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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بحقوق الإنسان للمهاجرين،  
خورخي بوستامانتي\*

إضافة\*\*

البعثة التي قام بها المقرر الخاص إلى المكسيك  
(٩-١٥ آذار/مارس ٢٠٠٨)

\* تأخر تقديم هذه الوثيقة.

\*\* يُعمَّم موجز هذه الوثيقة بجميع اللغات الرسمية. أما التقرير، الذي يرد في مرفق الموجز، فيُعمَّم باللغة التي قدم بها فقط وباللغة الإسبانية.

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## موجز

قام المقرر الخاص المعني بحقوق الإنسان للمهاجرين بزيارة المكسيك في الفترة من ٩ إلى ١٥ آذار/مارس ٢٠٠٨. ويحلّل هذا التقرير حماية المهاجرين في المكسيك من منظور شامل، واضعاً المكسيك في سياق تدفقات الهجرة الإقليمية إلى الولايات المتحدة الأمريكية ومن أمريكا الوسطى. كما يُبرز الإطار القانوني المتعلق بحقوق الإنسان للمهاجرين على المستوى الاتحادي، مؤكّداً على الثغرات القائمة في تنفيذ القوانين القائمة، ومشيراً إلى السياسات التي تثير مشاكل. ويلى ذلك تحليل لبعض الفئات في ظاهرة المهاجرين المكسيكيين، بمن فيهم مكسيكيو الشتات، والمرحلون من الولايات المتحدة، والعمال المهاجرون (في مجالي الزراعة والخدمة المتزلية)، والأطفال المهاجرون، بمن فيهم الأحداث الذين لا يرافقهم أحد، والأطفال العاملون، والنساء العاملات. ويوجّه المقرر الخاص فيما بعد النظر إلى تحديات الهجرة الرئيسية، بما فيها مراقبة الحدود واحتجاز المهاجرين، وشبكات الجريمة المنظّمة، والإفلات من العقاب في صفوف المسؤولين الحكوميين والمسؤولين عن إنفاذ القوانين، ومساعدة المهاجرين.

## Annex

**REPORT SUBMITTED BY THE SPECIAL RAPPOREUR ON THE  
HUMAN RIGHTS OF MIGRANTS, JORGE BUSTAMANTE, ON  
HIS MISSION TO MEXICO (9-15 March 2008)**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1 - 8	4
II. INTERNATIONAL AND FEDERAL PROTECTION OF THE RIGHTS OF MIGRANTS .....	9 - 21	5
A. International protection of the rights of migrants .....	9 - 13	5
B. Federal legal framework .....	14 - 21	6
III. THE MEXICAN MIGRANT PHENOMENON .....	22 - 53	8
A. Mexican diaspora .....	26 - 32	9
1. Risks for and abuses of Mexican migrants in the United States .....	27 - 28	9
2. Transnational gang networks and deportation .....	29 - 32	10
B. Migrant workers .....	33 - 37	11
C. Migrant children, including unaccompanied minors, and child labour .....	38 - 48	12
1. Migrant children, including unaccompanied minors .....	39 - 44	12
2. Child labour .....	45 - 48	14
D. Migrant women .....	49 - 53	15
IV. KEY MIGRATION CHALLENGES .....	54 - 80	16
A. Border control and detention procedures .....	54 - 64	16
B. Organized crime networks and impunity among governmental and law enforcement officials .....	65 - 70	18
C. Assistance to migrants .....	71 - 80	19
V. CONCLUSIONS AND RECOMMENDATIONS .....	81 - 95	21
A. Recommendations to the Government of Mexico .....	82 - 92	21
B. Recommendations to the United Nations .....	93 - 95	23

## I. INTRODUCTION

1. The Special Rapporteur on the human rights of migrants visited Mexico from 9 to 15 March 2008. He visited Tapachula (Chiapas state), Tijuana (Baja California), and Mexico City (Federal District). The Special Rapporteur expresses his thanks to the Government of Mexico for its cooperation and assistance, and his appreciation to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Organization for Migration (IOM) for their support.
2. The Special Rapporteur met with a number of ministries and agencies responsible for law enforcement, border control and the protection of migrants and their families at the federal, state and municipal levels, including the Ministry of Foreign Affairs, the Ministry of the Interior, the Under-Secretariat of Population, Migration and Religious Affairs, the Ministry of Labour, Security and Social Services, the Ministry of Public Security, the National System for the Integral Development of the Family (DIF), and the National Institute of Migration (INM). He also engaged in a dialogue with the Senate.
3. The Special Rapporteur had a meeting with United Nations actors working on issues related to migration, held three civil society forums (one in each city visited) and met with the National Human Rights Commission and the Federal District Human Rights Commission. He spoke with a range of non-governmental actors involved directly in the protection of migrants (legal services, medical assistance and shelters) and in the investigation of issues related to the human rights of migrants, and expresses his appreciation to them for their time and resources.
4. The Special Rapporteur visited three governmental migration detention centres during his visit - the Migrant Holding Centre (Estación Migratoria) Iztapalapa in Mexico City, the Migrant Holding Centre of Tijuana and the Migrant Holding Centre Modelo Siglo XXI in Tapachula - to observe migrants' detention conditions and an official shelter for migrant children in Tapachula. The Special Rapporteur did a brief tour of the Mexico-Guatemala border near Tapachula, including the official border crossings of Talismán and Ciudad Hidalgo, with the assistance of the Beta Groups and the INM.
5. The present report analyses the protection of migrants' human rights in Mexico from a comprehensive perspective, placing Mexico in the context of regional migration flows with an emphasis on the dimensions of movement to the United States and from Central America. It highlights Mexico's significant historical role in the promotion of the human rights of migrants at the international level and examines the protection afforded under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which Mexico is a party. It then refers to the legal framework on migrants' human rights at the federal level, underscoring significant implementation gaps, and noting problematic policies.
6. There follows an analysis of some groups in the Mexican migrant phenomenon, including the Mexican diaspora and deportees from the United States, migrant workers (in the agricultural and domestic spheres), migrant children, including unaccompanied minors, and child labour, and

migrant women. Following that the Special Rapporteur draws attention to key migration challenges, including: border control and the detention of migrants, organized crime networks and impunity among governmental and law enforcement officials; and assistance to migrants.

7. Among his concerns, the Special Rapporteur notes reports of rampant impunity for instances of corruption, including bribery and extortion, and violence and abuse of labour practices, especially against women and children. Attention to the physical and psychological health of migrants seems to be of utmost urgency. The Special Rapporteur is concerned that this impunity seems to be linked to abuses of power and resources at the municipal, state and federal levels. As in the conclusions of his predecessor during her visit to Mexico in 2002 (see E/CN.4/2003/85/Add.2), the Special Rapporteur calls for an end to the dichotomy between what Mexican authorities and organizations ask for its own migrants abroad in terms of protection, and the type of treatment it offers to the foreign-born population in Mexico.

8. Based on these observations, the Special Rapporteur offers conclusions and recommendations to the Government of Mexico and to the United Nations. The Special Rapporteur, in formulating his recommendations, gives special attention to those made by his predecessor following her visit in 2002 and by the Committee on Migrant Workers in their concluding observations in 2006.<sup>1</sup>

## **II. INTERNATIONAL AND FEDERAL PROTECTION OF THE RIGHTS OF MIGRANTS**

### **A. International protection of the rights of migrants**

9. Based on Mexico's history as a country of origin to the United States and as a transit country for northward movements, migration has long been a priority on the Government's domestic and foreign policy agendas. At the international level, especially within the United Nations, Mexico has demonstrated its commitment to the promotion of the human rights of migrants and has encouraged the development of regional and international law in this respect. Mexico played a leading role in the establishment of the mandate of the Special Rapporteur on the human rights of migrants by the Commission on Human Rights, a mandate renewed in June 2008 by the Human Rights Council. It also played an important role in the adoption of the paragraphs on migrants' rights in the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and in promoting the inclusion of a human rights perspective in the process leading up to the second Global Forum on Migration and Development, held in October 2008 ("the Manila process").

10. Mexico is a party to most of the international and regional human rights treaties, and the Special Rapporteur notes that, since his predecessor's visit in 2002, Mexico has ratified the following instruments: the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

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<sup>1</sup> CMW/C/MEX/CO/1.

Especially Women and Children, and the Protocol against the Smuggling of Migrants By Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, ratified on 4 May and 4 March 2003, respectively; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 11 April 2005; the Convention on the Rights of Persons with Disabilities, ratified on 17 December 2007, and the Optional Protocol to the above Convention, ratified on 17 December 2007; and the International Convention for the Protection of All Persons from Enforced Disappearance, ratified on 18 March 2008.

11. Mexico has been one of the main promoters of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since the Government submitted the issue for discussion to the General Assembly of the United Nations in 1980. The Government of Mexico signed the Convention on 22 May 1991 and ratified it on 8 March 1999. The Convention was promulgated in Mexico's *Diario Oficial de la Federación* on 13 August 1999 and entered into force on 1 July 2003.

12. Upon ratifying the Convention, Mexico stated in an interpretative declaration that it reaffirmed its political will to ensure international protection of the rights of all migrant workers in accordance with the Convention. It submitted its first periodic report for consideration by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/MEX/1), in accordance with the provisional guidelines regarding the form and content of initial reports to be submitted by States Parties under article 73 of the Convention, adopted by the Committee at its informal meeting in October 2004.

13. Article 133 of the Constitution of the United Mexican States establishes that international treaties concluded by the President of the Republic, with the approval of the Senate, shall, together with the Constitution itself and the laws of the Congress of the Union, be the supreme law of the nation. Accordingly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families forms part of domestic legislation and may be the basis and foundation of any legal action.

## **B. Federal legal framework**

14. Despite Mexico's leadership role at the international level in promoting a human rights framework for the protection of migrants, there remain significant gaps in its domestic legal framework, existing laws and practice. Although Mexico is a party to the Convention, it only recently - on 16 April 2008, subsequent to the Special Rapporteur's visit - accepted the competency of the Committee on Migrant Workers to receive individual communications. This limits the Committee to review the practice of the Government of Mexico with regard to the protection of the rights of migrants. In its report to the Committee on Migrant Workers in 2006, the Government of Mexico recognized that absolute respect for the human rights of migrants is still a challenge for the country, since the existence of a legal framework envisaging strict respect for those rights does not per se guarantee the implementation of the Convention.

15. The federal legal framework regarding migration is provided by the Constitution of the United Mexican States (1917). Additionally, the General Population Act (1974) and its

Regulation (April 2000) establish the legal regime governing migration in Mexico for the purpose of regulating the volume, structure, and distribution of the population in the national territory. This law states that the Ministry of the Interior is in charge of setting the conditions for the entry and stay of foreigners in Mexico. The National Migration Institute (INM), which is under the Ministry of the Interior, is the institution in charge of carrying out migration policy. The INM and the Federal Preventive Police (PFP) are the agencies authorized to inspect the exit and entry of persons in Mexico. The authorities in charge of federal, state, or municipal public forces work in collaboration with the immigration authorities (through “collaboration agreements”). The Beta Migrant Protection Groups are a government-sponsored mechanism tasked with the responsibility for protecting and counselling migrants on the country’s northern and southern borders.

16. Article 11 of the Constitution of Mexico establishes the right of every person to enter, exit and travel within the territory of Mexico. Article 33 defines foreigners as those who are not Mexican by birth or adoption and provides that foreigners are covered by the guarantees of Chapter I, Title 1 of the Constitution, on, inter alia, the prohibition of slavery and the right to education. This article also authorizes the executive to make foreigners leave the national territory expeditiously and without any procedure when it is determined that their presence is “inadvisable”. In this regard, the Special Rapporteur reiterates the concern expressed during the concluding observations of the Committee on Migrant Workers in December 2006, which noted Mexico’s reservation to article 22, paragraph 4, of the Convention, given the fact that article 33 of the Constitution stipulates that “the Executive has exclusive authority to expel from the national territory, immediately and without a judicial hearing, any foreigner whose residence in Mexico it deems undesirable”.

17. In addition to the Constitution, the most relevant legislation concerning migration in Mexico is the General Population Act and its Regulations governing the Ministry of the Interior and the decree establishing the National Institute of Migration, as mentioned. These laws and regulations govern migration procedures, establishing migrants’ duties and the limits on their rights, but do not explicitly and exhaustively list the obligations of Mexico to protect the human rights of migrants. Rather, these rights are regulated by secondary laws.

18. Similar to his predecessor, the Special Rapporteur raised concerns during his visit about the long-discussed reform initiatives before Congress of the General Population Act. As noted by the Committee on Migrant Workers, these initiatives had not made much headway in Congress and that articles 118 to 125 of the General Population Act, which stipulate that infractions relating to migration may be subject to criminal proceedings, remained in force. This law criminalizes undocumented migrants (up to 10 years’ imprisonment) and can even be applied to the victims of trafficking and smuggling.

19. Moreover, article 67 of the General Population Act only authorizes legally resident foreigners to institute legal proceedings. Although that provision does not affect the right of every migrant worker to an effective remedy in conformity with article 83 of the Convention on Migrant Workers, the Special Rapporteur echoes the concern raised by the Committee on Migrant Workers that this provision may in practice give rise to discriminatory treatment of undocumented migrant workers, which would limit their access to justice.

20. During the mission the Special Rapporteur called on the Government of Mexico to reinstate the long-term process of reform of the General Population Act that would ensure that the most comprehensive protection would be afforded to migrants, whether documented or in a situation of irregular stay. As such, migrants would have the same rights as nationals of Mexico to file complaints and have access to redress mechanisms before the courts.

21. The Special Rapporteur takes special note of the subsequent efforts at revision following his visit, formalized on 22 July 2008, especially modifications passed by the Commission on Population and Development of the Senate of the Republic, to articles 118 and 125. He welcomes the efforts of the Senate to decriminalize irregular migration, making entering without documentation an administrative offence rather than criminal offence. He takes note of amendments to articles 19, 120, 121, 123, 124 and 127 of the Act that, inter alia, lessen penalties to migrants who enter Mexico without documentation. The Special Rapporteur emphasizes the landmark nature of such reforms, and calls on the Government of Mexico to implement them in accordance with international standards, especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### III. THE MEXICAN MIGRANT PHENOMENON

22. The multidimensional complexity of the Mexican migrant phenomenon can only be understood if one views Mexico as a country of origin, transit and destination. Mexican migration to the United States has occurred for centuries, creating a notable Mexican diaspora and population of Mexican-Americans (also known as *chicanos*). Over 1 million people migrate to the United States annually, and the last survey by the U.S. Census Bureau (2003) on the foreign-born population in the country estimated that over 50 per cent of this population are from Mexico and Central America; many more attempt entry into the United States but are deported or deterred before entry, creating intense pressure at the United States-Mexico border - not only at border posts in Tijuana, Nogales, Nuevo Laredo and Ciudad Juárez, but also in the more remote desert and river areas that border California, Arizona, Texas, and New Mexico, which are subject to increasing surveillance.

23. Mexico also receives a significant number of migrants, especially through the southern border, but due to its porosity it is impossible to know precisely how many migrants enter and for what reasons, whether for temporary stay (tourists and commercial traders), to use Mexico as a country of transit toward the United States, or to fill the labour gap in the agricultural industry, for example, left by the significant population of Mexicans who have departed. Rough estimates indicate that the number of these “southern” migrants could be around 400,000 in transit annually. According to INM, in the period from January to December 2007, 50,598 foreign nationals were detained in the southern border region and 45,785 were repatriated or deported. These flows create pressure on the Mexico-Guatemala border, not only at the crossings of Talismán and Ciudad Hidalgo, but also the unofficially regulated river and jungle crossings bordering Guatemala and Belize.

24. Within these general trends, one sees several dimensions of mixed migration flows: creation of a northward pattern of migration from Mexico to the United States; establishment of



Mexico as a country of transit for migrants from Central and South America and the Caribbean and, to a much lesser extent, Asia and Africa; and evolution of Mexico into a receiving country for labourers, traders, and as a central harbour for transnational gang operators using migration as a “business” (smuggling and trafficking in persons), often linked to drug and arms cartels. These flows contain a large number of migrant children (boys and girls), including unaccompanied minors, and a small number of asylum-seekers. Females (girls, adolescents and adults) are a notable portion of these migrants, which makes them vulnerable to abuses.

25. Also significant is the scope of internal movement within the country, characterized by both the migration of Mexicans from rural to urban areas and from various parts of the country to the borders, as well as the movement of the foreign-born population with the initial intention of northward transit but who remain in various parts of Mexico for longer than intended and become locally integrated. Agricultural day-labourers, especially from the southern states of Mexico, such as Oaxaca, Chiapas and Veracruz, form the greatest part of this movement and are largely responsible for harvesting tomato and apple crops, among others, in the northern states of Sinaloa, Sonora and Coahuila. These internal migrants, estimated at up to 3.5 million, the majority of whom are of indigenous origin, live on ranches or farms for months at a time, making rotations when needed on a seasonal basis. Their working conditions, standards of health, housing, transport and education are reported to be below international standards.

### **A. Mexican diaspora**

26. Although this report focuses on Mexico as a country of transit and destination, Mexico has long been a country of origin with the majority of Mexican emigrants destined for the United States of America, and this dimension forms part of the general migration phenomenon of the country (see A/HRC/7/12/Add.2). It is estimated that more than 2.5 million Mexicans emigrated to the United States from 2000 to 2006, and approximately 560,000 in 2007. Figures indicate drops in emigration attempts in the first part of 2008, which may be related to the economic downturn and attendant rise in unemployment. While many Mexicans have made the United States their new home, have become legal permanent residents or naturalized citizens and gained from the education and employment opportunities in the country, the continued outward migration is a cause of concern for numerous reasons.

#### **1. Risks for and abuses of Mexican migrants in the United States**

27. Most importantly, as the United States has increased its border control policies (e.g. by erecting a wall along its southern border with Mexico, carrying out radar surveillance, and increasing its technical and human capacity to do roundups and arrest and detain undocumented migrants, inter alia), the journey that the average Mexican with irregular status makes to the United States has become more dangerous. According to the United States Border Patrol, roughly 4,000 migrants have died en route in the last 12 years, equivalent to about one death a day during the last decade. This startling number directly relates to the need for would-be migrants to undertake increasingly high-risk routes, which are often longer and involve traversing rough terrain in extreme temperatures.

28. Despite these risks, a significant portion of the Mexican population continues to attempt their migration northward without documentation. The United States has absorbed a high number

of low-skilled Mexican migrants, and migrants from Central and South America and the Caribbean who travel through Mexico en route, offering mostly employment in the low-skilled service, commercial, domestic and agricultural sectors. These migration flows fill a need on the demand side, and provide employment opportunities potentially unavailable in many migrants' countries of origin, but there are disadvantages for migrants with irregular status in the United States. It is estimated that their salaries are 60 per cent lower than those of citizens or migrants with regular status, and they are vulnerable to wrongful termination and xenophobic and discriminatory acts of violence with no recourse or remedy. During his visit, the Special Rapporteur noted that it was not only the responsibility of the Government of the United States and members of the private sector to be aware of and change these practices, but also that of the Government of Mexico to demand better conditions for their labour force in the diaspora, regardless of their status.

## **2. Transnational gang networks and deportation**

29. Another dimension of the migration of the Mexican (and Central American) population is its relation to the spread of transnational gang networks, and related deportation policies. This has become a regional phenomenon, with many activities in the United States and in the border zones of Mexico and Central America, and a serious threat to peace. There are two main elements of this phenomenon of interest within the discussion on the human rights of migrants - one is the gang members themselves, who are often detained, arrested, abused and deported, and another is that the smuggling and trafficking of persons has become a business for many of the operators of these networks.

30. There is no agreement as to the precise origins or motivations of the gangs. Although there are numerous copycat or splinter youth gangs, the main components are divided into two rival gangs (or *maras*): Barrio 18 (also known as 18th Street gang) and Mara Salvatrucha (also known as MS-13). The majority of the members are males, in their teens or early twenties. They sustain themselves by organized crime networks of smuggling in drugs and persons and extortion. They are notorious for their violence (including beheadings and mutilation), kidnappings, violence against women and their increasing geographical and numerical pervasiveness. Reports estimate there are 70,000 to 100,000 members from as far south as Honduras, spreading north to Mexico and in increasing numbers on both coasts of the United States. One cannot overstate the regional dimension of this phenomenon and its consequences, with Mexico at the centre.

31. For those members who operate in the United States, many of them Mexican (but also El Salvadoran, Honduran, Nicaraguan and Guatemalan), the principal policy response of the United States Government (Department of Homeland Security and Federal Bureau of Investigation) has been either incarceration or deportation. The United States Immigration and Customs Enforcement bureau estimates that 70 per cent of gang members who are picked up by the police are deported; the members are often found in the United States without documentation and broadly linked to gang activity, yet sufficient evidence is often lacking to prosecute them of a specific crime. The United States Government therefore deports suspected gang members on a regular basis, flying weekly private jets of deportees and releasing them in their country of origin. Deportation further perpetuates the phenomenon and its cycle has been referred to as

a “revolving door”, a “merry-go-round” and an “unending chain”. Those deported to Central America often attempt to return to the United States, transiting through Mexico along the way, and often re-establishing operations with the gang networks during their journey.

32. Deportees are returned to their countries of origin stigmatized and with little assistance for integration and employment; some are not fluent in Spanish. They are, however, highly trained in sophisticated organized-crime techniques. With the large number of other deportees and continual communication with members remaining in the United States, they are often able to recreate or fortify existing gang networks with relative ease. And, because of the large number of disenfranchised youth in low-income neighbourhoods of the capital cities, deportees are able to find a plethora of new recruits. In Mexico, especially along the southern border with Guatemala, it is offshoots and affiliates of these networks that operate the majority of the smuggling and trafficking networks, and are responsible for the operation of the famed “train of death” (see chapter II.B above).

### **B. Migrant workers**

33. Mexico houses a large number of migrant workers in the agricultural sector and the domestic sphere. These workers are subject to the insecure circumstances described throughout the report, but warrant specific mention due to their particular situations.

34. Due to the high number of Mexican migrants going to the United States in search of better wages, there are large gaps left in the agricultural industry. These are specifically in the Mexican state of Chiapas, where the coffee plantations depend on the seasonal work of Central American labourers (*cafeteleros*), many from indigenous communities in Guatemala, as the Special Rapporteur noted after his mission there in 2008 (see A/HRC/11/7/Add.3). Although many are undocumented and therefore data may be unreliable, various reports estimate that there are between 250,000 and 300,000 such labourers in the state of Chiapas alone. Although Mexican wages are reportedly higher than in Guatemala, with some estimates at 50 per cent higher, the seasonal agricultural workers are still subject to low wages, excessive hours of work, and no overtime pay, depending on their migration status and employer. Coffee picking is a specialized field; the beans must be selected one by one and coffee plants often grow on steep hillsides where it is difficult to work. The harvested beans, collected in large baskets, must then be carried away on the labourers’ backs for sorting and drying.

35. The Special Rapporteur has received reports of various abuses related to migrants’ irregular status and sentiments of racism and xenophobia, such as overwork and wrongful termination. Of particular concern is the practice of employing child labour. There have been efforts between the Government of Mexico and the International Labour Organization to regularize the flow of seasonal workers, but many of the labour practices still occur without official involvement or oversight. The state of Chiapas is in the process of developing new programmes for assistance, including for medical care and education of families of agricultural workers, but there is much left to be done in the way of regularizing labour practices and providing recourse for abuses of migrant workers.

36. The clandestine abuse of domestic migrant workers (especially from Central America) is also a major issue, but there are few programmes to protect them and little data on their numbers

and nationality. As such, they may go largely unprotected and remain especially vulnerable to abuse. The Special Rapporteur received reports of wealthier Mexican families employing “servants” from Guatemala, El Salvador and Honduras. Vague estimates state that, for example, there may be 1,000 El Salvadoran female domestic workers in Mexico City alone and hundreds of Guatemalan domestic workers in the Tapachula area, many of them below the age of 18 and from indigenous communities. Central American domestic workers reportedly earn significantly lower wages than their Mexican counterparts.

37. But these numbers are not substantiated with recent data, and the precise locations of most of these workers are unknown. The situation of domestic workers remains of particular concern because of its wholly unregulated nature and therefore warrants further research. Federal law to a certain extent protects workers in the domestic sphere, but labour authorities seem to be doing little to monitor the situation of domestic workers or implement the obligations placed on employers. Health and education standards seem to be disregarded.

### **C. Migrant children, including unaccompanied minors, and child labour**

38. Migrant children including labourers (predominantly in the agricultural industries) and unaccompanied minors, is an issue of increasing concern in Mexico and a stated priority of the Government of Mexico. DIF estimates that there were 21,366 unaccompanied minor and adolescent migrants attended to in 2007. INM estimates there were a total of 17,558 Mexican unaccompanied minors (internal migrants) registered in the country in 2007. Both the northern and southern border regions pose an extremely high risk for children and adolescents. Traffickers and smugglers (*polleros* or *coyotes*) - many of them operators of gangs - take minors across the border, sometimes in order to reunite them with family members who have emigrated and sometimes to hand them over to exploiters. Many of these children are in need of international protection, since they are fleeing not only poverty but also *maras*, criminal groups, violence and abandonment by their families and society. They are returned to countries that lack adequate protection networks and where due attention is not given to their future reintegration; this exposes them to new risks of trafficking and exploitation.

#### **1. Migrant children, including unaccompanied minors**

39. Many migrant children are repatriated/deported back to their countries of origin. Of those deported in 2007, 47.46 per cent were Guatemalans, 36.85 per cent were Hondurans, 15.56 per cent were Salvadoran and 0.01 per cent were Nicaraguan. A total of 24 minors (15 boys, 9 girls) applied for asylum in Tapachula, representing 10.71 per cent of total asylum-seekers. The majority of these children were accompanied by their parents. None of the children were recognized as refugees in Tapachula.

40. DIF is the principal governmental organization dealing with children; through 32 offices of DIF at the state level, it attempts to build capacity at the local level through child protection programmes, a network of 29 shelters and an expansive system of information-sharing on individual cases. It develops national child protection policies, as well as intervention and rehabilitation strategies for child victims, and provides shelter to migrant families and

unaccompanied minors. Also, the Ministry of Social Development implements policies to combat rural poverty (there are also a significant number of internal migrants, Mexican children who move within the country to work in the agricultural industries as young as age 6) and acute manifestations of urban poverty. These policies include immigrant support clubs, child-care facilities (schools or crèches), social assistance and credit programmes in the poorest municipalities and activities to raise awareness among employers and migrant families of the need for children to attend school. This is of particular importance in the state of Chiapas, where there are many children of immigrant parents in the agricultural industry (mainly coffee plantations).

41. While the Special Rapporteur welcomes the many efforts being made by the Government of Mexico to focus on protecting the human rights of migrant children, including unaccompanied minors, he expresses various concerns. First of all, it is unclear that there is a uniform policy at the federal level or across states to protect migrant children. Despite clear standards established by the Convention on the Rights of the Child, to which Mexico is a party, the Special Rapporteur received inconsistent information about what age defined a “minor”, and therefore who deserve additional protection. This seemed to vary according to state and sex (i.e. there was a lower age for adulthood for boys, 13-15 in various cases, whereas girls could in certain circumstances be considered minors until age 17). Considering the mobility across states of many minors, and that there is no evidence to suggest that a 15-year-old boy would not need as much protection and assistance as a 15-year-old girl, for example, this policy leaves gaps for protection. This is especially important considering the high instances of violence towards girls and boys, including prostitution, other forms of sexual exploitation and trafficking (see A/HRC/7/12/Add.2).

42. Moreover, despite notable initiatives to attend to victims, Mexico has no effective centralized system to protect and provide assistance to children and adolescents who have been victims of offences of sexual exploitation or any form of trafficking. While shelters and holding centres have medical care available, the average stay of a minor can be a matter of days, even hours, limiting the types of long-term care necessary to treat the psychological and medical traumas associated with migrating. Social rehabilitation or reintegration programmes are practically non-existent. This lack of assistance to child victims of sexual exploitation and trafficking is one of the causes of re-victimization. Only 3 of the 31 Mexican states punish child prostitution as a serious offence. Although the Government of Mexico seems aware of what is necessary, there are gaps in capacity and resources, as well as impunity among law-enforcement officials, and more comprehensive policies for migrant children victimized by sexual offences or trafficking have yet to be developed.

43. Additionally, it is unclear from the visits of the Special Rapporteur to official government migrant-holding centres and shelters that children receive protection to the extent necessary while in the custody of Mexican authorities or during the return process. This raises questions about the length of stay, deportation procedures, relationship with consular officers, and reintegration and rehabilitation measures. While the state authorities seem to be making efforts to return children to their places of origin as soon as possible (some within hours), there were no clear signs that the children would be returned to a safe environment (not all children underwent an investigation of whether they were fleeing abuse) and whether, once they reached the border of their country of origin, that the journey to their home would be safe or that they would be safe upon arrival.

44. In addition, during a visit to a shelter for migrant children in Tapachula, run by DIF in the state of Chiapas, the Special Rapporteur arrived at the centre, with a capacity to provide shelter for over 100 children, to find only 2 boys housed there. It was unclear why the shelter was empty, considering the significant number of migrant children found on the streets and that shelter space is limited. Information gathered at meetings suggested that authorities working with DIF in Chiapas, advised of the visit of the Special Rapporteur, removed the children housed in the shelter, and carried out extra preparations so that the shelter would be in good condition. It was suggested that, should any minors give the impression that their conditions were less than desirable, their absence would be ensured during the visit of the Special Rapporteur.

## 2. Child labour

45. Child labour is prohibited nationally as well as internationally. Nevertheless, the Special Rapporteur observed rampant violations of this prohibition, with regard to child migrants from other countries as well as those Mexican children who have migrated internally. Although figures are inconclusive due to the clandestine nature of child labour, it is estimated that more than 100,000 children (nationals and non-nationals) under the age of 16 work in the Mexican agricultural industry. This is evident in the western states on the Pacific coast of Mexico. Moreover, children under the age of 16 can be found working in the mining industry, as well as in domestic service in the central and southern parts of Mexico; alarming violations of the rights of girls in the domestic sphere were specifically reported.

46. These violations are acute in the case of indigenous Mexican children who have migrated internally and migrant minors from Guatemala. The Special Rapporteur heard accounts of a “word of mouth” labour market where employers exchanged information on where and how to buy “servants” in Tapachula to work in Mexico City, or in Guatemala to take across the northern border of Mexico.

47. Migrant children form part of a sobering phenomenon of street children and children engaged in prostitution, confirmed by the Special Rapporteur on the sale of children, child prostitution and child pornography who visited Mexico in May 2007. In his report to the Human Rights Council (A/HRC/7/8/Add.2), the Special Rapporteur noted that “these problems should be viewed in the context of the pressures exerted on local society as a whole by the presence of a large immigrant population. The fact that more and more children are in the street, using drugs or involved in illegal migrant smuggling or drug trafficking only increases their vulnerability and exacerbates the likelihood of their becoming victims of sexual exploitation”.<sup>2</sup>

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<sup>2</sup> The Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, visited bars and other popular night spots in Tijuana, both during the day and at night. He was informed that groups of minors were involved in the local sex trade and that there was a proliferation of other businesses employing minors who provided sexual services, such as massage parlours, beauty salons, spas and escort or modelling agencies. All of these operate outside the public health inspection system, since they are not registered as establishments providing sexual services. There is therefore no information on the number of minors employed and the conditions in which they work (see A/HRC/7/8/Add.2, paragraphs 47-59).

48. Migrant child labour is a pervasive phenomenon according to information received by the Special Rapporteur. But government efforts, especially at the state level, seem not to be commensurate with the high rates of its occurrence and the corrupt practices that permit its continuance. The Special Rapporteur welcomes recent efforts by the state of Chiapas, for example, to acknowledge the phenomenon and to combat it, but suggests that these efforts are inadequate. Not only a shift in consciousness about the reality and severity of the violations, but a more robust targeting of employers and recruiters, are in order. The first step is further investigation regarding the extent that migrant child labour is being used.

#### **D. Migrant women**

49. Migrant women are particularly vulnerable in Mexico. They form the majority of cases of harassment or abuse in detention, clandestine domestic workers (sometimes “servants”), prostitutes, sexual abuse and physical and sexual assault in smuggling operations. They are also the majority of victims of trafficking (the total estimated at 16,000 to 22,000 victims annually, including children) and there are unusually high rates of homicides of women, especially in such border towns as Ciudad Juárez. Those women migrants who enter Mexico regularly or find decent work are often subject to a wage differential based on their sex, reported to be as much as 40 per cent lower than men of the same skill level.

50. According to INM, women migrants detained and deported from Mexico represent approximately 20 per cent of annual flows. While the majority of these women are from Central America (Guatemala, Honduras and El Salvador), some 5 per cent are from other Latin America countries and various parts of the world. The average stay in Mexico for women from Central America seems to be between two and seven days, while women from outside of Central America stay longer, generally from two weeks to three months or more, depending on their nationality, access to consular protection, and whether or not they had filed a legal claim.

51. According to reports from civil society organizations, there are recurrent incidents of women being treated with violence or aggressively by INM personnel when being transferred to detention centres and by staff upon arrival and during the duration of their stay. Some refer to aggressive and discriminatory comments, and others report physical mistreatment. There are few formal complaints, however, both because of fear of reprisal, or because there seems to be little knowledge about how to lodge a formal complaint.

52. Medical assistance to migrants, especially female-specific, seems to be lacking in some circumstances. Due to the stress that detention causes for women migrants, many become sick upon arrival at the detention centre and some seek to attend to injuries or illnesses incurred before or during the journey. Care and treatment related to sexual violence needs to be further developed and offered more pervasively. IOM has a programme in Tapachula to fill this gap and reports that there is a stigma attached to reporting incidences of sexual abuse. Although many women migrants flee abuse of such a kind or experience it along the way, few programmes for counselling or, more specifically, for victims of trafficking, exist.

53. There are also a small number of women asylum-seekers. According to INM figures from 2007, a total of 40 women applied for asylum in Tapachula, among whom 23 were main applicants. Four of these women were recognized as refugees; all four were Iraqi.

## **IV. KEY MIGRATION CHALLENGES**

### **A. Border control and detention procedures**

54. Most undocumented migrants come through the southern border with Guatemala. It is estimated that 60 per cent come through the state of Chiapas, but it is extremely difficult to get an estimate of the number of persons who pass through the southern border during the year. According to migration statistics, INM in Chiapas detained approximately 90,601 persons during 2007, 49.58 per cent of the total in Mexico. Furthermore, Chiapas receives undocumented migrants from other Mexican states for their deportation to Guatemala, Honduras, El Salvador and Nicaragua. During 2007, 86,206 persons were deported from Tapachula, an average of 225 persons per day. On a national level, Mexico deported 182,705 persons in 2007, an increase from 179,345 in 2006.

55. To avoid treating undocumented migration as a crime, Mexico uses the term “to secure” rather than “to detain” in migration matters. Under the General Population Act, a foreigner is secured when, because of his/her irregular situation in the country, he/she is housed temporarily in a migrant holding centre, pending clarification of his/her migration status and, if appropriate, a decision to send him/her back. The latter is an administrative penalty, applicable when a foreigner infringes migration law, and involves making the foreigner leave the country immediately.

56. According to the Government of Mexico, it is their policy to detain migrants for a very short time (a few days to a couple of weeks, generally). Depending on the bilateral relationship Mexico has with the country of origin of the migrant, they can be returned the same day after spending only a few hours in a holding centre. The return is carried out at the expense of the Government of Mexico, and the most frequent returns are to Guatemala.

57. INM instituted new procedures for repatriation in 2006, partly as a response to international reports of abuse. The main change is that citizens of Guatemala, Honduras, El Salvador and Nicaragua now have the opportunity to sign a repatriation form that may expedite their removal from the country. Those who immediately admit unlawful entry and who waive their rights to an administrative procedure are taken to the nearest INM office for processing.

58. Rather than remaining in the office or detention centre as in the past, these migrants are placed within hours on an INM bus. The bus then travels from office to office, collecting migrants until it is full. During 2007, 63 per cent of Central American migrants opted for repatriation or were repatriated. This process usually takes between one and three days depending on the location where the migrant is detained. Upon arriving at the Tapachula Detention Centre, migrants are usually deported on buses within 24 hours.

59. INM reports that it maintains 48 permanent detention centres and 116 additional spaces for housing migrants on a national level. These include immigration offices and, on occasion, jail cells. The number of detention centres has more than doubled since 2000, when INM reported having just 22 detention centres. INM began ramping up its infrastructure in 2000 by expanding the detention centre in Mexico City and then remodelling some of the smaller centres.



60. In 2006, INM opened its largest detention centre in Tapachula, Chiapas, which holds 960 migrants. The 48 centres are located in 23 of Mexico's 32 states and the Federal District. They are divided into three categories according to space, types of facilities, and administrative capacity. For example, three large detention centres are authorized to carry out administrative procedures and have separate spaces for men, women and families, and medical facilities. These are located in Saltillo, Coahuila, near the northern border; Mexico City; and Tapachula. In addition to these, there are two other centres in Acayucan, Veracruz state, and Juhro, Chihuahua state. INM manages the centres with security from local or federal police forces, and sometimes employs private security companies, raising the question of whether human rights standards are being enforced.

61. The executive order on detention facilities of 26 November 2001 provides for separating men and women and for setting aside areas for families, psychiatric patients and carriers of infectious diseases. The guards in the women's sleeping quarters must be women. In addition, the executive order states that detained individuals must be assigned a dormitory and given a mat and articles for personal hygiene. Detainees also have the right to receive food three times a day.

62. But despite the executive order, the Special Rapporteur notes recurring problems with Mexico's detention centres. Cases of cruel and degrading treatment and overcrowding have been reported, and lack of medical care and failure to notify consulates are commonplace. There are also common complaints about lack of hygiene, poor access to or poor quality food, and poor treatment by authorities. Concerns specific to women migrants relate to the practice that some security guards and attending physicians are men, which has occasionally resulted in accusations of sexual harassment and abuse. In addition, women have specific medical problems that they may want to disclose only to female medical personnel.

63. Among the three detention centres that the Special Rapporteur visited, in Mexico City, Tapachula and Tijuana, there were a very small number of migrants detained (between 5 and 50, depending on the holding centre), meaning the majority of supposed irregular migrants in the country were unaccounted for. While noting the Government of Mexico's policy of rapid repatriation, questions about the criminalization of irregular migration remain a concern. Reports suggest that there is an unknown number of migrants in prison, including in federal, state and municipal prisons, as well as unofficial or clandestine prisons, but requests by the Special Rapporteur for additional data and statistics on the foreign-born population in incarceration were not answered with sufficient information.

64. Reports from civil society indicate that detained migrants in many cases are not adequately informed of their rights, lack access to a lawyer, that no interpretation is offered in the case of non-Spanish-speaking migrants and that the registration of migrants is not systematic. Some migrants are detained for a short period of time by the authorities, "voluntarily repatriated" (but in many cases it is involuntary) and there is no record of some migrants' arrival and departure. Some non-governmental organizations explained that they do not have access to detained migrants in order to assist them and if so, in the cases where detainees do have access to a lawyer, they are allowed only 30 minutes (at most) to speak, which is insufficient to exchange proper information about the details of the case and the rights afforded to the migrant.

**B. Organized crime networks and impunity among governmental and law enforcement officials**

65. 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.

66. The Government of Mexico has to some extent a sophisticated and well-developed bureaucracy to handle migration issues, as evidenced by the myriad of agencies that cover the issue. However, implementation remains a challenge and, according to certain ministries, scarcity of resources remains a problem. There are reports about the misuse of funds intended to prevent undocumented migration to the United States (an estimated US\$ 1.5 million), including professionalizing the police forces. The Beta Groups, which provide material assistance and support to migrants in the process, often lack sufficient gasoline or personnel to carry out their tasks.

67. The Special Rapporteur recalls a point made by the Committee on Migrant Workers in its concluding observations. Under the General Population Act and its regulations, only officials of the National Institute for Migration and the Federal Preventive Police are empowered to carry out appropriate duties related to immigration control and supervision of the foreign-born population in the country. Under article 73 of the General Population Act, other authorities who by law have federal, local or municipal forces under their command may provide assistance to the migration authorities when so requested. However, the Committee noted that it is disturbed to find that in certain cases authorities not so empowered, including members of the Armed Forces and private security personnel (also known as *garroteros*), carry out migration control activities and arrests.

68. The Special Rapporteur has been informed of abuses by the INM, public law enforcement agents and private security personnel. Civil society organizations reported that arbitrary arrests are carried out by private security groups. These groups are mainly in charge of guarding railroads and trains, who arrest undocumented migrants illegally and hand them over to the INM. The most infamous cases seem to be those associated with the “train of death”, a mode of transport often used by undocumented migrants travelling internally. Reports indicate that mutilations, kidnapping, assaults and sexual harassment and abuse of migrants occur with some regularity during transit. The Special Rapporteur received reports of frequent operations during which the police and private security forces use extreme violence, beat people or throw them out of the train, causing serious accidents which can result in the amputation of limbs (arms or legs).

69. Civil society organizations and journalists reported cases of aggression, intimidation, violence and kidnapping of human rights defenders of migrants and those who assist

undocumented migrants. These often take place in areas near shelters where migrants are housed or in migrant communities. Many of these incidents and practices are associated with the transnational gang network described in more detail above. Systematic kidnapping for ransom purposes, whereby migrants with relations in the United States were targeted so that they would send money in order to free their family members in Mexico, was also reported. These incidents often go unreported if the relatives in the United States are undocumented and do not want to raise alarm for fear of deportation, raising levels of impunity. Reports of kidnappings involving sexual violence against women were highlighted.

70. Mexico has adopted an anti-*maras* law at the national level, and works with the United States and Central America on regional approaches to combating the phenomenon. However, there seem to be concerns about the collaboration between these networks and governmental officials and law enforcement agents, making the distinction between the two groups difficult to discern. Impunity, corruption, extortion and bribery seem to be a rampant phenomenon within the business of migration and contributing significantly to the pervasive abuse of migrants.

### **C. Assistance to migrants**

71. Basic due-process guarantees include the right to information, translation, and interpretation, the right to be heard, the right to an impartial and accountable adjudicator, the right to legal representation, the right to judicial review, and the right to consular access. The Government of Mexico faces the challenge of providing due-process guarantees to unauthorized migrants while also helping the majority return home safely and quickly.

72. In practice, the Government implements due-process guarantees unevenly. One problem is that authorities from several agencies participate in the detention process before turning migrants over to migration officials. As a result, the initial information collected about the circumstances leading to detention is not always clear. In theory, a recent reform decriminalizing undocumented entry should return migration control to INM agents and the Federal Preventive Police. However, if INM officials detain Central Americans they presume to be irregular migrants, and if those individuals cannot produce any legal migration documents, they will be placed in deportation proceedings with little time to clarify their situation.

73. Once migrants are in the custody of migration officials, the procedures vary among regional offices. For example, some officials allow migrants to make phone calls while others do not. Some migrants interviewed stated that they were unable to make phone calls if they lacked the necessary funds, which is often the case, especially with minors.

74. The Special Rapporteur observed a number of challenges regarding consular processes and migrants' detention and return to their country of origin. According to international standards,<sup>3</sup> the receiving State is to notify the consular or diplomatic authorities of the State of origin

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<sup>3</sup> Vienna Convention on Consular Relations, art. 36.

without delay whenever a migrant worker or a member of his family is arrested or detained, if so requested by the individual concerned. However, it was not clear the implementation of this law. Migrants interviewed in migrant holding centres affirmed not to have spoken with their legal representation. While this may have been obviated by the rapid return of certain migrants (especially those to Guatemala), migrants of other nationalities remained in detention without an indication of their legal rights or duration of detention.

75. Return depends on a bilateral agreement between the country of destination or transit and the country of the migrant's citizenship (not necessarily the country of origin). It was evident in visiting the migrant detention centres that Mexico has a functional reciprocal agreement with Guatemala, Honduras, El Salvador and Nicaragua whereby most undocumented migrants from these countries detained by Mexican authorities are released and returned promptly (often within two weeks but in many cases it is a matter of days, sometimes hours). Mexico often pays for the return of such migrants, as evidenced by the provision of ground transportation (tourist buses).

76. Bilateral agreements with other countries were not as evident. Cuba, for example, seems to be less tolerant of the outmigration of its citizens and, accordingly, less receptive of returned migrants, despite a Memorandum of Understanding with Mexico. Cuban migrants complained of waiting in detention without information about their stay duration or return. Those returned are potentially subject to persecution, as Cuban law criminalizes departure, raising questions about the non-refoulement of Cuban migrants under the 1951 Convention relating to the Status of Refugees.

77. As discussed throughout the report, physical and psychological assistance to migrants is a significant gap in Mexico's level of protection. Holding centres provide a minimum of physical care, and rarely offer mental-health assistance. The scarcity of treatment available for victims of sexual and gender-based violence is a weakness. The cases of amputees and those mutilated in association with violence on the "train of death" and the poor medical assistance, indeed negligence, that follows, is alarming.

78. Undocumented asylum-seekers arriving through the southern border of Mexico pose a procedural challenge. The border between Mexico and Guatemala is extremely difficult to monitor and there are several hundred unofficial crossings along the border. At the official entry points there is no standard procedure for referral of cases, and apparently there is confusion about the ad hoc procedures in place. The Office of the United Nations High Commissioner for Refugees (UNHCR) reports that, since most people stay only for a few hours in the holding centre, it is their greatest challenge to identify possible asylum-seekers among the hundreds of undocumented migrants. In theory, every migrant is interviewed (either at the checkpoint or in the holding centre) and there should be a transcript of this interview recorded by INM, but this is not always the case. Civil society organizations report systematic expulsion of asylum-seekers who are awaiting the determination of their refugee status.

79. The National Commission for Refugee Assistance (COMAR) in Tapachula analysed 224 cases in 2007. These cases originated from 26 countries. A bit fewer than half of the refugees were of Cuban, Salvadoran, Honduran and Guatemalan origin, none of whom were

recognized. A total of eight cases analysed by COMAR Tapachula were recognized as refugees: Colombia (2), Somalia (1), Burundi (1), Cuba (1) and Iraq (3). Thirty-one per cent of the applicants abandoned the procedure, many because of the amount of time spent in the migratory holding centre during the procedure.

80. The percentage of refugees recognized seems to be in decline, perhaps due to the fact that asylum-seekers of African origin are provided with an exit permit (*oficio de salida*), which allows them to travel through the country (generally with the goal of crossing the northern border). Since the destination of extraregional migrants is usually the North, they often do not bother to seek asylum in Mexico when they can be granted an exit permit.

## V. CONCLUSIONS AND RECOMMENDATIONS

81. **Mexico's progress in developing and implementing programmes to protect the human rights of migrants is evident, in terms of both the Government's capacity and willingness. The Special Rapporteur witnessed notable efforts by Mexican authorities to improve the handling of detention centres (especially overcrowding), training of border officials, return, and protection of children. Nevertheless, there are many issues of concern that warrant further attention and resources and, accordingly, the Special Rapporteur wishes to make the following suggestions for further consideration and action.**

### A. Recommendations to the Government of Mexico

#### Legal revisions

82. **Regarding the expulsion of migrants from its territory, the Special Rapporteur recommends that the Government of Mexico review its laws regarding expulsion (article 33 of the Constitution and corresponding practices stipulated in the General Population Act) and formulate policies according to international human rights law standards, that migrants are expelled only pursuant to a decision taken by the competent authority pursuant to the law. In addition, the Special Rapporteur, following up on recommendations by the Committee on Migrant Workers, recommends that Mexico should consider taking measures to withdraw its reservation to article 22, paragraph 4, of the Convention on Migrant Workers.**

83. **Regarding the criminalization of irregular migration, the Special Rapporteur welcomes the reform of the General Population Act and urges its harmonization with international law and reflection of attendant protections in practice. He is concerned with the punitive measures given to irregular migrants, including migrants involved in smuggling and trafficking. Now that irregular migration has been decriminalized by the reforms, and following up on recommendations by the Committee on Migrant Workers, the Special Rapporteur recommends that the law should, inter alia, implement the classification of illegal entry into the country as an administrative rather than criminal offence.**

84. **The Special Rapporteur again welcomes the efforts made by Mexico to implement the Convention on Migrant Workers, and notes that Mexico recently made a declaration under**

article 77 recognizing the competence of the Committee to receive communications from individuals. The Special Rapporteur regrets that this reluctance may signify a lack of complete support for the Convention itself. In the light of Mexico's exemplary efforts in the worldwide promotion of migrants' rights, the Special Rapporteur underscores the crucial nature of this element in the promotion of the Convention.

85. The Special Rapporteur received inconsistent information about at what age the federal Government and the state agencies considered migrant children as being legally "minors" and therefore deserving of additional protection. He also noted that there seemed to be differences according to sex, with girls eligible for protection longer than boys, which illustrates gaps in protection and lack of coherence in policy. The Special Rapporteur therefore recommends the revision of what is legally considered a "minor" at both the federal and state levels, and suggests that "minors" be inclusive, regardless of sex, of all children under the age of 18.<sup>4</sup>

86. Despite some programmes in place, the Special Rapporteur noted a general absence of public consciousness about the severity and extent of migrant child labour practices in Mexico, and calls for immediate measures to be taken by the Government of Mexico including: an enhanced national educational campaign against child labour, the further implementation of legislation that Mexico already has aimed at making child labour practices a crime, and prosecution and punishment of hiring a minor for labour at both the federal and state levels.

#### **Implementation and practice**

87. The Special Rapporteur takes note of efforts made by the Government of Mexico to professionalize and train its police forces and border control officials. He welcomes initiatives by the INM to organize technical training courses for administrative officials focusing on the protection of the human rights of migrants. The Special Rapporteur invites Mexico to continue these efforts, especially at the local level, and in particular for INM personnel, Federal Preventative Police personnel supporting the INM in the area of migration management, and officials working for the Beta Groups. He calls on the Office of the United Nations High Commissioner for Human Rights to assist with such trainings and capacity-building efforts.

88. The Special Rapporteur takes note of the rapid manner in which the authorities endeavour to return undocumented migrants to their countries of origin once detained in migrant holding centres. This varies by country of nationality and, as such, the corresponding bilateral agreement Mexico has with that country. However, he also observed that there were gaps to the extent Mexico had formulated bilateral agreements

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<sup>4</sup> Note article 1 of the Convention on the Rights of the Child, to which Mexico is a part, which states: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

encompassing conditions of return with many countries producing migrants to Mexico. He therefore recommends that Mexico review its current bilateral arrangements with consulates of countries in which migrants in Mexico are found and formulate more specific provisions for the following: (a) cost of return; (b) handling of reception of migrants; (c) transport from border or consular office back to family or other safe destination; (d) provision of immediate medical care if necessary; and (e) provision of clothing, food and shelter to be used in the interim, if applicable.

89. The Special Rapporteur observed gaps with regard to consular protection, as many migrants claim that they were offered no legal representation nor informed of their date of departure. As such, this limits their knowledge about their rights, even if a migrant is in an irregular situation. The Special Rapporteur recommends that the Mexican authorities notify the consular or diplomatic authorities of the State of origin without delay whenever a migrant is arrested or detained.

90. The Special Rapporteur observes the involvement of the armed forces and private security personnel in the handling of migrants, a practice not afforded to them under international nor federal law. He recommends that Mexico, and more specifically the National Institute for Migration, take appropriate steps to ensure that migration control and securing of migrants are carried out exclusively by the competent authorities and that every violation in this regard is promptly reported.

91. Regarding the abuse of domestic workers, the Special Rapporteur recommends that the Government of Mexico devote further resources to improving the data on migrant work in the domestic sphere, including but not limited to the research of numbers and nationalities of domestic workers and employers of domestic migrant workers. Further, he recommends that it examine potential abuse in the recruitment process, through investigations involving recruitment agencies and registration systems for migrant workers destined for the domestic sphere. In addition, the Special Rapporteur recommends that the Government create a mechanism whereby workers, even if in irregular stay, may lodge complaints of abuse regarding unfair labour practices in the domestic sphere and further develop support services and shelters for victims of abuse in the domestic sphere.

92. The Special Rapporteur recommends that appropriate legislative reforms address impunity of human rights violations, as a major weakness of the judicial system. In this regard the Special Rapporteur recommends to the Government that it establish obligations to report annually the number of cases that involve judicial actions such as arrests and convictions for the persecution of perpetrators of violations of the human rights of migrants, particularly, of the number of cases of judicial actions against perpetrators of child labour abuses.

## **B. Recommendations to the United Nations**

93. While the Special Rapporteur was pleased to learn about the various United Nations agencies and country offices involved in activities to protect women and children included

in the foreign-born population, he observed a fragmented approach among them, composed of disparate projects and programmes, which could benefit from increased cohesion. As such, he recommends that the United Nations Resident Coordinator, in conjunction with the International Organization for Migration, the Office of the High Commissioner for Human Rights, and specialized agencies, (a) review existing programmes that work to protect the rights of migrants and (b) integrate them for a more comprehensive approach to promote the protection of migrants within the United Nations system. This may be done in accordance with United Nations offices in, inter alia, Guatemala, Honduras, El Salvador and the United States. Considering the significant flow-through of the migration population, the Mexico offices of the United Nations have a leadership role to play in this regard.

94. The Special Rapporteur, at the time of drafting this report, was pleased to receive the recommendations issued by the International Meeting on the Protection of the Rights of Children in the Context of International Migration, “Migration and human rights of children”, organized jointly by the Ministry of Foreign Affairs and the Office of the High Commissioner for Human Rights in Mexico City, held from 30 September to 1 October 2008. As such, he would like to reiterate the call to intergovernmental institutions such as the United Nations to support initiatives to promote migrant children’s rights protection, and recommends that the United Nations encourage inter-institutional coordination at the national level, including through specific mechanisms and with the participation of the civil society, consular services, local governments and the private sector.

95. The Special Rapporteur welcomes the reforms of the General Population Act and the recent initiative of the Senate of the Republic of Mexico to recognize the competency of the Committee on Migrant Workers to hear individual communications, established in articles 76 and 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. He is pleased to learn that the Senate Commission on Population and Development is collaborating to form a working group, in coordination with the office in Mexico of the High Commissioner for Human Rights, to put such initiatives into practice. The Special Rapporteur therefore recommends that this office, in cooperation with the International Organization for Migration and various NGOs working on migration issues, work closely with the Congress to ensure harmonization of domestic law and policy with international standards.

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