

## **EXECUTIVE SUMMARY**

### **Alternative Report to that presented by the Mexican Government to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.**

#### **Introduction**

The Migration Network (El Foro Migraciones)<sup>1</sup> is a comprehensive network of over forty members representing Mexican non-profit organizations, academic institutions and activists who work in the field of migration. The Network was formed in 2001 with the principal goal of sharing and analyzing member experiences to better understand the phenomena of migration and identify priorities for action. One of these priorities is the presentation of this Alternative Report to that presented by the Mexican Government to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.

The Alternative Report presents a discussion of selected Articles of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>2</sup> (referred henceforth as “1990 Convention”). This discussion is supported by first hand knowledge of migration in Mexico and examples submitted by Network members. The Articles chosen for discussion are those considered most relevant to migrants transiting through, or residing in, Mexico.

The Alternative Report consists of two main parts. The first presents a discussion of the 1990 Convention’s general application in Mexico. The second presents discussion of the selected Articles accompanied by recommendations offered by the Network to the UN Committee on Migrant Workers.

#### **General Context**

Mexico shares borders with the United States of America, Guatemala and Belize. For migrants, Mexico is both a country of origin and destination as well as a country of transit. Mexico has 172 points of entry by air, sea or land. Forty eight of these points of entry are located in the southern region of the country. Twenty-nine of the 52 official migrant detention centers are located at these 48 southern points of entry. Furthermore, fifty percent of all formal entries are located in the southern region. The majority of these **detentions** take place not

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<sup>1</sup> See list of members in appendix.

<sup>2</sup> The International Convention on the protection of the Rights of Migrant Workers and their Families has as its primary objective the protection of the rights of migrant workers and their families in the area of human and labor Rights. It also addresses issues of the rights of migrants to education, health, culture, identity, freedom of expression, religion, and association and access to the same rights enjoyed by nationals of the countries in which they are found.

on the border, but inland at the numerous roadblocks that cross routes taken by the migrants, or in special border patrol operations.

There is a strong flow of Guatemalan, Salvadorian, and Honduran nationals into Mexico through Soconusco, Chiapas. To a lesser extent, nationals of South American countries such as Colombia, Ecuador, Peru and Brazil as well as some from other continents also cross the southern border into Mexico.

Many of these migrants enter Mexico with the intention of traveling to a northern or central city or reaching the northern border to cross into the United States. A lack of economic resources causes some to stay in the southern border region of Mexico.<sup>3</sup> Most of these are men and young women with children who find employment in agriculture and construction, or find jobs as household domestics, sex workers, tricycle drivers<sup>4</sup>, trades people, or street vendors. These migrants experience harsh work conditions in which their human rights are frequently violated by their employers.

It is important to emphasize that undocumented migrants of diverse national origin, in transit through Mexico, are routinely persecuted, detained and held in holding areas, detention centers, and municipal jails.

Moreover, since the 1990's, the US has adopted an increasingly strict migration policy. This policy has focused on border control and national security and has had significant negative consequences for migrants. In summary, the hardening of US migration policy has had the following consequences:

- Migrant deaths and accidents at the Mexico US border have increased annually by 25 percent.<sup>5</sup>
- Networks of human trafficking have strengthened and increased.
- Violence in the border areas has increased.
- The pattern of migration flow has changed from circular to one that is more unidirectional and permanent.
- Violation of labor rights has increased.
- The probability that migrants will fall prey to human traffickers has increased.

The Center for Human Rights of Migrants (Centro del Derechos Humanos del Migrante)<sup>6</sup> in Ciudad Juarez illustrates the extent of problems in the following

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<sup>3</sup> *Violaciones a los Derechos Humanos en el Contexto Migratorio*, Fray Matías Center for Human Rights of Córdoba. Tapachula, Mexico. May, 2005

<sup>4</sup> *Tricicleros* is the term used to describe people who provide bicycle transportation service.

<sup>5</sup> It is important to note in contrast the lack of data or concern about documentation and registration of accidents and deaths of migrants in transit, especially those in the south of the country. This reveals a discriminatory attitude, by both the Mexican authorities and the governments of the countries of origin of the Central American migrants, in terms of the "value" assigned to the lives and physical integrity of these people. *Situación de los Derechos Humanos de los Trabajadores Migratorios y miembros de sus familias Sin Fronteras*, March 2004, point 53.

example. In 2004, of 350 migrants attended to by the center, 56% reported being victims of crimes and human rights violations. These crimes and violations, which included denial of labor rights, were perpetrated primarily in Mexico.

Furthermore, when migrants, who had been deported from Mexico and delivered to Guatemalan authorities, were interviewed by the Human Rights Commission of Guatemala (Procuraduría de Derechos Humanos de Guatemala) in El Carmen, 25% reported being victims of abuses. Twenty-six percent of these abuses were reported to have occurred in Guatemala and 74% in Mexico. The authority most often cited as perpetrator of these abuses and human rights violations (47% of all incidences) was the Mexican National Institute of Migration (Instituto Nacional de Migración).<sup>7</sup>

### **Analysis of the Application of the 1990 Convention**

We will continue with some comments regarding fundamental aspects of the Constitution and legislation that affects in a general way the rights of migrant workers, due to the lack of legal safeguards that they provide.

Regarding the General Law on Population (Ley General de la Población,) we find little coherence between this and current Mexican migration policy. In reality, there is no official Mexican policy governing migration. The Mexican government's efforts to promote and protect the human rights of its citizens living abroad are not accompanied by corresponding concrete actions domestically to protect the human rights of migrant workers in Mexico. An example of this gap between the government's domestic treatment of migrants and its support of Mexican migrants living abroad is the absence of specialized courts for migratory issues. Nor is free legal assistance for vulnerable populations, such as migrants, especially unaccompanied adolescents and children, provided.

The Mexican Constitution contains two problems of great concern: within Article 11, the rights of migrant workers and their families are restricted, as these rights are subordinated to the will of administrative authorities. As far as Article 33, it establishes that "the Executive of the Union will have the exclusive authority to require immediate departure from the national territory, without prior judgment, of any foreigner whose presence shall be judged undesirable."

The migratory procedures stipulated in the General Law on Population (GLP) make no mention of the rights of migrants but do contain rules in the realm of criminal law which delineate "specific crimes," such as human trafficking, use of

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<sup>6</sup> Of the 353 migrants interviewed by the *Casa del Migrante* in Ciudad Juárez who reported violations of their rights; however, only 57% decided to have their cases documented.

<sup>7</sup> Interview with an officer of the PDHG in El Carmen, Guatemala, conducted by Sin Fronteras.

false documents, sanctions for improper conduct on the part of authorities, and penalties for migratory activities such as unauthorized entry and residence.<sup>8</sup>

Furthermore, the lack of specific criteria for the application of the above General Law on Population enables considerable discretionary judgment on the part of authorities. This increases the arbitrary application of the GLP with significant negative repercussions on the human rights of migrants. Security forces often overstep their authority and violate the right of migrants (including Mexicans) to free transit. Also, security forces violate human rights such as the right to personal safety.

In August of 2005, the Mexican government took the following two additional measures to increase border control, in keeping with United States border security policy. First, three additional points of inspection were established on the northern border to identify persons of nationalities of special interest to the United States.<sup>9</sup>

We believe that the Mexican migration policy focuses on policing measures and inquisitive and seeks to control, repress, and contain migration through Mexico, especially via its southern border. On May 18, 2005, the National Institute of Migration was integrated into the National Security System of Mexico (Sistema de Seguridad Nacional de Mexico).<sup>10</sup> This measure, which portrays migrants as a threat to national security, is based on control and repression. This contradicts and reduces the credibility of the Mexican government's stated position of commitment to the defense of human rights. In addition, at the Special Conference on Hemispheric Security of the Organization of American States held in Mexico City on October 27-28, 2003, member governments clearly agreed that migration did not pose either a traditional or new threat to security.

### Recommendations

- *It is essential to identify the elements of Mexican legislation that hinder migrants in the exercise of their human rights.*
- *Mexico should establish the central elements of a national migration policy that abides by the following general principles:*
  - a) *Migratory status does not affect the inalienability of human rights of migrant workers and their families.*

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<sup>8</sup> Sanctions stipulated in Articles 117, 118, 119, 120, 122, 123, 124, 125, 126, and 127 of the General Law on Population.

<sup>9</sup> Natalia Gomez, "Tres puntos de inspección establecidos en la frontera", *El Universal*, National section, p. 16, Sept 1, 2005. igual, yo dejaria el titulo en español

<sup>10</sup> The National Security Council also includes the Departments of Public Security, Internal Revenue and Finance, Public Administration, External Relations, and Transportation and Communication; the National Attorney General's office; and the General Director of the Center for Investigation and National Security.

- b) Migration policy should ensure legal enforcement of human rights.*
- c) Migration policy should address migrants' concerns across age and gender.*
- d) Migration policy should coordinate with legislation in a concerted and consistent manner.*
- e) Migration policy should establish permanent mechanisms for monitoring and evaluating the implementation and impact of migration policy on the human rights of migrants.*
- f) Any migration policy that emphasizes administration and, even more, national security should be avoided.*
- g) The continuity of migration policy should be ensured across presidential administrations.*
- h) Migration policy should eliminate discretionary and arbitrary application of laws and policies.*
- i) Migration policy should ensure the protection of the human rights of migrants in all bilateral agreements adopted by the Mexican government.*

Among the factors that affect the Mexican government's fulfillment of the obligations dictate by the 1990 Convention is the inconsistency in the government's practices. While, indeed, it is true that legislative change is needed, the overarching challenge is to harmonize actual practice with existing law. Current practice is characterized by the following problems which impede the government's ability to fulfill the Convention obligations:

- An excess of discretionary judgment and arbitrariness in the detection and detention of migrants
- A lack of transparency and information access
- Inadequate legal safeguards in the judicial system and access to due process under the law.
- Corruption<sup>11</sup> and impunity<sup>12</sup> from the law.

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<sup>11</sup> According to the organization Mexican Transparency in its *National Corruption and Good Government Survey, 2003*, carried out in 32 federal entities in the country, significant acts of corruption were carried out in 38 public services. In the worst of these (Puebla), citizens paid for "18.0 out of 100 opportunities to receive a public service."

- Inadequate funding of the National Institute of Migration

For these reasons, the report of the Mexican government should concentrate more on illuminating any concrete legislative and jurisdictional means that have been established to ensure the achievement of Convention mandates rather than relying on the general commitment of the federal government. It is important to note that the legislative changes to the LGP presented in the Mexican government's report are only proposals, and do not currently have legal force. Therefore, one cannot consider that they offer any real solution to the legal and administrative problems facing migrants.

### Recommendations

- *Develop practices for public officials at all three government levels that are congruent with the 1990 Convention.*
- *Fight against political corruption and arbitrary actions by police forces.*
- *Generate budget proposals that will provide adequate funding for protection and promotion of the human rights of migrants.*

With respect to the dissemination, promotion, and cooperation with civil society, a profound lack of awareness and understanding of the rights outlined in the 1990 Convention is apparent among government officials and the Mexican population at large.

### Recommendations

- *Continue to provide opportunities for dialogue and cooperation with organizations of civil society.*
- *Promote joint training of government officials and civil society on the rights and responsibilities contained in the 1990 Convention.*

Parts two, three, and four of the Alternative Report present discussion and first hand information that relates to the Articles of Part I, III, IV, and V of the Convention which are the Articles most relevant to migrants transiting through or

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[Http://www.transparenciamexicana.org.mx/documentos/ENCBG%202003/Encuesta%20Nacional%20de%20Corrupcion%20y%20Buen%20Gobierno%202003.pdf](http://www.transparenciamexicana.org.mx/documentos/ENCBG%202003/Encuesta%20Nacional%20de%20Corrupcion%20y%20Buen%20Gobierno%202003.pdf)

<sup>12</sup> According to the publication *Compilation of recommendations to Mexico by international agencies and human rights committees of the United Nations and the Organization of American States*, of 387 recommendations, 53 (13%) are for failures in the current system of administration of justice. If we add to this number those which refer to human rights violations caused by failure to sanction those responsible, we find that 44.7% of violations can be attributed to the lack of an innovative and democratic justice system which is truly concerned with resolving criminal problems. This compilation includes those recommendations from the UN report on protection of the human rights of migrants, but not that of the Organization of American States.

residing in Mexico. These sections of the Alternative Report consist of an exhaustive review of the violations of the articles of the Convention, which address issues that fall within the area of expertise of the members of the Migration Network. In this review, the number of the Article is indicated, documented cases are presented, some statistics are offered and specific recommendations made. In the summary some general principles and recommendations are highlighted, which is then followed by a discussion of pertinent human rights violations.

### **Part I of the 1990 Convention**

- The General Law on Population (GLP) does not address gender. On the contrary, the GLP allows for conditions that result in the discrimination and abuse of, and violence towards, women. The vulnerability of migrating women is increased by the violence directed towards them throughout their transit through or stay in Mexico, as well as in their home countries.

#### Recommendations

*With respect to discrimination towards migrating women, the Mexican government should:*

- a) Develop a policy that takes gender into account.*
- b) Provide gender equality training for staff of the Institute of Migration.*
- c) Promote actions that would eliminate stereotyping based on gender.*
- d) Recognize the migratory status of women in legislation.*

### **Part III of the 1990 Convention**

- The most frequent violations involve the arbitrary detention of migrants for alleged reasons of security. However on occasion, these migrants suffer extortion. Also, measures of control, both at the northern and southern borders, that supposedly are intended to protect the physical well-being of migrants in high risk zones have had the opposite effect. Militarization of these areas without proper training for personnel has increased risks for migrants. Finally, the participation of armed forces seems inappropriate and unjustified since safeguarding Mexican national security is not an objective.<sup>13</sup>

#### Recommendation

*Eliminate all factors that criminalize migrants leaving only administrative sanctions. Avoid at all costs the criminalization of undocumented migration.*

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<sup>13</sup> See comments regarding Article 9 of the Convention.

#### **Part IV of the 1990 Convention**

- The GLP and the Federal Law on Labor consider the rights of documented or legalized migrant workers and their families. Nonetheless, violations of the rights of this migrant group continue to exist.

#### Recommendations

*Guarantee the labor rights of migrant workers, domestic workers, and seasonal workers by ensuring their access to social services, labor union activities, courts,, etc.*

#### **Part V of the 1990 Convention**

- The law does not provide for the possibility that seasonal workers who have been employed in the country for a period of time may obtain the right to secure additional employment. However the existence of temporary work permits such as the Visiting Agricultural Migratory Visa for Guatemalans in southern Mexico and the H2A visa of the United States are positive points.

#### Recommendations

*Provide seasonal workers, who have resided in Mexico for a substantial period of time, the right to secure additional paid employment and ensure enforcement of their rights contained in their contracts.*

#### **Part VI of the 1990 Convention**

- Missing from the discussion, and especially from any measures taken, is the issue of the relationship between migration, development, and the movement of workers within the framework established by the North American Free Trade Agreement. Migratory policy tends generally to focus on a single issue: control of migratory flows, rather than presenting an integral conceptualization of migration within the framework of development processes, addressing a series of problems associated with migratory flows, in countries of origin as well as transit, and destination.