigation, as dictated by the requirements of due process. Failure to comply with this obligation in such circumstances engages the State's international responsibility. If the State investigates, prosecutes and punishes such acts through the courts, it can help deter a repetition of such acts and also guarantees that the substantive rights are protected, like the right to life, the right to humane treatment, the prohibition of trafficking in persons and the right to personal liberty; it also protects the guarantees of due process and the right to judicial protection.

386. With respect to the Mexican State, the Court has also held that the obligation to investigate remains "whosoever the agent to which the violation may eventually be attributed may be, even individuals, because if their acts are not investigated genuinely, they would be, to some extent, assisted by the public authorities, which would engage the State's international responsibility."<sup>403</sup> To ascertain the extent of the State's responsibility for crimes committed by private individuals, the circumstances under which the victim's rights were violated have to be examined, as must any knowledge that the State may have had of those circumstances.

387. As for the States' duty to investigate violations of rights recognized in the American Convention, inter-American case law has developed standards regarding the right that victims or members of their family have to participate in the criminal proceedings being conducted into the events that befell them. The Inter-American Court has been clear in establishing that an effective search for the truth is the job of the State, and shall not depend upon the procedural initiative of the victim or the victim's relatives or upon their offer of proof. Here the Inter-American Court has written that in cases of grave violations of human rights, the positive obligations inherent in the right to the truth demand the adoption of institutional structures that permit this right to be fulfilled in the most suitable, participatory, and thorough way. These structures should not impose legal or practical obstacles that make them illusory. The Court emphasized that the satisfaction of the collective dimension of the right to truth requires a legal analysis of the most complete historical record possible. With regard to the participation of the victims, the State should guarantee that at every stage of the proceedings the victims have an opportunity to present their concerns and evidence, which the authorities are to examine thoroughly and in a serious manner before determining the facts, responsibility, penalties, and reparations.<sup>404</sup>

<sup>403</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 291. Citing, I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case.*, Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 140, para. 145; y I/A Court H.R., *Kawas-Fernández v. Honduras Case*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 78.

<sup>404</sup> I/A Court H.R., *Rochela Massacre v. Colombia Case*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 195.

388. In cases of forced disappearance the Inter-American Court has held that the next of kin have a right to know where the loved ones' remains are, and this is a just expectation that the State should satisfy using all the means available to it. The Court has written that

the State must carry out an effective search for the victim's whereabouts<sup>405</sup> since the right of the victim's family to know the fate or whereabouts of the disappeared victim constitutes a measure of reparation and therefore, an expectation that the State must satisfy.<sup>406</sup> It is of utmost importance for the relatives of the disappeared victim, the clarification of the whereabouts or fate of the victim, since by doing so, the relatives would be relieved from the anguish and suffering caused by the uncertainty about the whereabouts and fate of the disappeared loved one.<sup>407</sup>

389. Genuine involvement on the part of the victims or their family members in the process should mean that they are able to present their own experts, so they can add to, probe, clarify or take issue with the government experts. The Model Protocol for Forensic Investigations developed by the Office of the United Nations High Commissioner points out that one of the obstacles to a proper forensic investigation is the absence of mechanisms to allow independent forensic or criminal specialists to assist family members of the victims by providing them with an opinion separate from the official one.<sup>408</sup>

390. As for the obligation to investigate cases of cross-border trafficking in persons, the Commission agrees with the European Court's finding to the effect that in addition to the obligation to conduct a domestic investigation into events occurring within their own territories, in cross-border trafficking cases States also have a duty to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories.<sup>409</sup> So that States can guarantee an

<sup>405</sup> I/A Court H.R., *Ticona-Estada et al. v. Bolivia Case*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 155. Citing, I/A Court H.R., *Castillo Páez v. Peru Case*. Judgment of November 3, 1997. Series C No. 34, para. 90; I/A Court H.R., *Goiburú et al. v. Paraguay Case*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 171; I/A Court H.R., *La Cantuta v. Peru Case*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 231.

<sup>406</sup> I/A Court H.R., *Ticona-Estada et al. v. Bolivia Case*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 155. Citing, I/A Court H.R., *Neira Alegria et al. v. Peru Case*. Judgment of January 19, 1995. Series C No. 20, para. 69; I/A Court H.R., *Goiburú et al. v. Paraguay Case*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 171; /A Court H.R., *La Cantuta v. Peru Case*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 231.

<sup>407</sup> I/A Court H.R., *Ticona-Estada et al. v. Bolivia Case*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 155.

<sup>408</sup> Office of the United Nations High Commission for Human Rights, *Protocolo Modelo para la investigación forense de muertes sospechosas de haberse producido por violación de los derechos humanos* [Model Protocol for forensic investigation of deaths suspected of having been caused by human rights violations]. Proyecto MEX/00/AH/10. First Phase of the Technical Cooperation Program for Mexico. Prepared by: Luis Fondebrider – Argentine Forensic Anthropology Team and Maria Cristina de Mendonça – National Institute of Legal Medicine of Portugal. Mexico, 2001. Available in Spanish at: <http://www.pgjdf.gob.mx/temas/4-6-1/fuentes/11-A-8.pdf> [Consulted on December 30, 2013].

<sup>409</sup> ECHR, *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04, January 7, 2010, para. 289.

effective investigation of cases of international human trafficking, in which the national borders of the trafficking victims are crossed, the Commission believes that apart from the States' obligation to investigate any human trafficking crime committed within their jurisdiction, they also have an obligation to cooperate with the States of origin, transit and destination since the activities involved in international human trafficking, such as abducting, transporting, moving and receiving the trafficking victims, necessarily take place in two or more States.

***ii.a. The obligations with respect to the chain of custody as part of the obligation to investigate human rights violations***

391. Given the violence in Mexico today, many migrants in an irregular situation have been killed and their bodies discovered in clandestine graves or in places near the migrant routes they travel. Compounding this is the inhospitable climate that migrants headed to the United States have to endure and that ends up claiming the lives of many who die of exposure or sun along the way. The combination of these factors has meant that countless numbers of migrants lay buried, unidentified, in tombs of unknowns or common gravesites along the migration route. The fact that they are not nationals of the State in which they died is the first of many obstacles that their families encounter in their quest to find and identify their loved ones.

392. The importance of identifying deceased migrants can be traced back to widely recognized standards in the international law of human rights, such as the duty to treat the deceased with respect and dignity, family members' right to know what fate befell their disappeared loved ones, the right of family members to have the bodies of their loved ones returned to them, if possible, and to bury them according to their own traditions. In addition to how important it is that family members know what happened to their loved ones, the identification of an unidentified deceased migrant has other practical consequences like being able to secure a death certificate, which is necessary to settle questions pertaining to inheritance, marriage or property rights.<sup>410</sup>

393. The Inter-American Court has established that the obligation to investigate a death means that the effort to determine the truth with all diligence must be evident as of the very first procedures.<sup>411</sup> This means that States must maintain the chain of custody

<sup>410</sup> See in this regard, GRANT, Stephanie, "Migration and frontier deaths: a right to identity", in DEMBOUR, Marie-Bénédicte and KELLY, Tobias (Ed.), *Are Human Rights for Migrants?: Critical Reflections on the Status of Irregular Migrants in Europe and the United States*. Abingdon: Routledge, 2011, pp. 48 et seq.

<sup>411</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 300. Citing, I/A Court H.R., *Servellón-García et al. v. Honduras Case*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 120; /A Court H.R., *Miguel Castro-Castro Prison v. Peru Case*, para. 383; I/A Court H.R., *Zambrano-Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 121.

of each item of forensic evidence.<sup>412</sup> The chain of custody is an elementary procedure in investigation and forensic work, which serves multiple purposes: 1) ensuring a strict record of the evidence obtained from its location and the time of its recovery; 2) preserving and protecting the immutability of the evidence and its protective wrapping transfer—where necessary—until it is tested and evaluated, even after the perpetrator has been tried and convicted, 3) reflecting any change in its record, or damage arising on the evidence and its main transfer wrap establishing the nature of the change, when it occurred, how it occurred and under whose custody occurred, and 4) enabling the identification of unidentified bodies or remains ensuring the custody of the evidence.

394. The Commission believes that maintaining the chain of custody is a fundamental principle in a thorough, serious and impartial investigation when faced with human rights violations and humanitarian crises such as the one posed by the need to identify the bodies or remains of deceased, unidentified migrants. Failure to maintain the chain of custody according to rigorous standards for preserving evidence obtained in the investigation could engage the international responsibility of States, as they have an obligation to investigate any human rights violation with all due diligence.<sup>413</sup> “If the [perpetrators’] acts are not investigated genuinely, they would be, to some extent, assisted by the public authorities, which would engage the State’s international responsibility.”<sup>414</sup> In effect, the Inter-American Court has written that the irregularities in the failure to identify the officials who had custody of the evidence at any given time, and the failure to preserve and protect the evidence, represent mismanagement and mishandling of the evidence obtained and a failure to properly document the chain of custody.<sup>415</sup> Furthermore, the possible careless handling and alteration of tangible and intangible elements that constitute the body of evidence is a danger that the State must take pains to avoid when there is any possibility that the human rights violations may have been committed with the involvement, collaboration or acquiescence of state agents. Hence the need for standardized criteria by which to conduct an investigation according to the obligations established in the American Convention.

395. Given the lack of uniformity the Commission observed with respect to the chain of custody in Mexico, standards commonly accepted by the international community and consistent with the American Convention and other international human rights instruments have to be identified. These standards, which must be applied in practice

<sup>412</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 305.

<sup>413</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 288. Citing, I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*, para. 176, y *Caso Kawas Fernández Vs. Honduras*, para. 76.

<sup>414</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 291. Citando a Corte I.D.H., 291, *Caso de la Masacre de Pueblo Bello Vs. Colombia*, para. 145; I/A Court H.R., *Kawas-Fernández v. Honduras Case*, para. 78.

<sup>415</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 304.

for proper observance of the chain of custody, are not an exhaustive list; they are the minimum guidelines that States must follow. The Commission therefore recommends:

- ✓ Keep a numbered or codified, written, and visual record of all the evidence, whether it be: material items, documents, photographs, protocols, tests, expert analyses, investigative reports, biological and non-biological samples and their derivatives. There should also be a record of the location of any collection of evidence gathered at the crime scene and the date and time it was gathered.<sup>416</sup>
- ✓ A record must be kept of the personal particulars of those persons involved in the handling of the evidence, from the time that evidence was compiled to its analysis and storage. That record must therefore identify where, how and when the evidence was handled or examined and by whom, indicating the person's name, position, dates and places, place where the individual took custody of the evidence, and other specifics.<sup>417</sup>
- ✓ The evidence that has to be collected for analysis should be packaged, sealed and labeled, and put in an appropriately safe place to prevent contamination and loss;<sup>418</sup> this will guarantee that the samples are properly preserved such that when material is retrieved it has not undergone any fortuitous or unintended alteration or manipulation.<sup>419</sup>
- ✓ The material must leave the scene of its discovery in proper containers, labeled, pre-sealed, and with the proper documentation attached, showing clearly the name and signature of the authority responsible for transporting it. The transport should be by suitable means, so as not to cause any damage or alteration to the evidence gathered.<sup>420</sup>
- ✓ The persons who receive the material (in the laboratory or autopsy room) must check that sealing placed on the bags or boxes containing the evidence when they left the scene of their discovery, to make certain that it is still entirely intact.<sup>421</sup>

<sup>416</sup> Argentine Forensic Anthropology Team, *Observaciones sobre el proceso de identificación de restos y recomendaciones sobre enterramiento de restos no identificados* [Observations on the process of identifying remains and recommendations on interment of unidentified remains], pp. 14-15.

<sup>417</sup> Argentine Forensic Anthropology Team, *Observaciones sobre el proceso de identificación de restos y recomendaciones sobre enterramiento de restos no identificados* [Observations on the process of identifying remains and recommendations on interment of unidentified remains], pp. 15-16.

<sup>418</sup> United Nations Office in Vienna, Centre for Social Development and Humanitarian Affairs, *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, United Nations, New York, 1991. Model Protocol for a Legal Investigation of Extra-legal, Arbitrary or Summary Executions, *Chapter III*, section C.

<sup>419</sup> Office of the United Nations High Commissioner for Human Rights, *Protocolo Modelo para la investigación forense de muertes sospechosas de haberse producido por violación de los derechos humanos* [Model Protocol for forensic investigation of deaths suspected of having been caused by human rights violations]. First Phase of the Technical Cooperation Program for Mexico. Mexico, p.30. Available in Spanish at: <http://www.pgjdf.gob.mx/temas/4-6-1/fuentes/11-A-8.pdf>

<sup>420</sup> *Ibid.*, p. 72.

<sup>421</sup> *Ibid.*

- ✓ Once the evidence has been analyzed, the chain of custody must extend beyond the author's trial and conviction, since old evidence, if properly preserved, can still be used to reverse a guilty verdict against someone who was mistakenly convicted,<sup>422</sup> or for the future identification of remains that remain unidentified even after a judgment. Therefore, there must be a record of who had custody of the evidence and for how long, and where the evidence was stored. For these purposes, the numbering should be consistent and easy to understand. This will make it easier to locate the evidence in the future, when the investigations are underway.
- ✓ Cremation of unidentified remains should be avoided, and remains should be buried in such a way that the remains and evidence are kept intact. Unidentified bodies or remains should be buried in individual tombs that are marked, and an updated and precise record must be kept to simplify the search for the remains.
- ✓ A national database should be established that centralizes all the information on unidentified remains and disappeared or missing persons.
- ✓ At the regional level, an international database should be established in which deaths are recorded and information on unidentified remains and disappeared persons is centralized; family members should have access to this database.

396. Summarizing, the implementation of standards for the preservation of evidence will: 1) ensure a thorough, serious and impartial investigation by State agents; 2) make the evidence gathered in the case more credible and reliable to the court authorities and relatives of the victims, thereby reducing the number of human rights violations that go unpunished; 3) make it easier to establish a connection or link between a number of extrajudicial executions, thereby reducing incidents of this kind; 4) make the eventual identification of disappeared or missing migrants or of unidentified remains possible; and 5) be instrumental in helping family members of missing migrants to finally know what happened to their loved ones.

### iii. Duty to adopt domestic legal provisions

397. The principal objectives of the Inter-American Human Rights System and the principle of efficacy demand that the rights and freedoms recognized in the American Convention are observed and are practiced. Therefore, when the exercise of any of the rights recognized in the American Convention is not yet guaranteed *de jure* and *de facto* with their jurisdiction, States parties have an obligation under Article 2 of the Convention, to adopt the legislative or other measures necessary to give effect to those rights or freedoms.

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<sup>422</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 305.

398. The American Convention requires that the domestic system afford effective judicial remedies accessible to any person who alleges violations of his/her rights under domestic law or the Convention. When these domestic remedies are neither accessible nor effective, the Inter-American Human Rights System provides subsidiary protection through its individual petition system and precautionary and provisional measures.

## E. Conclusions

399. The seriousness of the events discussed in this chapter suggests that, rather than improve, the situation of migrants in an irregular situation in Mexico has become much worse as the years have passed. And yet, the State has not adopted a comprehensive public policy geared to preventing, punishing and redressing the acts of violence and discrimination of which migrants in Mexico are victims and to protecting them from that violence and discrimination. The measures the State is taking notwithstanding, the violence and discrimination that migrants in Mexico encounter is very troubling. The Commission deeply regrets that the State has failed to take all the measures necessary to protect the human rights of migrants in transit through Mexico.

400. In its observations on this report, the Mexican State acknowledged that measures had to be taken to improve the situation of migrants whose status in Mexico is irregular and reported that efforts have been undertaken to ensure policies that will guarantee that such persons are protected.<sup>423</sup> The Commission, too, feels compelled to point out that while in many cases the policies, laws and measures introduced to protect the rights of migrants whose status in Mexico is irregular represent an improvement over the previous situation and legal framework, in many cases these new policies, laws and measures have not been up to the challenge posed by the serious human rights violations that they were intended to prevent, and even contain provisions and practices that are contrary to the Mexican State's international obligations with respect to the human rights of migrant persons and other persons in the context of human mobility. The Commission is also of the view that given the massive, systematic and egregious violations of human rights that irregular migrants experience in Mexico, the measures that the State has adopted as of the date of approval of this report are insufficient to provide an effective response to such violations. The Commission believes that, in general, the Mexican State must allocate more human and economic resources and make greater efforts to implement measures to prevent the crimes and human rights violations committed against migrants and members of their families, to protect these persons and to punish those responsible for the crimes and human rights violations committed against them.

401. The Commission appreciates the Mexican State's recognition of the fact that "migration is a human right and, as such, ought not to be criminalized under any

<sup>423</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 15.

circumstance. Above all, it should dignified, orderly and recognized as a legitimate opportunity for human development.”<sup>424</sup> To accomplish that purpose, the Commission believes that Mexico must adopt policies, laws and all measures necessary to ensure that persons who are part of the migration flows entering or traveling through Mexican territory can do so in an orderly and safe manner that guarantees their human rights.

402. Breaking the existing dichotomy between the human rights protection that Mexico seeks for Mexican migrants abroad, and the protection that the Mexican authorities provide to migrants from other countries who are either living in or are in transit through Mexico will demand that the immigration policies, laws and practices in Mexico are based on a real and not purely formal approach to human rights. Any immigration policy, law or practice should be premised on certain basic principles: 1) the right to migrate is a human right; 2) all persons immersed in human mobility—international immigrants, refugees, asylum seekers, persons applying for additional protection, stateless persons, victims and survivors of trafficking in persons, the internally displaced and domestic migrants—are the *titulaires* of human rights; 3) all the measures taken by States must be premised on a recognition of the human dignity of persons in the flow of human mobility; and 4) in keeping with the above, all the measures that States take must be calculated to respect and ensure the human rights of persons in human mobility, particularly their right to equal protection before the law by all Mexican authorities.

403. While the principal international and regional instruments recognize one’s right to leave any country of one’s own free will, even one’s own country, in order for this right to materialize States have to take measures to facilitate and guarantee human mobility to all persons. The Commission believes that immigration policies, laws and practices that criminalize migration, or those that take a dual approach—on the one hand recognizing that migrants have human rights, but at the same time regarding them as a threat to national sovereignty or security—contain an inherent contradiction and are at odds with what a human-rights-based immigration policy should be. The *prima facie* assumption that migrants pose a threat to the national sovereignty and security of States implies a prejudgment that migrants are criminals; it also denies the right of all persons to leave their countries at will and fails to recognize the contributions that migrants make in their countries of destination.

404. The complexity and seriousness of the violence and discrimination that migrants in Mexico encounter demands that the State adopt comprehensive responses that go beyond security-related areas, such as the police. The Commission believes that with matters as they now stand, the State must become involved in all areas, with the authorities in the three levels of government cooperating and coordinating to ensure that

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<sup>424</sup> Remarks by the Under Secretary for Population, Immigration and Religious Affairs, Dr. René Zenteno, at the Hearing of the Inter-American Commission on Human Rights on the Follow-Up to the Visit to Mexico by the Office of the Rapporteur on the Rights of Migrants. Washington, October 27, 2011, pp. 3-4.

the human rights of migrants are respected and protected, irrespective of their migration status.

405. To respond to situations that threaten observance and protection of migrants' human rights, the Commission believes that the measures the State adopts to prevent the violence against migrants and protect them from it must be premised on a citizen-security approach in which the migrants are regarded as *titulaires* of human rights that States have an obligation to respect and guarantee. As it did in its Report on Citizen Security and Human Rights, the Commission maintains that "[p]ublic policy on citizen security must devote special attention to the relationship between the police and migrants and their families, recognizing that migrant women, children and adolescents are the most vulnerable."<sup>425</sup>

406. Although there are differences of opinion as to the figures on kidnapping, murder and disappearances of migrants in Mexico, even the most conservative figures are alarming. Even so, however significant the figures may be, they do not tell the story of just how severe the violence and discrimination that migrants in transit through Mexico face. The various reports published in recent years and the testimony of victims and family members reveal a complex and enormous problem, one that the State acknowledges, involving violence against migrants that has become much worse in recent years. Having said this, and although it is important to ascertain the extent of the crime being committed against migrants, the issue of the figures cannot and should not become the crux of the debate. This is not to deny the vital importance of the State compiling and publishing reliable and disaggregated data on complaints, investigations, prosecutions and convictions of the intellectual and material authors of crimes and human rights violations committed against migrants, either by private individuals or State actors. Such information is essential to gauge the effectiveness of the measures taken by the State to facilitate access to justice, ascertain the truth and redress the harm caused to victims and their family members.

407. This is particularly true in the case of kidnapping of migrants, as this crime violates other human rights. Kidnapping is more than just depriving a person of his/her freedom; it also gravely imperils the right to life and the right to humane treatment, as kidnapping is generally accompanied by physical and psychological mistreatment. Kidnapping is a crime that deeply violates a person's human dignity and all the rights inherent in it, such as the right to communication, freedom of movement and the right to protection of the family, as kidnapping victims are cut off from contact or communication with family members. Given the situation, the State has to respond with measures that go beyond police action. When kidnapping becomes a rampant problem and is even committed on a mass scale, the response must be a comprehensive public policy adopted by the State

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<sup>425</sup> IACHR, Report on Citizen Security and Human Rights. Washington, DC, approved by the Inter-American Commission on Human Rights on December 31, 2009, para. 90.

to address this scourge afflicting migrants. The entire machinery of government must be brought to bear through its federal, state and municipal authorities. The problem does not end when a person is released. For kidnapping victims, their social reintegration will require rehabilitation in the form of the medical and psychological attention that enables them to go on with their daily lives.

408. The purpose of the recommendations set out below is to get the Mexican State to adopt a comprehensive public policy geared to protecting migrants in Mexico and to preventing, punishing and redressing the acts of violence committed against them, members of their families and those who defend their human rights in Mexico. On the matter of reparations for migrants and their family members, consistent with the past practice of the Commission and other international organizations for the protection of human rights, the reparations to victims of human rights violations must be comprehensive and include measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

## **F. Recommendations**

409. Based on the conclusions set out above, the Inter-American Commission on Human Rights is making the following recommendations:

### **The United Mexican States must:**

1. Implement a public policy specifically intended to protect migrants and other persons from the crimes and human rights violations to which they fall victim in the context of human mobility in Mexico, to prevent and punish those crimes and human rights violations and to prevent and punish human rights violations committed against those who defend these people's human rights in Mexico. In particular, the State must adopt a specific and comprehensive public policy, coordinated among the three levels of government and geared to combating kidnapping and other crimes and human rights violations committed against migrant persons.
2. Adopt measures to facilitate people's authorized entry into and transit through Mexican territory. Visas, transit permits, or a regulation under which visas would not be required, applicable to all persons, would mean that migrants would no longer have to resort to clandestine routes, which would reduce their exposure to crimes and violations of their human rights; it would also help ensure that such migrants would seek justice, as they would be more willing to report the crimes or human rights violations committed against them.
3. Step up security in areas that pose a high risk to migrants and in the means of transportation—like freight trains and buses—along the routes that the

migrants use, such as secondary roads, for example. Along these routes, the State must also establish centers that migrants can turn to for care, to ensure that their human rights are respected.

4. Provide greater administrative and functional autonomy to the Beta Groups and the Child Protection Offices (OPIS). To better perform their function of protecting migrants, they need more economic and human resources, and follow-up guidelines and training to make certain that their members are prepared to perform their functions.
5. Have the INM put into practice a protocol for preliminary identification of migrants who are vulnerable, such as asylum seekers, refugees, stateless persons, children and adolescents who are either unaccompanied or have become separated from family members; migrants who have fallen victim to crime during their migration; migrant women who have been the victims of sexual or gender-based violence; pregnant migrant women who are traveling alone, especially adolescent girls; migrants who have accidents while in their transit through Mexico; migrants with different capacities; and migrants from outside the hemisphere.
6. Launch, on its own initiative and without delay, a serious, impartial and effective investigation, using all legal means possible, to determine the truth and pursue, apprehend, try and ultimately punish the intellectual and material authors of such crimes as kidnapping, forced disappearance, murder and trafficking in persons once the Mexican authorities have learned of these events, especially when state agents are or may be involved. This recommendation also applies to reparations for the victims.
7. Effectively conduct any criminal proceedings already underway and those eventually undertaken, in order to identify, prosecute and, where appropriate, punish the material and intellectual authors of crimes and human rights violations committed against migrants, other persons in the context of human mobility, and those who defend these people's human rights. In these proceedings, the victims' family members should be regularly provided with up-to-date information on the progress made in the investigation, and be given full access to the case files. These matters should be handled by public officials who are highly trained and experienced in similar cases and in the treatment of victims of discrimination and violence against migrants.
8. Create a specialized federal body to take charge of investigations into crimes and human rights violations committed against migrants. An example would be an Office of the Special Prosecutor for Violent Crimes against Migrants. This office should also provide comprehensive attention to victims and their family members. Such an office would help migrants, their family members and others to know where to turn; it would focus attention on the problem

of crime against migrants so that it can be addressed and investigated; it can collaborate in the search for disappeared migrants and in the identification of unidentified bodies and remains that might be those of migrants, and produce reliable statistics that would enable civil society to track the results. This would also help craft public policies aimed at preventing and combating violence and discrimination against migrants. Steps must be taken to ensure that this office has the material and human resources it needs to perform its functions properly, independently and impartially and that the persons who take part in the investigations have the necessary assurances of their safety.

9. Considering the information about the many cases of kidnapping in which state agents were allegedly involved, the lines of investigation should also include crimes such as forced disappearance.
10. Enact a General Law on Forced Disappearance and ensure that the crime of forced disappearance is included in the criminal codes of Mexican states. The Commission confirms the statement made by the Working Group on Enforced or Involuntary Disappearances to the effect that the general law should define the autonomous crime of enforced disappearance; create a specific search procedure for the disappeared person with the participation of family members of victims and establish a national registry of forcibly disappeared persons with the guarantee that relatives, lawyers, human rights defenders and any other interested person will have full access to the registry. The law should allow for the declaration of absence as a result of enforced disappearance. Finally, the general law should be a legal tool for the full support and protection of relatives of the disappeared as well as witnesses and also for the right to integral reparations.
11. Continue implementing permanent programs and courses to educate and train public officials like INM agents, police agents at all levels, members of the public security forces and officials of the criminal justice system, about the human rights of migrant persons, asylum seekers, refugees, persons requiring additional protection, stateless persons, and victims of trafficking in persons, making certain that the training has a gender perspective and that it emphasizes the special measures of protection that must be accorded to children and adolescents.
12. Strengthen the mechanisms to combat corruption and promote accountability by state officials through evaluation and investigation, conducted by competent government institutions which, after due process, should apply the corresponding administrative, disciplinary or criminal sanctions to the INM officials, local, state and federal police or any other official found to be responsible for the commission of crimes and human rights violations against migrants and defenders of their human rights.

13. Establish mechanisms to allow for more rigorous monitoring of international money transfers done through businesses like Western Union, MoneyGram, and other similar services, since in many cases these transfers are for the payment of ransom for kidnapped migrants.
14. Put into practice mechanisms to search for migrants who are disappeared, missing, kidnapped, or otherwise deprived of liberty. These mechanisms must be coordinated among the states, federal government, and the migrants' countries of origin in Central America and the countries of destination, primarily the United States.
15. Develop effective and regionally coordinated investigative mechanisms that enable aggrieved migrants and their family members to have effective access to justice, irrespective of their immigration status or their provenance.
16. Strengthen the federal and state offices that assist victims of crimes and human rights violations and guarantee the accessibility and availability of services to migrant persons who have been victims of crimes or human rights violations and members of their families. These offices must have personnel who are trained in and sensitive to migrants, refugees and victims of human trafficking, and provide victims and their family members with immediate, adequate and effective medical, psychological or psychiatric treatment through state institutions in specialized medical areas. Access should be the same for all victims, regardless of where they are situated.
17. Strengthen the independence and autonomy of the CNDH and all public human rights agencies and ensure that they have sufficient resources to perform their functions.
18. Establish programs aimed at raising the Mexican public's awareness of the situation and the human rights of other persons in the context of human mobility, and adopt the measures necessary to eradicate any discriminatory policy, combat xenophobia and promote inter-culturalism in education and the media.
19. Periodically inform the general public of the violence and discrimination that migrants in Mexico encounter, and the results that the State has achieved in preventing, investigating, prosecuting, punishing and redressing the crimes and human rights violations committed against migrants.
20. Put into practice mechanisms to compile data and generate reliable figures, and systematize and standardize the criteria for collecting data on the dimensions of in-transit migration and the crimes and human rights violations affecting persons who comprise the mixed migration flows.

21. Step up efforts with the United States authorities so that deportations of Mexican nationals are carried out in places and at times that do not place their lives, personal safety and personal freedom in peril. In partnership with the United States, the State should find a mechanism that ensures that deportations of Mexican nationals will be to their places of origin or nearby, and that deportations in areas of high risk for these people will be discontinued. Until these measures are in place and put into practice, security measures at border points where Mexican nationals are deported or repatriated from the United States must be reinforced.
22. Allocate greater resources toward policies aimed at wiping out poverty and inequality so that the most vulnerable will not feel compelled to migrate.
23. Take measures to preserve the historic memory of the acts of violence and discrimination of which migrants have been victim, as a measure to avoid a repetition of such events.

**On the subject of disappeared or missing migrants and unidentified remains:**

24. In cases where remains and/or bodies are discovered whose features and other attendant characteristics suggest that they may have been migrants, preserve the unidentified remains.
25. Prevent the remains that are still with SEMEFOS from being created or sent to common graves.
26. Protect any remains that have already been sent to common graves from any further disturbance.
27. Put into practice a nationwide mechanism that makes it easier to share forensic information on the unidentified remains of Mexican persons and Central Americans who disappeared in Mexico, with the forensic databanks on disappeared migrants that have been developed within the region, such as those in El Salvador, Guatemala, Honduras and the state of Chiapas, and any others that may develop in the future. This national mechanism should be merged with a like regional mechanism enabling forensic information to be shared among the countries of Central and North America. Civil society organizations should be instrumental in running both the national and regional databanks.

**On the subject of human trafficking:**

28. Do an evaluation of the profile of the perpetrators and the victims of human trafficking in Mexico.
29. Establish State-run shelters that specialize in providing assistance to women and men who have been victims of human trafficking.

30. Develop measures to reduce the demand for forced labor and punish employers and recruiters of migrants for labor exploitation.

**On the subject of women's rights:**

31. Develop public policies to combat the discrimination, exploitation and abuse of migrant women from a gender perspective.
32. Conduct an assessment of the priorities and needs of migrant women, refugee women or displaced women, with particular emphasis on the situation of girls among these groups.

**On the subject of forced displacement:**

33. Conduct a study to “describe” internal displacement in Mexico and then adopt measures to provide a response consistent with international standards on the subject, especially the Guiding Principles of Forced Displacement.
34. Adopt specific legislation at the federal and state levels to address the problem of internal displacement in a manner consistent with the Guiding Principles of Forced Displacement.
35. Create a federal institution or focal point charged with protecting individuals from forced displacement and with protecting and assisting them during displacement and during their return or resettlement and reintegration.

**Recommendations for the States of the region:**

36. While the Commission recognizes that Mexico bears primary responsibility for guaranteeing the observance and protection of the human rights of the persons who comprise the mixed migration flows that enter and cross its territory, the Commission also recognizes that to make the measures that Mexico adopts to protect the human rights of migrants in transit through its territory more meaningful and effective, the countries of origin and destination must become its partners in tackling the hardship factors that caused the migrants to uproot themselves and the attractions that caused them to migrate. The States of the region must also provide the means so that everyone is able to migrate through regular channels and not in violation of the States' immigration laws. The Commission is therefore again calling upon the States of the region, particularly the United States and Canada, as countries of destination, and the Central American countries, as the countries of origin, to work with Mexico to adopt all the policies, laws and practices necessary to guarantee the individual's right to migrate in a safe and orderly manner and to comply with the other international obligations pertaining to the protection of the human rights of migrants who leave, travel through or are headed for their territory. Co-responsibility or responsibility shared by the States in managing migration flows shall under no circumstances mean

that States are derelict in the obligations they have to persons within their jurisdiction.

37. Countries that are destinations for migrants, like the United States and Canada, must adopt measures to make it easier for individuals to be able to migrate through regular channels.
38. The countries of origin of migrants, particularly El Salvador, Guatemala and Honduras, but other States of the region as well, must adopt the policies and measures necessary to address the hardship factors that caused their citizens to migrate elsewhere. It is vital here that problems of inequality, poverty and violence be addressed.
39. Develop regional instruments and mechanisms to combat the criminal activities of transnational organized crime groups involved in the abduction of migrants, human trafficking and smuggling of migrants.





*A real paradigm shift by the Mexican State will require the adoption of all the legislative, administrative and other measures necessary to ensure that immigration detention is the exception and to make alternatives to detention the general rule.*

## CHAPTER III

# Immigration Detention and Due Process

### A. General observations

410. By way of a general introductory comment, the Commission notes that the expression ‘immigration detention’ does not appear anywhere in Mexican domestic law. However, Article 3, paragraph XX of Mexico’s Immigration Law defines “presentation” as the measure by which the INM orders the temporary “holding” [*alojamiento*]<sup>426</sup> of any alien who cannot show his or her migration status; said order remains in effect so long as the administrative immigration proceedings to regularize the person’s presence in the country or to arrange the person’s assisted return<sup>427</sup> or deportation are in progress. For purposes of “holding” irregular migrants, the INM has immigration stations<sup>428</sup> and provisional centers. As a general rule, Article 111 provides that the INM shall settle the status of migrants ‘presented’ within a period of no more than 15 working days, counted from the date of their “presentation.” The “holding” of migrants in the immigration stations may continue beyond those 15 working days only if one or more of the circumstances provided for in paragraphs I to V of Article 111 of the Immigration Law is present. In the event of the circumstances provided for in paragraphs I to IV of Article 111, the Immigration Law provides that the “holding” of migrants shall not exceed 60 working days unless the law or its regulations establish a time limit for the “holding” of those migrants whose situation fits the circumstance posited in paragraph V of Article 111. Article 121 of the Immigration Law provides that an immigrant facing an administrative immigration proceeding for assisted return or deportation shall remain “presented” in the immigration station pursuant to Article 111 of that law.

411. Here, the Commission must point out that under international human rights law and the inter-American standards on the right to personal liberty, the measures known as “presentation” and “holding” are forms of deprivation of personal liberty because they prevent irregular migrants from exercising their right to freedom of movement. Therefore, the Commission will use the term “immigration detention” to refer to the measure whereby migrants and other persons in the context of human mobility are deprived of their liberty

<sup>426</sup> Before the Immigration Law took effect, the expression ‘holding’ was known as ‘lock-up’.

<sup>427</sup> United Mexican States, *Immigration Law*, Article 3, paragraph XX.

<sup>428</sup> Article 3, paragraph X of the Immigration Law defines “Immigration Station” as the physical facility that the National Immigration Institute establishes to temporarily house aliens who are unable to show that they are documented migrants and where they are held until their immigration situation is determined. See, United Mexican States, *Immigration Law*, Article 3, paragraph X.

at immigration stations by virtue of their irregular immigration status, and remain there so long as the administrative immigration proceedings in their case are in progress.

412. According to the information supplied by the INM, at the time of the visit there were 35 immigration stations and 23 provisional centers, also known as *garitas* [posts or shelters] in 26 of Mexico's federal entities. At the time of the visit, these facilities had a capacity to house 4,300 persons simultaneously.<sup>429</sup> The largest immigration stations are in Tapachula, Chiapas, with capacity for 940 persons; Acayuca, Veracruz, with capacity for 836 persons, and Iztapalapa in the Federal District, with a capacity for 450 persons. According to the INM, 88,501 migrants were detained in immigration stations in 2012,<sup>430</sup> while in 2011 that number had been 66,583.<sup>431</sup> This means that the number of detentions in 2012 was 33% higher than in 2011 (see Table 3).

413. Extrapolating from the 2012 figures, the detained migrants can be characterized as follows: by sex, 86 out of every 100 were men, and 14 were women; by age group, for every 100 migrants detained, 93 were adults and 7 were minors, one of whom was between 0 and 11 years of age. Some 93% of the migrants detained in immigrations stations in 2012 were from Central American countries, the principal countries of origin being Guatemala at 45% (40,058) of the detained migrants; Honduras at 33% (28,887); El Salvador at 14% (12,398) and Nicaragua, at just under 1% (683).<sup>432</sup> The pattern for the principal foreign nationalities detained has remained constant since the late 1990s (see Graph 5).<sup>433</sup> However, the detained migrants include nationals of many other countries of the Americas. In terms of numbers, the main countries of origin were Cuba at 3,247 (4%), the United States at 926 (1%), Ecuador at 697, and Colombia at 237.<sup>434</sup>

<sup>429</sup> United Mexican States, *Report of the Secretariat of the Interior for the Rapporteurship on Migrant Workers and Their Families of the Inter-American Commission on Human Rights (IACHR)*, Mexico, July 25, 2011, p. 24.

<sup>430</sup> INM, *Boletín mensual de estadísticas migratorias 2012: III. Extranjeros alojados y devueltos* [Monthly Bulletin on Immigration Statistics 2012: III. Aliens held and returned]. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Extranjeros\\_Alojados\\_y\\_Devueltos\\_2012](http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_2012) [Consulted on December 30, 2013].

<sup>431</sup> INM, *Boletín estadístico anual 2011* [Annual Statistical Bulletin 2011]. Mexico. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Extranjeros\\_Alojados\\_y\\_Devueltos\\_01](http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_01) [Consulted on December 30, 2013].

<sup>432</sup> INM, *Boletín estadístico anual 2011* [Annual Statistical Bulletin 2011]. Mexico. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Extranjeros\\_Alojados\\_y\\_Devueltos\\_01](http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_01) [Consulted on December 30, 2013].

<sup>433</sup> See in this regard, CASILLAS R., Rodolfo, "Las Rutas de los Centroamericanos por México, un ejercicio de caracterización, actores principales y complejidades" [The Routes that Central Americans Travel through Mexico, an exercise in description, principal players and complications], in: *Revista Internacional de Migración y Desarrollo*. Volume 10, 2008, First Semester, p. 159. Available [in Spanish] at: <http://rimd.reduaz.mx/revista/rev10/c7.pdf> [Consulted on December 30, 2013].

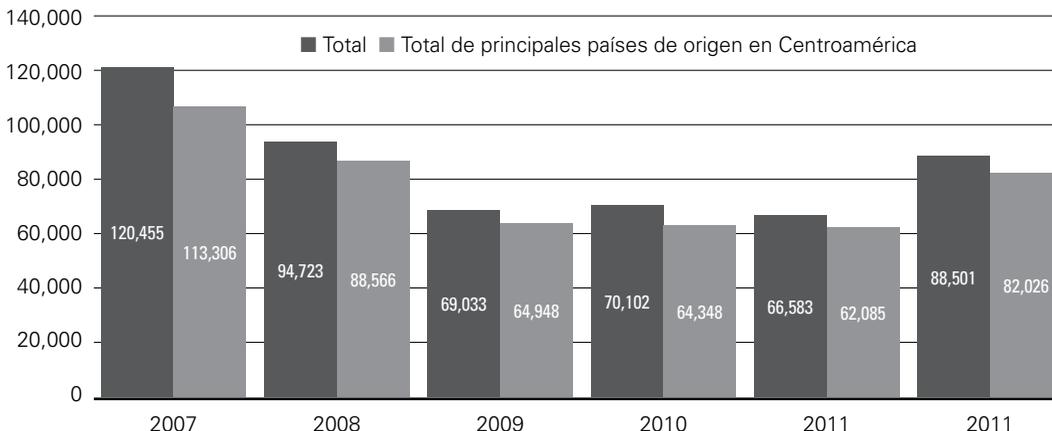
<sup>434</sup> INM, *Boletín mensual de estadísticas migratorias 2011: III. Extranjeros alojados y devueltos* [Monthly Bulletin on Immigration Statistics 2011: III. Aliens held and returned]. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Extranjeros\\_Alojados\\_y\\_Devueltos\\_2012](http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_2012) [Consulted on December 30, 2013].

**TABLE 3 Migrants detained in immigrations stations, by age group, travel status and sex | 2008 – 2012**

Year	2008			2009			2010			2011			2012		
	Subtotal		Total	Subtotal		Total	Subtotal		Total	Subtotal		Total	Subtotal		Total
	Men	Women		Men	Women		Men	Women		Men	Women		Men	Women	
Overall total	77,203	17,502	94,723	57,688	11,345	69,033	59,756	10,346	70,102	57,423	9,160	66,583	76,543	11,963	88,506
Over 18	69,215	15,155	84,370	53,543	9,798	63,341	56,749	9,310	66,059	54,282	8,141	62,423	71,976	10,423	82,399
Total minors	7,988	2,365	10,353	4,145	1,547	5,692	3,007	1,036	4,043	3,141	1,019	4,160	4,567	1,540	6,107
Ages 12 to 17	6,421	1,487	7,908	3,676	1,153	4,829	2,502	702	3,204	2,641	679	3,320	3,911	1,044	4,955
Ages 0 to 11	1,567	878	2,445	469	394	863	505	334	839	500	340	840	656	496	1,152
Accompanied	1,019	681	1,700	397	344	741	389	275	664	373	262	635	523	423	946
Unaccompanied	548	197	745	72	50	122	116	59	175	127	78	205	133	73	206

Source: *Boletín estadístico anual* [Annual Statistical Bulletin] from 2008 to 2012, Instituto Nacional de Migración

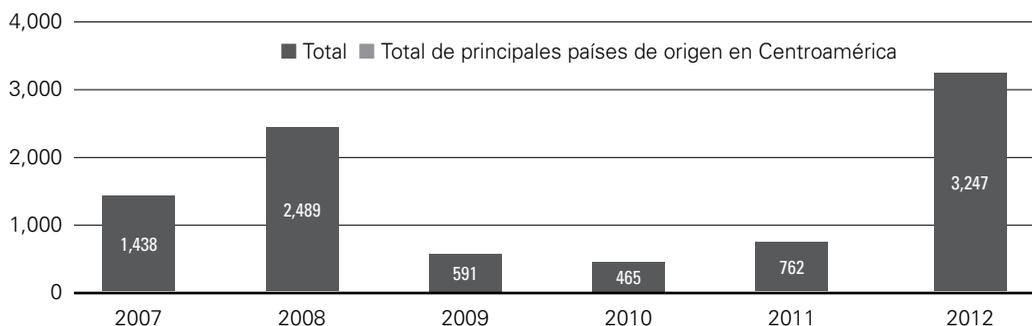
**GRAPH 5** Migrants detained in immigration stations (all migrants and Central American migrants<sup>435</sup>) | 2007-2012



Source: Monthly statistical bulletins from 2007 to 2012  
 Secretariat of the Interior, *Instituto Nacional de Migración*

414. From the figures on immigration detention, the Commission observes that in 2012 the flow of Cuban migrants in an irregular situation was more than 4 times what it was in 2011 (see Graph 6). With the unusual spike in Cuban migration, the Commission believes that the Mexican authorities should perhaps put into place procedures that will enable them to determine the particular situation of each Cuban immigrant and whether he or she might be in need of international protection or have other special protection needs.

**GRAPH 6** Cuban migrants detained in immigration stations | 2007-2012



Source: Annual statistical bulletins from 2007 to 2012  
 Secretariat of the Interior, *Instituto Nacional de Migración*

415. In 2012, a total of 746 extra-continental migrants and asylum seekers from outside the hemisphere were detained in Mexico’s immigration stations: 323 from Africa, 303 from Asia, 117 from Europe and 3 from Oceania; the countries most represented were

<sup>435</sup> The principal countries of origin of migrants in Mexico are Guatemala, Honduras, El Salvador and Nicaragua.

Somalia (176), China (104), Eritrea (61), India (51), Nepal (37), Bangladesh (29), Ghana (22), Pakistan (21), Spain (20), Nigeria (20), Sri Lanka (16), Italy (13), Romania (13), and Germany (11), among others (see Table 4).<sup>436</sup> Because of geographic location, many extra-continental migrants bound for the United States and, to a lesser extent, Canada, have to travel by way of Mexico and the Central American countries. On average, it takes extra-continental migrants from 6 months to make the trip from their country of origin to their country of destination. Because of climate conditions, cost, border patrols and other factors, there are no pre-established routes; instead, there are multiple maritime and aerial platforms through which such migrants enter the American hemisphere. The Caribbean islands are frequently the maritime platforms that extra-continental migrants use. The aerial platforms can include entry points as far away as airports in Argentina, Brazil and Ecuador, or closer airports in Venezuela, Panama and Nicaragua.<sup>437</sup>

**TABLE 4** Extra-continental migrants detained in immigration stations (total and principal countries of origin in Africa and Asia) | 2007-2012

Year	2007	2008	2009	2010	2011	2012
Total Migration from Outside the Hemisphere	1.203	1.125	1.309	2.551	1.327	746
Eritrea	232	363	330	723	136	61
Somalia	110	134	303	311	83	176
China	255	137	237	176	178	104
India	31	36	24	544	451	51

Source: *Boletín estadístico anual* [Annual Statistical Bulletin], 2007 to 2012  
*Instituto Nacional de Migración*

## B. Applicable international norms and standards on immigration detention and due process

416. The Commission will now set out the international norms and standards that apply with respect to immigration detention and due process, since in the Commission's view the generalized practice in Mexico is to detain migrants in an irregular situation who are discovered in the course of immigration review or verification operations conducted by the Mexican authorities. The information that the Commission examined suggests that in the case of some States take an approach that criminalizes migration with the result that immigration detention has become the norm. Indeed, some States justify immigration detention and even criminalize irregular migration by arguing that it poses a threat to

<sup>436</sup> For more statistics on aliens detained in immigration stations, see, INM, *Boletín mensual de estadísticas migratorias 2011: III. Extranjeros alojados y devueltos* [Monthly Bulletin on Immigration Statistics 2011: III. Aliens held and returned]. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Extranjeros\\_Alojados\\_y\\_Devueltos\\_2012](http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_2012) [Consulted on December 30, 2013].

<sup>437</sup> FLACSO – Costa Rica, UNHCR and IOM, *Diagnóstico sobre la situación actual, tendencias y necesidades de protección y asistencia de las personas migrantes y refugiadas extracontinentales en México y América Central*. Costa Rica [Study on the current situation, trends and protection and assistance needs among migrants and refugees from outside the hemisphere who are in Mexico and Central America]. Costa Rica, 2011, p. 19.

national security. The Commission esteems it necessary to emphasize that measures that criminalize migration pose one of the principal challenges for the observance of the human rights of migrant persons in the region. As the Rapporteurship has pointed out,<sup>438</sup> immigration detention is one of the principal measures that countries of transit and destination rely on to discourage migration.<sup>439</sup> Mexico is no exception. Elaborating, the Rapporteurship has observed that “governments often intentionally treat undocumented migrant workers as criminals because they want to discourage foreigners from entering the country. The logic followed by many countries of destination and transit is that any leniency towards people trying to enter without adequate documentation would only encourage others to do the same. Thus, they conclude that a hard-line, inflexible response will discourage and scare off potential immigrants.”<sup>440</sup>

417. The Commission believes that to make good on the guarantees set forth in Article 7 of the American Convention, member States must establish immigration policies, laws, protocols and practices premised on a presumption of liberty—the migrant’s right to remain at liberty until the immigration proceedings in his or her case have come to a conclusion—and not on a presumption of detention.<sup>441</sup> As the Commission previously held, the standard for the exceptionality of detention must be even higher because immigration violations ought not to be construed as criminal offenses.<sup>442</sup> Because immigration detention must not be a punitive measure, States are prohibited from using this measure for either general or special preventive purposes to deter irregular migration. The Commission concurs with the position taken by the United Nations Special Rapporteur on the Human Rights of Migrants, who wrote that the “irregular entry or stay should never be considered criminal offences: they are not per se crimes against persons, property or national security.”<sup>443</sup>

418. Following this line of thought, automatic immigration detention is antithetical to protection of the right to personal liberty and to the principle that immigration detention

<sup>438</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights, 2000: Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*. OEA/Ser.L/V/II.111 doc. 20 rev., April 16, 2001, paragraph 106.

<sup>439</sup> See, in this regard, VOHRA, Shyla, “Detention of Irregular Migrants and Asylum Seekers”, in: CHOLEWINSKI, Ryszard; PERRUCHOUD, Richard and MacDONALD, Euan (editors), *International Migration Law: Developing Paradigms and Key Challenges*. T.M.C. Asser Press: The Hague, 2007, pp. 49-50.

<sup>440</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights, 2000: Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*. OEA/Ser.L/V/II.111 doc. 20 rev., April 16, 2001, paragraph 106.

<sup>441</sup> See, IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraph 219; and IACHR, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 39.

<sup>442</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 38.

<sup>443</sup> United Nations General Assembly – Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, François Crépeau*, Twentieth Session, April 2, 2012, paragraph 13. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf) [Consulted on December 30, 2013].

must be an exceptional measure and a last resort. The Commission believes that a proper balance has to be struck between, on the one hand, the States' legitimate objectives in immigration control and, on the other, observance of migrants' right to personal liberty. This means that alternatives to detention have to be established that function as the rule or norm and are less intrusive ways to achieve the same ends. Furthermore, the broad discretion that the authorities tend to have with respect to immigration detention too often means that the observance of procedural guarantees and the conditions under which migrants are held are much worse than they are in the case of persons deprived of liberty on suspicion of or for the commission of crimes.

419. In examining immigration detention, the IACHR Rapporteurship expressed its concern as follows:

[t]he most serious situation, however, is that faced by migrants detained for irregular status. Unlike those who have broken the law, these migrants are detained for administrative and not criminal reasons. In other words, the authorities do not arrest them to bring charges of alleged criminal activity or to make them serve out a sentence, but in order to resolve their immigration status. This means that after detaining them, the authorities either officially classify them as immigrants and provide them with the appropriate documentation, or deport them to their country of origin or to a third country that is willing to accept them. In some cases, however, migrant workers without proper authorization remain under detention. This may be due to various factors, such as: (a) an appeal against deportation may have been filed; (b) consular officials may not have been able to verify the nationality of the detainee; (c) the country of origin may have refused acceptance, or (d) the receiving country may not have the means to finance the deportation.<sup>444</sup>

420. The Commission echoes the statement made by the United Nations' Special Rapporteur on the Human Rights of Migrants where he wrote that "there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased. This may be due, *inter alia*, to the fact that migrants possibly see detention as an inevitable part of their journey."<sup>445</sup> This is consistent with the testimony received from migrants being detained at the immigration stations that the Rapporteurship visited in Mexico, many of whom said that although they were being deported, they would still attempt to migrate again.

<sup>444</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights, 2000: Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*. OEA/Ser./L/V/II.111 doc. 20 rev., April 16, 2001, paragraph 104.

<sup>445</sup> United Nations General Assembly – Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants*, François Crépeau, Twentieth Session, April 2, 2012, paragraph 8. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf) [Consulted on December 30, 2013].

421. Various research studies have shown that there is no empirical evidence to suggest that immigration detention is an effective means to deter irregular migration.<sup>446</sup> To the contrary, the global figures on international migration only reaffirm that mechanisms like immigration detention and deportation are ineffective ways to control international migration. International migration has been on a steady upward trend. According to the United Nations, the total number of international migrants worldwide went from 155 million in 1990 to 178 million in 2000; estimates for 2010 put it at 214 million, which would be around 3.1 percent of the world's population. According to the IOM, the increasing demographic disparities, the effects of environmental change, new global political and economic dynamics, technological revolutions and social networks could push the number of international migrants to 405 million by 2050.<sup>447</sup>

## 1. The right to personal liberty and the exceptionality of immigration detention

422. As previously observed, the practice of “holding” migrants in Mexico is in fact a deprivation of liberty and is more akin to what is commonly referred to as “immigration detention”. The prohibition against unlawful and arbitrary detention also applies to those situations in which irregular migrants, asylum seekers, stateless persons or others in need of international protection are detained, whether detention occurs when they enter the country of transit or destination, during the proceedings conducted to determine their immigration situation, or while they are awaiting enforcement of the order for their deportation.

423. This part of the report examines the compatibility of immigration detention with the right to personal liberty recognized in Article 7 of the American Convention. In the instruments of the Inter-American System, the right to personal liberty and the prohibition of illegal and arbitrary detention are recognized in Article 7 of the American Convention,<sup>448</sup> which reads as follows:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.

<sup>446</sup> EDWARDS, Alice, *op. cit.*, pp. 2-3. See also, SAMPSON, Robyn, MITCHELL, Grant and BOWRING, Lucy, *There are alternatives: A handbook for preventing unnecessary immigration detention*. Melbourne: International Detention Coalition, 2011, p. 6.

<sup>447</sup> See, IOM, *World Migration Report 2010*, p. 3. United Nations, Department of Economic and Social Affairs, Population Division (2009), *Trends in International Migrant Stock, 2008 Revision (United Nations database, POP/DB/MIG/Stock/Rev.2008)*. Available at: [www.un.org/esa/population/publications/migration/migration2008.htm](http://www.un.org/esa/population/publications/migration/migration2008.htm) [Consulted on December 30, 2013].

<sup>448</sup> In the American Declaration of the Rights and Duties of Man, the rights to personal liberty and to protection against arbitrary arrest are recognized in Articles I and XXV, respectively.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

424. In addition to the provision in the American Convention on Human Rights, Article 16, paragraphs 1 and 4 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families recognizes their right to personal liberty and security of person and provides that they shall not be subject to arbitrary arrest or detention, no matter their immigration status.

425. The right to personal liberty recognized in Article 7(1) of the American Convention applies to all forms of deprivation of liberty, including immigration detention. Here, the Commission believes it is worthwhile recalling the definition of deprivation of liberty set forth in its Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (hereinafter “Inter-American Principles on the Protection of Persons Deprived of Liberty in the Americas”), which reads as follows:

[a]ny form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under de facto control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses. This category of persons includes not only those deprived of their liberty because of crimes or infringements or non compliance with the law, whether they are accused or convicted, but also those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental, or sensory disabilities; institutions for children and the elderly; centers for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty.<sup>449</sup>

<sup>449</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. General Provision. The Commission stipulated that “given the breadth of the aforementioned concept, the following

426. For its part, in its Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, the Office of the United Nations High Commissioner for Refugees (hereinafter “UNHCR”) defines the ‘detention’ as

confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory. There is a qualitative difference between detention and other restrictions on freedom of movement.<sup>450</sup>

427. In those cases in which the deprivation of liberty is a consequence of immigration detention, it is important to underscore the fact that a violation of immigration laws can never be equated with a violation of criminal laws, such that a State’s first response vis-à-vis persons who entered or remained in its territory in violation of immigration law is to remand them to immigration detention. Irregular immigration status is simply a violation of an administrative rule. The Inter-American Court has held that administrative sanctions, like criminal sanctions, constitute an expression of the State’s punitive authority and, on occasion, the former are similar in nature to the latter.<sup>451</sup> In a democratic society punitive authority is exercised only to the extent strictly necessary to protect fundamental legal rights from serious attacks that may impair or endanger them. The opposite would result in the abusive exercise of the punitive authority of the State.<sup>452</sup> The Commission deems that the fact that a migrant’s status in a country is irregular does not represent an attack on any basic right that must be protected through exercise of the State’s punitive authority.

428. On the subject of immigration detention, the Commission has written that “international standards establish that detention must be applied only as an exceptional measure and after having analyzed the necessity in each case. In all cases, states must avoid prolongation of detention, and must ensure that it is as brief as possible.”<sup>453</sup> The multiple effects that deprivation of liberty can have on the rights of persons explain why States should only use such measures as a last resort. Furthermore, in addition to the effects that immigration detention can have on the right to personal liberty, one also

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principles and best practices shall be invoked, according to each case, depending on whether the persons are deprived of liberty as a result of the perpetration of crimes or violations of the law, or for humanitarian and protective reasons.”

<sup>450</sup> UNHCR, *Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, February 26, 1999, Guideline 1. Available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3c2b3f844> [Consulted on December 30, 2013].

<sup>451</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 170, citing I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paragraph 106.

<sup>452</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 170, citing *Case of Kimel, supra* note 43, paragraph 76; *Case of Usón Ramírez, supra* note 10, paragraph 73, and *Case of Tristán Donoso, supra* note 120, paragraph 119.

<sup>453</sup> IACHR, *Human Rights of Migrants, International Standards and the Return Directive of the EU*, July 25, 2008, Resolution 03/08, July 25, 2008, p. 2.

has to consider that detention can frequently have serious consequences for a detained migrant's personal integrity and his or her physical and mental health.

429. The organs of the Inter-American System have consistently and emphatically maintained that where infractions of immigration law are concerned, deprivation of liberty must be an exceptional measure.<sup>454</sup> Principle III (2) of the Inter-American Principles on the Protection of Persons Deprived of Liberty in the Americas provides that deprivation of liberty or detention must be an exceptional measure, and that

[t]he law shall ensure that personal liberty is the general rule in judicial and administrative procedures, and that preventive deprivation of liberty is applied as an exception, in accordance with international human rights instruments.

[...]

[p]reventive deprivation of liberty is a precautionary measure, not a punitive one, which shall additionally comply with the principles of legality, the presumption of innocence, need, and proportionality, to the extent strictly necessary in a democratic society.<sup>455</sup>

430. Ever since the case of *Rafael Ferrer-Mazorra et al. v. United States*, the Commission has maintained that the presumption must be one of liberty rather than detention, making immigration detention the exception, justified only if it is lawful and not arbitrary.<sup>456</sup> Here, the Commission wrote that

the domestic law upon which the petitioners' detention was based, as described above, is fundamentally antithetical to the protections prescribed under Articles I [right to life, liberty and personal security] and XXV [right to protection against arbitrary arrest] of the Declaration, because it fails to recognize any right to liberty on the part of the petitioners notwithstanding their physical presence within the State's

<sup>454</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 34. For a more in-depth examination of the principle of the exceptionality of deprivation of liberty under international human rights law, see: IACHR, Merits Report No. 86/09, Case 12.553, Jorge, José and Dante Peirano Basso (Eastern Republic of Uruguay), August 6, 2009, paragraphs 93 et seq.; IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraphs 216-219; I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraphs 124-144; I/A Court H.R., *Case of Vélez Loo v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 166. Other cases in which the Inter-American Court has elaborated upon the principle that any deprivation or restriction of the right to personal liberty must be exceptional in nature, see, *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, paragraph 98; *Case of Chaparro Álvarez y Lapo Iñiguez v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 93, and *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paragraph 129.

<sup>455</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Document approved by the Commission at its 131st session, held March 3 to 14, 2008, Principle III (2).

<sup>456</sup> IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraphs 216-219.

territory; indeed, it prescribes a presumption of detention rather than a presumption of liberty and is therefore incompatible with the object and purpose of Articles I and XXV of the Declaration, namely to secure the liberty of the individual save in exceptional circumstances justified by the state as lawful and non-arbitrary. Consequently the Commission considers that the treatment of the petitioners in this manner under domestic law is *per se* inconsistent with their right to liberty under Article I of the Declaration as well as the right not to be arbitrarily deprived of liberty under Article XXV of the Declaration.<sup>457</sup>

431. Similarly, in the case of *Vélez Loor v. Panama*, the Inter-American Court addressed the issue of immigration detention and wrote that the right to personal liberty presupposes that any restriction on that right must be exceptional.<sup>458</sup> The Court also underscored the point that immigration detention must never be punitive, and wrote that:

[i]n a democratic society punitive power is exercised only to the extent that is strictly necessary in order to protect fundamental legal rights from serious attacks that may impair or endanger them. The opposite would result in the abusive exercise of the punitive power of the State. Similarly, the Working Group on Arbitrary Detention sustained that right to personal liberty “requires that States should have recourse to deprivation of liberty only insofar as it is necessary to meet a pressing societal need, and in a manner proportionate to that need.”<sup>459</sup>

432. In its *Report on Immigration in the United States: Detention and Due Process*, the Commission held that

to be in compliance with the guarantees protected in Articles I [right to life, liberty and personal security] and XXV [right to protection against arbitrary arrest] of the American Declaration [analogous to Article 7 of the American Convention], member States must enact immigration laws and establish immigration policies that are premised on a presumption of liberty—the right of the immigrant to remain at liberty while his or her immigration proceedings are pending—and not on a presumption of detention. Detention is only permissible when a case-specific evaluation concludes that the measure is essential in order to serve a legitimate interest of the State and to ensure that the subject reports for the proceeding to determine his or her immigration status and possible removal. The argument that the person in question poses a threat to public safety is only acceptable in exceptional circumstances in which there are certain indicia of the risk that the person represents. The existence of a criminal record is not sufficient to justify the detention of an immigrant once he or she has served his or her criminal sentence. Whatever the case, the particular reasons why

<sup>457</sup> IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraph 219.

<sup>458</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 166.

<sup>459</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 170, citing *Case of Kimel*, supra note 43, paragraph 76; *Case of Usón Ramírez*, supra note 10, paragraph 73, and *Case of Tristán Donoso*, supra note 120, paragraph 119. United Nations, Working Group on Arbitrary Detention, Report of the Working Group, Civil and Political Rights, Including the Question of Torture and Detention, E/CN.4/2006/7, December 12, 2005, paragraph 63.

the immigrant is considered to pose a risk have to be explained. The arguments in support of the appropriateness of detention must be set out clearly in the corresponding decision.<sup>460</sup>

433. As for asylum seekers, the American Convention recognizes the right of any person to seek and receive asylum in a foreign territory.<sup>461</sup> Hence, when ordered for asylum seekers and refugees, detention is antithetical to the logic of protection that States must apply where such persons are concerned. Under international human rights law, detention or other restrictions on the freedom of movement of asylum seekers, refugees, persons seeking additional protection and stateless persons are permitted only as exceptions, and then only when lawful, non-arbitrary and subject to due process protections.<sup>462</sup> Elaborating, the Inter-American Commission has written that

[m]easures aimed at the automatic detention of asylum seekers are therefore impermissible under international refugee protections. They may also be considered arbitrary and, depending upon the characteristics of persons affected by any such restrictions, potentially discriminatory under international human rights law.<sup>463</sup>

434. In the Commission's view, the detention of asylum seekers, refugees, applicants for and beneficiaries of additional protection and stateless persons must be an exceptional measure of last resort, that the authorities can only use in the cases prescribed by domestic law, which must be compatible with the norms and principles of international human rights law. Because it is an exceptional measure, the authorities may only resort to it once they have determined that this measure meets the following tests: 1) necessity, 2) reasonability, and 3) proportionality. This means that immigration detention must be necessary in a given case, that its use must be reasonable, and that it has to be proportionate to achieve the ends being sought. If detention is deemed necessary, it must not be discriminatory and should be for as short a period of time as possible.<sup>464</sup>

## 2. Specific obligations that follow from the right to personal liberty

435. When addressing the scope of the right to personal liberty recognized in Article 7 of the American Convention, the Inter-American Court has held that the obligations that the right to personal liberty entail are of two, clearly distinguishable types: one general and one specific. The general rule, set forth in the first paragraph of Article 7, provides that

<sup>460</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 39, citing, IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraphs 219, 221 and 242; see also, IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Document approved by the Commission at its 131st session, held March 3 to 14, 2008, Principle III (2) (2008).

<sup>461</sup> American Convention on Human Rights, Article 22(7).

<sup>462</sup> IACHR, *Report on Terrorism and Human Rights*. October 22, 2002, paragraph 380.

<sup>463</sup> IACHR, *Report on Terrorism and Human Rights*. October 22, 2002, paragraph 380.

<sup>464</sup> UNHCR, *Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*. February 26, 1999, Guideline 3.

“[e]very person has the right to personal liberty and security;” the specific rule spells out the guarantees that protect the right not to be deprived of one’s liberty unlawfully (Art. 7(2)) or arbitrarily (Art. 7(3)), to be informed of the reasons for the detention and notified of the charges (Art. 7(4)), to be subject to judicial review for the deprivation of liberty (Art. 7(5)) and to contest the lawfulness of the detention (Art. 7(6)).<sup>465</sup> Here, the Court has held that any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily entails a violation of Article 7(1) thereof,<sup>466</sup> since failure to observe the guarantees that attend a person deprived of liberty results in a failure to protect that person’s right to liberty.

### **a. Right not to be deprived of liberty unlawfully**

436. Under international human rights law, and specifically with respect to the guarantees protected in Article 7(2) of the American Convention on Human Rights and in Article 16(4) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the right to personal liberty includes the right not to be deprived of liberty unlawfully, which means that for a detention or other deprivation of liberty to be justified it must be for the reasons and under the conditions previously established in the Constitution or the law. This right has been widely upheld in the case law of various international human rights bodies and by the organs of the Inter-American Human Rights System.

437. In the Commission’s view, to ensure the lawfulness of an immigration detention the grounds for and conditions for such detention must be clearly and exhaustively prescribed in existing laws.<sup>467</sup> Any ambiguity in the laws establishing the grounds and conditions under which immigration detention is permissible may lead to an arbitrary exercise of authority and would be particularly undesirable given the effects that the deprivation of liberty has on such rights as, *inter alia*, personal liberty, life, personal integrity, family life and so on. The Commission has written that

[t]he grounds and procedures by which non-nationals may be deprived of their liberty should define with sufficient detail the basis for such action, and the State should always bear the burden of justifying a detention. Moreover, authorities should have a very narrow and limited margin of discretion, and guarantees for the revision of the detention should be available at a minimum in reasonable intervals.<sup>468</sup>

<sup>465</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 125, citing I/A Court H.R., *Case of Chaparro Álvarez and Lapo Ñiquez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 51, and *Case of Fleury et al. v. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, paragraph 53.

<sup>466</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 125; and *Case of Vélez Loo v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 189.

<sup>467</sup> See in this regard, United Nations, Human Rights Council, Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*. Doc. A/HRC/10/21, February 16, 2009, paragraph 67.

<sup>468</sup> IACHR, *Report on Terrorism and Human Rights*. October 22, 2002, paragraph 379.

438. As to the prohibition of illegal detentions and arrests, the Inter-American Court has repeatedly held that “[a]ccording to the first of said provisions [Article 7(2) of the Convention] no one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by the law established pursuant thereto (material aspect), and with strict observance of the proceedings objectively defined therein (formal aspect).”<sup>469</sup> The Court has repeatedly held that the “limitation of physical liberty, even for a short period, including limitations merely for identification purposes, must “adhere strictly to the relevant provisions of the American Convention and domestic law, provided that the latter is compatible with the Convention. Therefore, in order to analyze the alleged violation of Article 7(2), the Court considers it necessary to refer to the domestic legal and constitutional provisions, so that any requirement established therein that is not complied with would make the deprivation of liberty unlawful and contrary to the American Convention.”<sup>470</sup>

439. The Inter-American Commission has continued the practice of analyzing cases of deprivation of liberty to ensure that any such deprivation was done in accordance with the rights recognized in Article 7, subparagraphs (2) and (3) of the American Convention. In doing so, it follows three steps. The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.<sup>471</sup>

### **b. The right not to be deprived of one’s liberty arbitrarily**

440. The guarantee that no one shall be arbitrarily detained is recognized in Article 7(3) of the American Convention and in Article 16(4) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On the subject of arbitrary detention, the Inter-American Court has held

<sup>469</sup> See, *inter alia*, I/A Court H.R., *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, paragraph 54; I/A Court H.R., *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, paragraph 105; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 57; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 98; *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 83; *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, paragraph 43, and *Case of Gangaram Panday v. Suriname*. Merits, Reparations and Costs. Judgment of January 21, 1994. Series C No. 16, paragraph 47.

<sup>470</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012, Series C No. 251, para. 126.

<sup>471</sup> See, *inter alia*, IACHR, Merits Report No. 53/01, *Ana, Beatriz and Celia González Pérez (Mexico)*, Case 11.565, April 4, 2001, paragraphs 23-27; IACHR, Merits Report No. 77/02, *Waldemar Gerónimo Pinheiro, José Víctor Dos Santos (Paraguay)*, Case 11.506, December 27, 2002, paragraphs 50 *et seq.*

that “no one may be subjected to detention or imprisonment for causes or by methods that, although classified as legal, could be regarded as incompatible with respect for fundamental human rights because, *inter alia*, they are unreasonable, unpredictable or disproportionate.”<sup>472</sup> Therefore, every detention must be carried out in accordance with the provisions of domestic law. However, it is also essential that the domestic laws, the applicable procedures, and the corresponding general principles—whether tacit or explicit—also be Convention compatible.<sup>473</sup> Further, the Inter-American Court has written that “the concept of ‘arbitrariness’ cannot be equated with that of ‘contrary to the law,’ but must be interpreted more broadly to include elements of irregularity, injustice and unpredictability.”<sup>474</sup>

441. When it turned its attention to the standards that immigration detention must adhere to lest it be deemed arbitrary, the Inter-American Court wrote that

without prejudice to the lawfulness of the detention, it is necessary to assess, in each case, the compatibility of the legislation with the Convention, understanding that such law and its application must respect the requirements listed below, in order to ensure that this measure is not arbitrary: i) that the purpose of the measures that deprive or restrict liberty is compatible with the Convention; ii) that the measures adopted are appropriate to achieve the sought-after purpose; iii) that they are necessary, in the sense that they are absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved, that would be as suitable to achieve the proposed objective. Hence, the Court has indicated that the right to personal liberty supposes that any limitation of this right must be exceptional; and, iv) that the measures are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought. Any restriction of liberty that is not based on a justification that will allow an assessment of whether it is adapted to the conditions set out above will be arbitrary and will thus violate Article 7(3) of the Convention.<sup>475</sup>

<sup>472</sup> See, I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 133; and *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 165.

<sup>473</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 133, citing I/A Court H.R., *Case of Chaparro Álvarez and Lapo Ñíñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 91, and *Case of Fleury et al. v. Haiti*. Merits and Reparations. Judgment of November 23, 2011, paragraph 58.

<sup>474</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 133, citing I/A Court H.R., *Case of Chaparro Álvarez and Lapo Ñíñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 92, and *Case of Fleury et al. v. Haiti*. Merits and Reparations. Judgment of November 23, 2011, paragraph 58. See also Human Rights Committee, *Case of Albert Womah Mukong v. Cameroon*, (458/1991), July 21, 1994, UN Doc. CCPR/C/51/D/458/1991, paragraph 9.8.

<sup>475</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 166.

442. Addressing the issue of the legitimate ends that immigration detention must serve, the Commission has observed that immigration detention is only permissible when a case-specific evaluation concludes that the measure is essential in order to serve a legitimate interest of the State and to ensure that the subject reports for the proceeding to determine his or her immigration status or to guarantee enforcement of a deportation order.<sup>476</sup> In the Commission's view, for immigration detention to be permissible, there must be sufficient indicia to persuade an objective observer that the migrant will not report for the administrative immigration proceeding or will take flight to avoid his or her deportation. In the end, the competent authority has an obligation to make a case-by-case determination working from the premise that the migrant will appear for the proceedings; immigration detention can only be ordered on the basis of objective criteria that fit a given case.

443. On the matter of immigration detention, the Court has relied on its own case law and held that when the decision to detain is made, the competent authorities must give a reasoned and objective legal explanation of why the measure is appropriate and necessary. Merely listing all the legal norms that might apply does not satisfy the requirement that sufficient cause be given so as to be able to determine whether the measure is compatible with the American Convention.<sup>477</sup> The Court has held that rulings by domestic bodies that can affect human rights, such as the right to personal liberty, are arbitrary if not properly substantiated.<sup>478</sup>

444. Furthermore, immigration detention may be deemed arbitrary if the law does not prescribe a maximum period of detention; custody may in no case be unlimited or of excessive length.<sup>479</sup> Here, the Court has written that when immigration detention is unduly protracted it becomes a punitive measure.<sup>480</sup>

445. As to whether immigration detention is a proportionate measure, the Commission deems that the relationship between the measure and the end sought must be reasonable, such that the sacrifice inherent in the restriction of the right to liberty is

<sup>476</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 39, citing IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraph 242.

<sup>477</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 116, citing I/A Court H.R., *Case of García Asto and Ramírez Rojas*, supra note 99, paragraph 128 and 143; *Case of Barreto Leiva*, supra note 96, paragraph 116, and *Case of Yvon Neptune*, supra note 97, paragraph 98.

<sup>478</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 23 de November de 2010. Series C No. 218, paragraph 116, citing I/A Court H.R., *Case of Yatama*, supra note 38, paragraph 152; *Case of Escher et al.*, supra note 110, paragraph 208, and *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, paragraph 153.

<sup>479</sup> United Nations, Working Group on Arbitrary Detention, Report of the Group, Annex II, Deliberation No. 5: Situation regarding immigrants and asylum-seekers, 1999, E/CN.4/2000/4, Principle 7.

<sup>480</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 117.

not exaggerated or excessive compared to the advantages obtained from the restriction. The proportionality requirement also means that immigration detention must cease when its duration has exceeded what is reasonable.

446. In conclusion, the Commission believes that for immigration detention not to be arbitrary, state authorities are required to do a case-by-case analysis, after which the State must demonstrate that there are no less intrusive means to achieve the same ends and the immigration detention does fulfill the requirements of: i) pursuing a legitimate end or objective; ii) reasonability; iii) necessity; iv) proportionality, and v) non-discrimination.

### ***c. Right to be advised of the reasons for one's arrest and the charges***

447. Under Article 7(4) of the American Convention on Human Rights, and as the Commission has previously written, the State has an obligation to advise a detainee of the grounds or reasons for his or her detention.<sup>481</sup> Regarding Article 7(4) of the Convention, the Court has considered that “the facts must be analyzed under domestic law and the provisions of the Convention, because information on the ‘reasons and grounds’ for the detention must be provided ‘when this occurs’ and because the right contained in this article entails two obligations: (a) oral or written information on the reasons for the detention, and (b) notification, in writing, of the charges.”<sup>482</sup>

448. The obligation to inform a detainee of the motives or reasons for his or her arrest must be provided at the very moment of the arrest, as a way to prevent an arrest from becoming arbitrary and to guarantee the individual's right of defense. This right is closely associated with the right to challenge the lawfulness of an arrest, recognized in Article 7(6) of the American Convention; once one knows the motives or reasons for one's arrest, one can more effectively avail oneself of the remedies that the State's domestic law affords to challenge the legality of the arrest. On the subject of the right to know the reasons for one's arrest, the Inter-American Court has written that

The information about the motives and reasons for the arrest necessarily supposes, first, providing information on the arrest itself. The detained person must understand that he is being detained. Second, the agent who carries out the arrest must inform him in simple language, free of technical terms, about the essential legal grounds and facts on which the arrest is based. Article 7(4) of the Convention is not satisfied by the mere mention of the legal grounds.<sup>483</sup>

<sup>481</sup> IACHR, Merits Report No. 49/99, *Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz* (Mexico), Case 11.610, April 13, 1999, para. 39; and IACHR, Merits Report No. 84/09, Case 12.525, *Nelson Iván Serrano Sáenz* (Ecuador), August 6, 2009, paragraphs 46-47.

<sup>482</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 132. See also, U.N., Body of Principles for the Protection of All Persons under Any Form of Detention or Prison, adopted by the General Assembly in its Resolution 43/173, of 9 December 1988, Principle 10.

<sup>483</sup> I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 71.

449. As to the scope and content of this obligation in the context of immigration detention, the Commission believes that States must take the measures necessary to ensure that detained migrants have sufficient information regarding the nature of their detention, the reasons for it, the procedural guarantees that protect them, and the remedies available to appeal or challenge a detention. Since in some cases migrants do not speak the language of the State in which they are detained, it is vital that they fully comprehend the information concerning the motives or reasons for their detention, which means the information must be in a language they understand;<sup>484</sup> their level of education must also be considered as must the fact that they may require legal counsel to fully understand their situation.

450. The Commission concurs with the United Nations Working Group on Arbitrary Detention, to the effect that notification of the custodial measure must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the measure; it shall set out the conditions under which the asylum-seeker or immigrant must be able to apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned.<sup>485</sup>

***d. Right to judicial control of a detention and the reasonableness of the period of detention***

451. Where immigration detention is concerned, the right recognized in Article 7(5) of the American Convention means that States parties have an obligation to ensure that any migrant detained is “brought promptly” before a judge or other officer authorized by law to exercise judicial control over the detention. Here the Inter-American Court has held that to satisfy the requirement spelled out in Article 7(5), i.e., “being brought” without delay before a judge or other officer authorized by law to carry out the judicial functions, the competent authority must hear the detained person personally and evaluate all the explanations that the latter provides, in order to decide whether to proceed to release him or to maintain the deprivation of liberty.<sup>486</sup>

452. Citing the *pro persona* principle, the Inter-American Court has written that the guarantee of judicial control of an arrest or detention requires that whenever a person is arrested or detained owing to his or her immigration status, the proceedings must be conducted in accordance with the principles of judicial control and procedural immediacy. Elaborating, the Court has held that in order to ensure that it constitutes an effective

<sup>484</sup> See, in this regard, Article 16(5) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>485</sup> United Nations Working Group on Arbitrary Detention, Deliberation No. 5: Situation regarding immigrants and asylum seekers. E/CN.4/2000/4, December 28, 1999, Principle 8. Available at: [access-dds-ny.un.org/doc/UNDOC/GEN/G99/165/70/PDF/G9916570.pdf?OpenElement](https://www.unhcr.org/refworld/doc/undoc/gen/g99/165/70/pdf/g9916570.pdf?OpenElement) [Consulted on December 30, 2013].

<sup>486</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 109.

means to protect against unlawful and arbitrary detention, the judicial review must be carried out promptly and in such a way that it guarantees compliance with the law and ensures the detainee's effective enjoyment of his or her rights, taking into account his or her special vulnerability.<sup>487</sup> The Court has also written that

in order to satisfy the guarantee established in Article 7(5) of the Convention in relation to migrants, the domestic legislation must ensure that the officer authorized by law to carry out judicial functions fulfills the requirements of impartiality and independence that must be present in any body authorized to determine the rights and obligations of persons. In this respect, the Court has already established that said requirements must not only be met strictly by judicial bodies, but that the provisions of Article 8(1) of the Convention apply also to the decisions of administrative bodies. Since, in relation to this guarantee, the officer has the task of preventing and ending unlawful and arbitrary detentions, it is essential that the officer has the authority to order the release of the person if his or her detention is illegal or arbitrary.<sup>488</sup>

453. The Commission has held that the procedures for reviewing a detention must observe the guarantees of due process. In the case of immigration detention, this means, *inter alia*, the right of the migrants to be heard promptly by a judge or other official authorized by law to exercise judicial functions, the right to present evidence and refute the State's arguments, and to be represented by counsel.<sup>489</sup> The judge or official authorized by law to exercise judicial functions shall issue a prompt ruling on the lawfulness of the detention<sup>490</sup> and, if deemed appropriate, shall order that the immigrant or asylum seeker be released,<sup>491</sup> without prejudice to the continuation of the proceedings. In the Commission's view, this provision imposes time limits on the duration of immigration detention and, by extension, on the State's authority to claim that the purposes of an immigration-related administrative proceeding are being served by immigration detention.

<sup>487</sup> See, *inter alia*, I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 136; and I/A Court H.R., *Case of Vélez Looz v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 107.

<sup>488</sup> See, I/A Court H.R., *Case of Vélez Looz v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 108. See also I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 137.

<sup>489</sup> See, IACHR, Merits Report No. 49/99, Case 11,610, *Loren Laroye Riebe Star, Jorge Baron Guttlein and Rodolfo Izal Elorz (Mexico)*, April 13, 1999, paragraph. 40; IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraph 213. See also, Human Rights Committee, *Torres v. Finland*, Communication No. 291/1988, CCPR/C/38/D/291/1988, April 5, 1990), paragraph 7.2.

<sup>490</sup> See in this regard, IACHR, Merits Report No.49/99, Case 11.610, *Loren Laroye Riebe Star, Jorge Baron Guttlein and Rodolfo Izal Elorz (Mexico)*, April 13, 1999, paragraph 40.

<sup>491</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. Document approved by the Commission at its 131st regular session, held March 3 to 14, 2008, Principle V. See also, United Nations Working Group on Arbitrary Detention, *Deliberation No. 5: Situation regarding immigrants and asylum-seekers*. E/CN.4/2000/4, December 28, 1999, Principles 3 and 8.

454. Because immigration detention is an exceptional measure, the Commission must point out that the duration of the detention must be the “minimum necessary period”.<sup>492</sup> The Commission concurs with the concern expressed by the Committee against Torture (hereinafter “the CAT”) over the failure to limit the length of administrative detention of foreign nationals, which it said should in no circumstances be indefinite.<sup>493</sup> Because of the effects that deprivation of liberty can have on detainees’ personal integrity, the Commission believes that an excessively prolonged or indefinite detention affects personal integrity and may even constitute cruel, inhuman or degrading treatment. The right to judicial control of detention means that the State has an obligation to periodically review a detention to determine whether the grounds for keeping a person in custody still exist.<sup>494</sup>

### **e. Right to challenge the lawfulness of a detention**

455. As for the right to challenge or appeal the lawfulness of a detention, the Commission has written that the fact that a foreign national is detained and deported without being guaranteed his or her right of recourse to a competent court in order for that court to decide without delay on the lawfulness of the detention is a violation of the right to personal liberty.<sup>495</sup> The Court has written that this right, recognized in Article 7(6) of the American Convention, has its own legal content, which consists of the protection of personal or physical freedom, by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the lawfulness of the detention may be determined and, if appropriate, the detainee’s release ordered.<sup>496</sup>

456. Elaborating, the Court has held that Article 7(6) is clear when it provides that the authority that must decide on the lawfulness of the “arrest or detention” must be “a judge or court.” The Convention is stating that the control of the lawfulness of a detention must be judicial in nature. Since, as a general rule, immigration detention is ordered by administrative or police authorities, the Court has held that review by a judge or court is a condition *sine qua non* to guarantee proper control and scrutiny of administrative acts that affect fundamental rights.<sup>497</sup>

<sup>492</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. Document approved by the Commission at its 131st regular session, held March 3 to 14, 2008, Principle III.1.

<sup>493</sup> See CAT, Conclusions and recommendations of the Committee against Torture: Costa Rica. CAT/C/CRI/CO/2, July 7, 2008, paragraph 10; CAT, *Concluding observations of the Committee against Torture: Sweden*. CAT/C/SWE/CO/5, June 4, 2008, paragraph 12.

<sup>494</sup> See, Human Rights Committee, *A. v. Australia*, Communication No. 560/1993, CCPR/C/59/D/560/1993, April 30, 1997, paragraph 9.4.

<sup>495</sup> IACHR, Merits Report No. 49/99, *Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz* (Mexico), Case 11.610, April 13, 1999, paragraph 40.

<sup>496</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 124.

<sup>497</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraphs 126-127.

457. As the Commission has observed, “effective judicial oversight of the detention or arrest of a person imposes two fundamental— independent and mutually complementary— obligations on the part of the State: the obligation to bring any detained person promptly before a judge or other officer authorized by law to exercise judicial power (Article 7.5), and the obligation to allow anyone who is deprived of his liberty immediate recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention; that is to say, habeas corpus or personal appearance of the detainee (Article 7.6). Habeas corpus ensures that the detainee is not exclusively at the mercy of the detaining authority, and this protection must always be accessible.”<sup>498</sup>

458. In summary, based on the case law and decisions of the organs of the Inter-American system concerning the right to personal liberty, the following standards apply in cases of immigration detention: i) immigration detention must be the exception and not the rule; ii) therefore, the fact that an immigrant’s status is irregular is not, by itself, sufficient grounds to order his or her immigration detention on the assumption that the person will not comply with the legitimate ends that an immigration proceeding serves; iii) the legitimate and permissible ends of immigration detention must be procedural in nature, such as ensuring the immigrant’s appearance for the proceeding at which his or her immigration status will be determined or to ensure enforcement of a deportation order; iv) even when there are procedural ends to be served, immigration detention must be absolutely necessary and proportional, in the sense that there must no less onerous means of achieving the procedural end being sought and it must not disproportionately affect the right of personal liberty; v) all the foregoing elements require case-by-case motives based on fact not assumptions; vi) immigration detention must be ordered for the time strictly necessary to achieve the procedural end, which also means periodic review of the factors that prompted the detention; and vii) immigration detention for an unreasonable period of time is arbitrary and abusive.

#### **f. Right to consular assistance**

459. In addition to the specific obligations that Article 7 of the American Convention spells out in connection with the right to personal liberty, detained migrants are entitled to be informed of their right to consular assistance,<sup>499</sup> a right that also implies the ability to communicate with the consular or diplomatic authorities of the country of which they are nationals, if they so desire. This right is based on the obligations arising out of the international *corpus juris*, particularly Article 36(1)(b) of the Vienna Convention on Consular Relations and Article 16(7) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>498</sup> IACHR, *Report on the human rights of persons deprived of liberty in the Americas*. OEA/Ser.L/V/II. Doc. 64, adopted on December 31, 2011, paragraph 119.

<sup>499</sup> I/A Court H.R. *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16..

460. In referring to this right, Article 16(7) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that when a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner, the consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor. This right also includes the right of the interested party to communicate with those authorities without delay.

461. On this subject, the Inter-American Court of Human Rights has written that, as provided in Article 36 of the Vienna Convention on Consular Relations, in administrative and criminal cases the authorities of a receiving State shall, without delay, advise nationals of a sending State of their right to communicate with their consular agent.<sup>500</sup> This right is of particular importance in the case of migrants who have been detained either for criminal or immigration-related reasons, because consular assistance is for them a means of defense, which can in some cases be decisive in ensuring that their other procedural rights are observed. The Court has held that:

Aliens detained in a social and juridical milieu different from their own, and often in a language they do not know, experience a condition of particular vulnerability, which the right to information on consular assistance, inserted into the conceptual universe of human rights, seeks to remedy in such a way that the detained alien may enjoy a true opportunity for justice, and the benefit of the due process of law equal to those who do not have those disadvantages, carried out with respect for the dignity of the person.<sup>501</sup>

462. In the Court's interpretation, the right to consular protection materializes in four different forms:

- a) consular information, understood as "[t]he right of a national of the sending State who is arrested or committed to prison or to custody pending trial or is detained in any other manner; to be informed "without delay" that he has the following rights: the right to have the consular post informed, and the right to have any communication addressed to the consular post forwarded without delay (Article 36(1)(b) of the Vienna Convention on Consular Relations);
- b) the right to consular notification, understood as "the right of the national of the sending State to request and obtain that the competent authorities of the host

<sup>500</sup> I/A Court H.R. *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16.

<sup>501</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paragraph 165; I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 152. See also, *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99, October 1, 1999. Series A No. 16, paragraph 119, and *Juridical Status and Rights of Undocumented Migrants*, September 17, 2003, Serie A, n°. 18, para. 121.

State notify the consular post of the sending State, without delay, of his arrest, imprisonment, custody or detention”, which must be carried out in conjunction with its obligations under Article 7(4) of the American Convention;

- c) the right of consular assistance, understood as “[t]he right of the consular authorities of the sending State to provide assistance to their nationals (articles 5 and 36(1)(c) of the Vienna Convention on Consular Relations)”, and
- d) the right of consular communication, understood as “[t]he right of the consular authorities and nationals of the sending State to communicate with each other (articles 5, 36(1)(a) and 36(1)(c) of the Vienna Convention on Consular Relations).” To ensure that he has an effective defense, the Court’s interpretation is that notification must be made at the time the accused is deprived of his freedom, or at least before he makes his first statement before the authorities.<sup>502</sup>

463. The Inter-American Court has concluded that the failure to inform an immigrant of his right to communicate with the consulate of his country of origin and the lack of effective access to consular assistance as a component of the right to defense and due process, are contrary to articles 7(4), 8(1), and 8(2)(d) of the American Convention, in relation to Article 1(1) thereof.<sup>503</sup>

464. In multiple cases, the Commission has concluded that it was appropriate to examine whether a State party to the Vienna Convention on Consular Relations has complied with the requirements of that treaty’s consular notification article, as compliance with that article is essential to guaranteeing the rights to personal liberty and security and the rights to due process and a fair trial in the case of foreign nationals deprived of liberty, arrested, committed to prison or custody pending trial or detained in any other way by that State, as in the case of an individual being held in immigration detention.<sup>504</sup> In particular, the Commission has found that it could consider the extent to which a state party had observed the requirements of Article 36 of the Vienna Convention on Consular Relations in order to evaluate that state’s observance of a foreign national’s due process rights under Articles XVIII and XXVI of the American Declaration.<sup>505</sup>

465. The Commission must emphasize the fact that the consular authorities must be contacted only when so requested by the detained immigrant. The United Nations Special Rapporteur on the Human Rights of Migrants has written that “[i]n particular, asylum-

<sup>502</sup> I/A Court H.R. *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paragraphs

<sup>503</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 160.

<sup>504</sup> IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116, October 22, 2002, paragraph 382.

<sup>505</sup> See, *inter alia*, IACHR, Report No.90/09, Case 12.644 – Medellín, Ramírez Cárdenas and García Leal (United States), August 7, 2009, paragraphs. 97 and 125; IACHR, Report No. 91/05, Case 12.421 – Javier Suárez Medina (United States), October 24, 2005, paragraphs 82-87; IACHR, Report No. 1/05, Case 12.430 – Roberto Moreno Ramos (United States), January 28, 2005, paragraph 72; and IACHR, Admissibility and Merits Report No. 99/03, Case 11.331 – César Fierro (United States), December 29, 2003, paragraph 37.

seekers should not be brought to the attention of their consular authorities without their knowledge and consent.”<sup>506</sup>

**g. Right to compensation as a consequence of unlawful detention or imprisonment**

466. Under Article 16(9) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

**C. Immigration detention and immigration-related administrative proceedings under Mexican law**

467. Article 11 of the Constitution of the United Mexican States recognizes the right of every person to enter, cross and leave Mexican territory. Exercise of this right may only be limited in the cases expressly stipulated in Article 11 of the Constitution, which reads as follows:

Every person has the right to enter and leave the Republic, to travel through its territory and to change residence without the need for a letter of safe passage, passport, safe-conduct or other similar requirement. In cases of civil or criminal liability, exercise of this right shall be subject to the powers of the judicial authority; in the case of the limitations imposed by laws on emigration, immigration and the general health and welfare of the Republic or laws on undesirable aliens residing in the country, exercise of this right shall be subject to the powers of the administrative authority.

In a case of political persecution, any person has the right to seek political asylum, which will be granted on humanitarian grounds. The law shall regulate the cases in which political asylum should be granted as well as the exceptions.<sup>507</sup>

468. Article 16 of the Mexican Constitution provides that no one shall have the privacy of his person, family, domicile, papers or possessions invaded, except by virtue of a written order from the competent authority stating the legal grounds and justification for the action taken.

469. The Mexican Constitution makes no express mention of the power of the competent authorities to order the arrest a migrant by virtue of his or her irregular situation. Apart from detention on criminal grounds, the only provision of the Constitution under which a person may be deprived of his or her liberty for administrative infractions

<sup>506</sup> United Nations General Assembly – Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants*, François Crépeau. Twentieth Session. April 2, 2012, paragraph 20.

<sup>507</sup> United Mexican States, Political Constitution of the United Mexican States. Published in the Official Gazette of the Federation on February 5, 1917, most recent amendment published in the Official Gazette of the Federation, February 9, 2012, Article 11.

is in Article 21, which states that the punishment for violations of governmental and police regulations is the purview of the administrative authority, which may order, among other measures, the accused offender's arrest. However, that person cannot be held for more than 36 hours. The guarantees of due process must be observed and a judge must determine the offense that the person is alleged to have committed.

470. Under Article 11 of the Constitution, exercise of the right to enter, travel through and leave Mexican territory is subject to the limitations that immigration law imposes. The centerpiece of immigration law in Mexico is the 2011 Immigration Act. Under that law, the INM's functions include immigration control, verification and review. Specifically, the Immigration Act defines these terms as follows:

- ◆ Immigration control consists of the measures for reviewing the documentation of persons who seek to enter or leave the country, and inspection of the modes of transportation used for those purposes. In such actions, the Federal Police may assist and coordinate with the INM.<sup>508</sup>
- ◆ Immigration verifications are the visits that the INM conducts to confirm that foreign nationals within Mexican territory are in compliance with the obligations set forth in the Immigration Act and its Regulations.<sup>509</sup>
- ◆ Immigration reviews are those measures that the INM may take to establish the immigration status of aliens within the national territory, in places other than those used for international travel by persons.<sup>510</sup>

471. Under the Immigration Act, the INM may perform its immigration control, verification and review functions in places other than those used for international maritime and airborne travel. While the law allows other authorities to collaborate with the INM in the performance of those functions, the law does not allow such authorities to perform those functions independently.<sup>511</sup> In performing immigration control measures, the Federal Police may act to assist and coordinate with the INM.<sup>512</sup>

472. The Immigration Act also makes provision for immigration detention in the case of migrants in an irregular situation, in the form of two measures: "presentation" and "holding" [*alojamiento*]. The Immigration Act provides that until the immigration status of a migrant in an irregular situation and who cannot show proof of his or her immigration status can be determined for purposes of regularizing his or her presence within the national territory or arranging for his or her assisted return, said migrant's presentation (read 'detention') in immigration stations or places outfitted for that purpose shall be

<sup>508</sup> United Mexican States, *Immigration Act*, Art. 81.

<sup>509</sup> United Mexican States, *Immigration Act*, Art. 92.

<sup>510</sup> United Mexican States, *Immigration Act*, Art. 97.

<sup>511</sup> United Mexican States, *Immigration Act*, Art. 96.

<sup>512</sup> United Mexican States, *Immigration Act*, art. 81. Similarly, paragraph XXXVIII of Article 8 of the Federal Police Act provides that under the applicable law, the Federal Police are authorized to perform immigration-related functions in coordination with the INM.

deemed a matter of public order.<sup>513</sup> The INM is authorized to ‘present’ at immigration stations or places outfitted for that purpose, those foreign nationals whose ‘presentation’ is required under the provisions of the Immigration Act, and whose human rights shall be respected at all times.<sup>514</sup> The law provides that “presentation” shall be understood as the measure through which the INM orders that a foreign national who cannot show proof of his or her immigration status, be temporarily held until such time as his or her presence within the national territory is regularized or his or her assisted return is arranged.<sup>515</sup>

473. Article 100 of the Immigration Act provides that when a foreign national is handed over to the Institute as a result of immigration verification or review measures and the presence of any of the conditions provided for in Article 144 of the Act has been established, the corresponding order of presentation shall be issued within twenty-four hours of the migrant being handed over to the INM. The conditions stipulated in Article 144 of the Act are as follows:

- I. The individual in question has entered the country without the necessary documentation or at a place that is not an authorized international port of entry or departure.
- II. Having been deported in the past, the individual in question re-enters the national territory without having obtained a re-admittance agreement, even though the person in question may have obtained some residency or visa status;
- III. The person in question falsely represents himself or herself as a Mexican citizen;
- IV. The person in question is the subject of a criminal case or has been convicted of a serious crime under the national criminal laws or the provisions of international treaties and conventions to which the Mexican State is party, or whose record in Mexico or abroad could compromise national security or public safety;
- V. The person in question provides false information or presents the Institute with false or altered documentation or documentation that, although legitimate, has been fraudulently obtained, and
- VI. The individual in question has failed to abide by an Institute order for said individual to leave the country.

474. Under Article 68 of the Immigration Act, a record must be made of the presentation of migrants in an irregular situation, and said presentation shall be for no longer than 36 hours, counted from the time the person is turned over to the INM. Article 69 of the Immigration Act lists the rights that attend migrants in an irregular situation at the time of their presentation. That article reads as follows:

<sup>513</sup> United Mexican States, *Immigration Act*, Art. 99.

<sup>514</sup> United Mexican States, *Immigration Act*, Art. 20 paragraph VII.

<sup>515</sup> United Mexican States, *Immigration Act*, Art. 3 paragraph XX and Art. 99.

At the time of their presentation, immigrants whose immigration status in the country is irregular shall have the right to be advised by the authorities of the following:

- I. Their rights and guarantees under the applicable law and under the international treaties and conventions to which the Mexican State is party;
- II. The reason for their presentation;
- III. The established entry requirements, and their rights and obligations under the applicable law;
- IV. The immigration authority is to immediately notify the consulate of the country that the immigrant claims as his or her country of nationality, except in the case of an alien who may be claiming political asylum or seeking recognition of refugee status;
- V. The possibility of regularizing his or her immigration status in accordance with the provisions of articles 132, 133 and 134 of this Act, and
- VI. The possibility of posting bail under Article 102 of this Act.

475. Once they are in the hands of the INM, migrants in an irregular situation and facing no legal restriction issued by a competent authority to prevent them from leaving the country, may choose between two types of immigration-related administrative proceedings: i) the immigration-related administrative proceeding for assisted return<sup>516</sup>, or ii) the immigration-related administrative proceeding for deportation.<sup>517</sup> In both cases, the foreign nationals shall remain ‘presented’ in the immigration station,<sup>518</sup> during which time the provisions of Article 111 of the Immigration Action shall be observed. Article 111 provides that as a general rule, the INM has 15 business days, as of the date of a migrant’s presentation, to resolve the matter of the immigration status of migrants being ‘held’ (read detained) in immigration stations. Specifically, Article 111 of the Immigration Act provides that:

The Institute shall determine the immigration status of ‘presented’ foreign nationals within no more than 15 working days, counted from the date of their presentation.

A migrant in an irregular situation may be held in immigration stations for longer than the 15 working days referred to above only when any of the following conditions is present:

- I. No reliable information exists concerning his or her identity and/or nationality, or difficulties have been encountered in obtaining his or her respective identification papers and travel documents;
- II. The consulates or consular sections of the country of origin or residence need more time to issue the corresponding identification and travel documents;

<sup>516</sup> United Mexican States, *Immigration Act*, Art. 118.

<sup>517</sup> United Mexican States, *Immigration Act*, Art. 122.

<sup>518</sup> United Mexican States, *Immigration Act*, arts. 121 and 118.

- III. Some impediment exists that prevents the migrant from traveling through third countries or some obstacle exists to arranging the migrant's itinerary to his or her final destination;
- IV. Some physical or mental illness or disability has been confirmed that prevents the presented migrant from traveling, and
- V. An administrative or judicial remedy has been filed in which questions pertaining to the migrant's immigration status in the national territory are claimed, or a petition has been filed seeking *amparo* proceedings and the competent authority has expressly prohibited the removal of the foreign national or his or her departure from the country.

In the situations posited in paragraphs I, II, III and IV of this article, the foreign national may be held in immigration stations for no longer than 60 working days.

Once those 60 days have passed, the Institute shall grant the immigrant a visitor permit, with permission to receive a remuneration in the country for the length of time for which said visitor permit is granted. Once that time period has elapsed, the Institute shall settle the question of the foreign national's immigration status.

476. In the situations posited in paragraphs I, II, III and IV, immigration detention may not exceed 60 working days; once that period has elapsed the INM will grant a visitor permit, with permission to receive a remuneration in the country for the length of time for which said visitor permit is granted. Once the period has elapsed, the INM shall settle the question of the foreign national's immigration status. However, in the case of paragraph V of Article 111, the Immigration Act does not establish any limit on the duration of immigration detention.

477. The rights that attend detained migrants from the time they enter an immigration station are spelled out in Article 109 of the Immigration Act, which reads as follows:

All persons presented shall have the following rights from the time they are admitted to the immigration station:

- I. The right to know the location of the immigration station where they are being held, the applicable rules and the services available to them;
- II. The right to be informed of the reasons why they were sent to the immigration station, the immigration procedure, their right to request recognition of refugee status or to be declared a stateless person, their right to have their presence within the national territory regularized under articles 132, 133 and 134 of this law; where appropriate, their right to request voluntary repatriation; and their right to file an effective remedy to challenge the Institute's decisions;
- III. Their right to receive protection from their consular representation and communicate with it. If the foreign national wishes to receive the protection of his or her consular representation, he or she shall be provided the means to communicate with the consular representation without delay;

- IV. Their right to receive in writing a list of their rights and obligations and the offices where they can file their complaints;
- V. Their right to have the proceedings conducted in the presence of a competent authority and their right to receive legal assistance, introduce evidence and make the arguments in defense of their rights, and have access to the records in the immigration-related administrative case file;
- VI. If the foreign national does not speak or understand Spanish, he or she shall have the right to a translator;
- VII. The right to have access to a telephone;
- VIII. During his or her presence in the immigration station, the right to a decent living space, food, basic necessities for personal hygiene, and medical care when necessary;
- IX. The right to receive visits from family members and his or her legal representative;
- X. The right to participate in any recreational, educational and cultural activities organized within the facilities;
- XI. The right not to be the victims of discrimination by the authorities based on their ethnic or national origin, sex, gender, age, disability, social or economic condition, marital status or any other circumstance whose purpose is to nullify recognition of or impair exercise of their rights and real equality of opportunity;
- XII. The right to receive decent and humane treatment during their stay in the immigration station;
- XIII. Immigration stations shall have separate areas for men and women, while at all times ensuring the right to preservation of the family unit, except in cases in which separation is deemed to be in the best interests of the child or adolescent;
- XIV. Immigration stations shall have separate areas for unaccompanied immigrant children and adolescents where they will be held until such time as they are sent to institutions where they can be provided proper care, and
- XV. Such other rights as are established in the general provisions that the Secretariat issues.

478. Furthermore, Article 70 of the Immigration Act refers to the general guarantees of due process to which every migrant is entitled in immigration-related administrative proceedings, whether for assisted return or for deportation. Article 70 reads as follows:

Every migrant has the right to be assisted or legally represented by the person that he or she designates during the immigration-related administrative proceeding. The Institute may enter into the necessary cooperative agreements and shall make it possible for civil society organizations to offer legal advisory and representation services to migrants whose immigrant status is irregular and with respect to whom an immigration-related administrative proceeding has been instituted.

During the immigration-related administrative proceeding, migrants shall have the right to due process, which is the right to have the proceeding conducted in the presence of a competent authority; the right to introduce evidence and argue in defense of one's rights, to have access to the records in the immigration-related administrative case file; to have a translator or interpreter to make communication possible when the immigrant does not speak or understand Spanish, and the right to have the authority's decisions duly substantiated and reasoned.

479. The specific procedural guarantees afforded in an immigration proceeding for assisted return are set forth in articles 119 and 120 of the Immigration Act, which provide that:

Article 119. The assisted return of an immigrant over the age of 18 whose status within Mexican territory is irregular shall be done at the express request of the foreign national in question. During the respective proceeding full observance of his or her human rights shall be guaranteed. Prior to the assisted return, the foreign national shall have the right to:

- I. Be informed of his or her right to receive protection from his or her consular post and to communicate with same. In the event the foreign national wishes to have the protection of his or her consular post, he or she shall be afforded the means to communicate with the consular post without delay;
- II. Receive information concerning the possibility of remaining in the country with one's status regularized, and the procedure for assisted return, including the available legal remedies;
- III. Notify his or her family members, legal representative or person of trust, whether in the national territory or elsewhere, and be afforded the means to contact them without delay;
- IV. Have a translator or interpreter to facilitate communication should the individual in question neither speak nor understand Spanish;
- V. Have the proceeding conducted in the presence of a competent authority and the right to receive legal advisory services, introduce evidence, make legal arguments in his or her defense, and have access to the records in the immigration-related administrative case file;
- VI. The Institute shall determine beforehand that the foreign national is a citizen or resident of the receiving country;
- VII. Be moved together with his or her personal effects, and
- VIII. In the event that the foreign national is refused by the country of destination, he or she will be returned to the territory of the United Mexican States for the INM to determine his or her immigration status.

Article 120. In the assisted return proceeding, priority shall be given to the principles of preservation of the family unit and special treatment for persons who are vulnerable, endeavoring to ensure that members of the same family travel together.

In the case of unaccompanied children and adolescents, pregnant women, victims of or witnesses to crimes committed on national territory, persons with disabilities and the elderly, the assisted return procedure shall be applied with the involvement of consular or immigration officials of the receiving country. The following factors should also be considered:

- I. The best interests of these individuals and what will best guarantee their utmost protection, and
- II. Their vulnerability with a view to determine how and under what terms they will be returned to their country of origin.

Unaccompanied children and adolescents and victims of or witnesses to crimes committed on the national territory shall not be deported; if they so desire and if it is in their best interests to ensure that they are better protected, they may be subjected to the assisted return proceeding or the proceeding through which their immigration status is regularized.

480. The specific procedural guarantees in deportation proceedings are ensured under Article 122 of the Immigration Act, which provides that

Article 122. In a deportation proceeding, the foreign national shall have the right to:

- I. Be notified of the start of the immigration-related administrative proceeding;
- II. Receive protection from his or her consular post and communicate with it, except when the foreign national is seeking political asylum or recognition of refugee status. Should the foreign national wish to receive protection from his or her consular post, he or she shall be afforded the means to communicate with it without delay.
- III. Notify family members or trusted persons, within the national territory or elsewhere, and be afforded the means to communicate with them without delay;
- IV. Receive information concerning the deportation proceeding and his or her right to file an effective remedy to challenge the Institute's decisions;
- V. Have a translator or interpreter to assist with communication in the event the foreign national does not speak or understand Spanish, and
- VI. Receive legal counsel.

481. While the Immigration Act does not include any express mention of alternatives to detention, articles 101 and 102 establish a number of conditions under which a foreign national may be placed in what amounts to an alternative to detention, once the presentation decision has been issued and for as long as the decision concerning his or her immigration status is pending, in the cases and subject to the conditions specified in

the Regulations.<sup>519</sup> The measures provided for in Article 101 of the Immigration Act are as follows: i) to be handed over to the custody of the diplomatic representation of the country of which the individual is a national; ii) to be handed over to a legal entity or institution known to be trustworthy and somehow involved in the protection of human rights, which must also undertake the obligation to ensure that the foreign national will remain in a domicile located within the area in which the immigration station is located, so that the immigration-related administrative proceedings may go forward. For its part, Article 102 reads as follows:

Article 102. Until a final decision is rendered, a foreign national facing an administrative proceeding to regularize his or her presence in the country may:

- a) Post bail that is sufficient and to the authority's satisfaction;
- b) Establish domicile or a place in which he or she will remain;
- c) Not leave said domicile without prior authorization from the authority, and
- d) File a request with a waiver signed by a Mexican citizen or social organization.

The bail may be in the form of a bond, a surety bond or any other means that the law allows.

## **D. Principal concerns with regard to immigration detention, procedural guarantees, detention conditions and deportation proceedings**

### **1. Immigration verification and review operations and the principle of non-discrimination and the right to equal protection**

482. The IACHR delegation was repeatedly told that because of the way in which the immigration review operations are conducted, migrants in an irregular situation are frequently exposed to even greater danger. Because they cannot enter Mexico through the established points of entry, they are forced to take isolated and inhospitable alternative routes and to travel roads of this type at night. The IACHR was informed of cases in which INM agents—sometimes in collaboration with Federal Police agents or Army troops—choose to conduct these operations in areas away from urban centers or on the very routes that the migrants usually travel. The Commission received information from a number of migrants who said that to avoid the immigration review operations set up by the INM between Tapachula and Arriaga, they had allegedly travelled for several days following a route that paralleled the train tracks. On their way to Arriaga, these migrants were assaulted by common criminals lying in wait at a place along the alternative route that these migrants had taken.

<sup>519</sup> For its part, Article 153 of the General Population Law read as follows:

Article 153.- The Secretariat of the Interior, considering the special circumstances associated with each case, may assign temporary custody of a foreign national in the State's custody to a person or institution known to be trustworthy.

The foreign national assigned to the temporary custody of a person or institution shall be required to post bail, appear before the immigration authority as many times as required, and sign the foreign nationals control book.

483. The Commission also received information concerning a number of mass kidnappings of migrants, said to have occurred within a few kilometers of the immigration review operations.<sup>520</sup> The Commission was told that:

On December 16, 2010, a group of Central American migrants were traveling aboard a cargo train from Arriaga, Chiapas. At around 8:00 p.m., federal police, soldiers and INM agents boarded the train. Reports from eye witnesses indicate that some immigrants managed to escape by jumping off the train; those who didn't manage to escape were beaten, detained and taken away by the police.

After the operation, some 150 migrants—including women and children—had reportedly managed to re-board the train. Approximately a half hour after the operation, some 5 kilometers away, the train was attacked by ten men in black, carrying high-caliber weapons and machetes. The men supposedly boarded the train and shouted at the people demanding that they hand over their money. One of the eye witnesses said he heard four shots and then screams; he also said that by the time the attack was over, there were no more women on board the train. He said he had not heard from his father since the episode; his father had been traveling with him. According to the testimony gathered by the CNDH, as a result of the attack a group of 30 to 40 persons were abducted in the community of Chahuities, Oaxaca.

484. The delegation from the Commission was also told that INM agents and agents of other institutions resorted to violence and excessive force in the course of these operations.<sup>521</sup> One example was the operation in which three INM agents from Tenosique, Tabasco, pursued a Honduran migrant woman with a machete; she was forced to throw herself into the Usumacinta River to avoid being detained. Although the woman struggled to stay afloat in the river and despite the locals' pleas, one of the agents continued to watch her from the river bank, with machete in hand, preventing her from making her way to shore.<sup>522</sup> The information the Commission received concerning these events indicates that the INM agent standing on the river bank never attempted to help the woman. When the INM agents finally withdrew, the woman was rescued by a boatman. The Commission was

<sup>520</sup> Multiple authors, *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias en México: Elaborado en ocasión de la visita a México del señor comisionado Felipe González, Relator de Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos*. [Report on the General Situation of the Rights of Migrants and Their Families in Mexico: Prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on Migrant Workers and Their Families of the Inter-American Commission on Human Rights], Mexico, July 2011, p. 29.

<sup>521</sup> Civil Society Organizations, *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias en México: Elaborado en ocasión de la visita a México del señor comisionado Felipe González, Relator sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the General Situation of the Rights of Migrants and Their Families in Mexico: Prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on Migrant Workers and Their Families of the Inter-American Commission on Human Rights], Mexico, July 2011, p. 34.

<sup>522</sup> See, *El Diario de Juárez, Filman persecución de migrantes [Persecution of migrants caught on film]*. March 25, 2011. Available [in Spanish] at: <http://www.youtube.com/watch?v=IOMY6Q9W96Q>; *Noticieros Telever, Migrante a punto de morir ahogada [Migrant on the verge of death by drowning]*. March 25, 2011. Available [in Spanish] at: <http://www.youtube.com/watch?v=dGKmj0HscGs&feature=related> [Consulted on December 30, 2013].

told that although the INM reported that the agents involved in these events—Ernesto Román Santos, Elmer Domínguez Cruz and Alonso Molina Trujillo—had been discharged from the INM in March 2011, it was not until the end of the year that one of the agents was in fact dismissed; there is no information available as to whether these agents will be criminally prosecuted for these events.

485. The Commission was also told that the immigration operations tend to use racial profiling against the migrants, as they are detained on the basis of subjective and discriminatory criteria such as skin color, physical aspect or social condition. Here, the Commission has described racial profiling as a repressive tactic adopted for supposed reasons of public safety and protection and motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions.<sup>523</sup> The Commission deemed that this practice was a violation of the principle of equal protection recognized in Article 24 of the American Convention.<sup>524</sup> Elaborating, the Commission wrote that “when immigration laws are enforced, the fundamental right to equal protection by the law and non-discrimination require that a State’s policies and practices not unfairly target certain individuals based solely on their ethnic or racial characteristics, such as skin color, accent, ethnic origin or area known to be home to a particular ethnic population.”<sup>525</sup>

486. The Commission must again make the point that “race” is a “suspect category” of distinction and therefore subject to stricter scrutiny. The practice of immigration control operations or the deportation of persons by racial profiling, which is based on phenotypic features or skin color, is a form of discrimination being practiced by the authorities of the State against the persons who are the victims of measures of this kind, which are contrary to the principles of equal protection and non-discrimination and constitute noncompliance with the obligation to respect rights without discrimination, recognized in articles 24 and 1(1) of the American Convention.<sup>526</sup>

487. The United Nations Human Rights Committee has observed that under certain circumstances identity checks may serve a legitimate purpose if carried out for public security or crime prevention purposes in general, or to control irregular migration. It went on to observe, however, that “when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic

<sup>523</sup> IACHR, Report No. 26/09 (Admissibility and Merits), Case No. 12.440, *Wallace de Almeida* (Brazil), March 20, 2009, paragraph 143.

<sup>524</sup> IACHR, Report No. 26/09 (Admissibility and Merits), Case No. 12.440, *Wallace de Almeida* (Brazil), March 20, 2009, paragraph 152.

<sup>525</sup> IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12.688, *Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic)*. February 11, 2011, paragraph 205.

<sup>526</sup> IACHR, Merits Report No. 64/12, Case 12.271, *Benito Tide Méndez et al. (Dominican Republic)*. March 29, 2012, paragraphs 261-274.

characteristics. Elaborating, the Committee wrote that “to act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.”<sup>527</sup> It therefore concluded that the facts in this case disclosed a violation of the victim’s right to equal protection and non-discrimination.<sup>528</sup>

488. For its part, the Committee on the Elimination of Racial Discrimination has recommended that States Parties put into practice the measures needed to prevent the use of racial profiling by the authorities.<sup>529</sup> The Committee expressed concern about the information received on identity checks and police raids carried out on the basis of ethnic and racial profiling in public places and neighborhoods with high concentrations of foreigners, with the aim of arresting anyone in an irregular situation in the State party. The Committee therefore urged the States to take effective measures to eradicate the practice of identity checks based on ethnic or racial profiling.<sup>530</sup>

489. In view of the foregoing, the Commission is recommending that the State take the measures necessary to prevent immigration review, verification and control measures and interrogations, detentions and body searches that are, *de facto*, based exclusively on a person’s physical aspect, color facial features, membership in a given racial or ethnic group or any other category.

## **2. Immigration detention and the use of alternatives to detention as they pertain to the right to personal liberty**

490. At the outset, the Commission is compelled to express its profound concern over the fact that under the Immigration Act and its Regulations immigration detention is still the rule rather than the exception. Despite the advances introduced in the current body of immigration law, in general, the personal liberty of migrants in an irregular situation is still an exception under Mexico’s immigration laws. Mexican immigration law does not regard liberty as the rule. The Immigration Act and its Regulations do not show any evidence of having progressed on the issue of alternatives to immigration detention,<sup>531</sup> especially when compared to the provisions of the General Population Law.<sup>532</sup> In addition,

<sup>527</sup> Human Rights Committee, *Rosalind Williams Lecraft v. Spain*. Views adopted on July 27, 2009, Communication No. 1493/2006, paragraph 7.2.

<sup>528</sup> Human Rights Committee, *Rosalind Williams Lecraft v. Spain*. Views adopted on July 27, 2009, Communication No. 1493/2006, paragraph 8.

<sup>529</sup> Committee on the Elimination of Racial Discrimination, *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*. A/60/18, 2005, paragraph 20.

<sup>530</sup> Committee on the Elimination of Racial Discrimination. *Concluding observations: Spain*, 78th session, CERD/C/ESP/CO/18-20, March 10, 2011, paragraph 10.

<sup>531</sup> See, United Mexican States, *Immigration Act*, Art. 101.

<sup>532</sup> See, United Mexican States, *General Population Law*, January 7, 1974, Art. 153.

the enforcement of these provisions in practice is even more stringent, with the result that immigration detention is the rule in law and in practice.

491. Following its visit to Mexico in 2002, the Rapporteurship underscored the fact that Mexico's legal system offered alternatives to detention, such as the alternative established in Article 153 of the General Population Law, which provided that as an exception, an alien could be placed in the temporary custody of a legal person or institution known to be trustworthy.<sup>533</sup> In the report on its 2002 on-site visit to Mexico, the Rapporteurship underscored the point that custody by third persons is an alternative to detention that does not limit personal liberty and gives the beneficiary of this alternative the opportunity to more readily become assimilated into and adapted to his or her new environment.<sup>534</sup> For that reason, the Rapporteurship invited the State of Mexico to expand its application of the practice of custody by third parties. Nevertheless, during the 2011 visit, the Rapporteurship received information from a number of civil society organizations to the effect that this practice is rarely used; they said that in general alternatives to immigration detention are not common.

492. In his Preliminary Observations upon the conclusion of his 2011 visit, the Rapporteur recommended to the Mexican State that it ensure that future Regulations state clearly that immigration detention is to be the exception, in keeping with Inter-American standards.<sup>535</sup> Thereafter, in the hearing the IACHR held on the follow-up to the visit to Mexico made by the Rapporteurship on the Rights of Migrants, the Under Secretary for Population, Immigration and Religious Affairs, René Zenteno, observed that "one matter of particular importance to the Mexican State is exploration of measures and mechanisms that can be used as alternatives to holding migrants in an irregular situation in immigration stations. We would like to underscore our commitment to observing the guarantees contained in articles I and XXV of the American Declaration of the Rights and Duties of Man. Hence, we must make the point that the practice of holding persons in immigration stations is a measure necessary to ensure a person's appearance for the proceeding where his or her immigration status and possible repatriation will be determined."<sup>536</sup> The Mexican State repeated this line of argument in the information it provided in late April of 2012.<sup>537</sup> It also reported that in response to the Rapporteur's recommendation that future

<sup>533</sup> United Mexican States, *General Population Law*, January 7, 1974, Articles 152 and 153.

<sup>534</sup> See IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003: Chapter V: Fifth Progress Report of the Rapporteurship on Migrant Workers and Their Families*, December 29, 2003, paragraphs 345 and 413.

<sup>535</sup> IACHR, *Preliminary Observations of the IACHR's Rapporteurship on the Rights of Migrant Workers on Its Visit to Mexico*. Mexico, D.F., August 2, 2011, Recommendation No. 5.

<sup>536</sup> United Mexican States. Remarks by the Under Secretary for Population, Migration and Religious Affairs, Dr. René Zenteno, at the Hearing the Commission held on the Follow-up to the Visit to Mexico of the Office of the Rapporteur on the Rights of Migrants. 143rd Session, Washington, D.C., October 27, 2011. Available at: <http://www.cidh.org/comunicados/English/2011/Calendar143en.htm> [Consulted on December 30, 2013].

<sup>537</sup> The Mexican State maintained that "[it was] reasonable to argue that the principle of 'holding' in immigration stations—which is the principle applied in our country—is based on the State's interest in ensuring that the foreign national appears for the proceeding where his or her immigration status will be determined; it also allows

Regulations clearly state that immigration detention is to be the exception, in keeping with inter-American standards, the Mexican State thought that “the point had to be made that such a measure will require amendments to the law.”<sup>538</sup>

493. Elaborating upon this subject, the Mexican State argued that the Immigration Act did make provision for alternatives to immigration detention, which are set in motion once the authorities have had an opportunity to identify the persons concerned and have them appear for a hearing to determine their immigration status, whether their status can be regularized or, failing that, their possible deportation, as cited below:

Article 52, paragraph V of the Immigration Act provides that the status of Visitor for Humanitarian Reasons is authorized in the case of foreign nationals who fall into the following categories:

- a) A person who is an aggrieved person, a victim of or witness to a crime committed within the national territory.
- b) A person who is an unaccompanied immigrant child or adolescent.
- c) An asylum seeker or person seeking recognition of refugee status or additional protection.
- d) The status of visitor for humanitarian reasons may also be authorized on humanitarian grounds on in the public interest.

494. The Commission has learned of situations in which migrants who have fallen victims to crime because of their special vulnerability, have remained in immigration detention for nearly a year until the INM finally ordered their release so that they might see to the procedures necessary to regularize their presence within Mexican territory. Based on the information it compiled, the Commission must emphasize that these measures are not being carried out in a manner that will effectively accomplish the objective of making detention an exceptional measure.

495. The Mexican State also maintained that “Article 113 of the Immigration Act provides that in the case of foreign nationals who are pregnant women, senior adults, disabled or indigenous persons, or victims of or witnesses to serious crimes committed within national territory and whose emotional state is such that they are unable to decide whether to return to their country of origin or remain within Mexican territory, the emphasis must be on placing them in specialized public or private institutions that can provide them the care they need.”<sup>539</sup> In conclusion, the State maintained that “under current immigration law, persons who have no way of obtaining a decision from the

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the State to offer the foreign national other humane alternatives to being held in the immigrations stations”, see INM, *Avances recomendaciones preliminares de la CIDH* [Advances, Preliminary Recommendations of the IACHR]. Mexico, April 26, 2012, pp. 5-7 [Document on file with the Commission].

<sup>538</sup> INM, *Avances recomendaciones preliminares de la CIDH* [Advances, Preliminary Recommendations of the IACHR]. Mexico, April 26, 2012, pp. 5-7 [Document on file with the Commission].

<sup>539</sup> INM, *Avances recomendaciones preliminares de la CIDH* [Advances, Preliminary Recommendations of the IACHR]. Mexico, April 26, 2012, pp. 5-7 [Document on file with the Commission].

immigration authority that would enable them, once their identity has been established, to regularize their specific status (and thereby avail themselves of procedures that preclude “detention” or “holding”) are precisely those who warrant deportation under articles 121 and 144 of the Immigration Act.”<sup>540</sup> The Commission does not regard these options as alternatives to detention.

496. The Rapporteur on the Rights of Migrants also recommended to the Mexican State that it consider establishing a provision for alternatives to immigration detention in the Immigration Act’s Regulations.<sup>541</sup> Subsequently, the Mexican State reported that in the draft Regulations, the Federal Executive Branch had made provision for the mechanisms necessary to put into practice the clauses of the Immigration Act that pertain to alternatives to immigration detention. While the Immigration Act does not expressly mention alternatives to detention, Article 101 provides that in those cases and under the conditions set forth in the Regulations, a foreign national may be placed in what could be regarded as alternatives to detention, consisting of the following: 1) being turned over to the custody of the diplomatic mission of the country of which he or she is a national; ii) being turned over to the custody of a trustworthy legal person or institution somehow involved in the protection of human rights, with the requirement that the foreign national shall remain in a domicile located within the area of the immigration station in order to allow the proceedings in the immigration-related administrative case to go forward.

497. In articles 214 to 221, the Regulations detail the requirements that must be met for a person to be handed over to the custody of a trustworthy legal person or institution somehow involved in the protection of human rights. The Commission observes that given the characteristics of most migrants in an irregular situation traveling through Mexico, the requirements that must be met under the Regulations for a person to be placed in the custody of a trustworthy legal person or institution are so stringent that this alternative to detention is virtually unworkable in most cases. The requirements set out in the Regulations are such that this one alternative to immigration will likely continue to be the exception, when it should be the rule.

498. In the Commission’s view, the various forms of administrative detention that the Immigration Act provides for, such as presentation and holding by order of a non-jurisdictional authority, are not in keeping with the provisions of the American Convention. In addition to being contrary to the right to personal liberty protected under Article 7 of the American Convention, the Commission believes that automatic application of immigration detention is a form of criminalization that victimizes the migrants.

<sup>540</sup> INM, *Avances recomendaciones preliminares de la CIDH* [Advances, Preliminary Recommendations of the IACHR]. Mexico, April 26, 2012, pp. 5-7 [Document on file with the Commission].

<sup>541</sup> IACHR, *Preliminary Observations of the IACHR’s Rapporteurship on the Rights of Migrant Workers on Its Visit to Mexico*. Mexico, D.F., August 2, 2011, Recommendation No. 6.

499. To ensure observance of the right to personal liberty in the case of migrants in an irregular situation, asylum seekers, refugees and other persons in need of international protection, the Commission urges the Mexican State to establish, in law, that immigration detention is an exceptional measure, and to implement alternatives to detention that are automatically accessible to such persons. Accordingly, the Commission is calling upon the State to put into practice a risk-assessment mechanism premised on a presumption in favor of liberty, and to set out clear criteria for determining those exceptional cases in which detention is called for. To that end, the Commission believes that the Mexican State must first establish alternatives to detention that function as the rule in cases of migrants, asylum seekers, refugees and other persons in need of international protection who are the subjects of a proceeding to determine their immigration status or a proceeding to determine whether refugee status will be recognized. The State may resort to immigration detention only when alternatives to detention are not viable options, and then only as a last resort and for the shortest period of time possible.

### 3. Immigration detention of immigrant children and adolescents.

500. Various Mexican authorities and civil society organizations noted that in recent years, an increase in the number of unaccompanied immigrant children and adolescents has been observed. A considerable number of migrant children and adolescents detected in immigration verification or review operations have been detained until such time as the immigration authorities resolved their immigration status; in many cases, they deported these children and adolescents to their country of origin.

501. According to the information that civil society organizations reported to the Rapporteur, the State has not eradicated from its immigration policy those procedures and practices that involve serious violations of the human rights of migrant children and adolescents. The detention of children and adolescents in an irregular situation continues to be routine and widespread. In effect, the Commission observes with concern that in 2012, 6,100 children and adolescents were in immigration detention; of these 1,150 were between the ages of 0 and 11 -79 were unaccompanied,<sup>542</sup> whereas in 2011 the number of children and adolescents in immigration detention was 4,160.<sup>543</sup> These figures show an increase of 47 % in the number of migrant children and adolescents in detention between 2011 and 2012 (see Table No. 5).

<sup>542</sup> INM, INM, *Boletín mensual de estadísticas migratorias 2012: III. Extranjeros alojados y devueltos* [Monthly Bulletin on Immigration Statistics 2012: III. Aliens held and returned]. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Extranjeros\\_Alojados\\_y\\_Devueltos\\_2012](http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_2012) [Consulted on December 30, 2013].

<sup>543</sup> INM, *Boletín mensual de estadísticas migratorias 2011: III. Extranjeros alojados y devueltos* [Monthly Bulletin on Immigration Statistics 2011: III. Aliens held and returned]. Table 3.1.3. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Extranjeros\\_Alojados\\_y\\_Devueltos\\_01](http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_01) [Consulted on December 30, 2013].

**TABLE 5** Detained children by age group, accompanied/unaccompanied, and sex

Nationality/age group/ accompanied or unaccompanied	2011			2012		
	Male	Female	Total	Male	Female	Total
Overall total	57 423	9 160	66 583	76 543	11 958	88 501
Over the age of 18	54 282	8 141	62 423	71 980	10 421	82 401
Total for minors	3 141	1 019	4 160	4 563	1 537	6 100
Between 12 and 17	2 641	679	3 320	3 909	1 041	4 950
Between 0 and 11 years	500	340	840	654	496	1 150
Accompanied	373	262	635	521	423	944
Unaccompanied	127	78	205	133	73	206

Source: Instituto Nacional de Migración

502. Concerning immigration detention in the case of children and adolescents, the Commission must emphasize once again that Article 37(b) of the Convention on the Rights of the Child, which also applies to immigration detention, expressly states that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

503. In its Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the Commission established that deprivation of liberty or immigration detention shall be applied as a measure of last resort and for the minimum necessary period, and shall be limited to strictly exceptional cases.<sup>544</sup> The Commission is reminded that in its *Report on Immigration in the United States: Detention and Due Process*, it wrote that “[t]he principle of exceptionality governing deprivation of liberty in general and deprivation of liberty for immigration violations, carries even more weight when children are involved. Only in the most extreme cases could such a measure be justified.”<sup>545</sup>

504. In the case of immigration detention of migrant children and adolescents, the Commission notes that the laws and practices developed by the INM make provision for different treatment of migrant children and adolescents, depending on whether they are: a) unaccompanied children and adolescents, b) children and adolescents in the company of their families or legal guardians; c) children under the age of 12, and d) children and adolescents over the age of 12. It is worth recalling that any and all measures that the authorities take with respect to migrant children and adolescents must be done in accordance with the principle of the best interests of the child, the principle of family unity, the principle of nondiscrimination and the obligation to adopt the special measures

<sup>544</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. Document the Commission approved at its 131st session, held March 3 to 14, 2008, Principle III.

<sup>545</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 51.

of protection that migrant children and adolescents require because they are minors. In the case of unaccompanied children and adolescents, States have an obligation to take the special measures of protection that these children and adolescents require. In the case of accompanied children and adolescents, preservation of family unity is a vital consideration in the measures the authorities take with respect to these children and adolescents. The age and vulnerability of children and adolescents are determinative considerations when the measures of protection that the State adopts are decided.

505. Under the Immigration Act and its Regulations, all unaccompanied children and adolescents are to be immediately referred to the National System for the Integral Development of the Family (hereinafter “SNDIF” or “DIF”), to the states’ and the Federal District’s DIF Systems so that “the emphasis is on placing them in places where they can be provided with proper care until such time as their immigration status is determined.” Nevertheless, this does not preclude the possibility that migrant children and adolescents may end up being detained in immigration stations. Article 176 provides that under special circumstances, unaccompanied migrant children and adolescents may be detained in immigration stations, separated from the adult population and for the shortest time possible.

506. At the present time, only children under the age of 12 are being referred to one of the 27 shelters for unaccompanied children, run by the DIF system in partnership with civil society. The law does not provide that an unaccompanied child or adolescent identified during an immigration verification or review operation shall be immediately sent to a shelter; instead, Article 112 of the Immigration Act provides that unaccompanied children and adolescents shall be handed over to the INM and then referred to the DIF System. While the service that the DIF System provides at its shelters is better suited to migrant children and adolescents, the Commission notes with concern that even in these shelters the children and adolescents are effectively being deprived of their liberty, as the doors to these shelters are locked and the children housed there are not allowed to leave.<sup>546</sup>

507. Here, the Mexican State maintained that the majority of the shelters mentioned in the report are located along its northern border and take in mainly Mexican migrant children and adolescents who have been repatriated from the United States and, to a

<sup>546</sup> See in this regard, International Detention Coalition, *Dignidad sin excepción: Hacia la construcción e implementación de alternativas a la detención migratoria en México 9* [Dignity without exception: Building and Implementing Alternatives to Immigration Detention in Mexico 9], Mexico, 2013. Available at: <http://idcoalition.org/dignity-without-exception-alternatives-to-immigration-detention-in-mexico/>; and *Centro de Derechos Humanos Fray Matías de Córdova* and *Centro de Derechos Humanos Universidad Nacional de Lanús Guatemala* [Fray Matías de Córdova Human Rights Center and the Human Rights Center of the Universidad Nacional de Lanús], *Los Derechos Humanos de Niños, Niñas y Adolescentes en la Frontera México-Guatemala* [The Human Rights of Children and Adolescents on the Border between Mexico and Guatemala]. Tapachula and Lanús, 2012, p. 22. Available [in Spanish] at: <http://ninezmigrante.blogspot.com.ar/2012/09/informe-final-los-derechos-humanos-de.html> [Consulted on December 30, 2013].

lesser extent, foreigners. According to the State, almost 90% of the population assisted at shelters are children under the age of 12. The Government explains that, at the time of the visit, there was only one shelter along Mexico's southern border, located in Tapachula, which received children under the age of 12, but also girls between the ages of 0 and 17 and mothers with small children. In the State's observations on this report, it points out that a shelter now exists for migrant children and adolescents in the city of Oaxaca and that the shelter in Tapachula is now receiving a number of adolescent males, such as those seeking shelter.<sup>547</sup>

508. As for migrant children and adolescents accompanied by family members or legal guardians, the Commission notes that the Immigration Act and its Regulations do not contain any provision under which such children would be immediately referred to the DIF System; nor do they make provision for any of the other special measures of protection that such children and adolescents require by virtue of their age or their vulnerability. These children and adolescents tend to be detained in immigration stations. In some cases they are separated from their male family members during detention, with limited contact. This is a situation that both the Fray Matías de Córdova Human Rights Center and the Human Rights Center of the Universidad Nacional de Lanús have documented.<sup>548</sup> The general procedure followed in the case of migrant children and adolescents over the age of 12 is to detain them at the immigration stations.

509. During the visit, the Rapporteur was told that no protocols are in place by which to assess the special situation of children and adolescents and make a case-by-case determination of the procedure to follow to establish which course of action is in the child's best interests.<sup>549</sup> The Commission recognizes that the National DIF System, the INM and COMAR have established criteria to follow in the case of migrant children and adolescents. However, these criteria are not serving the children's best interests, since detention continues to be the general rule for how to respond to cases involving migrant children and adolescents in an irregular situation, a problem compounded by the fact that the State has not yet established that alternatives to detention are to be the rule where migrant children and adolescents are concerned.<sup>550</sup>

<sup>547</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 15 and 16.

<sup>548</sup> *Centro de Derechos Humanos Fray Matías de Córdova and Centro de Derechos Humanos Universidad Nacional de Lanús Guatemala* [Fray Matías de Córdova Human Rights Center and the Human Rights Center of the Universidad Nacional de Lanús], *Los Derechos Humanos de Niños, Niñas y Adolescentes en la Frontera México-Guatemala* [*The Human Rights of Children and Adolescents on the Border between Mexico and Guatemala*]. Tapachula and Lanús, 2012, pp. 23-26.

<sup>549</sup> IACHR, *Preliminary Observations of the IACHR's Rapporteurship on the Rights of Migrant Workers on Its Visit to Mexico*. Mexico, D.F., August 2, 2011, p. 7.

<sup>550</sup> Civil Society Organizations, *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias en México: Elaborado en ocasión de la visita a México del señor comisionado Felipe González, Relator sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the General Situation of the Rights of Migrants and Their Families in Mexico: Prepared on the occasion

510. For its part, the State reported that the INM takes charge of the “presentation” of migrant children and adolescents to ensure their safety. It also pointed out that detention at immigration stations precedes presentation of the application for refugee status; acting in accordance with the principles of international law regarding the best interests of the child and in compliance with the provisions of the Law on Refugees and Additional Protection, the moment COMAR takes up an application for refugee status for a child or adolescent, it asks the INM for authorization so that the child or adolescent seeking recognition of refugee status might pursue the proceeding in his or her case outside the confines of an immigration station and be placed instead in shelters that specialize in the care and treatment of children and adolescents applying for refugee status. According to the State, between January 2005 and July 2013, 45 children and adolescents were sent to special shelters and eventually were granted refugee status.<sup>551</sup>

511. Based on the Immigration Act it was established that once the corresponding Regulations were in place, the procedure would be established for determining the best interests of unaccompanied migrant children and adolescents. Article 172 of the Regulations of the Immigration Act provides that “in all cases involving unaccompanied migrant children and adolescents, the Institute shall determine their best interests; specialists trained in the rights of the child and child protection will interview an unaccompanied migrant child to gather information with a view to establishing the child’s identity, his or her country of nationality or residence, immigration status, the location of the child’s parents or other family members and the child’s particular requirements with respect to protection, medical and psychological care and treatment.” Based on this assessment, a determination will be made as to what measures of protection would be best for the unaccompanied migrant child or adolescent and, where appropriate, a determination as to the child’s best interests will be recommended.

512. The United Nations Committee on the Rights of the Child has written that:

A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.<sup>552</sup>

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of the visit to Mexico by Commissioner Felipe González, Rapporteur on Migrant Workers and Their Families of the Inter-American Commission on Human Rights], Mexico, July 2011, p. 37.

<sup>551</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 16.

<sup>552</sup> Committee on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*. CRC/GC/2005/6, September 1, 2005, paragraph 20.

513. On the matter of the procedure for determining the best interests of the child, the Commission notes with concern that the procedure does provide for accompanied children and adolescents, which suggests that they are not recognized as subjects of law, with rights, and that the State does not recognize that they, too, may be in situations that require the State's special measures of protection. The fact that migrant children and adolescents are with their parents, family members or other adults responsible for their legal representation, does not mean that the immigration proceedings, particularly those that can lead to their detention and the detention of family members, and even their eventual deportation, do not have an impact on their human rights. For States to guarantee the child's right to the special measures of protection required under Article 19 of the American Convention, and for true recognition of children as subjects of law, any proceeding involving a migrant child or adolescent—accompanied, unaccompanied or separated from family—that can affect the exercise of his or her human rights must take the best interests of that child into consideration. To do that, a procedure has to be in place for determining what the best interests of the child are.

514. The Commission also observes that the Regulations of the Immigration Act assign the INM the function of doing an “assessment” and “where appropriate, a determination of the child's best interests will be recommended.” This is at variance with the impartiality and specialized capability that the institution charged with conducting this procedure must have, because the INM is also a decentralized organ of the Federal Government charged with planning, executing, controlling, overseeing and evaluating the immigration services and coordinating with the various offices of the Federal Government that are involved in addressing and resolving immigration-related matters.<sup>553</sup> The Commission believes that because the INM is the institution in charge of detaining migrants in an irregular situation, and carrying out deportations, it is only natural that children and adolescents should feel uncomfortable with or be intimidated by INM officials at the time of the interview. The Commission believes it is critical that the determination of the best interests of the child should be in the hands of an independent, specialized body.

515. Particularly disturbing are the reports the Commission received to the effect that the best interests of the child are not considered during the detention and repatriation of migrant children and adolescents.<sup>554</sup> The Commission must underscore the fact that the right of migrant children and adolescents to have the special measures of protection adopted that their status as minors requires necessarily implies that any proceeding to determine the best interests of the child must be conducted by a specialized technical

<sup>553</sup> See, *Decreto por el que se crea el Instituto Nacional de Migración como órgano técnico desconcentrado, dependiente de la secretaría de gobernación* [Decree creating the National Immigration Institute as a decentralized technical body under the Secretariat of the Interior]. Mexico. October 19, 1993, Article 2.

<sup>554</sup> See Centro de Derechos Humanos Fray Matías de Córdova y Centro de Derechos Humanos Universidad Nacional de Lanús [Fray Matías de Córdova Human Rights Center and the Human Rights Center of the Universidad Nacional de Lanús], *Los Derechos Humanos de Niños, Niñas y Adolescentes en la Frontera México-Guatemala* [*The Human Rights of Children and Adolescents on the Border between Mexico and Guatemala*]. Tapachula and Lanús, 2012, p. 28.

body, separate from and independent of the immigration authority; it is that specialized body that will perform an evaluation that takes into account the particular characteristics of each case. The final decision adopted with respect to a migrant child or adolescent must, first and foremost, be in the child's best interests, and secondarily in the interests of the State where immigration is concerned.

516. The Commission is particularly troubled by the violations of the due process rights of migrant children and adolescents. There is no judicial control of immigration detention and migrant children and adolescents are not provided free legal aid. According to the information the Commission compiled, the reasons or legal grounds for the decision to detain them are not given; the detained children and adolescents do not have guardians to protect their rights and are not properly advised of their rights.<sup>555</sup>

517. During the visit, the Rapporteur and the delegation from the Commission interviewed a number of children at the Siglo XXI Immigration Station, the Iztapalapa Immigration Station and the Tapachula Temporary Shelter for Migrant Children. During these visits, the Commission observed that certain special measures had been put into practice in connection with the way in which migrant children and adolescents were treated by officials from the SNDIF, the state-level DIF systems and officials from the INM. In general terms, the IACHR Delegation observed that the migrant children and adolescents were well treated by the authorities.

518. At the Siglo XXI Immigration Station, an especially prepared area was reserved for the children and adolescents to stay with their families, and certain areas were outfitted for medical services and psychological treatment. On the other hand, at the Iztapalapa Immigration Station, the delegation did not observe any area where children and adolescents could stay with their families; the migrant children and adolescents held in that facility were confined to the area reserved for women. According to the testimony of two migrant women detained at that station, some days prior to the visit by the IACHR delegation, that area had been the scene of disturbances and even a fire in one of the rooms. The IACHR delegation was concerned to find that in the aforementioned immigration stations, children only a few years old—accompanied and unaccompanied alike—were being detained in the areas designated for women.

519. As for the medical treatment administered inside the stations, one Salvadoran adolescent said that although he had been suffering from a fever and terrible headaches for several days, the medical service at the Siglo XXI Immigration Station had only prescribed

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<sup>555</sup> Civil Society Organizations, *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias en México: Elaborado en ocasión de la visita a México del señor comisionado Felipe González, Relator sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the General Situation of the Rights of Migrants and Their Families in Mexico: Prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on Migrant Workers and Their Families of the Inter-American Commission on Human Rights], Mexico, July 2011, p. 37.

pills for his headache. The delegation heard similar complaints from the adults being detained at this immigration station.

#### 4. The guarantees of due process in the context of immigration-related administrative proceedings

520. Civil society organizations told the Commission's delegation that in practice, the observance of due process guarantees in immigration-related administrative proceedings for matters like assisted return and deportation is seriously flawed. They specifically cited the fact that little or no information is given about the grounds or reasons for detaining the migrants in the immigration stations, the administrative proceeding that will be followed, how long detention will last, the right to request asylum, the right to consular assistance and to communicate with family members and the right to receive legal aid and representation. The Commission's delegation was also told that during their immigration proceedings, the right of non-Spanish speaking migrants to have a translator or interpreter was violated.<sup>556</sup>

521. According to a survey that the organization I(dh)eas conducted among migrants detained at the Siglo XXI Immigration Station, 95% said that INM personnel had not informed them, in writing and in a language they understood, of their right to communicate with a person they trusted or a legal representative. In those cases in which a migrant was informed of his or her right to legal assistance, the explanation given by the INM agents was superficial and incomplete.<sup>557</sup>

522. For migrants from outside the hemisphere who do not speak Spanish, especially those from African and Asian countries, and for members of indigenous peoples, the situation is much more serious because of the difficulties such migrants have in making themselves understood and the lack of interpreters. These problems significantly limit any possibility such migrants have of defending themselves adequately during their immigration proceedings.<sup>558</sup> During its visit to the Iztapalapa Immigration Station, the Commission found there was one INM official who translated for and enabled communication with Chinese migrants. During the visit to the Siglo XXI Immigration Station, a group of immigrants from Bangladesh told the delegation that they had spent 48 days at that immigration station and still did not know when they would be returned

<sup>556</sup> Multiple authors. *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias en México: Elaborado en ocasión de la visita a México del señor comisionado Felipe González, Relator sobre Trabajadores Migratorios y Miembros de sus Familias de la Comisión Interamericana de Derechos Humanos* [Report on the General Situation of the Rights of Migrants and Their Families in Mexico: Prepared on the occasion of the visit to Mexico by Commissioner Felipe González, Rapporteur on Migrant Workers and Their Families of the Inter-American Commission on Human Rights], Mexico, July 2011, p. 35.

<sup>557</sup> Ibid.

<sup>558</sup> See, i(dh)eas, Litigio Estratégico en Derechos Humanos A.C. [Strategic Human Rights Litigation], *En tierra de nadie. El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco* [In No Man's Land. The Labyrinth of Impunity: Violations of the human rights of migrants in the Soconusco region]. i(dh)eas: Mexico City, 2011, p. 39.

to their country or how much longer they would be detained at that station. They also said that they had not had access to lawyers or legal assistance during the immigration proceedings.

523. The State, for its part, insisted that once the immigration authority has instituted the administrative immigration proceeding involving an alien who has violated the immigration law, it conducts a series of procedures, one of which is to take the accused' statement; before the alien makes his or her case, the immigration authority puts in writing that the accused has been advised of all his or her rights under the Immigration Act and other legal provisions. The State also asserted that the alien is given a document containing information on his or her rights and obligations, written in his or her native language, and explaining the reason why he or she is being held at the immigration station and the most pertinent questions in the immigration administrative proceeding that will be held in his or her case.<sup>559</sup>

524. Another problem found during the visit concerns the failings in the area of the information, notification, assistance and consular communication that should be afforded to detained migrants. While at the immigration stations visited, most of the detained migrants said they had been advised of their right to consular assistance, some of the women detained at the Siglo XXI Immigration Station said that they had not been advised of their right to consular assistance and that in the time they had been held there, they had yet to receive any visit from their consulates. Civil society organizations observed that the problems in this area are particularly acute at the smaller stations and the temporary facilities. Migrants from outside the hemisphere have the greatest difficulties with respect to consular assistance; many stated that they had never been visited by their consular agents. Furthermore, some of the immigration stations are so far away from Mexico City that migrants being held at such stations are much less likely to receive any type of consular assistance from their consulates; in some cases, the migrants are from countries that do have consular posts in Mexico. A significant number of the migrants from outside the hemisphere that the Commission was able to interview at the Siglo XXI Immigration Station said they had never received any type of consular assistance during their time at the station.

525. The *jurisprudence constante* of the organs of the Inter-American System is that due process guarantees are not confined to the issue of judicial remedies; instead, such guarantees apply to every stage and every type of proceeding,<sup>560</sup> including of course

<sup>559</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 16.

<sup>560</sup> I/A Court H.R. *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraph 69; and *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 27. The Inter-American Court has been building up its case law on the scope of the due process guarantees and their sphere of application. The Court's interpretation is that the application of due process guarantees is not limited to judicial remedies in a strict sense; instead, it refers "[to]

any proceeding that may result in a person's expulsion or deportation.<sup>561</sup> In the case of deportation, both the Inter-American Commission and the Inter-American Court have underscored that, in addition to the guarantees contemplated in Article 8(1) of the American Convention, where relevant the guarantees established in Article 8(2) of the Convention must also be observed. This is because of the punitive nature of this type of proceeding.<sup>562</sup> The Commission has also written that in proceedings that may result in a person's expulsion or deportation, fundamental rights are at stake, which necessitates the most expansive interpretation possible of the right to due process.<sup>563</sup>

526. The Commission is therefore recommending to the State that it adopt all measures necessary to guarantee, not just in law but in practice as well, that the guarantees of due process recognized in the American Convention, the Mexican Constitution, Mexico's Immigration Act and in other applicable provisions will be observed throughout an immigration proceeding, from the time it gets underway to when the decision is made to detain a migrant—if detention is deemed to be a necessary, suitable and proportional measure.

## 5. The indefinite duration of immigration detention

527. At the Iztapalapa and Tapachula immigration stations, the Commission's delegation took testimony from a number of detained migrants, both men and women, who said that they had been held for more than 60 days as a consequence of having filed judicial remedies related to their immigration status. Under Article 111 of the Immigration Act, migrants who are unable to prove their legal immigration status in the country may be

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all the requirements that must be observed in the procedural stages," in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them." The Court has emphasized the point that "the State also empowers administrative, collegiate, and uni-personal authorities to adopt decisions that determine rights." See in this regard, I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, paragraph 118.

<sup>561</sup> IACHR. Report No. 136/11, Case 12.474. Merits. *Pacheco Tineo Family*. Bolivia. October 31, 2011, paragraphs 113 and 133; IACHR. Report No. 78/11, Case 12.586, *John Doe et al.* Canada. July 21, 2011, paragraphs 113-117; IACHR. Report No. 64/08. Case 11.691. Admissibility. *Raghda Habbal and son*. Argentina. July 25, 2008, paragraph 54; IACHR. Report No. 49/99. Case 11.610. *Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz*. Mexico. April 13, 1999, paragraphs 56, 58; IACHR. Report No. 81/10. Case 12.562. *Wayne Smith, Hugo Armendariz et al.* United States, July 12, 2010, paragraphs 5 and 63; IACHR. Report No. 84/09. Case 12.525. Merits. *Nelson Iván Serrano Sáenz*. Ecuador. August 6, 2009, paragraph 61; IACHR. Report No. 63/08. Case 12.534. Admissibility and Merits. *Andrea Mortlock*. United States, July 25, 2008, paragraphs 78 and 83; IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), paragraph 401; IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000, paragraphs 98-99. See also, I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*; I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218. Paragraphs 141 and 142.

<sup>562</sup> IACHR. Application filed with the Inter-American Court of Human Rights. Case 12.581, Jesús Tranquilino Vélez Loor. Republic of Panama, October 8, 2009, paragraph 73; and I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, paragraph 103.

<sup>563</sup> IACHR. Report No. 49/99. Case 11.610. *Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz*. Mexico. April 13, 1999. Paragraph 70.

detained at the immigration stations for up to 15 working days, counted from the date of their presentation and until such time as their immigration status is determined either for purposes of regularizing their presence in the territory or arranging their assisted return. This article also provides that when any of the conditions provided for in paragraphs I, II, III and IV of Article 111 of the Immigration Act is present, the duration of the detention may exceed the 15-day limit, but may not last longer than 60 working days, counted from the date of the migrant's presentation to the INM.

528. However, the law makes no mention of how long detention can last in the circumstance provided for in Article 111, paragraph V. Because of this gap in the law, if a migrant has filed an administrative or judicial remedy in which he or she is making claims pertaining to his or her immigration status or has filed a petition of *amparo*, or if an authority has issued an order prohibiting said migrant from leaving the country, then he or she may be held in detention indefinitely or until such time as a decision is delivered on the remedy or petition filed. In Tapachula, the Rapporteur took testimony from a Cuban migrant who had been in immigration detention for over 10 months and whose case would eventually become CNDH Recommendation No. 57/12. The following are excerpts taken from his testimony and from the CNDH's recommendation:

On February 9, 2010, he was handed over to the INM at the Siglo XXI Immigration Station in Tapachula, Chiapas. Between February 23 and 25, he applied for recognition of refugee status, but was denied; the decision denying him refugee status was confirmed on appeal on June 15, 2010. At 4:40 a.m. on June 30, 2010, he was notified that he would be transferred to the Federal District. Because of this, he scaled one of the walls separating the sleeping quarters, which was roughly 15 meters high, to avoid being transferred. In the meantime, he asked if he could contact his attorney. At around 10:00 a.m., he came down from the wall, while staff from the Fray Matías de Córdoba Human Rights Center filed a petition of *amparo* to challenge his transfer and deportation. The migrant spent 24 hours in isolation for having resisted transfer. According to the psychological profile prepared by Health Jurisdiction No. VII, the migrant was suffering from anxiety and depression associated with his prolonged detention and from a sense of insecurity that the prospect of being transferred and deported created in him. On September 2, he was notified of the *amparo* decision, which overruled the two measures the authorities had ordered: transfer and deportation. In his ruling, the judge reasoned that the migrant was neither being detained nor deprived of his liberty; instead, his freedom of movement and travel was being restricted.

Then, on September 22, 2010, as the review of the verdict was nearing completion, the migrant contacted the Fray Matías de Córdoba Human Rights Center to inform them that he was at the Tapachula International Airport. Staff at the Siglo XXI Immigration Station had told him that the Federal District offices of the Mexican Commission for Refugee Assistance had requested his presence. All this despite the fact that his request for recognition of refugee status had been denied in first and second instance. Given the situation, another petition seeking *amparo* relief was filed to challenge the transfer and deportation. This petition was filed with the District Court via appearance, in principle, and then in writing. Both were denied. Subsequently a telephone complaint was lodged with the CNDH's offices in the Federal District, which

succeeded in averting the migrant's deportation. That same day, however, he was transferred to Mexico City.

On September 24 of that year, the user called to comment that under threat and by deception, he had been transferred to San Cristóbal de las Casas, where he was for two days. On September 30, 2010, the CNDH granted precautionary measures to stop the migrant's transfer and deportation. Nevertheless, one month later the INM sent the migrant to the Iztapalapa Immigration Station in the Federal District where he was subjected to cruel, inhuman and degrading treatment. This despite the precautionary measures ordered on his behalf.

On December 16, 2010, after spending more than 10 months in immigration detention, the migrant was released, having been granted a visa on humanitarian grounds. The migrant stressed certain facts in the testimony he gave to the Rapporteur, including the fact that for the duration of his detention, he was never informed about his immigration proceeding; he was never informed of his transfers. The anxiety this created in him had made the target of threats and ridicule. He was shackled and held incommunicado for having resisted transfer. At the time the Rapporteur took his testimony, the migrant's immigration status had already been regularized and, under the principle of family unity, his wife's status had also been regularized. They were waiting for their children to get their papers to come to Mexico.<sup>564</sup>

529. Civil society organizations reported that because of the clause in Article 111(V) of the Immigration Act, many migrants prefer to be deported and re-enter Mexican territory again rather than remain in custody indefinitely, for as long as it takes for the remedies they filed to be decided. All this has posed a serious obstacle to migrants' access to justice in the conduct of their immigration-related administrative proceedings.

530. During his visits to the immigration stations, the Rapporteur heard testimony from a number of migrants who had spent several months in custody, and had no idea of when their detention would end. The Commission observes that because of the psychological stress associated with prolonged or indefinite detention, where migrants have no date certain as to when their immigration situation will be decided or when they will be deported, migrants are particularly vulnerable to physical and mental health problems.

531. Some authorities explain away the situation by saying that immigration detention was prolonged because the migrants filed various petitions with the justice system, which meant that they had to remain in detention until their petitions were decided. Civil society organizations said that when suspension of detention was requested to allow the migrants to follow their case outside the confines of the immigration station, the judicial authorities had either refused to suspend detention, citing reasons of public

<sup>564</sup> For more information, see, CNDH, *Recomendación No. 57/2012, Sobre el caso de VI, migrante de nacionalidad cubana* [Recommendation No. 57/2012, Case VI, a Cuban immigrant. Mexico, October 18, 2012. Available [in Spanish] at: [http://www.cndh.org.mx/Recomendaciones\\_1990\\_2012](http://www.cndh.org.mx/Recomendaciones_1990_2012) [Consulted on December 30, 2013].

interest and order, or had granted the suspension on condition that the migrant be available to appear before the District Court regarding the matter of personal liberty, or that he or she be available to appear before the INM for the continuation of his or her immigration proceeding. In practice this has meant that the migrants remain in detention at the immigration stations.

532. The Commission feels compelled to give voice to its deep concern regarding the indefinite prolongation of immigration detention in the case of those migrants who exercise their right to turn to the courts by filing an administrative or judicial remedy in which they raise issues pertaining to their immigration status within Mexican territory or file a petition of *amparo*, particularly as both measures are allowed under Article 111(V) of Mexico's Immigration Act. In the Commission's view, it is contrary to the American Convention's purpose to use the legitimate exercise of Convention-protected rights, such as the right to judicial guarantees recognized in Article 8 of the Convention and the right to judicial protection recognized in Article 25 thereof, as a pretext for prolonging immigration detention. In other words, if a migrant or any other person in need of international protection turns to the courts for a determination of his or her rights, this cannot be used as a justification for indefinitely prolonging his or her deprivation of liberty.

533. Far from facilitating migrants' access to justice, Article 111(v) is a deterrent to their defense of their rights. The Commission also observes that the other time periods established in Article 111 of the Immigration Act are longer than the periods provided for in the Constitution. It is therefore recommending to the State that it take the measures necessary to ensure that immigration detention is for the shortest period possible and that exercise of the rights that all migrants have under the American Convention and the Constitution of Mexico does not have the effect of prolonging their detention indefinitely, until the petitions and other remedies they file are decided.

## **6. Right to apply for recognition of refugee status in relation to the right to the guarantees of due process and the right to judicial protection**

534. On the subject of the situation of asylum seekers, refugees and other persons in need of international protection, civil society organizations maintained that when these persons enter Mexico under irregular circumstances, they are placed in immigration detention and, in many cases, are subsequently deported to their countries of origin.<sup>565</sup> The Rapporteur and the delegation from the Commission were told that one of the first obstacles that persons applying for recognition of refugee status encounter is that when they are placed in the immigration station they are not adequately advised of their right to request recognition of refugee status. One piece of testimony that the Commission's

<sup>565</sup> See, i(dh)eas, Litigio Estratégico en Derechos Humanos A.C. [Strategic Human Rights Litigation], *En tierra de nadie. El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco* [In No Man's Land. The Labyrinth of Impunity: Violations of the human rights of migrants in the Soconusco region]. i(dh)eas: Mexico City, 2011, p. 159.

delegation received at the Siglo XXI Immigration Station came from a Nigerian asylum seeker, who said the following:

*When am I going to leave this place? She told me that it would be 90 days from now. I told her I came here on my own. I was not arrested before coming here. I am seeking recognition of [refugee] status, so I'm going to be here 90 days. I'm not a criminal. I've committed no crime. So I can't stay in a place like this. She told me they couldn't do anything about my situation. I came here voluntarily. I went to the office myself and now they're telling me that I have to stay here for 90 days, three months. The other man who arrived with me, they let him go two days ago, in my presence. They asked him to sign, they took him away and he went. He was from Somalia.<sup>566</sup>*

535. Thanks to the work done by a number of human rights organizations, such as the Fray Matías de Córdova Human Rights Center, I(dh)reas, *Sin Fronteras* and others, the Rapporteur learned that 68% of the migrants detained at the Siglo XXI Immigration Station were unaware of their right to apply for recognition of refugee status and had never been given any information in that regard. It is difficult to prove one's refugee status when one is in immigration detention and therefore having difficulty finding an attorney. For their part, the INM authorities said that under the INM Standards for Operation of the Immigration Stations,<sup>567</sup> the person in charge of the immigration station has an obligation to give written notice to any person being held there [a detained migrant] advising him or her of his or her rights and obligations, including the right to apply for recognition of refugee status and gather the records that will help make his or her case.

536. The Commission was informed that asylum seekers picked up by the INM in immigration verification and review operations are detained first; those who then ask to be granted asylum are held at the immigration station until a decision is made on their request. Under the Law on Refugees and Additional Protection, their detention can last up to 45 working days, which can be extended for another 45 days under certain circumstances.<sup>568</sup>

537. In its observations on this report, the State commented that those persons who file their application for refugee status with the offices of COMAR or its delegations, or with an INM delegation, are not brought before the immigration authority and are not held in custody at immigration stations. It also asserted that if applicants for refugee status are being held in immigration stations, it is because they were already in custody at an immigration station at the time they filed their application for refugee status. It noted, however, that immigration agents advise the aliens of their right to apply for refugee

<sup>566</sup> Testimony that a Nigerian asylum seeker gave to the IACHR's delegation in Tapachula, Chiapas, July 28, 2011.

<sup>567</sup> See, SEGOB, *Acuerdo por el que se emiten las normas para el funcionamiento de las estaciones migratorias del Instituto Nacional de Migración* [Decision issuing the standards for the operation of the National Immigration Institute's immigration stations]. Published in the Official Gazette, October 7, 2009, Article 16, paragraph V.

<sup>568</sup> United Mexican States, Law on Refugees and Additional Protection, Article 24.

status. According to the information supplied by the State, of all the applications received as of October 2013, 53% were from aliens who were in custody at immigration stations prior to applying for refugee status.<sup>569</sup>

538. The civil society organizations also told the Rapporteur of the problems that arise in connection with due process; many times, the account given in the decisions does not match the account given by the applicant during his or her interview; applicants are sometimes not allowed to introduce evidence or, if they do, their evidence is not taken into account; in many cases, persons applying for recognition of refugee status are not assisted by qualified interpreters.

539. On this issue, the Mexican State commented that under Article 23 of the Law on Refugees and Additional Protection, the applicant shall provide his or her full and truthful identification information, the reasons for his or her application for refugee status, and all the evidence he or she has at hand to support it. Between the time that the application is filed and a decision made, the State gave assurances that the applicant has the right to provide any additional evidence that he or she deems pertinent. The State also pointed out that if deemed necessary during the course of the proceeding, especially during the interviews, the assistance of a translator or interpreter will be provided to enable communication with the applicant. Mexico explained that any and all communication during the interviews between the public servants from the Coordination Office and the applicants is recorded. On the question of the use of interpreters, Mexico maintained that full comprehension is guaranteed and interpretation and translation services will be made available to assist and will be provided by persons who have no relevant connection with the diplomatic or consular offices of the applicant's country of origin. Lastly, Mexico observed that under Article 30 of the Law on Refugees and Additional Protection, if it does not have the services of an interpreter or translator for the language spoken by the applicant, it can turn to institutions with personnel on staff who have a command of the needed language; assistance can also be requested of international organizations and agencies, where the translation or interpretation will be by video conference, conference calls or any other means of remote communication; in exceptional cases, the interviews can be conducted in a language other than the language of the applicant, provided he or she gives his or her consent.<sup>570</sup>

540. The Rapporteur was also told that there is no effective remedy by which to challenge decisions refusing to recognize refugee status. COMAR is the institution in charge of recognizing refugee status and if it denies an application, it is up to the Office of the General Coordinator of COMAR to decide petitions filed seeking review for the

<sup>569</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, pp. 16 and 17.

<sup>570</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 17.

purpose of challenging the decision to refuse to recognize refugee status.<sup>571</sup> In practice this has meant that COMAR serves both as the decision-making authority and as a party to the proceeding, and its inclination is to defend its own decisions.

541. On this subject, the Mexican State noted that under the provisions of the Federal Law on Administrative Procedure, which is supplementary of the Law on Refugees and Additional Protection, the remedy that can be invoked to challenge a COMAR decision to deny refugee status is a petition for review. The latter is filed with the same authority that issued the decision being challenged; that authority's hierarchical superior will review the petition to determine the lawfulness of the decision and issue a finding confirming, amending or revoking the administrative decision. Under Article 86 of the Federal Law on Administrative Procedure, "the brief entering the petition for review must be filed with the authority who issued the decision being challenged and will be decided by that authority's hierarchical superior except when the decision being challenged was taken by the head of an office, in which case it will be decided by that same authority." In addition to the foregoing, the State observed that Article 87 of the Federal Law on Administrative Procedure provides that the filing of the petition shall suspend enforcement of the decision being challenged, provided the applicant expressly requests its suspension and provided the petition is admissible. Given the foregoing, the State contends that once a petition for review is admitted, COMAR notifies the INM so that the principle of *non-refoulement* recognized in the Law on Refugees and Additional Protection is guaranteed.<sup>572</sup>

542. In the case of decisions that deny the application for refugee status, the Mexican State explained that, in addition to the petition for review, the applicant may also bring a contentious administrative case, and need not exhaust the petition filed with COMAR seeking review of a decision. The State also pointed that any act of an authority can be challenged by filing a petition seeking *amparo* relief. Thus, the petition for review is not the only remedy available to challenge a decision issued by COMAR.<sup>573</sup>

543. As for the obligation to afford judicial protection to applicants seeking refugee status, the Mexican State pointed out that under paragraph I of Article 1 of the *Amparo* Act, the purpose of *amparo* proceedings is to resolve any dispute that arises out of general norms, acts or omissions on the part of an authority that violate the human rights recognized and the guarantees given for their protection under the Constitution and the international treaties to which the Mexican State is party.<sup>574</sup>

<sup>571</sup> United Mexican States, *Reglamento de la Ley sobre Refugiados y Protección Complementaria* [Regulations for the Law on Refugees and Additional Protection, Article 15, paragraph XIX.

<sup>572</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 18.

<sup>573</sup> *Ibidem*, pp. 18 and 19.

<sup>574</sup> *Ibidem*, p. 18.

544. The right of any person to seek and receive asylum in foreign territory is recognized in Article 22(7) of the American Convention. The Commission's interpretation of this article has been based on such instruments as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. For its part, Article 11 of Mexico's Constitution recognizes the right to petition for asylum in a case of persecution on political grounds and the right to have one's refugee status recognized on humanitarian grounds.<sup>575</sup>

545. The first consideration that the Commission must reaffirm in addressing the right to seek and receive asylum is that "[t]he status of refugee is one which derives from the circumstances of the person; it is recognized by the State, rather than conferred by it. The purpose of the applicable procedures is to ensure that it is recognized in every case where that is justified."<sup>576</sup> It is also important to recall that persons who apply for recognition of refugee status tend to be in particularly vulnerable circumstances.<sup>577</sup> Accordingly, any proceeding to determine refugee status involves an assessment of and a decision on the risk of violation of the most fundamental rights, among them the rights to life, personal integrity and personal liberty. This must be the fundamental premise applied when designing and implementing this type of proceeding, so that it can effectively accomplish its essential purpose, which is to afford the protection being sought.

546. The Commission therefore must again make the point that because the proceeding held for recognition of refugee status requires a substantive determination, the State must ensure that due process guarantees will be observed. Here, the Commission has written that in proceedings conducted to determine refugee status and in those that can lead to the expulsion or deportation of a refugee or applicant seeking recognition of refugee status, the analysis of compliance with the State's obligations under the American Convention necessitates a combined evaluation of the right to judicial guarantees, the right to seek and receive asylum, the principle of *non-refoulement*, and the right to judicial protection, recognized in Convention articles 8, 22(7), 22(8) and 25.<sup>578</sup> The Commission has been emphatic in maintaining that the *jurisprudence constante* of the organs of the Inter-American System is that the guarantees of due process are not confined to courts alone; instead, they apply in all proceedings, including not just immigration proceedings that may end in a person's expulsion or deportation, but also proceedings to determine whether to recognize refugee status.<sup>579</sup>

<sup>575</sup> In its observations of October 4, 2013, the Mexican State observed that in compliance with the June 2011 constitutional reform on the subject of human rights, the proposal to amend the Law on Refugees and Additional Protection and the amendment of the Immigration Act are currently before the Chamber of Deputies for a decision. See, GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 18.

<sup>576</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*. . OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000, paragraph 70.

<sup>577</sup> See, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*. Geneva, 1992, paragraph 190.

<sup>578</sup> IACHR. Report No. 136/11, Case 12.474. Merits. *Pacheco Tineo Family*. Bolivia. October 31, 2011. Paragraphs 132 et seq.

<sup>579</sup> See, IACHR. Report No. 136/11, Case 12.474. Merits. *Pacheco Tineo Family*. Bolivia. October 31, 2011. Paragraph 133. In addition to the observations made earlier in connection with the Inter-American System, the African

547. As for the possibility of appealing a decision, the facts that have to be determined and the consequences that could follow as a result of how the facts are determined are such that an applicant for recognition of refugee status who receives a decision not in his or her favor must have access to some remedy with automatic suspensive effects.<sup>580</sup>

548. Lastly, under the American Convention, persons within the jurisdiction of a State party and facing a proceeding to decide whether to recognize their refugee status must have some degree of judicial protection against possible violations of their right to seek and receive asylum and of the principle of *non-refoulement*, both of which are protected by the American Convention.<sup>581</sup>

549. Where no effective remedy is available to challenge decisions in which recognition of refugee status is denied, the Commission believes that the authority charged with conducting the review must have sufficient independence and autonomy to make decisions, and have access to specialized knowledge and means for arriving at a well reasoned decision. Applicants seeking recognition of refugee status must be guaranteed effective access to judicial protection, the scope of which will depend on the nature of the review of the merits of the case.

## 7. Immigration detention conditions

550. As for the detention conditions at immigration stations and provisional facilities, the Commission delegation was told—and could see for itself—various situations that are violations of the right to humane treatment, recognized in Article 5 of the American Convention, to the detriment of those detained in those facilities. The CNDH has also extensively monitored conditions at the immigration detention stations.<sup>582</sup> Between January and December 2010, the CNDH conducted 1,559 working visits to immigration detention stations during which it assisted 35,237 migrants. As a result of those visits, the CNDH filed 6,666 requests with the INM authorities on behalf of detained migrants.

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Commission on Human and Peoples' Rights has consistently maintained that the due process guarantees must be observed in proceedings that may result in the deportation of migrants and refugees. For more information see, *inter alia*, African Commission on Human and Peoples' Rights: Communication 313/05 – *Kenneth Good vs. Republic of Botswana*, 47th regular session, May 12 to 26, 2010, paragraphs 160-180, and Communications 27/89, 46/91, 49/91, 99/93 - *Organisation Mondiale Contre La Torture and Association Internationale des juristes Democraties*, *Commission Internationale des Juristes (C.I.J)*, *Inter-African Union of Human Rights v. Ruanda*, 20th regular session, October 1996, p. 4.

<sup>580</sup> IACHR. Report No. 136/11, Case 12.474. Merits. *Pacheco Tineo Family*. Bolivia. October 31, 2011, paragraph 142, citing European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011, paragraph 293.

<sup>581</sup> IACHR. Report No. 136/11, Case 12.474. Merits. *Pacheco Tineo Family*. Bolivia. October 31, 2011. paragraph 145.

<sup>582</sup> See CNDH, *Informe Especial de la Comisión Nacional de los Derechos Humanos sobre la Situación de los Derechos Humanos en las Estaciones Migratorias y Lugares Habilitados del Instituto Nacional de Migración en la República Mexicana* [Special Report of the National Human Rights Commission on the Human Rights Situation in the Immigration Stations and Provisional Facilities Run by the National Immigration Institute in the Mexican Republic]. Mexico, 2005, p. XX. Available [in Spanish] at: [http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2005\\_migracion.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2005_migracion.pdf) [Consulted on December 30, 2013].

Most of these requests were for medical attention for migrants, information on their immigration cases, food, supplies for basic cleaning and personal hygiene, clean bedding, telephone privileges, the opportunity to elaborate upon the statement given to the INM, an inventory of goods, and requests to speed up the repatriation process.<sup>583</sup> Inasmuch as the CNDH did not have contact with everyone in immigration detention stations in 2010 and was not a permanent presence in the immigration detention stations, the IACHR believes that these requests suggest that the problems with immigration detention conditions are considerable.

551. As previously observed, the Rapporteur and the delegation from the IACHR visited the Iztapalapa Immigration Detention Station, the Siglo XXI Immigration Detention Station, the Tapachula Temporary Shelter for Migrant Children. During the course of the visits to the immigration stations, the Rapporteurship was paying particular attention to the following: the detention conditions, access to medical services and psychological treatment, the condition of the facilities, access to educational and recreational programs, the training of the INM personnel, the opportunities that migrants had to speak with family members and the outside world, and their access to legal advisors, civil society organizations and international organizations like the UNHCR and the IOM.

**a. Material conditions: living quarters, infrastructure, sanitation, hygiene, food and ventilation**

552. At the time of the visit to the immigration detention stations, the IACHR delegation observed that in general, the facilities are in good condition in terms of infrastructure and hygiene. Nevertheless, the infrastructure of the immigration stations that the IACHR delegation visited clearly had the look of an incarceration facility. As noted in the preliminary observations, the IACHR finds that, on the whole, the facilities and treatment of persons held in the Immigration Stations are unsuitable given the administrative nature of immigration detention.<sup>584</sup>

553. The Commission delegation found that four migrants were housed in improperly ventilated quarters; instead of windows, they had narrow openings that obstructed the natural lighting. They used bars like one would find in a prison to divide up the area in which the detained migrants were held. The prison mentality that underlies immigration detention is evident in the security infrastructure deployed throughout the immigration stations and the presence of heavily-armed security guards. In discussing the maximum-security infrastructure of the Immigration Station at Acayucan, Veracruz, one state official described it as “a real bunker”. During the Commission’s visit to the immigration stations,

<sup>583</sup> CNDH, *Informe Especial sobre Secuestro de Migrantes en México* [Special Report on Migrant Abduction in Mexico]. Mexico, D.F., February 22, 2011, p. 21.

<sup>584</sup> IACHR, *Preliminary Observations of the IACHR’s Rapporteurship on the Rights of Migrant Workers on Its Visit to Mexico*. Mexico, D.F., August 2, 2011, p. 5.

it was told of practices like placing the immigrants in lockdown at night; in some cases, small punishment and isolation cells were used.<sup>585</sup>

554. The Rapporteur was also told that some of the provisional facilities, also called *garitas*, do not comply with certain provisions of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, particularly with respect to the accommodations, overcrowding, hygiene, availability of drinking water, ventilation and adequate food.

555. The Commission was unable to determine whether the regulations governing the rights and obligations of migrants detained in immigration stations had been translated into English, French, Portuguese, Arabic, Chinese and Russian. Such measures are vital to ensuring that migrants are informed of and understand what their rights and obligations are during immigration detention.

556. The mixed migration flows that cross Mexico include migrants from outside the hemisphere, making the job of protecting their human rights even more challenging for the State, particularly in terms of communication, data verification, medical assistance, identification of their needs and consular assistance.<sup>586</sup> The Rapporteur and the IACHR delegation saw firsthand that migrants from outside the hemisphere being held in immigration detention facilities encounter difficulties that obstruct their exercise of their rights because of the communication problems created if they neither speak nor understand Spanish, and because in some places where the immigration stations are located there are few if any consular posts.

*Some immigration agents discriminate against us. We don't know why. Is it because we don't speak Spanish? I don't know. Many [INM agents] speak English. Sometimes we want to talk to the agents who speak English, and they say: Wait! Wait! If they say "wait" that means we have to wait as long as an hour; sometimes they never pay attention to us. He was sick for three days and wanted to see a doctor, but no. If one goes in the morning, they tell you to come back in the afternoon. If you go in the afternoon, they say the doctor's not in. Three days; for three days he had to go to the door and ask to see the doctor, and they told him: no doctor.*<sup>587</sup>

557. The IACHR delegation also received complaints from detained children and adult males about the foul odor in the bedding at the Siglo XXI Immigration Station, a complaint that

<sup>585</sup> IACHR, *Preliminary Observations of the IACHR's Rapporteurship on the Rights of Migrant Workers on Its Visit to Mexico*. Mexico, D.F., August 2, 2011, p. 5.

<sup>586</sup> See, also, AZUARA, Araceli, "Panorama General de la Migración Extracontinental en las Américas" [Overall Picture of Extra-regional Migration in the Americas], Coordinator of the OAS Migration and Development Program, Department of Social Development and Employment, *Migración Extracontinental en las Américas: Memoria* [Extra-regional Migration in the Americas: A Report]. Washington, D.C., 2010, p. 9.

<sup>587</sup> Testimony that an African immigrant gave to the IACHR delegation in Tapachula, Chiapas, July 28, 2011.

members of the delegation corroborated. One of the children said that the odor was so bad that several of them preferred the floor or stone benches over the bedding. The Commission must stress how important it is to maintain hygiene and order in the immigration stations, provisional facilities and any other place where migrants are held in custody.

558. Subsequent to the visit, the Commission received information from the CNDH and several civil society organizations about a series of significant disturbances at the Siglo XXI Immigration Station between May 8 and 11, 2012. Because of these disturbances a group of detained Cuban migrants called for a hunger strike.

### ***b. Access to health services and psychological treatment***

559. During its visits, the Rapporteur and his delegation confirmed that the immigration detention facilities did have infirmaries to treat the medical and psychological conditions of the persons detained there. A number of the migrants interviewed said that when they arrived at the immigration station, they were given a medical checkup. However, when asked about their access to medical care, they said that the doctors were only there at the scheduled times and when emergencies happened, there was no one to treat them. They also said that the psychological care was limited and that only a few migrants had received those services. One migrant detained at the Siglo XXI Immigration Station said the following:

*I've been here [at the immigration station] for seven months... I, too, have a problem I have a hernia and need surgery. I told them this some time ago, and they [the INM personnel] said okay... But later they told me to forget it. I don't know what's happening. It hurts. The pain is terrible. I can't sleep.<sup>588</sup>*

560. In its response to the present report, the State reported that each INM delegation has entered into health agreements with the state Secretariat of Health. As of October 2013, the INM had signed 17 of those agreements in the states of: Aguascalientes, Baja California Sur, Campeche, Chiapas, Chihuahua, Coahuila, Guerrero, Hidalgo, Oaxaca, Quintana Roo, San Luis Potosí, Sinaloa, Tabasco, Tlaxcala, Veracruz, Yucatán, and Zacatecas.<sup>589</sup>

### ***c. Communication with family members and the world outside***

561. Some migrants detained at the Iztapalapa Immigration Station said that they were given telephone calling cards, but others said they had to pay for the cards. The persons detained there had no Internet access. One detained migrant stated that

*Because of the emotional state one is in when detained, a free phone call is what matters most. They have no idea whether the detained person has money on his or*

<sup>588</sup> Testimony that a Haitian immigrant gave to the IACHR delegation in Tapachula, Chiapas, July 28, 2011.

<sup>589</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 19.

*her person or lost it, or had it at one time but was robbed. When one considers the emotional or mental stress that any detained migrant suffers, a phone call costs nothing. Even a daytime phone call. It is important because we leave home and our families don't know how we are. So if they pick us up, we have a right to let our families know: 'Look, they caught us, and I'm on my way back to my country. I don't know when, but don't worry.' What matters most is that the migrant has a right to a free phone call, because we often get here without money.<sup>590</sup>*

562. For its part, the State explained that a partnership was established in 2008 between Nextel de México, the Federal Government (by way of the INM), and UNICEF to protect the right of unaccompanied migrant children and adolescents to communicate with their parents or close family members by way of a free telephone call, no matter where they are. Based on that partnership, Mexico reported that starting in 2008, telephone lines were installed in 19 INM immigration stations so that children and adolescents could avail themselves of their right to contact with family.<sup>591</sup>

563. Access to economical, private and regular communication is particularly important to persons in immigration detention. The complex predicament in which migrants find themselves, far from family and loved ones, makes them all the more vulnerable, contributes to their sense of anxiety and can have psychological effects, which in some cases have repercussions for their physical health. In general, the Commission considers that the communications services available to persons detained in the immigration stations are in need of improvement, especially by equipping the facilities with phones for the detained migrants to use, and by making email services and other internet-based communication available to them on a periodical, frequent and free of charge basis.

#### **d. Access to legal assistance and periodic independent monitoring**

564. The Rapporteur was also told that civil society organizations encounter serious difficulties when they attempt to gain entry into immigration stations to provide legal assistance to detained migrants and privately monitor detention conditions inside the immigration stations and provisional facilities, with full access to every area of a detention center. The Commission was told that the INM either refused to allow civil society organizations to enter the immigration stations, or set conditions that made it difficult for these organizations to perform their function and prevented them from making prompt visits. A group of Central American women detained at the Siglo XXI Immigration Station said that despite having requested it, they had not had access to legal aid or contact with human rights organizations.

<sup>590</sup> Testimony that a Salvadoran migrant gave to the IACHR delegation in Tapachula, Chiapas, July 28, 2011.

<sup>591</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 19.

565. The Commission has learned of situations in which interviews with detained migrants were conducted in the presence of INM officials and under conditions that did not allow the interviewers to take proper notes of the testimony.<sup>592</sup> Because of the lack of privacy, detained migrants were unable to report irregularities inside the detention facilities or file any type of complaint alleging violation of human rights.

566. On this matter, the Mexican State pointed out that the procedure to allow outsiders to visit immigration stations and provisional facilities is regulated under the *Agreement issuing the standards for operation of INM immigration stations and provisional facilities*, published in the Federation's Official Gazette on November 8, 2012. According to the data supplied by the State, in 2012, 21 nongovernmental organizations were granted permission to enter these facilities; 16 nongovernment organizations obtained that authorization between January 1 and March 31, 2013.<sup>593</sup> From the information provided it is impossible to ascertain whether the nongovernmental organizations' access to the immigration stations and provisional facilities was obtained through a simple, routine procedure or whether it was something very exceptional.

567. Because of the nature of the rights at stake, once the State has taken persons into custody, it has an obligation to ensure that independent organizations are able to monitor detention conditions. Accordingly, the State must take whatever measures necessary to guarantee that immigration detention is monitored by civil society organizations, consular agents and national and international organizations like the UNHCR, the Office of the United Nations High Commissioner for Human Rights, the IOM, and the ICRC, to ascertain the conditions under which migrants in detention are kept and what the authorities do to ensure that detained migrants are able to exercise their rights in immigration proceedings held to determine whether to recognize refugee status. Therefore, the Commission is urging the Mexican State to allow and facilitate access by the above-mentioned persons and organizations to those places where detained migrants, asylum seekers, persons applying for recognition of refugee status and other persons in need of international protection are being held.

## E. Conclusions

568. The information compiled by the IACHR delegation during its visit to Mexico and thereafter exposes a series of contradictions in Mexico's immigration policy. Since the Constitutional Reform in the Area of Human Rights entered into force, the Immigration Act and its Regulations, the Law on Refugees and Additional Protection and its Regulations, and other laws adopted in recent years indicate that the Mexican State has altered its approach to international migration to assign greater importance to human rights, which

<sup>592</sup> See, i(dh)eas, *El Laberinto de la Impunidad* [The Labyrinth of Impunity]. Mexico, pp. 106-107.

<sup>593</sup> GOVERNMENT OF MEXICO, *Comments of the Government of Mexico on the Draft Report on the Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*. October 4, 2013, p. 19.

is a major step forward. At the same time, however, the national security approach to immigration is still intact, as are laws and practices that are inimical to observing and guaranteeing the human rights of migrants and other persons in the context of human mobility. In this scenario, automatic immigration detention is one of the major concerns for the Commission.

569. The moment the Mexican authorities come into contact with a migrant, asylum seeker, refugee or other person in need of international protection but unable to prove that he or she is in the country legally under the Immigration Act, automatic immigration detention is the rule rather than the exception. Furthermore, once migrants are in immigration detention, they have little chance of being released while their immigration cases are ongoing, especially if they file remedies to challenge their detention, as there is no time limit on immigration detention in such circumstances. The Commission observes that at the present time, detention and deportation are the principal measures used to control immigration, the goal being to discourage irregular migration in Mexico.<sup>594</sup>

570. The Commission acknowledges the recent advances in the law, particularly the fact that the Immigration Act now embraces the principle of the best interests of the child as one of the maxims of immigration law, and develops principles established in the Convention on the Rights of the Child. This places Mexico on the cutting edge of legal recognition of the rights of migrant children and adolescents. However, detention of migrant children and adolescents is still both law and practice in Mexico and alternatives to detention continue to be the exception in such cases. These matters are of great concern to the Commission and do not comport with the principle of the best interests of the child, the principle of family unity and the State's obligation to adopt the measures of protection that migrant children and adolescents require by virtue of their age and particular vulnerability.

571. The entry into force of the Immigration Act and its Regulations has represented considerable progress, as it has brought a human rights approach to the issues of immigration and migration, especially by providing that due process guarantees must be observed in immigration proceedings. Nevertheless, the Commission believes that a real paradigm shift by the State will require the adoption of all the legislative, administrative and other measures necessary to ensure that immigration detention is the exception and to make alternatives to detention the general rule.

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<sup>594</sup> See in this regard, CERIANI CERNADAS, Pablo, Prologue. "El Laberinto Mexicano." *Política Migratoria y Derechos Humanos* [The Mexican Labyrinth: Immigration Policy and Human Rights], in i(dh)eas, Litigio Estratégico en Derechos Humanos A.C. [Strategic Human Rights Litigation], *En tierra de nadie. El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco* [In No Man's Land. The Labyrinth of Impunity: Violations of the human rights of migrants in the Soconusco region]. i(dh)eas: Mexico City, 2011, p.10.

572. Again, the Commission appreciates that the new laws on immigration and refugee status reflect a broad recognition and acceptance of the procedural guarantees that the authorities must observe from the moment a person is detained for immigration-related reasons and during immigration-related administrative proceedings and those conducted to determine whether refugee status will be recognized. However, the information the Commission has in its possession suggests that this broad recognition of procedural guarantees is not yet reflected in the conduct and practice of the authorities who exercise immigration-control functions, which has serious consequences for the ability of migrants and persons seeking international protection to adequately defend themselves in the proceedings to which they are party.

573. As mentioned earlier, detention conditions are a particularly relevant concern because of the principle that immigration detention must be an exceptional measure. The Commission is concerned that immigration detention centers look more like prisons and is troubled by reports of overcrowding, mistreatment and the deplorable detention conditions at many immigration stations, especially the lack of hygiene, inadequate medical attention and the obstacles put in the way of civil society organizations to prevent them from monitoring conditions at the immigration detention centers. The conditions under which immigration detentions are conducted lead to violations of the rights of migrants subjected to measures of this type, particularly their rights to humane treatment, the guarantees of due process, the duty to adopt special measures of protection for children and adolescents, the right to seek and receive asylum and the right to judicial protection.

574. Lastly, the Commission must underscore how important it is that civil society organizations active in immigration-related work take part in the process of crafting immigration policies and drafting immigration law. As the Immigration Act and its Regulations were being drafted, the Commission received multiple complaints from such civil society organizations concerning the obstacles that the Mexican State had created to limit their participation in the process. Particularly troubling to the Commission were the statements made, for example, by the Working Group on Immigration Policy<sup>595</sup> after publication of the Regulations, to the effect that in drafting the Regulations, the Mexican

<sup>595</sup> The Working Group on Immigration Policy is composed of the *Centro de Derechos Humanos Fray Matías de Córdova, A.C.* [Fray Matías de Córdova Human Rights Center]; the *Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro PRODH)* [Miguel Agustín Pro Juárez Human Rights Center]; the *Coalición Pro defensa del Migrante de Baja California* [Baja California Migrant Defense Coalition]; the *Dimensión Pastoral para la Movilidad Humana* [Pastoral Dimension of Human Mobility]; *FUNDAR Centro de Análisis e Investigación, A.C* [FUNDAR Analysis and Research Center]; *I(dh)eas, Litigio Estratégico en Derechos Humanos* [Strategic Human Rights Litigation]; the *Instituto de Estudios y Divulgación sobre Migración (INEDIM)* [Institute for Studies and Information on Migration]; the *Instituto para las Mujeres en la Migración (IMUMI)* [Institute for Women in Migration]; the *Instituto para la Seguridad y la Democracia (INSYDE)* [Institute for Security and Democracy]; *Movimiento Migrante Mesoamericano (M3)* [Mesoamerican Migrant Movement]; the *Alianza Nacional de Comunidades Caribeñas y Latinoamericanas (NALACC)* [National Alliance of Caribbean and Latin American Communities]; *Red por los Derechos de la Infancia en México (REDIM)* [Network for the Rights of Children in Mexico]; *Sin Fronteras*, IAP; Manuel Ángel Castillo García, Guatemala-Mexico Group; Leticia Calderón, analyst on immigration issues; Elba Coria, Consultant; Gisele Lisa Bonnici, Consultant; José Antonio Guevara, Consultant; Karina Arias, Consultant.

State had simulated the participation of civil society organizations and advocated for and defended migrants.<sup>596</sup>

575. Mexico has one of the largest networks of academics and civil society organizations on the subject of immigration and refugee status, which is an invaluable resource that must be used to advantage when crafting immigration and refugee policy. The expertise of these players is the main argument in favor of effectively engaging them in these processes. In the Commission's view, a paradigm shift in the area of immigration and migration necessitates genuine and effective involvement of all those who work around migrants and persons subject to international protection. This will require a coordinated effort among federal government institutions, states and civil society organizations, academics, and international organizations active in this area, all working in concert to develop mechanisms for collaboration and opportunities for dialogue and consultation that enhance the protection of these persons' human rights. For these reasons, the Commission believes it is imperative that the State establish an open and plural mechanism with clear rules regarding participation, feedback and accountability in the drafting of policies, laws and practices in the areas of immigration, migration and refugee status.

576. The intention of the following recommendations is that the Mexican State should adopt all measures necessary to ensure that its policies, laws and practices regarding irregular migration are in keeping with its international obligations in the area of human rights and, in particular, with its duty to respect and ensure the rights to personal liberty, personal integrity, the right to seek and receive asylum, the guarantees of due process and the right to judicial protection.

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<sup>596</sup> Working Group on Immigration Policy, *Comunicado de prensa: Reglamento de la Immigration Act se publica con cambios, pero persisten problemas de fondo que vulneran los derechos humanos de la población migrante en México* [Press Release: Regulations of the Immigration Act are published with changes, but substantive problems persist that violate the human rights of the migrant population in Mexico]. Mexico, D.F., October 1, 2012. [Document on file with the Commission].

## F. Recommendations

577. Based on the foregoing conclusions, the Inter-American Commission on Human Rights makes the following recommendations:

### **The United Mexican States should:**

#### **In the area of immigration review, verification and control operations:**

1. Take the measures necessary to ensure that the immigration review, verification and control operations and the interrogations, detentions and body searches conducted are not *de facto* based exclusively on a person's physical aspect, color, facial features, membership in a given racial or ethnic group or any other category.

#### **In the area of immigration detention:**

2. Establish, in law, the general presumption of personal liberty in the case of migrants, asylum seekers, refugees and other persons in need of international protection. Detention of migrants in an irregular situation, asylum seekers, refugees, stateless persons and others in need of international protection is an intrinsically undesirable measure. Hence, it must be used only as an exceptional measure, and then only as a last resort and for the shortest period of time possible.
3. Put into practice a risk-assessment mechanism premised on a presumption in favor of liberty, and set out clear criteria for determining those exceptional cases in which immigration detention is called for.
4. Establish, in law, alternatives to detention and expand upon the existing alternatives. These measures should function as the rule in cases of migrants in an irregular situation, asylum seekers, refugees and other persons in need of international protection, who are the subjects of a proceeding to determine their immigration status or a proceeding to determine whether refugee status will be recognized. For the alternatives to detention to be effective, efforts must be made to build up community acceptance and support.
5. Adopt legislative measures that ensure that vulnerable persons like refugees, victims of human trafficking, crime victims, children and adolescents, survivors of torture and trauma, pregnant women, nursing mothers, senior adults, persons with disabilities or those with physical or mental health needs are not placed in immigration detention.
6. Adopt legislative measures that guarantee that children and adolescents, whether accompanied or unaccompanied, will not be placed in immigration detention. Under Article 19 of the American Convention and in keeping with the obligations undertaken in the Convention on the Rights of the Child, the

best interests of the child or adolescent must be protected. Children and adolescents must not be separated from their family or guardians; if they are unaccompanied, arrangements must be made to have them placed in the keeping of a specialized institution capable of performing that function.

7. Ensure that the proceeding to determine the best interests of the child is conducted by a specialized technical entity, separate from and independent of the immigration authority, and that it conducts an evaluation that considers the particular characteristics of each case.
8. Strengthen the mechanisms of coordination and referral between the authorities and civil society organizations, so as to facilitate implementation of alternatives to detention.

**In the area of procedural guarantees and judicial protection:**

9. Guarantee that the decision on immigration detention is made in accordance with the Mexican State's obligations under the conventions to which it is party, its Constitution and its laws, that it is neither arbitrary nor abusive and is subject to periodic judicial review. Detained persons must have the right to challenge the lawfulness of their detention, and enjoy their right to legal assistance; the judge or court must have the authority to order the detained person's release, and the INM authorities must enforce that order promptly.
10. Advise persons in immigration detention of their right to request consular assistance and make available the means to enable them to contact their consulates should they so require
11. Take the measures necessary to ensure that immigration detention is for the shortest time possible and within time limits established for immigration detention, which must be strictly observed.
12. Introduce any amendments in the law needed to ensure that no migrant, asylum seeker, refugee or other person in need of international protection is subjected to immigration detention for an indefinite period of time.
13. Take all the measures necessary to ensure, in law and especially in the practices of INM authorities, that the moment an immigration-related administrative proceeding is instituted and at the time the decision to detain a migrant is made, the due process guarantees recognized in the American Convention, the Mexican Constitution, the Immigration Act and other applicable provisions are protected and observed. This includes the right of such persons to have the means to defend themselves during any immigration proceedings conducted, and to challenge decisions that adversely affect them. In all phases of their immigration proceedings, the persons involved must be guaranteed the assistance of attorneys and interpreters and be informed of their right

to appeal those decisions, the procedures to be followed and the authorities with whom to file their appeals. Such decisions must be duly substantiated.

14. Guarantee that the authority charged with conducting the review has sufficient Independence and autonomy to make the required decisions, and has access to specialized knowledge and the means to arrive at a well-reasoned decision. Applicants seeking recognition of refugee status must be guaranteed effective access to judicial protection.
15. Ensure that migrants are expelled only by order of a competent authority, delivered in the context of a proceeding previously established by law and in which the migrant has had an opportunity to defend himself or herself in accordance with the inter-American standards of due process.
16. Establish, in law, a mechanism through which persons who are deported or repatriated may institute or continue legal action by way of their consulates.

**On the matter of detention conditions:**

17. Ensure that detention conditions at the immigration detention stations and provisional facilities meet the minimum human rights standards recognized in the American Convention and developed in greater detail in the IACHR's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. It is particularly important that any practice intended to punish persons in immigration detention be eliminated, especially forced solitary confinement.
18. Ensure that primary health care is available at immigration stations and provisional facilities. Should a person in immigration detention require specialized medical care, the State shall guarantee that they have access to such care.
19. Ensure that persons in immigration detention are able to communicate promptly with their family members, attorneys or guardians. To that end, free internet and telephone access must be made available at the immigration stations and provisional facilities.
20. Ensure that civil society organizations have access to immigration stations, provisional facilities or any other place where detained migrants in an irregular situation, asylum seekers, refugees, stateless persons or other persons in need of international protection are being held, so that those organizations can provide humanitarian and legal assistance and monitor the conditions under which the persons detained there are being held and the conditions at these places. Accordingly, the State will have to establish clear regulations so that civil society organizations' access to immigration detention centers shall not be left to the discretion of state authorities. The

Commission is of the view that if visiting hours are observed, civil society organizations and attorneys representing migrants in an irregular situation, asylum seekers, refugees, stateless persons and other persons in need of international protection should be able to enter immigration detention centers without giving advance notice to the immigration detention centers or other places where such people are held.



*Irrespective of a person's nationality or immigration status, States have an obligation to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of progressively achieving the full observance of economic, social and cultural rights.*

## CHAPTER IV

# Migrants in Mexico: Equality, Non-Discrimination and Economic, Social and Cultural Rights

### A. General observations

578. Mexico is today the principal destination for hundreds of thousands of immigrants. According to the latest population census, in 2010 Mexico had 961,121 international migrants.<sup>597</sup> According to the INM, between November 2008, the date on which the 2008-2011 immigration regularization program was launched,<sup>598</sup> and late 2011, the status of 10,122 foreign nationals in an irregular situation in Mexico had been regularized.<sup>599</sup> According to the information supplied by the authorities, most of the immigrants whose status was regularized were Central Americans.

579. Many economic migrants, the majority of whom are from Guatemala, gravitate towards bordering States to work as farmhands or as domestics in the more populous cities near the southern border.<sup>600</sup> Indeed, migrant farm workers, most from Guatemala, are a common presence in Chiapas and work on the farms in the Soconusco region.<sup>601</sup> According to information provided by the INM, between 2008 and 2012, a total of 134,974 border worker visitor card [*tarjetas de visitante de trabajador fronterizo*— TVTF]<sup>602</sup> and 361,747 cards of

<sup>597</sup> INEGI, *Censo de Población y Vivienda de 2010 [2010 Population and Housing Census]*. Available [in Spanish] at: <http://www.inegi.org.mx/sistemas/sisept/Default.aspx?t=mdemo63&s=est&c=23634> [Consulted on December 30, 2013].

<sup>598</sup> Under the Immigration Regularization Program, a person could apply for (FM2) immigration status if he or she was a professional, a person in a position of trust, a scientist, a technician, a family member, an artist or athlete, or assimilated person. This program was for aliens of any nationality who were within Mexican territory prior to January 1, 2007 but whose status was irregular and who expressed an interest in establishing residence in Mexico. The program entered into force upon its publication in the Federation's Official Gazette on November 12, 2008, and new applications were accepted up until May 11, 2011.

<sup>599</sup> INM, *Centro de Estudios Migratorios [Immigration Studies Center]*, *Estadísticas migratorias básicas [Basic migration statistics]*. V. 4. Mexico, D.F., July 2011, p. 4 [Document on file with the Commission].

<sup>600</sup> i(dh)eas, *En tierra de nadie. El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco [In No Man's Land. The Labyrinth of Impunity: Violations of the human rights of migrants in the Soconusco region]*. i(dh)eas: Mexico City, 2011, p. 35.

<sup>601</sup> IACHR, *Hearing on the Human Rights Situation of Migrant Persons on the Southern Border of Mexico*. 141st Session, Washington, D.C., March 28, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=122&page=2> [Consulted on December 30, 2013].

<sup>602</sup> Until October 2012, the figure included foreign nationals from Guatemala and Belize documented with a Border Worker Immigration Form [*Forma Migratoria de Trabajador Fronterizo* - FMTF] under Article 42, Section III of the General Population Law, and Articles 162 and 163 of its Regulations. Since November 2012, the figure includes foreign nationals from Guatemala and Belize documented with the border worker visiting card [*Tarjeta*

regional visitor [*tarjetas de visitante regional*— TVR]<sup>603</sup> were issued to foreign nationals from Guatemala and Belize,<sup>604</sup> which enabled them to spend up to three days in communities along Mexico's southern border.<sup>605</sup>

## B. International norms and standards on the subject of the economic, social and cultural rights of migrant persons

580. Under International Law, States have the right to control their borders, establish the requirements for entering and remaining in their territory, and the right to expel or deport foreign nationals.<sup>606</sup> In general, they have the right to establish their immigration policies. However, those immigration policies, laws and practices must be respectful of and guarantee the human rights of all migrant persons, which are rights and freedoms that derive from their dignity as human persons and that the States have widely recognized in the international human rights treaties to which they are party.

581. In the case of the Inter-American Human Rights System, the States parties have an obligation to respect the rights and freedoms recognized in the Inter-American instruments and to guarantee their free and full exercise to all persons subject to their jurisdiction. In general, the rights recognized in the Inter-American instruments apply to all persons, regardless of their nationality, their immigration status, statelessness or any other social condition.<sup>607</sup> Therefore, the States parties of the Inter-American System have a general obligation to guarantee each and every right protected under the Inter-American instruments to which they are party, and may not discriminate between nationals and migrants. Protection of the rights of migrants, foreign nationals, non-nationals, and

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*de Visitante Trabajador Fronterizo*] under Article 52, Section IV of the Immigration Act, Articles 134 and 136 of its Regulations and Articles 75, 76 and 77 of the guidelines for immigration applications and procedures.

<sup>603</sup> Until October 2012, the figure included foreign nationals from Guatemala and Belize documented with the Local Visitor Immigration Form [*Forma Migratoria de Visitante Local* – FMVL] under Article 42, Section IX of the General Population Law. Effective November, it includes foreign nationals from Guatemala and Belize who carry the Regional Visitor Card, under Article 52, Section III of the Immigration Act, articles 132 and 136 of its Regulations, and Articles 72, 73 and 74 of the guidelines for immigration applications and procedures.

<sup>604</sup> INM, *Boletines estadísticos*. Mexico, 2012. Available [in Spanish] at: [http://www.inm.gob.mx/index.php/page/Boletines\\_Estadisticos](http://www.inm.gob.mx/index.php/page/Boletines_Estadisticos) [Consulted on December 30, 2013]. See also, Remarks by the Under Secretary for Population, Migration and Religious Affairs, Dr. René Zenteno, at the Hearing the Commission held on the Follow-up to the Visit to Mexico of the Office of the Rapporteur on the Rights of Migrants. Washington, D.C., October 27, 2011, p. 7 [Document on file with the Commission].

<sup>605</sup> For more information on visas of this type, see, ANCEHITA PAGAZA, Alejandra Constanza and BONNICI, Gisele Lisa, *¿Quo Vadis? Reclutamiento y contratación de trabajadores migrantes y su acceso a la seguridad social: dinámicas de los sistemas de trabajo temporal migratorio en Norte y Centroamérica* [Quo Vadis? Recruitment and hiring of migrant labor and their access to social security: the dynamic of the seasonal migrant worker systems in North and Central America]. INEDIM: Mexico, 2013, pp. 103 et seq.

<sup>606</sup> United Nations Human Rights Committee, “General Comment No. 15: The position of aliens under the Covenant” in: *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty*. HRI/GEN/1/Rev.9 (Vol.I), 2008, p. 189.

<sup>607</sup> See, American Convention on Human Rights, Article 1; Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, “Protocol of San Salvador”, Article 3.

stateless persons follows from the general obligation prohibiting discrimination in the exercise of rights.

582. As with civil and political rights, the principle of the universality of economic, social and cultural rights applies to everyone within the jurisdiction of a State, and no distinction based on nationality, immigration status, statelessness or any other social condition is permissible. The Commission feels compelled to point out that, irrespective of a person's nationality or immigration status, under Article 26 of the American Convention on Human Rights and Article 1 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (hereinafter "the Protocol of San Salvador"), States have an obligation to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of progressively achieving the full observance of economic, social and cultural rights.<sup>608</sup>

583. Like the American Convention, the Protocol of San Salvador provides that States have an obligation to guarantee the exercise of the rights set forth in the Protocol without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.<sup>609</sup> In addressing the juridical condition and rights of migrants in an irregular situation, the Inter-American Court wrote that "the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws."<sup>610</sup> Elaborating, the Court wrote that "the obligation to respect and ensure the principle of the right to equal protection and non-discrimination is irrespective of a person's migratory status in a State. In other words, States have the obligation to ensure this fundamental principle to its citizens and to any foreigner who is on its territory, without any discrimination based on regular or irregular residence, nationality, race, gender or any other cause."<sup>611</sup>

584. Moreover, the Committee on Economic Social and Cultural Rights has maintained that without prejudice to the application of art. 2, para. 3 of the Covenant, which states: "Developing countries, with due regard to human rights and their national economy, may

<sup>608</sup> Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, (hereinafter "the Protocol of San Salvador"), Article 1.

<sup>609</sup> Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, (hereinafter "the Protocol of San Salvador"), Article 3.

<sup>610</sup> I/A Court H.R., *Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants*. 2003, paragraph 101.

<sup>611</sup> I/A Court H.R., *Case of the Yean and Bosico Children v. the Dominican Republic*. 2005, paragraph 155. Citing, *Juridical Condition and Rights of Undocumented Migrants*, *supra* note 95, paragraph 118.

determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals”

[t]he ground of nationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.<sup>612</sup>

585. The Commission shares the view of the Committee on Economic, Social and Cultural Rights which wrote that while the International Covenant on Economic, Social and Cultural Rights (hereinafter the “ICESCR”) uses the term “progressive realization”, that concept should not be misinterpreted as depriving the obligation of all meaningful content where economic, social and cultural rights are concerned.<sup>613</sup> The Committee also maintained that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Elaborating, the Committee observed that

It is the Committee’s view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*. Furthermore, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources”. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>614</sup>

586. While the American Convention and the Protocol of San Salvador recognize the progressive development of economic, social and cultural rights, under Article 1 of the Protocol of San Salvador States parties undertake to immediately adopt the necessary measures, to the extent allowed by their available resources and taking into account their

<sup>612</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). E.C.12/GC/20, July 2, 2009, paragraph 30. Citing General Comment No. 30 (2004) of the Committee on the Elimination of All Forms of Racial Discrimination on non-citizens.

<sup>613</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3: *The nature of States parties’ obligations*(art. 2, para. 1, of the Covenant). UN Doc.HRI/GEN/1/Rev.9 (Vol. I), December 14, 1990, paragraph 9.

<sup>614</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3: *The nature of States parties’ obligations* (art. 2, para. 1, of the Covenant). UN Doc.HRI/GEN/1/Rev.9 (Vol. I), December 14, 1990, paragraph 10.

degree of development, for the purpose of achieving the full observance of the rights recognized in the Protocol. This obligation of immediate effect is recognized in Article 2 of the ICESCR. The inference of the foregoing is that States are prohibited from adopting regressive measures in the area of economic, social and cultural rights.

### **C. Principal concerns regarding immigration proceedings, the right to nationality and the economic, social and cultural rights of migrants in Mexico**

587. Under Article 52 of the Immigration Act, foreign nationals may remain within Mexican territory if they fall into any of the following categories: visitor without a permit to engage in remunerated activities, visitor with a permit to engage in remunerated activities, a regional visitor, a border laborer with a visiting card, a visitor in Mexico for humanitarian reasons, a visitor in Mexico for adoption purposes, a temporary resident, a student with temporary residency status, and a permanent resident.

#### **1. Regularization and access to immigration documentation**

588. According to the information provided by civil society organizations, the main difficulties that migrants encounter when attempting to regularize their status are, first of all, the lack of financial resources, and secondly a lack of command of the Spanish language.<sup>615</sup> Although Article 14 of the Immigration Act provides that a translator or interpreter shall be appointed when the migrant, no matter what his or her immigration status is, neither speaks nor understands the Spanish language, the Commission was told that in practice the problem persists.

589. The Rapporteur and the IACHR delegation were informed that in the case of women who have a Mexican partner or husband, the documentation issued to regularize their presence in Mexico authorizes them to remain in Mexican territory living with and dependent on their husband or partner. This makes women doubly dependent upon their partners: on the one hand they depend upon them for renewal of their document; on the other hand, they are forced to be economically dependent upon their partner. This situation is particularly problematic in cases of domestic violence, since the female victims cannot turn to the authorities for help for fear they will be deported or because they do not have the financial means to survive on their own. The Commission was also told that in some cases, it takes too long to get the immigration document; the immediate need for such a document does not seem to be a consideration. In Mexico City, the Commission heard testimony from one migrant woman who said the following:

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<sup>615</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*, Mexico, 2011, p. 38.

*I met my former husband in Cali (Colombia) back in 2002 {...}. In 2004, I went to Mexico because my former husband was there. I had a daughter, age 11, from a previous relationship and we traveled to Mexico together to live with my former husband. I was on an economic-dependent visa. When we arrived, I realized that he was machista. Following our arrival, he began to abuse my daughter and me, both verbally and emotionally [...] The physical abuse started after about a month. One day he got jealous when we were out and locked me and my daughter in a room. Sometimes we went without food for as long as three days [...] He retained my passport and other documents and constantly threatened to report me to Immigration so that they would deport me. In January or February of 2005, he began going to Immigration to file complaints against me [...] In 2005, I was hospitalized several times, because he kept battering me. Once he was drunk and threw me on the floor and began beating me on the head; when I was able, I escaped and managed to get to the lady who lived across the street. I was blind for 15 days; he had also broken my right eardrum. I reported this to the CAVI [Centro de Atención a la Violencia Intrafamiliar – Domestic Violence Treatment Center], but the Public Prosecutor's Office never conducted any investigation. After that, I began getting psychological treatment and filed for divorce. In reprisal, my husband bribed an Immigration agent to threaten me that they were going to deport me [...] Because of this, I filed to have my visa status changed from dependent to independent, so that I could work and regularize my immigration status in Mexico. However, my husband had filed an immigration alert, and Immigration told me I had 30 days to leave the country [...] That immigration alert disrupted the immigration and divorce proceedings. Immigration had to give me authorization to divorce my husband, and I had to pay them 5,700 pesos before they would authorize my divorce. The divorce and the visa change took several years [...] In December 2010 when I went to exchange my visa for an FM2, there was another Immigration alert [...] In March [2011] they finally gave me the FM2, but only with a work permit, not a study permit. They also charged me the tax for a change of employment status, when by law I was exempt and had requested the exemption at the proper time. I had to wait five years to regularize my immigration status and have my rights recognized.<sup>616</sup>*

590. According to the Commission, another question that should be addressed concerns the families of migrant workers, especially when a migrant worker's spouse and children enter the country as the migrant worker's economic dependents. The Commission observes that family members' economic reliance on the migrant worker, without having any way to earn on their own, can take a disproportionate toll, especially

<sup>616</sup> A Colombian immigrant woman. Testimony taken in Mexico City by the Rapporteur on the Rights of Migrants, July 25, 2011.

on the women,<sup>617</sup> since being classified as a dependent for immigration purposes means that such cannot be employed.

## 2. Recognition of the right to nationality

591. Article 30 of Mexico's Constitution provides that Mexican citizenship is acquired by birth or through naturalization. In the case of Mexican citizenship acquired by birth, the Constitution establishes that the following shall be deemed Mexican citizens: a) children born on Mexican territory shall be Mexican citizens, no matter what their parents' nationality; b) children born abroad of Mexican parents who were born on national territory, of a Mexican father born on Mexican territory, or of a Mexican mother born on Mexican territory; c) children born abroad of naturalized Mexican parents, a naturalized Mexican father, or a naturalized Mexican mother, and d) children born aboard Mexican-flagged military or mercantile vessels or aircraft. Citizenship through naturalization shall be acquired by: a) foreign nationals who obtain a letter of naturalization from the Secretariat of Foreign Affairs; and b) a foreign-born man or woman who marries a Mexican woman or man, who has established or establishes domicile within Mexican territory and meets all the other requirements that the law stipulates.

592. In addition, Article 9 of the Immigration Act provides that in the case of immigrants, no matter what their immigration status, judges or officials with the Vital Records Office shall not refuse to authorize acts relating to civil status or documents pertaining to birth, acknowledgement of parentage, marriage, divorce and death, which was the opposite of the provision contained in the now repealed Article 68 of the General Population Law.<sup>618</sup>

593. In this regard, the Commission received information about cases in which officials with the Vital Records Office refused to register children born in Mexico of migrants in an irregular situation. According to civil society organizations, migrants in

<sup>617</sup> On Mexico's southern border a process of "feminization of migration" is underway because of the many women migrating to Mexico with their husbands to work in the agricultural sector. CANALES, Alejandro *et al.*, "Migración y Salud en Zonas Fronterizas: Informe de Cinco Fronteras Seleccionadas", CELADE, Santiago 2010, p.38. Available [in Spanish] at: <http://www.eclac.cl/cgi-bin/getProd.asp?xml=/publicaciones/xml/1/42081/P42081.xml&xsl=/celade/tpl/p9f.xsl>. [Consulted on December 30, 2013].

<sup>618</sup> The repealed Article 68 of the General Population Law read as follows:

Judges or vital records officials shall not perform any ceremony to which a foreign national is party without said foreign national first showing proof of his or her legal presence within the country; exceptions are made to register births and deaths, under the conditions established in the regulations governing this law. In cases where foreign nationals are entering into marriage with Mexican citizens, the authorization of the Secretariat of the Interior shall also be required.

A record of the proofs to which this article refers shall be made and the Secretariat of the Interior shall be notified of the act performed.

Marriages and divorces between Mexican citizens and foreign nationals shall be entered into the national catalogue of foreign nationals within 30 days.

an irregular situation are the victims of discrimination when they try to register their Mexican-born children. The refusal to register such children is a violation of Article 30 of the Mexican Constitution, which provides that Mexican citizenship is acquired by birth or through naturalization.

594. The Commission welcomes the Decree that added a third paragraph to the Chiapas State Civil Code specifically stating that under no circumstances may be denied the registration of a child born within the territory of Chiapas State when the child's father, mother or both parents are foreign nationals who do not have documents to show that they are within Mexican territory legally; the new third paragraph orders that the names of the parents be entered into the record. However, the Commission was told that some vital records offices in Chiapas State still refuse to register the births of Mexican children born of foreign parents.<sup>619</sup> The Commission is therefore urging the State to continue to take the measures necessary to ensure that children of migrants are registered, irrespective of their parents' immigration status.<sup>620</sup>

595. The Rapporteur and the IACHR delegation were informed that one of the main obstacles facing migrants whose destination is Mexico is the practice of withholding documents like the birth certificates of children born within Mexican territory of migrants in an irregular situation.<sup>621</sup> This directly affects their right to recognition as persons before the law, their rights to a name, to nationality, to equal protection of the law and to non-discrimination, the rights of the child and access to education and health. Apart from the impact this has on the rights of such children, situations of this type also affect their parents, who might otherwise have applied for a visa to stay in Mexico by virtue of being related to a Mexican citizen.

596. In the case of children born in Mexican territory, whose parents are migrants in an irregular situation, the Commission must highlight the Inter-American Court's finding to the effect that the immigration status of parents can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights. Furthermore, the immigration status of a person cannot be a condition for the State to grant nationality.<sup>622</sup>

597. The Commission was also told of situations in which the children of naturalized Mexican parents have encountered difficulties in securing their own naturalization, which directly affects the enjoyment and exercise of their rights, particularly their right

<sup>619</sup> Chiapas State Civil Code, Article 56.

<sup>620</sup> Final observations of the Committee of Migrant Workers to Mexico, May 3, 2011, paragraphs 39-40.

<sup>621</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*. Mexico, 2011, p. 38.

<sup>622</sup> Inter-American Court of Human Rights, *Case of the Yean and Bosico Children v. the Dominican Republic*. Judgment of September 8, 2005. Paragraph 156. Citing, I/A Court H.R., *Judicial Condition and Rights of Undocumented Migrants*, paragraph 134.

to education. In some cases, the parents are required to present a document proving their legal immigration status before they are allowed to register the birth of their Mexican-born children with the vital records office.<sup>623</sup> During the visit, the Commission took testimony from a Honduran migrant woman who said the following:

*In late 1999, some friends made an offer to me that I should come to the United States. When I was already there, I met Eduardo, my partner. He was Mexican and, like me, had no papers [...] Our son Alex was born in the United States in 2003 [...] In 2009, I was detained and after spending, about two months in immigration detention, they deported me to Guatemala. Eduardo was unable to take care of the child, so we decided that I should come to Mexico, where I would join my son and we would live with Eduardo's family. That was back in January 2010 [...] Alex made the trip to Mexico by himself, on a tourist visa, on March 28, 2010 [...] The Immigration people gave me an FM3 visa, but what I need in order to be able to live in Mexico and be with my son is an FM2 visa. I can't work with the FM3 visa, and Alex is not being allowed to enroll in elementary school. They fined me 5,700 pesos for having entered the country without papers and later lowered the fine to 3500 pesos. We managed to pay the fine with help from the Institute for Women in Migration. The naturalization procedures were halted because I was unable to pay the fine. [...] These naturalization procedures have taken a long time. In October 2010, I filed my application to have my immigration status and my son's immigration status regularized, and presented a letter from the Honduran Embassy to support my case.*<sup>624</sup>

598. The Commission is of the view that the amendments to the law must be accompanied by extensive training and efforts to raise awareness among State officials and government employees. The Commission believes it is vital that the rights and guarantees recognized in the new immigration laws be widely publicized, since civil society organizations have observed that in some cases migrants in an irregular situation don't even try to register their children with the Civil Registry office for fear of being detained and then deported. The Commission has been informed that these situations have reached the point that in some cases the migrants will ask relatives or friends to register the children as their own.<sup>625</sup>

### 3. Labor rights

599. The information compiled by the Commission reveals that migrant workers tend to be more exposed to abuses of their labor rights than their Mexican counterparts

<sup>623</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*. Mexico, 2011, p. 38.

<sup>624</sup> Testimony given a Honduran migrant woman.

<sup>625</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*. Mexico, 2011, p. 38.

are. The information reported by civil society organizations indicates that some migrants claim to be making half what their Mexican counterparts earn per day worked; sometimes they are not paid what was promised or not paid at all. Their workdays are longer than eight hours and there are many documented cases in which migrant workers are not given days off.<sup>626</sup> With this combination of circumstances, abuse and exploitation of migrant workers has become the norm. While the principle of non-discrimination and equal protection under the law requires that the State guarantee observance of migrant workers' labor rights, the fact of being a migrant in practice means not being recognized as a person before the law; the situation is even worse in the case of migrants in an irregular situation.

600. The National Survey of Farm Day-Laborers [*Encuesta Nacional de Jornaleros Agrícolas* - ENJO 2009] found that 21.3% of all farm day-laborers in Mexico are migrants.<sup>627</sup> The Commission's delegation was told that where work was concerned, the situation of migrant workers in Mexico is not much different from that of Mexican farmhands. According to the data compiled by the ENJO 2009, 90.9% of farm workers did not have a labor contract and 73% were paid on a wage basis or by day worked, and 23.7% were paid by piecework.<sup>628</sup> Some 60.9% of farm workers work 6 days a week, while 13.9% work seven days a week. This is especially true among migrant farm workers, who tend to have a much longer workday than what the law prescribes; in many cases, they work under exploitative conditions and are in general exposed to a variety of dangers in the work they perform. The wage paid to day laborers in Mexico is below the rural poverty line as defined by the National Council on Social Development Policy.

601. The Commission also received reports about the unsafe and unhealthy conditions in which workers live on the farms where coffee beans and other crops grow. On such farms, the migrant workers live together in sheds made of cardboard or galvanized tin called "galleras" [hen houses], with no access to potable water; the overcrowded conditions tend to make expose them to various types of illnesses.<sup>629</sup>

602. The Commission was also informed about the existence of a significant percentage of migrant child labor engaged in agricultural work in Mexico. Under international human rights standards, children have labor rights, whose enjoyment and exercise demands a much higher standard of protection. Article 32 of the United Nations Convention on the Rights of the Child provides that States shall establish the minimum working age and shall provide for the appropriate regulation of the hours and conditions

<sup>626</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias* [Report on the General Situation of the Rights of Migrants and Members of Their Families]. Mexico, 2011, p. 46.

<sup>627</sup> Secretariat of Social Development, "Estimación de la Población Jornalera Migrante" [Estimate of the Total Number of Migrant Day Laborers]. Available [in Spanish] at: <http://sedesol2006.sedesol.gob.mx/archivos/336/file/Estimaciondejornalerosmigrantes.pdf> [Consulted on December 30, 2013].

<sup>628</sup> National Survey of Farm Day-Laborers [*Encuesta Nacional de Jornaleros Agrícolas 2009*] (ENJO) Available [in Spanish] at: <http://www.cipet.gob.mx/Jornaleros/index.html> [Consulted on December 30, 2013].

<sup>629</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias* [Report on the General Situation of the Rights of Migrants and Members of Their Families]. Mexico, 2011, p. 45.

of employment. ILO convention No. 138, the Minimum Age Convention, provides that States shall establish a minimum age for admission to employment, which shall not be less than 15 or 14 years of age, provided certain formalities established in that instrument are complied with.<sup>630</sup> ILO Convention No. 182 on the worst forms of child labor contains similar provisions. Article 123, Section A, subsection III of the Constitution of the United Mexican States prohibits employment of children under the age of 14. The maximum workday for children over the age of 14 and minors 16 years and older is six hours. The clause of the Constitution is echoed in several articles of the Federal Labor Law.<sup>631</sup>

603. The regulations under international human rights law on the subject of child labor and the provisions of the Mexican Constitution notwithstanding, due to the poverty and extreme poverty in Central American countries and some parts of Mexico, 20.4% of the total number of day-laborers working on farms in Mexico were children under the age of 12; close to 40% were minors under the age of 18.<sup>632</sup> According to the information provided by the Fray Matías de Córdova Human Rights Center, some 40% of Guatemalan women who cross the border to work in Mexico do so as domestic workers starting at the age of 12, on average.<sup>633</sup> The Commission knows that many of the children working in Mexico labor under conditions that are not conducive to and are incompatible with their physical and mental development.

604. Another troubling aspect concerns social security for seasonal migrant workers, since there is no law on the books making social security rights acquired in the country of origin or destination transferrable.<sup>634</sup>

605. The government established the Mexican Southern Border Migration Program, which issues immigration forms especially designed for migrant workers from Guatemala and Belize. Although these forms regularize the migrant workers' status and thereby protect their rights, the immigration forms themselves do not inform the migrant workers of their rights; nothing is being done to bring these forms to public attention, which would make them more effective tools in protecting workers against labor abuses.<sup>635</sup>

606. In its advisory opinion on the *Juridical Condition and Rights of Undocumented Migrants*, the Inter-American Court wrote that irrespective of their immigration status,

<sup>630</sup> See International Labour Organization, Convention No. 138, The Minimum Age Convention, Articles 2.3 and 2.4.

<sup>631</sup> See, Federal Labor Law [*Ley Federal del Trabajo*], Articles 5, 22, 173, 174, 175, 176, 177, 178, 179, 180, 191, 267, 541, 988 and 995.

<sup>632</sup> National Survey of Farm Day-Laborers [*Encuesta Nacional de Jornaleros Agrícolas 2009*] (ENJO).

<sup>633</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias* [Report on the General Situation of the Rights of Migrants and Members of Their Families]. Mexico, 2011, p. 46.

<sup>634</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias* [Report on the General Situation of the Rights of Migrants and Members of Their Families]. Mexico, 2011, p. 40.

<sup>635</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias* [Report on the General Situation of the Rights of Migrants and Members of Their Families]. Mexico, 2011, p. 39.

migrant workers have labor rights which necessarily emanate from the circumstance of being a worker, not from their immigration status.<sup>636</sup>

#### 4. Right to education

607. Article 13 of the Protocol of San Salvador provides that everyone has the right to education and that among the principles to which States must adhere to allow for full observance and exercise of that right is that “[p]rimary education should be compulsory and accessible to all without cost.” Article 30 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that every child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned.

608. From the information compiled during the visit, the Commission notes with concern that migrant children encounter a variety of difficulties in getting access to education. First they are required to have current immigration papers. Second, the administration charges them for validating previous studies. This is difficult for many families, who are poor and cannot pay fees of that kind. The same problem arises when they are required to pay fines in order to have their immigration status regularized.<sup>637</sup>

609. The situations described above prevent the children from having the same access to education that Mexican nationals have, which is a violation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has observed, immigration status is irrelevant in establishing the State’s obligation to guarantee the right to education.<sup>638</sup>

610. The Commission has also learned that many migrant workers and their families are monolinguals in indigenous languages. The lack of command of the Spanish language is an encumbrance to their access to and enjoyment and exercise of their rights. Another problem for children who migrate with their parents is that the planting and harvest times do not coincide with the school year, which is also a problem for children who work as farmhands. The Commission applauds the efforts that the Mexican State is making

<sup>636</sup> I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18.

<sup>637</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*. Mexico, 2011, p. 41.

<sup>638</sup> *Centro de Derechos Humanos Universidad Nacional de Lanus, “Estudio sobre los Estándares Jurídicos Básicos aplicables a Niños y Niñas Migrantes en Situación Migratoria Irregular en América Latina y el Caribe” [Study on the Basic Legal Standards that Apply to Children of Migrants with an Irregular Immigration Status in Latin America and the Caribbean]*, UNICEF 2009. p 87. Available [in Spanish] at [http://www.unicef.org/mexico/spanish/mx\\_Unicef-EstandaresJuricoNyNMigrantes.pdf](http://www.unicef.org/mexico/spanish/mx_Unicef-EstandaresJuricoNyNMigrantes.pdf) [Consulted on December 30, 2013].

to address this problem as it develops the Program for Migrant Children (PRONIM) and urges it to extend the program so that it includes children it does not currently cover.<sup>639</sup>

## 5. Right to health

611. Under Article 10 of the Protocol of San Salvador, everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a) primary health care, that is, essential health care made available to all individuals and families in the community; b) extension of the benefits of health services to all individuals subject to the State's jurisdiction; c) universal immunization against the principal infectious diseases; d) prevention and treatment of endemic, occupational and other diseases; e) education of the population on the prevention and treatment of health problems, and f) satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

612. Article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. It goes on to state that such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

613. States have the obligation to respect the right of health of migrants, asylum seekers and refugees. As the Committee on Economic, Social and Cultural Rights and the Committee for the Elimination of Racial Discrimination have observed and as this Commission reaffirms, States have an obligation to respect the right of non-citizens, migrants in an irregular situation, asylum seekers and refugees to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.<sup>640</sup>

614. The Commission welcomes the 2011 Immigration Act, Article 8 of which recognizes the right of every migrant to receive medical care, irrespective of his or her immigration status. The law provides for the right of migrants to receive life-saving emergency medical attention free of charge. Nevertheless, Commission has been told that migrants' right to medical treatment does not always mean that they receive such

<sup>639</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*. Mexico, 2011, p. 41.

<sup>640</sup> See, Committee on Economic, Social and Cultural Rights, General Committee No. 14, The right to the highest attainable standard of health (Article 12). E/C.12/2000/4, August 11, 2000, paragraph 34; CERD, *General Recommendation No. XXX on discrimination against non-citizens*. HRI/GEN/1/Rev.9 (Vol. II), October 1, 2004, paragraph 36.

treatment. In effect, migrants in an irregular situation cannot avail themselves of the public health systems and, because of their circumstances, are unable to pay for private health care. As a result, migrants in an irregular situation turn to clandestine clinics or rely on self-medication, thereby putting their health in jeopardy.<sup>641</sup> Civil society organizations told the Rapporteur of situations in which health officials were completely insensitive to the plight of migrant persons.<sup>642</sup> The States' obligation to ensure that migrants and members of their families have access to health care requires that measures be taken to monitor whether these persons are actually being afforded access to health care, whether health care providers are being properly trained and whether migrants are being advised of their rights.<sup>643</sup> The Commission observes with concern that the work that migrant workers do makes them particularly prone to illnesses that are the result of labor exploitation, on-the-job accidents and overcrowded conditions.<sup>644</sup>

## D. Recommendations

615. Based on the above considerations, the Inter-American Commission on Human Rights is making the following recommendations:

### **The United Mexican States should:**

1. Take the necessary measures to recognize the Mexican citizenship of children born in Mexico of migrant parents, regardless of the latter's immigration status.
2. Ensure that the immigration-status regularization programs are low cost, have easier payment arrangements including the offering of exemptions and that waiting times are kept to a minimum.
3. Ensure that migrant workers know their labor rights and where they should turn in the event their labor rights are violated. Provide *pro bono* legal aid so that migrant workers can demand their rights, no matter what their immigration status.

<sup>641</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*. Mexico, 2011, p. 41.

<sup>642</sup> VV. AA., *Informe sobre la Situación General de los Derechos de los Migrantes y sus Familias [Report on the General Situation of the Rights of Migrants and Members of Their Families]*. Mexico, 2011, p. 42.

<sup>643</sup> Centro de Derechos Humanos Universidad Nacional de Lanus, "Estudio sobre los Estándares Jurídicos Básicos aplicables a Niños y Niñas Migrantes en Situación Migratoria Irregular en América Latina y el Caribe" [Study on the Basic Legal Standards that Apply to Children of Migrants with an Irregular Immigration Status in Latin America and the Caribbean], UNICEF 2009. p 96. Available [in Spanish] at [http://www.unicef.org/mexico/spanish/mx\\_Unicef-EstandaresJuricoNyNMigrantes.pdf](http://www.unicef.org/mexico/spanish/mx_Unicef-EstandaresJuricoNyNMigrantes.pdf) [Consulted on December 30, 2013].

<sup>644</sup> Mirta Roses Periago, "Migración y Salud. Discurso apertura, 8.va Conferencia para Migraciones" ["Migration and Health, Inaugural address delivered at the Eighth South American Conference on Migration". Uruguay, 2008. Available [in Spanish] at: [http://www.paho.org/Spanish/D/DSpeech\\_URU\\_Migracion\\_spa\\_Sep08.htm](http://www.paho.org/Spanish/D/DSpeech_URU_Migracion_spa_Sep08.htm). [Consulted on December 30, 2013].

4. Prosecute and punish those employers who commit abuses against migrant workers and their families, and guarantee that migrants have access to the domestic remedies that ensure that the abuses committed against them are properly redressed.
5. Strengthen the protection of seasonal farm workers by monitoring and inspecting the conditions under which they work and ensuring that they work under formal contracts. Here, it is imperative that the measures take a differentiated approach that is responsive to the specific needs of migrant workers, especially those of indigenous origin.
6. Take the measures necessary to guarantee the economic, social and cultural rights of migrant workers, without any form of discrimination. Specifically, the State must monitor conditions on the farms and in the places where migrant workers and their families live, to ensure that they are provided with the basic necessities such as: potable water, electricity, medical services and educational programs.
7. Guarantee that domestic workers are protected by inspecting their places of work and through informational campaigns to inform them of their rights. The Mexican State must take particular care to ensure that minors under the age of 14 are not engaged in domestic labor or any other type of work.
8. Implement programs to provide migrant farm workers and their families with access to regular medical attention and launch campaigns to prevent the illnesses that commonly afflict this population.
9. Strengthen the mechanisms to enable children of domestic and foreign migrants to attend school, taking account of the crop cycle and cultural differences.
10. Establish procedures to assist migrants who are either illiterate or have very little education, or those who neither speak nor understand the Spanish language. Have translators on hand to assist them and informative signs posted in several languages.



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