



**International Convention  
on the Protection of the  
Rights of All Migrant  
Workers and Members  
of Their Families**

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COMMITTEE ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 73 OF THE CONVENTION**

**Initial reports of States parties due in 2004**

**MEXICO\***

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\* This report was not edited before being submitted for translation.

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### **List of abbreviations**

AFEM	Agreement issuing norms for the functioning of INM migrant holding centres
AICM	Mexico City International Airport
AFI	Federal Investigation Agency
APIS	Advance Passenger Information System
BANXICO	Bank of Mexico
CEDH	State Human Rights Commission
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEM	Centre for Migration Studies
CFPP	Federal Code of Criminal Procedure
CIM	Inter-American Commission of Women
CISEN	Centre for Investigation and National Security
CNDH	National Human Rights Commission
COLEF	College of the Northern Border
COMAR	Mexican Refugee Assistance Commission
CONACULTA	National Council for Culture and the Arts
CONAPO	National Population Council
CONAPRED	National Council for the Prevention of Discrimination
CONASIMI	National Minimum Wage Commission
CPGDH	Commission on Governmental Human Rights Policy
CTL	Labour Transition Centres
DIF	National Scheme for the Comprehensive Development of the Family
EAP	Economically active population
EFTA	European Free Trade Area
EMIF	Survey of Migration on the Mexico-Guatemala Border
FMVA	Visiting Agricultural Worker Migration Form
FMVL	Local Visitor Migration Form
FONHAPO	National Fund for Low-Income Housing
GATS	General Agreement on Trade in Services
GTM	Working Group on Migration
IACHR	Inter-American Commission on Human Rights

IA Court of HR	Inter-American Court of Human Rights
IACML	Inter-American Conference of Ministers of Labour
IDB	Inter-American Development Bank
IDH	Institute for Human Development
IFE	Federal Electoral Institute
ILO	International Labour Organization
IME	Institute for Mexicans Abroad
IMSS	Mexican Social Security Institute
INFONAVIT	Institute of the National Workers' Housing Fund
INM	National Institute for Migration
INMUJERES	National Institute for Women
IOM	International Organization for Migration
IRCT	International Rehabilitation Council for Torture Victims
ITAM	Autonomous Technological Institute of Mexico
LFPED	Federal Act to Prevent and Eliminate Discrimination
LFT	Federal Labour Act
LGP	General Population Act
MCAS	High-Security Consular Registration Certificate
MCI	Internal consultation mechanisms
MEF	Liaison mechanisms for border matters
OAS	Organization of American States
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSC	Civil society organizations
PAE	Employment support programmes
PFP	Federal Preventive Police
PGR	Office of the Attorney-General of the Republic
PHR	Physicians for Human Rights
PNDH	National Human Rights Programme
PROFEDET	Federal Procurator's Office for the Defence of Workers
PRONAM	National Women's Programme
PRONIM	Primary school programme for migrant children
PTAT	Mexico-Canada Seasonal Agricultural Workers Programme

RCM	Regional Conference on Migration
REDES	Discouraged Returnees
RFE	Federal Electoral Roll
RNE	National Register of Foreigners
RVA	Assisted Voluntary Returns of Extraregional Migrants
SAEBE	Jobseekers economic support scheme
SAEMLE	Economic support scheme for labour mobility abroad
SAEMLI	Economic support scheme for internal labour mobility
SEDENA	Ministry of Defence
SEDESOL	Ministry of Social Development
SEE	State Employment System
SEGOB	Ministry of the Interior
SEP	Ministry of Public Education
SHCP	Ministry of Finance and Public Credit
SIEMMES	Statistical Information System for Mesoamerican Migration
SIOM	Integrated System for Migration Operations
SNE	National Employment, Training and Skills Service
SOPEMI	Continuous Reporting System on Migration
STPS	Ministry of Labour and Social Security
TEFI	International Electronic Funds Transfer
UNAM	National Autonomous University of Mexico
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WTO	World Trade Organization

## Introduction

1. Since 2000, human rights have been one of the priorities of the administration of President Vicente Fox. As a result, policy in this area has been one of the main focuses of government policy, since democracy can be genuinely consolidated only within a culture in which human rights are respected.
2. Mexico has promoted openness and ongoing cooperation with various international organizations as one means of enhancing the national protection and safeguarding of human rights in keeping with international standards.
3. Migration is a priority of the present administration's domestic and foreign policy agenda. In this connection, the Government of Mexico recognizes 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.
4. Accordingly, 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 ever since the Government submitted the issue for discussion to the General Assembly of the United Nations in 1980. The Mexican Government 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.
5. 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.
6. As a State party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Mexican Government hereby submits its first periodic report for consideration by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 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.
7. As a way of giving practical effect to Mexico's commitment to human rights, a new methodology was proposed for the preparation of the periodic reports that States parties are required to submit under some universal international instruments. Through this new procedure, the Government has sought to reflect the situation of human rights in Mexico accurately, objectively and independently, as well as to reflect the dialogue promoted between civil society and the federal Government.
8. The Government of Mexico wishes to emphasize the valuable participation and inputs of the civil society organizations, academics and government bodies that were involved in the preparation of this report.

## I. INFORMATION OF A GENERAL NATURE

### A. Constitutional, legislative, judicial and administrative framework

9. 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 all 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.

10. In addition, Mexico is a party to the following bilateral mechanisms:

- *Mexico-United States Binational Commission*. The Binational Commission's Working Group on Migration and Consular Affairs is the main forum for dialogue on migration matters. It deals with the most important issues related to the protection of Mexican nationals at the level of Secretaries of State. Its decisions and agreements have ensured decent treatment of Mexicans abroad.<sup>1</sup>
- *Liaison mechanisms for border matters (MEF)*.<sup>2</sup> These mechanisms are the main forum for participation by the three levels of government of Mexico and the United States and deal with the main issues in the border area: consular protection, public safety and border crossing points and bridges.

Their main purpose is to promote coordinated action between the two countries' federal, state and local governments and to ensure that local issues at each border point are addressed from the standpoint of those who, because they live in the border area, have the clearest idea of the problems. This enables border communities themselves directly to influence federal public policy on border matters and also permits the solution in situ of a variety of border problems and issues that previously required intervention and decision-making by authorities based in Mexico City and Washington. The mechanisms are headed by the consuls of Mexico and the United States at each border point.

- *Internal consultation mechanisms (MCI)*. These are operated by all consulates and have immediate responsibility for addressing the problems of Mexicans detained by the United States immigration authorities, consular notification, access and protection and repatriation problems.
- *Pilot voluntary programme for interior repatriation*.<sup>3</sup> This is based on the Memorandum of Understanding on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals signed in February 2004 between the Ministries of the Interior and Foreign Affairs of Mexico and the United States Department of Homeland Affairs. The pilot programme was intended to safeguard the lives of migrants attempting to cross the border in the Sonora-Arizona area and involved the migration authorities of both Governments.



11. The Mexican consular network in the United States for the protection of Mexican nationals also carries out the following programmes:

- *External legal assistance programme.* The purpose of this programme is to reinforce protection activities for Mexicans through the hiring of lawyers specialized in the various branches of United States law to provide legal aid or free representation for Mexican nationals and/or assist in the conduct of legal proceedings.
- *Legal aid programme for Mexicans sentenced to the death penalty.* This programme seeks to prevent Mexicans charged with very serious crimes from being executed or sentenced to the death penalty.
- *Inter-agency programme for border-area children.* Since 1996, the Ministry of Foreign Affairs has been participating in the inter-agency programme for border-area children, in conjunction with the National Institute for Migration (INM) and the National Scheme for the Comprehensive Development of the Family (DIF). To date, nearly 114,000 unaccompanied minors detained by the United States immigration authorities have been repatriated. Under the programme, Mexican consulates on the border are responsible for the repatriation of unaccompanied minors, who are channelled to DIF state offices.
- *Preventive protection programme.* The main aim of this programme is to educate Mexican migrants abroad about their rights, regardless of their migration situation.
- *Mobile consulate programme.* Mexican consulates in the United States are responsible for this programme, under which visits are made to Mexican communities living far from permanent consular offices. The purpose of the programme is to provide consular services and detect problems, as well as to handle cases of consular protection for Mexican nationals.

12. The Mexican consular network in the United States also monitors and reports to the Ministry of Foreign Affairs on anti-immigration initiatives, legal provisions, judicial rulings and policies that could undermine or infringe the rights of Mexican nationals in the United States.

#### **A.1. Ratification of relevant international instruments**

13. Mexico is a party to the basic multilateral agreement on consular protection, namely, the Vienna Convention on Consular Relations, 1963, signed on 24 April 1963 and ratified by Mexico on 16 June 1965.

14. It is also a party to the following bilateral conventions or agreements on consular protection:

- Consular Convention between the United Mexican States and the United States of America, 1942;
- Memorandum of Understanding on Consular Protection of United States and Mexican Nationals, 1996;

- Memorandum of Understanding on Consultation Mechanisms on Immigration and Naturalization Service Functions and Consular Protection, 1998;
- Memorandum of Understanding between the Ministry of the Interior and the Ministry of Foreign Affairs of the United Mexican States and the Department of Homeland Security of the United States of America on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals, 2004.

### **B. Overview of the migration situation in the country**

15. Migration is a multidimensional phenomenon for Mexico, in that it is a country of origin, transit and immigration.

16. As far as immigration is concerned, there are few migrants to Mexico. According to data from the 1990 population and housing census, there were some 340,000 foreigners living in Mexico in 1990, equivalent to 0.42 per cent of the total population. Information from the 2000 census shows a slight increase, with an estimated 493,000 foreigners, corresponding to 0.5 per cent of the country's total population.<sup>4</sup>

17. A large majority of migrants come from the United States (69 per cent), followed by Central America (9 per cent), mainly Guatemala (5.6 per cent), and South America (5.9 per cent). European migrants come from a vast array of countries, of which Spain accounts for the largest proportion (4.1 per cent), while the numbers of migrants from Africa and Asia are very small.

18. With regard to refugees, representative cases include Spanish refugees in the early 1940s, South Americans in the 1970s and Guatemalans in the 1980s, many of whom stayed on in the country as permanent residents even after the conditions of political conflict and violence that had forced them to leave their countries of origin essentially ceased. According to INM data, of the Guatemalans settled in Mexico between 1996 and 2003 under the Guatemalan migrant stabilization programme, 25,196 remained in the country as permanent residents.

19. The volume of foreigners entering the country as immigrants or permanent residents (FM2) is relatively stable, ranging between 60,000 and 70,000 entries a year over the past 15 years.

20. According to National Population Council (CONAPO) estimates, there were 492,600 immigrants residing in the country in 2000. Their distribution by gender is balanced. In terms of educational levels, nearly a quarter (23.2 per cent) of foreign migrants in Mexico have a university degree or similar qualification.

21. As regards their labour status, almost half (45.1 per cent) are of working age and economically active. The great majority (68.8 per cent) work in the services sector, a fifth (21.1 per cent) in the processing sector and a tenth (10.1 per cent) in the primary sector.

22. As a country of origin of migrants, most of Mexico's emigrants go to the United States. From the outset, this emigration process has been primarily motivated by the search for employment opportunities. Mexican migration to the United States takes place in the context

of a historically complex relationship bringing together two neighbouring nations whose situations differ profoundly.<sup>5</sup> The following are some of the principal characteristics of Mexico-United States migration:

- A marked increase in the net annual flow of Mexican migrants entering the United States in order to settle there, from 235,000 in 1980-1990 to 390,000 in 2000-2002.
- A trend towards mass migration of Mexicans to the United States, with the United States population of Mexican origin almost tripling between 1980 and 2003, from around 9 million to 26.7 million. Of the latter, an estimated 9.9 million were born in Mexico (emigrants) and around 16.8 million were born in the United States.
- Around 85 per cent of Mexican migrants in the United States have resided there for more than three years; only one in five has been naturalized. Mexicans are the largest migrant group in the United States and in 30 of the 51 states in that country, accounting for 30 per cent of all foreign residents.
- Mexican migrant populations in the United States are very diverse in terms of gender and age and, contrary to the traditional pattern (predominantly male and young), Mexican migration to the United States increasingly involves whole families. Thus, there are 116 Mexican men for every 100 Mexican women, 55.4 per cent of the Mexico-born population living in the United States are men and 44.6 per cent are women and most migrants are young people of childbearing age, the average age being 34 years.
- Mexican migrants in the United States fall into diverse social and occupational groups,<sup>6</sup> working primarily in the tertiary and secondary sectors and, to a lesser extent, in the primary sector (60 per cent, 36 per cent and 4 per cent respectively in 2003).<sup>7</sup>
- Greater heterogeneity of migrants (greater proportion of migrants from urban areas, growing proportion of women, higher educational levels). In terms of schooling, 12.1 per cent have completed fourth grade, 29.8 per cent have completed between fifth and eighth grade, 19.3 per cent have completed between ninth and eleventh grade and 38.8 per cent have completed twelfth grade or higher.
- The 6.4 million Mexicans working in the United States account for 4.4 per cent of that country's economically active population. Seven per cent of the economically active Mexican migrant population in the United States occupy professional positions. Over half (53 per cent) earn less than US\$ 20,000 a year, whereas non-immigrants average US\$ 33,800 a year.
- The phenomenon of outward migration covers a wide geographical area, with some states in the centre (México, Puebla, Hidalgo and the Federal District), south (Guerrero and Oaxaca) and south-east (Veracruz) of Mexico becoming important areas for migration flows to the United States.

- The American states with the greatest number of Mexican migrants are: California (42.5 per cent), Texas (20.3 per cent), Illinois (4.9 per cent) and the rest of the states on the southern border (6.7 per cent).
- In the period 2001-2003, most temporary migrants were undocumented, in that 75 per cent did not have authorization to cross the border and 79 per cent did not have permission to work in the United States (compared with 48 per cent and 51 per cent, respectively, in 1993-1997), yet 82 per cent of them were in work during this period.
- A reduction in the circular nature of migration and a trend towards increasingly long stays in the United States.
- Consolidation of large binational communities and of social and family networks of migrants that help strengthen ties between communities of emigration and immigration and to reduce the costs of migrating.<sup>8</sup>

23. Mexico's importance as a transit country for the international movement of documented and undocumented persons both inside and outside the region, whether as tourists, businesspeople or permanent migrants, has grown substantially in the past two decades. Likewise, economic integration in North America and tighter links in a context of globalization and a greater free flow of goods and capital have increased the transit passage through Mexico of people, business and tourism coming above all from the United States, Canada and Europe. Ninety-five per cent of transit migration to the United States takes place on the southern border, making the latter the nerve centre for the implementation of national migration policy.

24. Mexico's southern border<sup>9</sup> with Guatemala and Belize lacks a proper system for ensuring controlled, legal and orderly migration. The border infrastructure, in terms of entry ports, bridges and crossing points, is also ineffective and, in some cases, inadequate. As a result, the migration of Central American nationals in transit to the United States is a growing challenge for the country. The fact that Mexico borders the world's biggest economic power, combined with growing economic disparities, a porous southern border and the need for procedures that address risks and threats to national and international security, adds to the complexity of administering transit migration.

25. Central American emigration over the past three decades has changed steadily, from the mainly intraregional emigration of the 1970s to the extraregional migration of the 1980s and 1990s, but always with the United States as the principal destination. Even Mexico, which played an important role in the 1980s in receiving Guatemalan refugees, has not seen major changes in its Guatemalan population, whereas emigration from Guatemala, El Salvador, Honduras and other countries of the region to the United States has surged. Mexico thus remains the obligatory country of transit for these ever-greater northward flows of migrants.

26. Undocumented migration, by its very nature, is extremely difficult to quantify. All that can be done is to make an indirect assessment based on INM statistics for cases in which migrants were secured and sent back.

27. The flow of undocumented migrants over the southern border increased by 41.4 per cent in the period 2001-2004, from 144,300 cases to 204,000.

28. To avoid adopting an approach that treats undocumented migration as a crime, Mexico uses the term “secure” rather than “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.

29. Indicators show that the majority of irregular migrants are Guatemalans, followed by Hondurans and Salvadorans, and that most of them are headed for the United States. According to 2004 data, these three nationalities account for 95 per cent of all cases in which migrants are secured in Mexico.

30. In 2003, of a total of 187,614 migrants secured in Mexico, 86,023 were Guatemalans, 61,900 Hondurans and 29,301 Salvadorans. In 2004, the numbers were 94,404 Guatemalans, 72,684 Hondurans and 34,572 Salvadorans. During the same period, 93,667 Guatemalans, 73,046 Hondurans and 35,270 Salvadorans were sent back<sup>10</sup> and 10,089 foreigners were denied entry,<sup>11</sup> of whom 4,822 were Brazilian, 1,076 were Ecuadorian and 601 were Venezuelan.<sup>12</sup>

31. In all, 215,695 migrants were secured and 211,618 were sent back in 2004. Between January and May 2005, 107,349 foreigners were sent back to their country of origin. Undocumented migration is growing at an annual rate of 30 per cent.

32. The State does not have sufficient material and human resources to respond to irregular migration flows of this magnitude. As a result, the Mexican Government is conscious of the importance of working with civil society and with the countries concerned to tackle the phenomenon.

33. Based on article 42 of the General Population Act, Mexico documents legal migrants in transit as “transmigrant non-immigrants”, a status which allows them to stay in the country for up to 30 days. Between 1995 and 2004, the number of foreigners entering Mexico as transmigrants grew at an average rate of 8 per cent a year, with the rate peaking in 2000. In 2003, the National Institute for Migration recorded a little over 20 million entries of persons to the country, of whom 98,418 were transmigrants. The number of local maritime visitors also increased steadily from 1998, the first year for which it was recorded, at an average rate of 16.5 per cent a year. In 2003, there were 6,939,072 visits by local maritime visitors to Mexico. The two categories combined mean that a little over 7 million documented persons entered the country temporarily, an annual growth rate of 16.2 per cent. In 2004, 212,681 people were documented as transmigrants.

34. According to article 41 of the General Population Act, foreigners may enter the country legally under any one of the following three migration categories: non-immigrant, immigrant or permanent resident:

- Non-immigrant: a foreigner who enters the country temporarily in one of the following capacities: tourist, transmigrant, visitor, minister of religion or similar, political asylum-seeker, refugee, student, distinguished visitor, local visitor, temporary visitor or correspondent;<sup>13</sup>
- Immigrant: a foreigner who enters the country legally with the intention of settling there in one of the following capacities: person of independent means, investor, professional, person occupying a position of trust, scientist, technician, family member, artist, performer, sportsperson or similar;<sup>14</sup>
- Permanent resident: a foreigner who acquires rights of permanent residence in the country.<sup>15</sup>

35. In 2004, almost 500,000 migration procedures were handled; more than 3,000 migrants were rescued by the 15 migrant protection Beta Groups, which work to protect and counsel migrants on both the northern and the southern border of the country; some 45,000 Guatemalan seasonal agricultural workers were registered; 215,000 foreigners were sent back to their countries of origin; and the rights of 2 million Mexican nationals who return temporarily to Mexico every year were ensured.

36. As a result, one of the main challenges facing Mexico in the area of migration is to put in place a proactive migration policy that translates into the effective promotion and facilitation of migrant flows beneficial to the country, in keeping with domestic priorities, and at the same time helps to make Mexico more competitive internationally: a coherent, long-term policy that creates certainty and facilitates the entry and stay of foreigners in Mexico.

37. The Ministry of the Interior, through the National Institute for Migration and in coordination with the Ministry of Foreign Affairs, establishes visa policies for third countries, pursuant to reciprocal agreements on the abolition of visas signed with other countries and to unilateral decisions of the Mexican Government to exempt certain countries from visa requirements by virtue of the nature of their bilateral relations and the international situation. Currently, 54 countries are exempt from the visa requirement for ordinary passports, whether by agreement or by unilateral decision, and 71 countries do not need a visa in diplomatic and official passports.

38. In granting visas, the National Institute for Migration handles freely regulated nationalities, regulated nationalities and nationalities requiring its prior consent to enter the national territory.

39. Freely regulated nationalities may enter Mexico using the *Forma Migratoria de Turista, Transmigrante, Visitantes personas de negocios o Visitante Consejero* (FMTTV) (migration form for tourists, transmigrants, visiting businesspersons or visiting advisers),<sup>16</sup> which they can obtain at travel agencies, airlines or entry points.

40. Regulated nationalities, on the other hand, must be documented in advance by Mexican diplomatic and consular missions abroad.

41. It should be mentioned that the Government of Mexico has implemented a long-term visa programme. This programme has its origin in the authorizations granted jointly by the Ministries of the Interior and Foreign Affairs to Central American nationals, initially Guatemalan nationals, to enter Mexican territory as tourists and businesspersons, which were valid for five years and three years, respectively.

42. In order to create certainty for migrants from countries of the Latin American community, their nationals have been incorporated in the programme of long-term consular visas, which are valid for five years for tourists and three years for businesspersons. This programme operates successfully as a catalyst for tourism and investment in Mexico.

43. Its aim is to simplify migration procedures so that the visa holder does not have to go to a consular mission each time he/she is to travel to Mexico.

44. Mexico is pursuing the consolidation of a policy of opening up to the rest of the world in the different spheres of human activity, and migration is not and cannot be an exception. This opening up is taking place in accordance with the principles of the migration policy designed by the Mexican Government, which embody the following concepts:

1. Absolute and unrestricted respect for the human rights of all persons who emigrate, irrespective of their migration status on entering Mexican territory;
2. Shared responsibility of migrants' countries of origin, host countries and transit countries;
3. Legality, safety and order;
4. Combating of drug trafficking and people trafficking;
5. Non-criminalization of migrants;
6. Perception of migration as a tool for promoting national development.

45. Efforts are currently being made to shape a new culture in which men, women and children who are forced to leave their countries in search of better prospects can regain their dignity. For this reason, Mexico established the Integrated System for Migration Operations (SIOM) in 2004, making it possible to improve response times in rulings on migration procedures, support the authorities' discretionality in ruling on each case and access online information on the various cases, facilitating its exchange with other countries.<sup>17</sup> In 2004, the number of migration procedures, namely, requests to enter, stay in and leave the country, increased by 138 per cent over 2003.

46. Mexico has a database with photographs of 10.6 million foreigners who have entered the country by air over the past year and a half. Through the Advance Passenger Information System (APIS), Mexico receives information in real time on passengers arriving at the country's international airports before the aircraft has taken off from its place of origin. Before passengers

arrive, the migration authorities already know their name, registration document details, age, migration status, airline and flight number. Once on national territory, their passport is scanned and entered in the SIOM database.

47. In 2003, the Ministry of Foreign Affairs and INM developed computer systems which in the medium term made it possible to maintain communication online, including all the information on visas and migration documents generated in embassies and consulates, the INM central office and its 32 regional offices. The link-up between SIOM and the databases of Mexican consulates abroad will be completed by the end of 2005.

48. Another stage in the modernization process has been the digitization of the National Register of Foreigners (RNE) and the migration archive, the second largest in the country. By March 2005, almost 500,000 RNE migration forms (FM1) had been digitized and almost a million files in the migration archive, thereby recovering and preserving Mexico's documentary memory of migration.

49. In 2003, an Italian consulting firm, CERFE, hired by the Inter-American Development Bank (IDB) and the International Organization for Migration (IOM), analysed the generation of migration statistics in Mexico and concluded that it was feasible for Mexico to join the Statistical Information System for Mesoamerican Migration (SIEMMES)<sup>18</sup> in order to exchange information enabling it to determine and monitor the volume and characteristics of international movements both among countries of the region and to and from outside the region, as well as to generate reliable migration statistics, particularly gender- and age-disaggregated statistics, since only migration statistics on the repatriation of Mexican nationals are currently disaggregated.

### **Women migrants**

50. International women migrants have become an especially vulnerable population group, since their gender and situation of social, legal and political inequality are compounded by their migrant status. According to IOM, women now move around more independently and no longer because of the place they occupy in the family or under male authority. Around 49 per cent of the 185 to 192 million migrants in the world are women. In some regions, the proportion is even higher.<sup>19</sup>

51. The volume of Mexico's population living in a state other than the one where they were born increased from just over 7 million in 1970 to 17.7 million in 2000 and the gender distribution of that population shows that the percentage of women increased from 15.4 per cent to 18.4 per cent and that of men from 14.4 per cent to 17.9 per cent over the past 30 years.

52. With regard to the net migration rate by place of birth, in 2000 the states which gained the greatest percentage of women migrants as opposed to men were Baja California, México and Morelos and those which lost the greatest percentage of women were Zacatecas, Durango, Michoacán and Nayarit.<sup>20</sup>

53. CONAPO estimates that approximately 45 per cent of Mexicans living in the United States are women.<sup>21</sup> Ninety-four per cent of female Mexican workers in the United States are wage earners and their average monthly wage is US\$ 1,100. Mexican



women in that country work mainly in factories, workshops, domestic service, restaurants and small businesses, all semi-skilled occupations that in many cases do not provide employee benefits. The dollars sent back by such women account for 20 per cent of all remittances by Mexican nationals in the United States. These women generate around US\$ 1.5 billion a year.

54. CONAPO also states that deported Mexican women are one of the most vulnerable groups among unauthorized migrants to the United States. Most of them are young, unmarried women with a higher educational level than men and coming from the traditional and northern regions of migration. They have no prior migration experience and travel in the company of relatives or friends, and they migrate in search of work.

55. Of the total 514,944 repatriations in 2004, 69,495 were of women aged over 18 and 11,170 were of migrant girls and adolescent girls.

56. Undocumented women migrants are particularly vulnerable. Women in this situation face a number of difficulties. For instance, many of them come from rural areas and move to cities in order subsequently to cross international borders. The testimonies of women transiting not only through Mexico but also through various regions of the world often mention the fact that they are asked for sexual favours in return for protection or to enable them to cross borders and checkpoints. Unfortunately, many of these acts are not reported to the authorities.

57. In her contribution to the document: “Reports, studies and other documentation for the Preparatory Committee and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance”, the United Nations Special Rapporteur on the human rights of migrants noted that one of the main obstacles to remedying violations of the human rights of migrants consists in the lack of information regarding the type of violations, the places where they occur and their characteristics.<sup>22</sup> The under-recording of violations of the human rights of women migrants is all the greater because women migrants are more marginalized.

58. The National Human Rights Commission (CNDH) has pointed out that there are victims of domestic violence who do not report it because they are dependent on the migration status of their abuser and mistakenly believe that they could be deported. Article 39 of the General Population Act does not provide for a person’s immediate expulsion upon dissolution of the marriage. Instead, it gives the Ministry of the Interior the discretionary power to authorize the person’s stay in the country or a change in the person’s migration status.

### **C. General aspects of the implementation of the Convention in the country**

59. Pursuant to article 7 of the General Population Act, the Ministry of the Interior is responsible for organizing and coordinating the various migration services, monitoring the entry and departure of nationals and foreigners and checking their documentation.

60. The migration services are divided into the domestic and the foreign service. The former comprises the offices established by the Ministry of the Interior within the country and the latter comprises Ministry representatives, members of Mexico’s Foreign Service and any auxiliary institutions designated by the Ministry.

61. The Ministry performs the functions of organizing and coordinating the various migration services, monitoring the entry and departure of nationals and foreigners and checking their documentation through the National Institute for Migration, a decentralized organ of the Ministry set up in 1993 to handle the increasingly complex phenomenon of international migration efficiently and effectively and to implement migration policy.<sup>23</sup> Its purpose is to plan, implement, control, supervise and evaluate migration services and to coordinate with the various departments of the federal public administration that are also involved in addressing and solving migration-related issues.

62. The Institute has a staff of around 3,555 working in operations, services, inspection, surveillance, procedures, administration and management. This staff is distributed among the 32 states of the Republic, in 32 regional offices and 26 local offices with an institutional presence, as well as the over 200 entry points along the country's 3,200 kilometre northern border with the United States, 1,200 kilometre southern border with Guatemala and Belize and approximately 10,000 kilometres of coastline.

63. With some 3,500 public servants, of whom 1,857 are migration officers, INM documents the entry and departure of an average 36 million people a year who enter the national territory, of whom over 11 million are foreigners.<sup>24</sup>

64. The Institute also has the migrant protection groups, or Beta Groups,<sup>25</sup> which since being set up in 1990 have played an important role in the protection of all migrants who face serious dangers in attempting to cross the border in places which present a major risk to their physical integrity.

65. There are currently 15 migrant protection groups: 11 on the northern border at Tijuana, Tecate and Mexicali in Baja California; San Luis Rio Colorado, Sonoyta, Nogales, Sásabe and Agua Prieta in Sonora; Piedras Negras in Coahuila; Ciudad Juárez in Chihuahua; and Matamoros in Tamaulipas; and 4 on the southern border at Comitán and Tapachula in Chiapas; Tenosique in Tabasco; and Acayucan in Veracruz.

66. In 2004, more than 3,000 migrants who were injured, wounded or in imminent danger of death were rescued by the Beta Groups distributed along the country's borders.

### **Measures taken for the protection and dissemination of migrants' rights**

67. INM periodically runs technical training courses for officials and administrative staff, focusing on the protection of the human rights of migrants and their families, with special emphasis on the rights of women migrants. For instance, on 9 and 10 December 2003, a Workshop on the Human Rights of Migrant Women and Minors was held in Veracruz. Its purpose was to provide basic human rights tools, with a gender approach, to public servants responsible for dealing with migrants.

68. On 8 March 2005, on the occasion of International Women's Day, the Institute organized a seminar on "Women and Migration on Mexico's Borders", which dealt with such issues as: the situation of women migrants on the southern border; women's participation in the *Mara Salvatrucha*; a study of international migration from a gender perspective; and the human rights of women migrants on the northern border.

69. To help solve the serious problem of violence against women in Ciudad Juárez, Chihuahua, INM is cooperating and coordinating on an ongoing basis with the Office of the Attorney-General of the Republic and with the Attorney-General's Office of that state, under the latter's Programme of Action to Cooperate with the Federal Government in Preventing and Combating Violence against Women, and stepping up the actions of the Ciudad Juárez Beta Group to advise and protect women migrants in that area. For instance, as part of efforts to communicate and publicize the dangers facing women in the area, an information leaflet on preventive measures was produced for distribution to women migrants in Ciudad Juárez; 10,000 copies were printed and they began to be distributed in February 2004.

70. At the same time, an issue of *Cartel INM Informa*<sup>26</sup> was devoted to the issue of women migrants. The publication's purpose is to alert migrants to the risks they face on the journey to the United States. It is published monthly and has a circulation of 5,000.

71. It is important to mention that Mexico has signed various international instruments relating to the protection of women's rights, such as the Convention on the Elimination of All Forms of Discrimination against Women,<sup>27</sup> the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women or Convention of Belém do Pará<sup>28</sup> and the International Convention on the Protection of All Migrant Workers and Members of Their Families.<sup>29</sup>

72. The competent departments, coordinated by the National Institute for Women (INMUJERES) and the Ministry of Foreign Affairs, are currently participating in the interministerial working group set up in July 2003 to follow up the preparation of Mexico's sixth report on its compliance with the Convention on the Elimination of All Forms of Discrimination against Women. Mexico signed the Convention on 17 July 1980 and deposited the instrument of ratification with the Secretary-General of the United Nations on 23 March 1981.

73. At the regional level, Mexico is promoting a comprehensive approach to dealing with migration. To that end, the first Regional Conference on Migration was convened in March 1996. Member countries have agreed to focus attention on women migrants as a central element of their domestic political and social agenda, emphasizing the special needs of such women, and various courses, workshops and seminars have been held on the issue of respect for their human rights.<sup>30</sup>

74. For Mexico's Government, it is extremely important to mainstream a gender perspective in migration policy and in public policy in general. Accordingly, on 26 April 2004, INM and INMUJERES signed a general cooperation agreement<sup>31</sup> designed to strengthen measures for the promotion, protection, observance and dissemination of the human rights of national and foreign women migrants.

75. Under the agreement, regional forums on women migrants and human rights have been organized, as well as an ongoing campaign to publicize the human rights of Mexican women living and/or working in the United States and for women living in communities of origin. For instance, on 4 and 5 November 2004, a forum on "Women and International Migration on the Southern Border" was held in Tuxtla Gutiérrez, Chiapas, and on 2 and 3 December a forum was held on internal migration in the state of Guanajuato.<sup>32</sup>

76. On 1 June 2005, the Inter-agency Panel on Gender and Migration was set up, coordinated by INMUJERES and INM and made up of representatives of various departments of the federal public administration and civil society organizations. Its purpose is to help coordinate integrated, joint inter-agency and inter-state policies, programmes, projects and measures that guarantee respect for and promotion of the human rights of women affected by migration.

77. On 15 and 16 June 2005, binational training days on gender and international migration (southern border) were held in Cancun, Quintana Roo, and on 10 and 11 August 2005 binational training days on gender and international migration (northern border) were held in Ciudad Juárez, Chihuahua. The purpose of the training days is to raise the awareness, from a gender and human rights perspective, of staff of public and private bodies involved in dealing with women affected by migration and to promote through training activities the mainstreaming of a gender perspective in the policies, plans and programmes of government bodies, non-governmental organizations and associations of Mexicans abroad.

#### *Securing of foreign minors travelling alone*

78. The situation of migrant child victims is particularly worrying. Of the roughly 150,000 minors who attempt to cross to the United States each year, either to be reunited with their families or simply to achieve a better standard of living for themselves, some 60,000 are deported. A third of minors who attempt the crossing do so without the company of relatives or with people smugglers.<sup>33</sup>

79. Of approximately 200,000 Central Americans returned to their countries of origin from Mexico in 2004, around 17 per cent were minors, most were travelling unaccompanied and many were returning for the second, third or fourth time.<sup>34</sup>

80. Upon securing an unaccompanied minor, INM alerts the corresponding consulate so that the latter can begin trying to locate the minor's family and link up with a counterpart institution to DIF in the country of origin that will take charge of the minor. When the consulate informs INM that it has lists of family or institutional contacts and provides a safe conduct for the minor, INM begins the process of returning the minor to his/her country of origin.<sup>35</sup>

81. DIF provides support for housing unaccompanied foreign minors aged under 12 years, provided that they fulfil the norms of the home in which they are placed, do not require special care (mentally handicapped children, among others) and stay only for a short time.<sup>36</sup>

82. For minors who do not fulfil the foregoing norms, INM has built special facilities at the Iztapalapa migrant holding centre to shelter and care for adolescents under the Institute's protection pending completion of the procedures for returning them to their countries of origin.<sup>37</sup>

83. Travel tickets for minors are supplied mainly by INM, except in some cases where they are supplied by the minors' own relatives and/or consulates. Each minor is accompanied during the transfer process by a migration official who is responsible for the minor's safety until he/she is handed over to family members and the corresponding authorities in the country of origin.

84. INM is currently working to fit out special areas for minors within its different facilities to provide them with the necessary care and protection.<sup>38</sup>

85. As part of inter-agency cooperation measures, on 25 January 2005 DIF and the National School of Social Work of the Autonomous University of Mexico (UNAM) presented a methodology for the care of adolescent migrants, which is a model for the care of minors under INM protection at the Iztapalapa migrant holding centre. This model will be replicated in other INM migrant holding centres.

86. In some cases, repatriation is delayed because consulates do not receive an immediate response from the institutions responsible for caring for children in their countries.

87. For the Mexican Government, it is important to keep families together. Accordingly, if foreigners travelling with minors are secured, the children remain at the migrant holding centre or else, at the request of their parents or relatives, are sent to DIF until the time comes for their repatriation.

88. On 19 May 2005, the Ministry of the Interior, INM and DIF signed an agreement establishing joint measures for repatriated unaccompanied Mexican and foreign migrant children and adolescents that is a basic tool for providing the necessary comprehensive, differentiated care to migrant minors in the country.

89. The object of this agreement is to lay the bases for cooperation among the participating entities, committing DIF to providing shelter for migrant children under age 12 through the network of public and private shelters participating in the inter-agency programme for border-area children and INM to doing the same for migrant children age 12 and over in migrant holding centres, in keeping with the methodologies, technical advice and training provided by the national DIF scheme.

90. During 2004, the Iztapalapa migrant holding centre housed 4,142 minors: 879 girls (21.3 per cent) and 3,263 boys (78.7 per cent). Of these, 624 (15 per cent) were aged 0 to 11 years and 3,518 (84.9 per cent) were in the 12 to 17 age group.<sup>39</sup>

91. The minors came from 31 countries, the largest numbers coming from Guatemala, Honduras, El Salvador, Ecuador and Brazil. There were also minors from countries outside the region: Eritrea, Ethiopia, Iran, Lithuania and Sierra Leone.

92. To deal comprehensively with the problem of the risks faced by vulnerable minors living in the country's border areas, principally the northern border, an inter-agency project for the care of border-area minors was set up in 1996 under the Mexico-United Nations Children's Fund (UNICEF) Cooperation Programme.

93. The purpose of the project is to provide care for such minors and ensure respect for their human rights from the moment when they are secured until they rejoin their families or communities of origin, through the coordinated efforts of the following entities: INM, the Ministry of Foreign Affairs and the National Scheme for the Comprehensive Development of the Family, under the overall responsibility of the latter.

94. The project operates on Mexico's northern border and work is currently under way on a specific programme for the country's southern border, coordinated with the government of the state of Chiapas.

95. The inter-agency project for border-area minors comprises a network of 22 transit shelters throughout the length of the northern border, involving three levels of government and civil society organizations, to provide care for repatriated migrant minors.

96. From January to June 2005, 26,330 minors were repatriated, 3.6 per cent fewer than in the same period of 2004, and 14,108 minors were channelled, according to their characteristics, to the various public and private institutions belonging to the network of transit shelters, to other institutions that care for such minors and directly to their family members, 43 per cent more than in the same period of 2004.<sup>40</sup>

97. It should also be mentioned that the implementing regulations of the General Population Act state that: "The Ministry of the Interior, in coordination with the Ministry of Foreign Affairs and the National Scheme for the Comprehensive Development of the Family, shall promote agreements with state governments and state schemes for the comprehensive development of the family establishing mechanisms for cooperation and coordination in carrying out measures benefiting repatriated migrant minors, in order to guarantee their rights under the law."<sup>41</sup>

98. Accordingly, the Mexican Government has signed a number of agreements with United States authorities for the safe and orderly repatriation of Mexican nationals.<sup>42</sup> These agreements establish places, times and procedures in each border state for safe and orderly repatriation, emphasizing the care that must be given to people in special circumstances, women who are pregnant and/or accompanied by infants, injured persons and unaccompanied minors. Repatriated minors travelling alone are channelled directly by INM regional offices to municipal DIF schemes or network shelters.

99. The Beta Groups have also strengthened coordination with centres located in border areas that care for repatriated minors, as in the specific case of the state of Baja California where two centres located in Tijuana and Mexicali have been in operation since February 2004. On 18 November 2004, a centre for repatriated minors was also opened in San Luis Rio Colorado, Sonora.

100. The Mexican Government is continuing to set up new modules throughout the length of the border zone so that all minors can be handed over directly to DIF for channelling to the various shelters and handing over to their family members.

101. INM hands over repatriated minors to the DIF staff responsible for the module, where the minor is given a social, medical and psychological evaluation. Investigations are also begun to locate family members so that the minor can be returned to his/her family or community of origin.

102. Through its offices on the northern border, INM takes measures to back up and fulfil the objectives of the programme for the care of border-area minors by means of the following agreements and commitments:

- To reiterate the need to comply with bilateral agreements on orderly repatriation, emphasizing that INM offices may receive minors outside established hours only in cases involving their safety;
- To ensure the necessary compatibility between the operating hours of the National Institute for Migration and those of the social welfare institutions to which minors are channelled;
- To channel minors, at the moment of repatriation, directly to DIF or to the governmental and non-governmental agencies responsible for returning them to their families and places of origin;
- To make minors aware of their rights and discourage them from re-entering United States territory in the future;
- To strengthen the measures taken in the 11 northern border communities where the programme operates.

*Measures on the southern border*

103. Under the inter-agency programme for the care of border-area minors, efforts are being made to implement a care strategy for migrant minors on the southern border. To that end, a coordination group has been set up, comprising the national DIF scheme, the Ministry of Foreign Affairs, INM, the Institute for Human Development (IDH), the Mexican Refugee Assistance Commission (COMAR) and UNICEF. As part of this strategy, the government of the state of Chiapas, through IDH, set up a shelter for migrant minors in April 2005 in the city of Tapachula, Chiapas, to offer comprehensive care to migrant minors. There are also plans to sign a local inter-agency cooperation agreement among IDH, the national DIF, COMAR and INM to establish procedures for the care of Central American migrant minors in Tapachula, Chiapas.

104. The Agreement for the Safe and Orderly Repatriation of Central Americans on the Borders of Mexico and Guatemala,<sup>43</sup> signed on 2 July 2004, establishes that unaccompanied minors shall be repatriated only through the intervention of officials of the consular and migration authorities of the Central American country concerned, guaranteeing at all times their integrity and safety and respect for their human rights.

105. In July 2004, INM travelled overland from the Iztapalapa migrant holding centre to the Tapachula, Chiapas, migrant holding centre to observe and improve the procedure for repatriating Central American adolescents. It also verified the kind of treatment and care given to adolescents when they were handed over to their migration authorities on the borders of Honduras and El Salvador, where there is no involvement of the authorities responsible for the care of minors.

106. On 21 November 2004, the construction of the model migrant holding centre in Tapachula, Chiapas, began on a 30,000 sq. metre site in the state with the greatest volume and movement of secured migrants in the country. The centre has a projected capacity of around 960 temporary places and 490 overnight places, with specific areas for men, women, families

and minors. In keeping with applicable international standards, the project includes the construction of dormitories, interview rooms, rooms for medical visits, children's and recreation areas, dining rooms, a laundry, a library, a social work and psychological care area and offices for CNDH staff.

### **National Human Rights Programme**

107. In December 2000, President Vicente Fox concluded a technical cooperation agreement between Mexico and the Office of the United Nations High Commissioner for Human Rights (OHCHR). As part of this agreement, a survey was made of the situation of human rights in Mexico, which was handed over to President Vicente Fox on 8 December 2003.<sup>44</sup>

108. The survey seeks to reflect the actual situation of human rights in Mexico and to help society and the Government identify the structural obstacles impeding respect for human rights in the country. In preparing it, account was taken of the recommendations made by regional and international human rights mechanisms, including those of the Inter-American Commission on Human Rights and the Special Rapporteur of the United Nations Commission on Human Rights on the human rights of migrants.

109. The survey includes 31 principal recommendations, as well as many important proposals on different issues. In some cases, the recommendations have already been considered by public entities, but have yet to be fully implemented. In complying with the recommendations, the migration phenomenon will have to be considered in its entirety.

110. In keeping with the technical cooperation agreement, the survey was the main input for the preparation of the National Human Rights Programme (PNDRH).<sup>45</sup> This programme, which coordinates the measures to be implemented by the executive and legislative branches and the judiciary, as well as public human rights bodies, was designed and drawn up by the Commission on Governmental Human Rights Policy (CPGDH).

111. For the evaluation of the National Human Rights Programme, an evaluation and monitoring mechanism was designed that will ensure its ongoing evaluation both by civil society and by the concerned responsible entities of the federal executive branch.

112. The evaluation mechanism is made up of a system of two types of indicators. The first type comprises the indicators included in the programme document itself, which are designed to evaluate specific goals. The idea is to use this group of indicators to establish a precedent for using human rights indicators and increasing familiarity with them.

113. The idea is also to put the PNDRH coordinating committee for evaluation and monitoring in charge of analysing the efficacy of those indicators and suggesting how they might be modified and improved in order to have a set of indicators within the programme that are in keeping with the country's needs, realities and challenges. Indicators on migration are currently being prepared for the National Human Rights Programme.

114. The coordinating committee will comprise representatives of government offices, public human rights bodies and civil society organizations and observers from international human rights bodies, and other branches of government and states will be invited to participate.



115. To this end, the Subcommission for the Protection of the Human Rights of Migrants contributed its observations on the human rights of migrants and these were included in PNDH. The main migration issues identified in the Programme include: (a) promoting a culture of respect for people who migrate; (b) guaranteeing access to justice and due process for migrants in the national territory and abroad; (c) harmonizing substantive legislation with international instruments and standards for the protection of migrants' rights; and (d) promoting coordination measures among all bodies involved in dealing with migration, including civil society organizations.

116. Civil society organizations also contributed their comments for the preparation of this report through the Subcommission for the Protection of the Human Rights of Migrants.

#### **D. Measures to disseminate and promote the Convention**

117. The current administration has emphasized that the promotion and protection of human rights is one of the cornerstones of Mexico's foreign policy. For that reason, one of Mexico's priorities in international human rights forums has been to raise the international community's awareness of the vulnerable situation faced by the world's migrants and the importance of respecting their rights, as well as to promote the development of standards for the protection of those rights.

##### **United Nations system**

118. It is important to mention the resolutions on the human rights of migrants put forward by Mexico since 1999 in various multilateral forums such as the Commission on Human Rights and the General Assembly of the United Nations. One clear example is the resolutions put forward recently by Mexico at the sixtieth session of the Commission on Human Rights, held from 15 March to 23 April 2004,<sup>46</sup> which are along the same lines as the resolutions submitted to the General Assembly of the United Nations.<sup>47</sup>

119. At the sixtieth session of the Commission on Human Rights, Mexico put forward, inter alia, resolution 2004/56 entitled "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, resolution 2004/53 entitled "Human rights of migrants" and resolution 2004/87 entitled "Protection of human rights and fundamental freedoms while countering terrorism". It is important to mention that these resolutions were adopted by the Commission on Human Rights without a vote, with the general consensus of the international community.

120. At the sixty-first session of the Commission on Human Rights (14 March to 22 April 2005), Mexico put forward the resolution entitled "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families", which urges States to sign and ratify the Convention and calls upon the authorities to enact laws protecting the rights of migrants and regulating their stay in the country of immigration, according them fair and decent treatment. It also calls on them to cooperate with and report to the Committee.

121. At the same session of the Commission on Human Rights, Mexico again put forward the resolution entitled "Protection of human rights and fundamental freedoms while countering

terrorism”, providing for the appointment of a special rapporteur with the mandate to: make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including, at the request of States, for the provision of advisory services or technical assistance on such matters; identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms; and develop a dialogue with all relevant actors, including Governments and relevant United Nations bodies, specialized agencies and programmes.

122. Given that, especially since September 2001, Mexico’s relations with other States in the area of migration are directly or indirectly affected by the fight against terrorism, it is important to mention that the above resolution reaffirms that States must ensure that any measure taken to combat terrorism complies with their obligations under international law. That is why the Government of Mexico does not believe that violating the human rights and fundamental freedoms of migrants in order to protect State security is justified.

123. Mexico has advocated the creation of the mandate of Special Rapporteur of the Commission on Human Rights on the human rights of migrants since 1999 and is seeking to reaffirm the international community’s acknowledgement of the situation of vulnerability in which migrants find themselves.

124. At the sixty-first session of the Commission on Human Rights,<sup>48</sup> Mexico also put forward the resolution entitled “Human rights of migrants” (2005/47), which was adopted by consensus. The resolution advocates extending the mandate of the Special Rapporteur of the Commission on Human Rights on the human rights of migrants and seeks to reaffirm the international community’s acknowledgement of the situation of vulnerability in which migrants find themselves.

125. The resolution also condemns manifestations of racial discrimination and xenophobia against migrants, urges States to prohibit and prosecute such manifestations if they arise and to prosecute all violations of labour law with regard to migrant workers’ conditions of work. It further requests States effectively to promote and protect the human rights and fundamental freedoms of all migrants, regardless of their migration status.

126. In 2002, from 25 February to 6 March, the then Special Rapporteur of the Commission on Human Rights, Dr. Gabriela Rodríguez Pizarro, made an official visit to Mexico at the express invitation of the Mexican Government. Among other places, she visited the Iztapalapa migrant holding centre and the Mexico-United States border.<sup>49</sup>

127. As a result of her visit, the Special Rapporteur made a number of recommendations on the human rights of migrants in Mexico. Accordingly, the Mexican Government, through the different authorities involved, has taken various measures to implement her recommendations. The Special Rapporteur noted that Mexico had made considerable efforts to identify honestly and self-critically the problems facing migrants in the country, but said that it was crucial to move on from the diagnosis phase to that of implementing a national policy for the care and protection of migrants. That policy must be executed from a human rights perspective and in conjunction with civil society and must translate into concrete programmes.<sup>50</sup>

128. For that reason, it was also very important to include the protection of migrants' human rights in the drafting of the National Human Rights Programme and to strengthen action for the protection of migrants' human rights in the programmes of the National Human Rights Commission. To that end, she recommended that a five-year action plan be drawn up that would include the commitments made by the Mexican Government at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

129. The Special Rapporteur also proposed a number of specific measures to be taken by the Mexican Government in implementing that policy: strengthening of INM human and financial resources so that the Institute could perform its migration management functions independently; strengthening of the Beta Groups by providing them with their own human resources, an adequate budget and training in migration management and human rights; and expansion and consolidation of the Groups' presence in high-risk locations. She also urged the Mexican Government to provide training in migration management and human rights to officers of the Federal Preventive Police (PFP) involved in providing back-up for INM and to limit the involvement of other armed or public security forces in migration control activities. She considered it important to appeal against extortion and abuse of undocumented migrants, with effective penalties for the officials involved.<sup>51</sup>

130. The Special Rapporteur also recommended that the project for expanding the Federal District migrant holding centre be finalized, bearing in mind the relevant international standards. Lastly, she said that the federal authorities should provide assistance, in cooperation with civil society, to sick and wounded migrants and offer them the necessary facilities for them to receive humanitarian physical and psychological treatment. She believed that a special budget would be needed for that purpose.<sup>52</sup>

131. In order to obtain data to supplement her report to the Commission on Human Rights, the Special Rapporteur asked the Mexican Government on 2 November 2004 for information on the implementation of her recommendations. To that end, the Government transmitted to the Special Rapporteur a detailed report on the follow-up given to her recommendations and a document with the comments of various civil society organizations on her recommendations and their implementation.

132. It should be mentioned that on 31 March 2004, the International Court of Justice issued its judgment in the *Case of Avena and other Mexican nationals* brought by Mexico against the United States of America (31 March 2004, General List No. 128).

133. In its Judgment, the principal judicial organ of the United Nations ruled that the United States had deprived 51 Mexican nationals of their rights under article 36 of the Vienna Convention on Consular Relations and that those breaches must be reviewed and reconsidered by means of effective judicial mechanisms.

### **Organization of American States**

134. In the inter-American sphere, Mexico supported the creation of the mandate of the Special Rapporteur on the rights of migrant workers and members of their families of the Inter-American Commission on Human Rights and has actively promoted the drafting of the inter-American programme for the promotion and protection of the human rights of migrants.

135. Resolution AG/RES.2027 (XXXIV-0/04) entitled “The human rights of all migrant workers and their families”, adopted by the General Assembly of the Organization of American States on 8 June 2004, urges States to consider the possibility of inviting the Special Rapporteur for migrant workers and their families of the Inter-American Commission on Human Rights (IACHR) to visit their countries to enable him to fulfil his mandate effectively.

136. To that end and in response to the invitation of the Mexican Government, staff of the office of the IACHR Special Rapporteur for migrant workers and their families visited Mexico from 25 July to 1 August 2002 to gather information on the situation of migrant workers.

137. During their stay in Mexico, the staff of the Special Rapporteur’s office visited three cities, Mexico City, Tapachula and Ciudad Juárez, and various points on the border between Mexico and Guatemala and the northern border between Mexico and the United States. They also held meetings with various government officials and representatives of civil society organizations.

138. Based on the visit to Mexico, the office of the IACHR Special Rapporteur made a number of recommendations, which were evaluated and are currently being implemented.<sup>53</sup>

139. Mexico also requested the Inter-American Court of Human Rights of the Organization of American States (OAS) for an advisory opinion on the obligations established by international law with regard to the right to consular assistance in cases of foreigners detained by authorities of a receiving State.

140. This request related to minimum judicial safeguards and due process in the context of the judicial imposition of the death penalty on foreigners whom the receiving State had not informed on their right to communicate with and request assistance from the consular authorities of their State of nationality.

141. On 1 October 1999, in response to Mexico’s request, the Inter-American Court of Human Rights issued Advisory Opinion OC-16/99, which concluded that article 36 of the Vienna Convention on Consular Relations confers rights on detained foreign nationals, among them the right to information on consular assistance, and that the said rights carry with them correlative obligations for the host State. The Court also concluded that article 36 concerns the protection of the rights of a national of the sending State and is a part of the body of international human rights law.

142. With regard to the rights of children and adolescents, the Inter-American Court of Human Rights issued Advisory Opinion OC-17/02 in which it stated that children are subjects entitled to rights, not only the object of protection, and that the phrase “the best interests of the child” entails that children’s development and full exercise of their rights must be considered the guiding principles to establish and apply provisions pertaining to all aspects of children’s lives. The family is the primary context for children’s development and exercise of their rights. Therefore, the State must support and strengthen the family through the various measures it requires to best fulfil its natural function in this field. These principles must also be considered in drawing up migration policies.

143. It is important to mention that Mexico has adopted a proactive approach in international forums to defend the principle of non-discrimination in the conferring of rights. It requested a further advisory opinion from the Inter-American Court of Human Rights in connection with a March 2002 ruling by the United States Supreme Court that undocumented workers had no right to sue companies that had infringed the law by dismissing or punishing them for exercising their basic rights.

144. Accordingly, on 17 September 2003, at the request of the Mexican Government, the Inter-American Court of Human Rights ruled in Advisory Opinion OC-18/03 that States have an obligation to respect and guarantee the labour human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that are harmful to the latter in the employment relationship established between private individuals.

145. Furthermore, under resolution AG/RES 1898 (XXXII-O/02) entitled “The human rights of all migrant workers and their families”, adopted at the thirty-third session of the General Assembly of OAS in June 2003, it was agreed to establish an inter-American programme for the promotion and protection of the human rights of migrants. To that end, also at Mexico’s initiative, a working group was set up to prepare such a programme, taking into account the priorities established at the Summits of the Americas.

146. The Inter-American Programme for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and Their Families, was adopted in May 2005.<sup>54</sup>

147. The Programme provides, inter alia, for the identification and development of cooperation activities, the exchange of best practices and the integration of considerations of the human rights of migrants and their families into the work of OAS organs, agencies and entities, taking into consideration a gender perspective and the linkage of the work of OAS organs, agencies and entities to that developed by States, multilateral organizations and civil society, including migrants themselves.

#### **D.1. Cooperation with civil society**

148. As part of the Mexican Government’s comprehensive human rights policy, on 11 March 2003 the Commission on Governmental Human Rights Policy (CPGDH) was set up, comprising departments of the federal public administration as permanent members and civil society organizations participating as guests, to contribute to the design of governmental human rights policy and to the coordination of national and international measures in that area.

149. The Commission is chaired by the Ministry of the Interior, with the Ministry of Foreign Affairs acting as Vice-Chairman. It is divided into various subcommissions responsible for addressing the various human rights issues and proposing the policies that the Mexican Government must implement to ensure the proper promotion and protection of human rights.

150. Given the importance of migration for Mexico, a Subcommission for the Protection of the Human Rights of Migrants was created within the Commission, with representatives of the various authorities involved and members of civil society organizations. Although it was

established formally on 14 July 2004, the Subcommission began its preliminary work in April of that year, achieving a consensus among departments and civil society organizations on a detailed working agenda.<sup>55</sup>

151. The Subcommission is responsible for defining the bases and guidelines for ensuring the development of a migration policy rooted in a comprehensive vision of human rights, with special emphasis on the situation of migrant women, children and adolescents.

152. It is important to point out that the participation of civil society organizations in CPGDH is extremely important for its proper functioning, since they form an integral part of it.<sup>56</sup>

153. Also in the context of the Commission's activities, a cooperation programme with the European Commission was agreed in December 2003 and presented formally on 10 February 2004. The specific objectives of the programme, which is aimed at representatives of civil society and public servants, are to:

- Ensure understanding of the international and regional protection of human rights and of Mexico's international obligations;
- Consolidate opportunities for and promote a culture of dialogue between the Government and civil society;
- Facilitate exchanges of the know-how and expertise needed for each subcommission to draw up public policy proposals based on international human rights norms and standards;
- Design a dissemination campaign to transmit the expertise and know-how gained from the programme.<sup>57</sup>

154. Thus far, four seminars have been held under the cooperation programme, including the International Seminar on Human Rights of Migrants held from 22 to 24 June 2005.<sup>58</sup>

155. During the seminar, some recommendations arising from the discussion were formulated as follows:

- Submit promptly Mexico's initial report on compliance with the Convention;
- Declare expressly that Mexico accepts the inter-State complaints mechanism and the mechanism for individual complaints to be considered by the Committee that monitors compliance with the Convention;
- Take advantage of Mexico's participation in different international forums on migration to create an international legal framework on the human rights of migrant workers under the Convention; promote its ratification, especially by countries of immigration; and continue Mexico's leadership on the issue;

- Put together a regional migration system and use regional forums and mechanisms to meet common challenges, with the basic premise of promoting and protecting the human rights of migrants;
- Create alternative mechanisms for publicizing the Convention among illiterate migrants and non-Spanish-speaking migrants.

156. It was also felt that migrants' human rights must be addressed through a cross-cutting, medium-term, structured State policy and that the approach of providing assistance to migrants must be abandoned in favour of one that involves them as proactive subjects in policies and initiatives designed for them. Likewise, attention was drawn to the importance of wide-ranging coordination on migration issues between states and municipalities in both Mexico and the United States and Guatemala, as a key strategy in dealing comprehensively with the phenomenon.

157. Under current legislation, authorities other than migration authorities may be involved in monitoring and inspection functions. Accordingly, experts at the seminar proposed that a single authority should be entrusted with performing these functions, in order to avoid confusion and abuses in the treatment of migrants, and with attending to their needs as recommended by civil society organizations. It was also suggested that criteria should be defined for migration authorities' inspection and monitoring of migrants in order to end abuses in the application of migration law.

158. The experts agreed that a policy for integrating migrants should envisage at the least: not only formal but effective recognition of the principle of equality of rights; inclusion of economic, social and cultural rights; establishment of an urgent plan of action in support of unaccompanied migrant minors; exercise of certain political rights (assembly and public demonstration, among others); and implementation of effective measures against discrimination, since the latter undermines fundamental rights and prevents inclusion.

159. Lastly, it is important to mention that one of the Mexican Government's main objectives is to make international migration an effective factor in the country's economic and social development by facilitating the entry of flows beneficial to Mexico, encouraging the productive use of migrants' remittances for the progress of their communities of origin and working from the standpoint that migration is a shared responsibility of the governments concerned, so that bilateral or multilateral agreements can be drawn up that will facilitate the humane, efficient management of migration.

## **II. IMPLEMENTATION OF THE CONVENTION**

### **A. General principles**

#### **Articles 1 and 7. Applicability of the Convention, non-discrimination in the recognition of rights**

160. It should be mentioned that the Government of Mexico made an express reservation with regard to articles 18 and 22 of the Convention, given the current wording of article 33 of the Constitution of the United Mexican States and article 125 of the General Population Act.<sup>59</sup>

161. Article 33 of the Constitution states that foreigners are entitled to the guarantees conferred by chapter I of the Constitution, but that the executive branch shall have exclusive powers to make any foreigner whose stay is deemed inappropriate leave the national territory immediately and without the need for a prior judgement. It also establishes that foreigners may not interfere in any way in the country's political affairs.

162. In this connection, article 125 of the General Population Act provides that a foreigner to whom the situations envisaged in articles 115, 117, 118, 119, 120, 121, 122, 123, 124, 126, 127 and 128 apply shall cease to be treated as a migrant and shall be expelled from the country, without prejudice to the application of the penalties provided for in those articles.<sup>60</sup> These situations involve the following: (a) assisting, conspiring with or advising any individual to infringe the provisions of the General Population Act and its regulations; (b) any person who presents or signs any migration-related document bearing a false signature; (c) any person who has disregarded an order from the Ministry of the Interior to leave the national territory within the established deadline upon cancellation of his/her migration status; (d) any foreigner who, after being expelled, re-enters the national territory without obtaining a readmission agreement;<sup>61</sup> (e) any foreigner who enters the country or is in the country illegally; (f) any foreigner who, by committing unlawful acts, breaches the conditions to which his/her stay in Mexico is subject; (g) any foreigner who knowingly claims to have a migration status other than that granted by the Ministry of the Interior; (h) any foreigner who provides false information on his/her migration situation; (i) in cases involving an attack on national sovereignty or security, expulsion shall be definitive.

163. In addition, the Government of Mexico is currently weighing the possibility of making the declaration provided for in article 76 of the Convention in order to recognize the competence of the Committee to receive and consider complaints between States and article 77 in order to allow the Committee to receive and consider individual complaints.

164. With regard to non-discrimination, article 1 of the Constitution of Mexico prohibits all discrimination on grounds of ethnic or national origin, gender, age, different abilities, social status, health conditions, religion, opinions, preferences, marital status or any other discrimination that constitutes an attack on human dignity and is intended to nullify or undermine the rights and freedoms of individuals.

165. Article 3 of the Federal Labour Act, for its part, prohibits workplace discrimination on grounds of race, sex, age, belief, religion or social status.<sup>62</sup>

166. It is important to mention the drafting of the Federal Act to Prevent and Eliminate Discrimination (LFPED), published on 11 July 2003. The Act reiterates the prohibition on discriminating against individuals for any reason and advocates a new culture of recognition and combating of discrimination and unrestricted, universal respect for human rights.

167. To implement the Act, the National Council for the Prevention of Discrimination (CONAPRED) was set up to take measures to prevent and eliminate discrimination and promote public policies for equal opportunity and equal treatment of persons. The Council has an advisory board and a board of governors, which provide for both governmental and civic



participation. It receives and investigates private complaints, in cases of discrimination committed by private individuals, or official complaints, in cases of discrimination committed by public servants or federal authorities in exercise of their functions,<sup>63</sup> arising from alleged discriminatory acts committed by private individuals or public servants and federal authorities in exercise of their functions.<sup>64</sup>

168. There are two deadlines for filing the complaint with CONAPRED:

- One year, starting from the date on which the complainant learned of the discriminatory conduct; or
- Two years, in all other circumstances, in cases where the date given by the complainant is different from that given by the person who suffered discrimination.<sup>65</sup>

169. The Council may order administrative measures against the persons or institutions concerned, including public servants found responsible for discriminatory acts. The imposition of administrative measures against private individuals is subject to their having acceded to the corresponding conciliation agreement.

170. The Federal District Criminal Code, published in the *Diario Oficial* of the Federal District on 16 July 2002, establishes in Title X, entitled “Offences against the dignity of persons”, the offence of “discrimination” and imposes a penalty of one to three years’ imprisonment and 50 to 200 days’ fine on anyone who harasses or excludes any person or denies and restricts labour rights.<sup>66</sup>

171. Mexico is also a party to the following major international instruments that guarantee non-discrimination: International Convention on the Elimination of All Forms of Racial Discrimination and Convention on the Elimination of All Forms of Discrimination against Women.

172. In the area of migration, civil society organizations have expressed concern that migration legislation tends to discriminate by restricting the right to bring civil action in proceedings for divorce between foreigners and marriage between foreigners and Mexicans. In particular, article 67 of the General Population Act states that in order to bring any legal action before a federal, local or municipal authority or a notary public, foreigners must prove that they are in the country legally. However, the rationale of this provision is to prevent foreigners from committing or becoming victims of unlawful acts such as forgery of documents or trafficking in persons, especially so-called “servile marriages”.

### **Article 83. Right to an effective remedy**

173. In Mexico, the right of a private individual to an effective remedy is guaranteed in cases where the State incurs some kind of responsibility. In this connection, an amendment to article 113 of the Constitution, defining the State’s responsibility to provide a remedy, was published in the *Diario Oficial de la Federación* on 14 June 2002 and entered into force on 1 January 2004:

“The laws on administrative responsibilities of public servants will determine their obligations with a view to safeguarding legality, honesty, loyalty, impartiality and efficiency in the performance of their functions, jobs, responsibilities and commissions; the sanctions applicable in respect of any acts or omissions for which they are responsible; and the procedures and authorities for imposing them. Such sanctions, in addition to those laid down by law, shall comprise suspension, dismissal and disqualification, as well as economic sanctions, and shall be established according to the economic benefits derived by the culprit and the financial injury caused by his or her acts or omissions as referred to in section III of article 109, but may not exceed three times the benefits obtained or the injury caused.

The State’s responsibility for the harm caused by the unlawful administrative activity to the property or rights of private individuals shall be objective and direct. Private individuals shall be entitled to compensation in accordance with the bases, limits and procedures established by law.”

174. With this amendment, the Constitution envisages that the responsibility of the State for the actions of its civil servants will be proved by the harm caused by the illegal administrative activity to the property or rights of private individuals, unlike the current regulations in civil matters which stipulate that the responsibility of the State is subject to verification that its civil servants acted illegally.

175. Moreover, the Federal Act on Responsibility for Financial Injury, under which the State is responsible for injury caused by its civil servants in the exercise of their functions, entered into force on 1 January 2005.

176. The Convention refers to the right of migrant workers to seek compensation if a decision of expulsion is annulled.<sup>67</sup> In this case, the migrant worker and members of his family have two options for obtaining an effective remedy: non-judicial and judicial.

177. With regard to the non-judicial option, they may request the Ministry of the Civil Service to institute administrative proceedings against the public servant who issued the expulsion order. If the Ministry determines that the public servant is responsible and has caused injury to the affected parties, the latter may apply to the INM internal supervisory organ to issue the corresponding order for the payment of compensation. Also, when a recommendation from the institution legally responsible for monitoring and protecting human rights has been accepted, proposing that a remedy be provided for the injury, the corresponding office will limit itself to determining the monetary amount of the damages and issuing the respective order for payment.

178. The injured parties may also choose the judicial option and request the authority to pay compensation for injury and, if appropriate, for moral injury as defined in the Federal Civil Code.<sup>68</sup>

179. However, the criminal law in force does not envisage any regulation establishing a specific procedure that private individuals may follow in order to claim payment of compensation by the State in cases where a conviction has been overturned.

#### **Article 84. Duty to implement the Convention**

180. As mentioned earlier, Mexico applies the provisions of the Convention to all migrant workers and members of their families, since the Convention, being a duly adopted international treaty, has the rank of a supreme law.

181. However, one of the problems of the current legislative framework is that migration offences or infractions may be subject to criminal proceedings, pursuant to the General Population Act, although in practice this does not happen. Undocumented migrants are returned to their countries of origin, without the authorities instituting criminal remedies or proceedings against them. This situation results in a legislative ambiguity that creates a distinction between law and practice.

182. In view of these legal gaps and contradictions, the Government of Mexico is reviewing the current legal framework in the area of migration management so that its basic premise is strict respect for the human rights of migrants and also so that it responds to the country's migration regulation needs and the commitments assumed by Mexico internationally.

183. The reservation made by the Mexican Government to article 22, paragraph 4, of the Convention is also being reviewed.

184. Other provisions that are being analysed with a view to their possible harmonization are: legislative provision for the right of migrants to take proceedings in order to have a court rule on the lawfulness of depriving them of their liberty by securing them, as provided in the Convention;<sup>69</sup> the possibility of creating a specific migration category for migrant workers, in accordance with the Convention,<sup>70</sup> that would include the various modalities envisaged in the Convention;<sup>71</sup> legislative provision for giving seasonal workers who have been employed in the country for a significant period of time the possibility of taking up other remunerated activities, as provided in the Convention.<sup>72</sup>

185. It must be pointed out that any new law on migrants will require lobbying and negotiation among the various political forces in Congress and the different parties involved in the topic of migration.

#### **B. Human rights of all migrant workers and members of their families**

##### **Article 8. Right to leave any country, including one's own, and to return**

186. Article 11 of the Constitution establishes that everyone has the right to enter and leave the Republic and to travel and change domicile in the national territory without requiring a security card, passport or safe conduct or other similar requirements.

187. From reading this provision, it is clear that freedom of movement is enjoyed not just by Mexicans but by everyone, without distinction as to nationality. Moreover, this constitutional provision limits the powers of the administrative authorities under migration law to control the departure from and arrival in the country of Mexicans and foreigners.

188. In order to guarantee the right of migrants to freedom of movement, the *Paisano* programme for Mexican migrants was set up in December 1989, combining the efforts of 15 Ministries and 2 entities of the federal executive branch, as well as 3 attorney-general's offices. This programme is one of the permanent measures taken by the Mexican Government to ensure that Mexican migrant workers are not victims of corruption and extortion and can return to their country at any time and remain there.

189. In 2003, the National Institute for Migration, in coordination with the Ministry of Foreign Affairs, published 2,250,000 copies of the "*Guia Paisano*,"<sup>73</sup> a guide containing important information on government programmes for migrants, guidance as to services and details of the bodies to which they can turn if their rights are violated.

190. In 2003, the College of the Northern Border conducted an evaluation of the *Paisano* programme, which recorded a 98 per cent satisfaction rating for the programme's services. However, further work needs to be done to expand publicity and preventive information in the United States, increase the involvement of civil society, expand training and awareness-raising of public servants and build trust among Mexican migrants so that they will file complaints and so that these can be followed up promptly.

#### **Articles 9 and 10. Right to life; prohibition of torture; prohibition of inhuman or degrading treatment**

191. On 23 January 1986, Mexico ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also ratified on 22 June 1987 the Inter-American Convention to Prevent and Punish Torture. Torture and ill-treatment are also prohibited by articles 20.4 and 22 of Mexico's Constitution.

192. Article 3 of the 1991 Federal Act to Prevent and Punish Torture defines the crime of torture as follows: "The crime of torture is committed by a public servant who, by virtue of his office, inflicts severe pain or suffering, whether physical or mental, on another person for the purpose of obtaining information or a confession from him or a third person or punishing him for an act that he has committed or is suspected of having committed or coercing him into acting or not acting in a particular manner." With the Act's promulgation, Mexico complied with its international obligation to define torture as a crime in its criminal legislation, in keeping with international standards. However, there is no uniform definition of that crime in the legislation of the various states.<sup>74</sup> For this reason, on 10 December 2004 a national agreement on combating torture was concluded which reflects the minimum commitments of the federal Government and state governments to combating torture.

193. Furthermore, on 2 December 2000, President Vicente Fox and Mrs. Mary Robinson, then United Nations High Commissioner for Human Rights, signed an agreement for a technical cooperation programme.

194. Between February and August 2001, the first phase of the programme was carried out, involving the holding of training seminars on combating torture, particularly on the application of two standard procedures for the medical diagnosis of torture and the forensic identification of torture, based on international norms.

195. The Mexican Government signed the framework agreement for the second phase of the technical cooperation programme in October 2001 and, following the Government's invitation to the High Commissioner for Human Rights, adoption of a headquarters agreement for the establishment of an office of the High Commissioner in Mexico was promoted in the Senate. The decree adopting the headquarters agreement was published in the *Diario Oficial de la Federación* on 21 February 2003.

196. One of the first activities under the programme was the conduct of a survey of the human rights situation, which was carried out by four independent Mexican experts chosen by the High Commissioner's Office by means of a broad participatory process.

197. The Office of the Attorney-General of the Republic also requested technical assistance from international organizations specialized in this area and sought the views of the International Rehabilitation Council for Torture Victims (IRCT) and Physicians for Human Rights (PHR), both of which made a decisive contribution to the design and refinement of the Office's specialized medical/psychological certificate of possible torture or ill-treatment. The certificate is the result of putting into practice the Istanbul Protocol by applying the principles of effective medical documentation and investigation to the legislation governing the crime of torture during both the investigation by the Public Prosecutor's Office and the investigation by the judge.

198. On 18 August 2003, Decision No. A/057/2003 of the Office of the Attorney-General of the Republic was published in the *Diario Oficial de la Federación*. The Decision sets out institutional guidelines to be followed by the Office's legal or forensic medical experts in using the medical/psychological certificate of possible torture or ill-treatment when dealing with individuals suspected of criminal acts. The certificate is used to notify the Federal Public Prosecutor's Office of the results of medical/psychological examinations of any person who claims to have been tortured or ill-treated, with a view to establishing whether or not such abuse has taken place.

199. The representative of the Public Prosecutor's Office will order legal or forensic experts to use the medical/psychological certificate of possible torture or ill-treatment in the following cases:

- When a complaint of torture or ill-treatment is lodged by the victim, his/her legal representative or a third party;
- When, in the judgement of the legal or forensic medical expert who examines the prisoner, there are signs or evidence of possible torture or ill-treatment;
- On the order of the Attorney-General.

200. On 23 September 2003, the President of the Republic signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On 17 March 2004, the executive branch sent the Protocol to Congress for adoption, and it was ratified in April 2005.

### **Article 11. Prohibition of slavery and forced labour**

201. Article 5 of the Constitution prohibits slavery in Mexico. Slaves entering the national territory from abroad thereby automatically gain their freedom and the protection of Mexican laws. Article 5 also establishes that no one can be forced to provide personal services without fair compensation and without his/her full consent, save in prison work imposed by judicial authority.

202. Internationally, Mexico is a party to Convention No. 29 concerning Forced or Compulsory Labour<sup>75</sup> and Convention No. 105 concerning the Abolition of Forced Labour<sup>76</sup> of the International Labour Organization (ILO). It is also a party to the Slavery Convention<sup>77</sup> and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.<sup>78</sup>

#### **Trafficking in persons**

203. Given the ease with which Mexico's southern border can be crossed and the steady flow of irregular migrants, trafficking in persons in Mexico is most evident in this border region, particularly in Chiapas, where the prostitution of Guatemalan, Honduran and Salvadoran migrants, especially women and young men, is widespread, as is the employment exploitation or servitude of women, young people and unaccompanied minors looking for work in agriculture or domestic service. There is also the problem of youth gangs ("*maras*") from Central America, who traditionally attacked illegal migrants but are now becoming involved in trafficking in persons.<sup>79</sup>

204. Trafficking in persons is not restricted to the southern border, however. According to UNICEF, 21 of the country's 32 states are involved in sexual exploitation, which is particularly prevalent in Ciudad Juárez, Tapachula and Tijuana, as well as in Acapulco, Cancun and Guadalajara.<sup>80</sup>

205. It should be clarified that Mexico's legislation does not establish the crime of trafficking in persons and that, until now, there has been no policy of assisting the victims of such trafficking. Although the Federal Criminal Code, the General Population Act, the Federal Act against Organized Crime and the criminal codes of individual states establish some crimes linked with the exploitation and deprivation of liberty of persons, such as procuring, child pornography, trafficking of minors and trafficking of undocumented persons, among others, there is no specific crime of trafficking per se.

206. Some states, specifically Quintana Roo, Guerrero, Coahuila, Hidalgo, San Luis Potosi, Sinaloa, Tabasco and Veracruz, do criminalize trafficking in persons, but the relevant state legislation refers only to one form of such trafficking, namely, sexual exploitation.<sup>81</sup>

207. Conscious of this problem, Mexico has stated its commitment to combating trafficking in persons at the highest level internationally, as evidenced by its ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which was adopted in December 2000 and entered into force on 25 December 2003.

208. In addition, the following legislative proposals to punish and prevent trafficking in persons in Mexico have been presented to Congress:

- On 16 June 2004, a legislative proposal was presented to the plenary Congress containing a draft decree designed to amend the Federal Criminal Code and the Federal Code of Criminal Procedure in order to strengthen mechanisms for the protection of children and adolescents, by typifying the crimes of child pornography and child procuring, as well as trafficking in persons, as crimes that are automatically prosecutable and not subject to any statute of limitations;
- On 18 March 2004, a legislative proposal was presented to the plenary Chamber of Deputies amending articles of the General Population Act, the Federal Act against Organized Crime and the Federal Code of Criminal Procedure in order to improve coordination among institutions for combating trafficking in persons;
- On 25 March 2004, a legislative proposal was presented to the plenary Chamber of Deputies containing a draft decree designed to amend, supplement and repeal various provisions of the Federal Criminal Code, the Federal Act against Organized Crime and the Act for the Protection of the Rights of Children and Adolescents, the purpose being to establish guidelines enabling the authorities to provide proper care to minors who are victims of commercial sexual exploitation and trafficking in persons;
- On 30 November 2004, a legislative proposal was presented to the plenary Chamber of Deputies adding three paragraphs and five subparagraphs to article 400 of the Federal Criminal Code in order to invalidate the concept of exemption from criminal liability for relatives of persons who commit the crimes of abduction and homicide, crimes against the health of persons and trafficking in persons;
- On 9 December 2002, a legislative proposal to prevent and punish trafficking in persons was presented to the Senate, supplementing the Federal Act against Organized Crime and the Federal Code of Criminal Procedure in order to incorporate the relevant fundamental international guidelines and principles into domestic law with a view to preventing, criminalizing and punishing trafficking at the federal level, in cooperation with the authorities involved in the various spheres of government.

209. These proposals are currently being analysed in the corresponding congressional committees.

210. Mexico is making considerable inter-agency coordination efforts to combat trafficking in persons: the Centre for Investigation and National Security (CISEN) is responsible for coordinating the intelligence process to detect criminals; INM brings legal actions for breaches of the General Population Act; the Federal Preventive Police (PFP) assists in operations and files reports with the Office of the Attorney-General of the Republic; and the Federal Investigation Agency (AFI) compiles information and executes judicial orders. All these institutions are joining forces in order to arrest traffickers and safeguard the security of the Mexican State.

211. With regard to the protection of foreign victims, the migration authorities have the power to grant them a migration status, such as that of visiting non-immigrant (FM3), to enable them to remain in the country temporarily so that they can file complaints and take part in the corresponding legal proceedings.<sup>82</sup>

212. One of the main challenges currently facing the international community and Mexico is that of combating ignorance and disinformation about the implications of trafficking and its consequences for victims. For that reason, on 14 October 2004 the Inter-American Commission of Women (CIM), a specialized organ of OAS, the International Organization for Migration, the National Institute for Women and the National Institute for Migration put forward a project entitled "Combating the trafficking of women, adolescents and children in Mexico".

213. The project seeks to overcome two basic obstacles: the lack of accurate, objective information on trafficking in Mexico and the as yet limited state of knowledge about the concept of trafficking in persons, its scope, international agreements and the legal aspects involved.

214. Various activities have been carried out at the national level since the project's launching and up until October 2005, such as:

- The production of two working papers on the scale and scope of trafficking in persons on the country's northern and southern borders;
- The holding of four training workshops, one in the city of Monterrey, one in Nuevo León, one in the city of Tuxtla Gutiérrez, Chiapas, and two in Mexico City, at which civil servants, academics, civil society organizations and media received training on the dynamic of trafficking in persons, assistance to victims and the corresponding international legal framework;
- The holding of a closing seminar is scheduled for October 2005, at which a brief presentation will be made of activities and of the impact of the results achieved at the four training workshops given to civil servants. An informational/educational leaflet on trafficking in persons will also be distributed.

215. In the sphere of bilateral cooperation, during the official visit of President Vicente Fox to Guatemala, a Memorandum of Understanding for the Protection of Women and Minors from Trafficking in Persons on the Border between Mexico and Guatemala was signed on 23 April 2004; it entered into force on 22 February 2005.<sup>83</sup>

216. On 17 May 2005, a Mexico-El Salvador Memorandum of Understanding for the Protection of Persons, Especially Women and Minors, Victims of Illicit Trafficking was signed.<sup>84</sup>

217. Two memoranda for combating trafficking in persons, one with Brazil and the other with Ecuador, are currently being negotiated.

218. In November 2004, the Ministry of the Interior, through INM and in coordination with the Ministry of Foreign Affairs and the Office of the Attorney-General of the Republic, organized an international seminar on trafficking in persons in order to publicize the content of



the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and lay the groundwork for discussing the phenomenon, thereby contributing to the Protocol's implementation in Mexico through analysis and an exchange of ideas.

219. In early 2005, an interministerial subgroup on trafficking in persons was set up in the framework of the subgroup on trafficking in migrants of the Mexico-United States Senior Law Enforcement Plenary Group, given the growing international importance of the phenomenon of trafficking in persons. The subgroup's purpose is to coordinate and exchange information on the activities carried out by each unit to combat trafficking in persons. The Plenary Group is chaired by the Attorney-General's Office.

220. Consideration is being given to the idea of formalizing the subgroup through the creation of an interministerial commission whose main function would be to analyse and authorize foreign policy orientations in this area.

221. One of the subgroup's activities has been to evaluate and develop elements for negotiating a letter of understanding with the United States under which US\$ 8.2 million will be contributed in the form of cooperation programmes to combat trafficking in persons in Mexico. The United States proposal comprises seven projects designed to strengthen activities to combat such trafficking.

222. These projects are: case investigation; dismantling of criminal organizations; administration of justice; care and social reintegration of victims; dissemination of information and awareness-raising on trafficking in persons; support for a network of shelters; and victim protection bodies.

223. OIM and the Mexican Government are in negotiations on a project to tackle the problem of trafficking in persons in Mexico. The project, entitled "Construction of a support network for the integrated care of victims on Mexico's northern and southern borders", would involve various representatives of non-governmental organizations and civilian institutions working to assist each other. It would last two years and US\$ 1 million would be allocated for its implementation.<sup>85</sup>

224. The purpose of the project is to construct a support network to care for victims, primarily sexually exploited minors, on Mexico's northern and southern borders, providing them with shelter, protection, transport for their return and assistance for their reintegration in their places of origin.

225. Despite the above activities, the Government of Mexico is aware that there can be no ideal, infallible mechanism for combating trafficking in persons as long as the underlying causes of the recruitment of victims of this crime, such as poverty and lack of opportunity, persist in our societies and migration remains for many people in the world a necessity of survival, not an alternative way of life. Only through the combined efforts of States and international organizations and an ongoing process of consultation and analysis with civil society organizations specialized in the rights of victims of trafficking in persons will it be possible to tackle this crime successfully.

**Articles 12, 13 and 26. Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union**

226. The right to freedom of thought, conscience and religion is guaranteed in article 24 of the Constitution, which establishes that everyone is free to profess the religious belief that best suits him or her and to carry out the ceremonies, devotions and actions of the corresponding faith, provided that they do not constitute a crime or offence punishable by law. The Congress may not enact laws establishing or prohibiting any religion. Religious acts of public worship must ordinarily be held in places of worship. Those held exceptionally outside such places of worship are subject to legal regulation.

227. Article 3 of the Constitution also requires the State to ensure that the education it imparts is lay and therefore free from any religious doctrine.

228. Article 6 of the Constitution establishes that the expression of ideas shall not be subject to any judicial or administrative inquiry, except where it attacks morality or the rights of third parties, provokes some crime or disturbs public order; the right to information is guaranteed by the State.<sup>86</sup>

229. Likewise, the Constitution stipulates that the freedom to write and publish on any matter is inviolable. No law or authority may establish prior censorship or require bond from authors or printers or abridge freedom of printing, which has no limits other than respect for privacy, morality and public peace.<sup>87</sup>

230. The only restriction on a foreigner's exercise of freedom of expression in Mexico is established in article 33 of the Constitution, which provides that foreigners may not interfere in any way in the country's political affairs, a provision that is applicable to migrant workers in Mexico.

231. With respect to the right of migrant workers to join or not to join a trade union, article 372 of the Federal Labour Act establishes that a migrant worker in Mexico is free to join any trade union. The only restriction placed on foreigners by that article is the prohibition on becoming a member of the leadership of a trade union.

**Articles 14 and 15. Prohibition of arbitrary or unlawful interference with privacy, family, home, correspondence and other communications; prohibition of arbitrary deprivation of property**

232. Article 16 of the Constitution establishes that no one may be disturbed in his or her person, family, residence, papers or possessions, except by virtue of a written order from the competent authority substantiating the legal cause of the proceeding.<sup>88</sup>

233. In the case of undocumented migrant workers in Mexico, the migration authority or another authority working with INM to apply migration laws, such as the Federal Preventive Police (PFP), may temporarily secure the migrant in a migrant holding centre<sup>89</sup> in order to clarify his/her legal situation and take a decision on whether to expel him/her from the country, as well

as make inspection visits to a given residence after receiving a report of a particular case and drawing up the corresponding document, where it is alleged that a person or group of persons is in the country illegally.

234. Article 27 of the Constitution, for its part, establishes that expropriations may be carried out only for reasons of public utility and in return for compensation. In this connection, article 66 of the General Population Act authorizes foreigners, irrespective of their migration status and without permission from the Ministry of the Interior, to acquire fixed- or variable-income securities, urban real estate and real rights thereto. The Constitution also states that within a 100-kilometre zone along the borders and a 50-kilometre zone along the coasts, foreigners may not for any reason acquire direct ownership of land and waters.<sup>90</sup>

**Articles 16 (paras. 1 to 4), 17 and 24. Right to liberty and security  
of person; safeguards against arbitrary arrest and detention;  
recognition as a person before the law**

235. Article 16 of the Constitution establishes that no arrest warrant may be issued other than by the judicial authority and only after a complaint has been received of an act determined by law to be a crime punishable by deprivation of liberty and facts exist that attest to the *corpus delicti* and the person's probable responsibility.<sup>91</sup>

236. It should be mentioned that the powers of verification and monitoring of foreigners, including migrant workers, in Mexico are exercised by the staff of the INM migration services and PFP. Verification must be carried out in compliance with the applicable legislation and with full respect for migrants' human rights.<sup>92</sup>

237. The Mexican Government acknowledges that the fact that some migration-related offences are administrative as well as criminal<sup>93</sup> creates confusion as to which of the two approaches must be used. As a result, both the jurisdiction of the entities that cooperate with INM in applying immigration law and the criteria for requesting a migrant's documentation are issues that are being analysed in the context of the review of current migration law being carried out by the competent authorities.

238. Civil society organizations, for their part, have mentioned in various forums the need to define procedures for verification operations. One proposal in this connection is that a single authority should conduct verification and control operations, since at present other bodies are also involved. These and other proposals are being analysed as part of the legislative review being carried out by the Government of Mexico.

239. In migration matters, the General Population Act provides for the procedure of "securing", which involves temporarily depriving of their liberty foreigners who are in an irregular situation in the country, in order to clarify their migration situation and, where appropriate, expel them for committing various breaches of the law.<sup>94</sup>

240. Mexico believes that undocumented persons migrate, in most cases, because of economic factors, wage disparities or the need for family reunification. It is therefore working to make institutional operations transparent, combat corruption and promote and facilitate migration that is productive for the country's development.

241. Some civil society organizations have also pointed out that the human rights promotion activities carried out by the Ministry of Foreign Affairs in international bodies, as well as the activities and budget devoted to the protection of Mexicans abroad, are completely disproportionate to the efforts made by the Ministry of the Interior and other entities to ensure real protection for the rights of migrant workers in Mexico.

242. The lack of human and material resources to deal with migration in Mexico is definitely a reality, since the flow of undocumented migrants increases year after year, while resources have levelled off or even declined. For example, the federal budget for INM remained the same from 2000 to 2003 and was reduced by 6 per cent in 2004.<sup>95</sup>

243. In 2003 alone, the cost of transferring and feeding the more than 187,000 secured undocumented migrants came to 155 million pesos, or 45 per cent of INM operating costs.<sup>96</sup> Between 1995 and 2004, the staff assigned to INM increased by only 15 per cent, from 3,468 to 3,728 public servants, and the number of migrants secured in the Federal District migrant detention centre in the first quarter of 2004 increased by 674 per cent compared with the same period of 2002.<sup>97</sup>

244. Despite the magnitude of migration flows and the budgetary constraints facing the Government, one of the main concerns is to guarantee respect for the rights of migrants, regardless of their legal situation, in keeping with the treatment that the Mexican Government expects for its nationals in other countries and with the repeated demands by civil society organizations that migrant holding centres should not be identified as prisons and that the problem of overcrowding should be resolved. For that reason, in 2003 INM set in motion a programme for the upgrading of migrant holding centres, which are the shelters where undocumented migrants are housed temporarily until they are returned to their countries of origin or their migration situation is clarified.

245. Following a comprehensive survey of the 51 INM migrant holding centres in the national territory, it was determined that action needed to be taken and a programme designed for upgrading not only the facilities but also the treatment received by migrants during their stay. A work project entitled "Programme for upgrading migrant detention centres" was set up and its targets incorporated as a strategic indicator in the INM performance parameters.<sup>98</sup> The upgrading programme envisages the construction of new migrant holding centres, either to replace existing ones which have become unsuitable or to set up new ones in states that do not as yet have any, and the remodelling of existing centres.

246. Because of the project's complexity, work was programmed over two years. In 2003, INM completed the upgrading of 23 centres, located in the states of Baja California, Quintana Roo, Tamaulipas, Chihuahua, Chiapas, Tabasco, Oaxaca, Veracruz, Sonora, Guerrero and Campeche. In 2004 and 2005, the remaining centres, located in the states of Sinaloa, Quintana Roo, Oaxaca, Tamaulipas, Chiapas, Veracruz, Zacatecas and Campeche, were remodelled.

247. One of the basic premises of the Government's migration policy is that migrants are not to be treated as criminals. Accordingly, upgrading the treatment of migrants is not limited to building new temporary shelter facilities, but also involves respecting their rights as human beings.

248. The work to upgrade the Iztapalapa holding centre in the Federal District and the Tapachula centre in the state of Chiapas was particularly important because of its scale and complexity. These centres have the special characteristic of being places where migrants are held on their way to repatriation. In parallel with the upgrading work, INM has taken specific measures to improve the service offered to secured migrants during their stay at the Iztapalapa centre. Since January 2004, transfer and food services for secured migrants have been substantially improved by signing contracts with new providers of such services.
249. The buildings for the new migrant holding centre at Tapachula, Chiapas, cover an area of 30,000 square metres.
250. The centre's design will serve as a model for building new, high-capacity centres in the rest of the country. It will be able to house 490 secured migrants overnight and 960 on temporary stays. It will comprise specific areas for men, women and families.
251. Together with the careful project planning process carried out by INM, the International Organization for Migration provided assistance to ensure that the centre complies with the relevant international standards. It hired an international consultant to prepare a report with recommendations for the building and operation of the migrant holding centre, which was submitted for evaluation. The centre is scheduled to begin operations by the end of 2005.
252. Civil society organizations have also pointed out that work needs to be done in migrant holding centres nationwide to enforce the right of migrants to the assistance of legal representatives and persons of trust and to ensure access by such organizations to migrant holding centres to certify the conditions in which secured persons are being held.
253. Accordingly, progress has been made in teaching human rights courses and workshops to federal migration officers and members of the Beta Groups, with the active cooperation of the National Institute for Women, the national DIF scheme and the OHCHR office in Mexico.
254. A mechanism for periodic monitoring by central sector staff, mainly in the most isolated migrant holding centres, has also been put in place. As part of this mechanism, a permanent office for National Human Rights Commission (CNDH) staff was set up at the Iztapalapa migrant holding centre on 1 August 2003, at the request of INM.<sup>99</sup>
255. There will also be a permanent office of the State Human Rights Commission (CEDH) at the Tapachula migrant holding centre.
256. Despite the progress made in upgrading migrant holding centres, the Government of Mexico recognizes that much remains to be done to improve facilities, services and administrative activities. However, it is doing its best within available resources to comply fully with its international obligations.
257. It should be mentioned that article 94 of the General Population Act regulations give the migration authority the power to fit out places other than migrant holding centres for securing foreigners. Accordingly, INM has, on an exceptional basis in cases of overcrowding of migrant holding centres, resorted to using preventive detention centres, though never prisons, to secure

foreigners who are not subject to criminal proceedings. However, it is hoped that with the implementation of the migrant holding centre upgrading project, the use of preventive detention centres will be avoided in future.

258. Under article 209 of the General Population Act regulations, when a foreigner is secured in a migrant holding centre pending expulsion for having infringed the law or other applicable provisions, the following procedure must be followed: (a) he/she is given a medical examination; (b) he/she is allowed to communicate with the person he/she requests, by telephone or any other means; (c) his/her accredited consular representative in Mexico is notified immediately; if he/she has no passport, the issuance of a passport or identity and travel document is requested; (d) an inventory is made of his/her belongings; (e) a statement is taken from him/her by means of an administrative document and in the presence of two witnesses; he/she is informed of the charges against him/her and of his/her right to give evidence and make any claims relating to his/her rights. If necessary, a translator is authorized to facilitate the proceedings. When the document is drawn up, the foreigner is notified of his/her right to appoint a representative or person of trust to assist him/her; the foreigner has access to the file on the case; (f) he/she is provided during his/her stay with proper accommodation, food, basic toiletries, and medical care if needed; (g) during his/her stay, he/she is entitled to receive visits from family members, the legal representative or the person of trust; (h) when families are secured, they are housed in the same facility and the authorities allow them to live together, in keeping with the applicable administrative provisions; (i) when the foreigner is authorized to leave the migrant holding centre, all the belongings taken from him/her upon admission are returned, except any false documentation he/she may have presented. The Agreement issuing norms for the functioning of INM migrant holding centres (AFEM) contains the criteria for conducting visits.<sup>100</sup>

259. Secured migrants involved in any criminal proceedings or receiving medical care are not covered by the above procedure.

### **Recognition of the migrant as a person before the law**

260. In keeping with article 24 of the Convention and article 3 of the American Convention on Human Rights, in Mexico everyone has the right to recognition as a person before the law.

261. In this connection, it is important to mention that since 1871, the Mexican consular registration certificate has been an official document of the Government of Mexico for registering its citizens abroad. The issuance of these documents is recognized under the Vienna Convention on Consular Relations. Mexican consulates have issued these certificates to their nationals abroad.

262. In March 2002, the Mexican Government designed a new version of the consular registration certificate, the high-security consular registration certificate (MCAS), and began promoting it among the Mexican community in the United States.

263. In addition to serving as an official registration document, the consular registration certificate is used as an identity document for Mexicans abroad, for instance, for presenting to

state government offices and police departments, for opening bank accounts and joining public libraries and, in some states, for obtaining a driving licence. Its use sets in motion a series of positive economic transactions and gives access to a whole range of everyday operations.

264. All consular registration certificates are issued for a five-year period. The replacement of the old certificates by MCAS is scheduled for 2007. Since March 2002, new high technology and new security features have been incorporated in the MCAS to prevent its forgery.

265. The Mexican Government has developed a database giving consulates greater control over the MCAS. Consular employees have received training to detect typical errors made by forgers and check the holder's information when asking for the MCAS.

266. Following the introduction of the new security features, the Mexican Government issued 2,214,738 MCAS between March 2002 and July 2004.

267. At present, 377 cities, 163 counties and 33 states, as well as 178 financial institutions and 1,180 police departments, in the United States accept the MCAS as a valid form of identification.<sup>101</sup>

268. The MCAS has become an important instrument for obtaining financial services from institutions that has positive implications for everyday life. It also helps to prevent crime by reducing informal channels such as black markets. It helps police forces by facilitating communication with immigrant communities, ensuring that people who report or witness crimes are not afraid of being deported. It also facilitates identification. The MCAS reduces migrants' vulnerability to becoming victims of crime: before it was accepted as an identity document in financial institutions, undocumented workers were forced to hold on to their earnings in cash, which made them easy targets for crimes such as robbery.

269. On 16 July 2003, the United States House of Representatives adopted an amendment requiring the State Department to regulate the use of the MCAS as a valid form of identification in that country.

270. On 1 October 2003, the United States Treasury Department defended in Congress its decision to allow American banks to recognize the MCAS as a form of identification.

271. In addition to the above, since 16 April 2004, the association of health-care companies, Blue Cross, has accepted the MCAS as a valid form of identification and has been promoting health services among MCAS-holders through the Mexican Consulate in Fresno, California. Thanks to this, Mexican immigrants who do not have Social Security numbers can access medical services using their MCAS.

#### **Articles 16 (paras. 5 to 9), 18 and 19. Right to procedural guarantees**

272. Under the Constitution, all foreigners, including migrant workers and members of their families, have the same rights as Mexicans before the national courts.<sup>102</sup>

**Due process in migration matters**

273. In 1994, following the disturbances in the state of Chiapas, a number of foreigners were secured and expelled for infringements of the General Population Act. The expelled foreigners complained to the Inter-American Commission on Human Rights (IAHCR) alleging various offences against their person, including the denial of their right to due process, under the General Population Act then in force. In 1999, IACHR issued a final report on the case, in which it determined that Mexico had violated the American Convention on Human Rights and made various recommendations for correcting the legal situation that had infringed the victims' enjoyment and exercise of their human rights and for making appropriate reparation for the violations.<sup>103</sup>

274. As a result of the Commission's recommendations, various amendments were made to the General Population Act in 1996 in order to, inter alia, include in its text an administrative procedure governing migration that would protect the rights of migrants.

275. Accordingly, a chapter IX was added to the Act, containing specific rules governing the administrative procedure to be followed in migration matters. These rules established the main procedures for processing the entry, stay and departure of foreigners. Lastly, chapter X regulated the oversight and verification procedure by establishing rules for the performance of those functions. In so doing, it widened the margin of legal certainty for the benefit of private individuals and specified how the functions of the migration authority were to be performed.<sup>104</sup>

276. In this case, it is clear that the Congress acted in keeping with the requirements of protection of the civil rights recognized by the Mexican Government in signing the various international treaties and covenants.

277. It should be mentioned that, under the General Population Act regulations, a foreigner expelled from the country has the possibility of lodging an appeal for review against the decisions of the migration authority. This appeal is governed by the provisions of the Federal Act on Administrative Procedure. It may be lodged within 15 days following notification of the decision and must be resolved within a maximum of 60 days.<sup>105</sup>

278. As mentioned earlier, the current General Population Act establishes a procedure for securing foreigners and carrying out verification activities, as well as for expelling undocumented persons from the national territory. In keeping with a human rights perspective, the draft amendments to migration law currently being formulated are intended to strengthen the various migration procedures and design them with greater legal clarity, in order to safeguard the right of due process and the guarantees of legal certainty.

**Due process in criminal matters**

279. Article 20 of the Constitution provides that an accused must be informed, at a public hearing and within 48 hours of being taken into custody, of the name of his/her accuser and the nature and cause of the accusation, while the Federal Code of Criminal Procedure states that when the accused is a foreigner and does not speak Spanish, a translator will be assigned to inform him/her of his/her rights.<sup>106</sup>



280. The Constitution also provides that no accused may be detained by the Public Prosecutor's Office for more than 48 hours, within which time the accused must be either released or brought before the judicial authority; this period may be doubled in cases that the law classifies as organized crime.<sup>107</sup>

281. To this end, in all criminal proceedings the accused must be released on bail unless the crimes of which he/she is accused are so serious that the law expressly prohibits this benefit.

282. Furthermore, it is important to mention that in Mexico the presumption of innocence is a general principle of law. The Constitution also recognizes the principle of *non bis in idem*, under which no one can be tried twice for the same crime, irrespective of whether he/she was cleared or convicted of that crime in the first trial.<sup>108</sup>

283. Article 14 of the Constitution provides that no law may be applied retroactively to the detriment of any person, but only to a person's benefit, as established in the present Convention.<sup>109</sup>

284. It should be mentioned that if migrants are detained for the purpose of criminal proceedings, the Constitution stipulates that the place where persons subject to pretrial detention are held must be completely separate from that for prisoners serving a prison sentence.<sup>110</sup>

285. If the foregoing safeguards of pretrial hearing, legality and legal certainty enshrined in the Constitution are breached or restricted, migrants enjoy the same rights and remedies as other persons subject to legal proceedings in Mexico.<sup>111</sup>

**Article 20. Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation**

286. The Federal Criminal Code and the Civil Code provide that no one may be imprisoned for failure to fulfil civil obligations.

287. In migration matters, none of the grounds envisaged in the General Population Act for the expulsion of a foreigner involve failure to fulfil an obligation arising out of an employment contract.

288. The General Population Act regulations, for their part, provide that when the conditions governing a foreigner's stay in the country cease to exist or cease to be fulfilled, the foreigner must so inform the Ministry of the Interior, which may, at its discretion, give him/her a period of time in which to leave the country or regularize his/her situation.<sup>112</sup>

**Articles 21, 22 and 23. Protection from confiscation and/or destruction of identity and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection**

289. Mexican legislation does not contain a precise provision regulating the confiscation or destruction of identity or other documents. It should be pointed out, however, that under the General Population Act regulations, only staff of the migration services and PFP have the power

to carry out the verification and monitoring of foreigners in Mexico as provided by law.<sup>113</sup> Nevertheless, domestic legislation needs to be harmonized and procedures laid down for requesting and confiscating identity documents.

290. In the case of migrants secured in migrant holding centres, the General Population Act regulations stipulate that, upon arrival, an inventory must be made of the foreigner's belongings, which must be deposited in an area set aside for this purpose.

291. Mexican migration law does not expressly mention the prohibition of collective expulsion, but the law is clear in stipulating individualized procedures that must be followed in all cases. Article 125 of the General Population Act regulations provides that when the expulsion of a foreigner from the national territory is ordered under the Act, the expulsion must be carried out immediately, subject to prior notification of the person concerned.

292. In this connection, the Mexican Government made an express reservation with regard to article 22, paragraph 4, of the Convention, in view of the current wording of article 33 of the Constitution and article 125 of the General Population Act.<sup>114</sup> Those articles of the domestic legal system refer to the right of the Mexican State to expel foreigners who infringe the law. Article 128 of the General Population Act also provides that for all legal purposes the expulsion of foreigners, and the measures ordered by the Ministry of the Interior for securing foreigners in migrant holding centres or places fitted out for that purpose when the intention is their expulsion from the country, are matters of public order.

293. However, the Government of Mexico is conducting a review of the reservations made by Mexico to human rights instruments, with a view to their withdrawal, where appropriate.

294. With regard to the opportunity given to a migrant worker under the Convention to settle any claims for wages and other entitlements before or after departure,<sup>115</sup> it is important to mention that under the General Population Act regulations, the worker may request that the expulsion order be replaced by official notice to leave, provided that the worker has not broken the law repeatedly and makes the request voluntarily. Once the migrant worker has obtained official notice to leave, he/she will have the period of time stipulated therein to take appropriate steps to claim any wages and other entitlements due to him/her.

295. Moreover, under the General Population Act regulations, appropriate measures ensuring respect for human rights must be taken when enforcing expulsion orders issued by the Ministry of the Interior. The Ministry exercises that power using the budgetary resources allocated to it in each financial year, so that it bears the costs of expulsion procedures.

296. Mexico does not require foreigners to pay their travel costs in complying with an expulsion order. However, under the General Population Act regulations, companies, institutions, individuals and legal entities are required to defray any costs arising from the expulsion of foreigners in their service or under their responsibility.<sup>116</sup>

297. Article 209 of the regulations establishes that when a foreigner is secured, his/her accredited consular representative in Mexico must be informed without delay. The foreigner must also be provided with a translator, if needed.

298. It should be mentioned that, save in exceptional cases such as the granting of refugee status or temporary custody, securing a foreigner automatically leads to his/her expulsion or issuance with official notice to leave.<sup>117</sup>

299. On 16 June 2004, as a follow-up to the Convention, INM held a dialogue workshop with civil society organizations at which they expressed their concern to the Government that informing consular representatives without delay could contravene the Vienna Convention on Consular Relations,<sup>118</sup> which stipulates that in all cases the detained person must be informed of his/her right to request assistance and must also be able to request that the consulate not be informed. If the person does not want the consulate to be informed, the authorities must refrain from doing so, unless an expulsion order is issued and they need to request the person's identity and travel documents from the consulate. The non-governmental organizations at the workshop also recommended that when migrants are informed of their rights, this should be done in such a way that they understand them fully, given the high levels of illiteracy and the different languages spoken by the secured population.

300. In this connection, when secured migrants enter a migrant detention centre, they are given a copy of the publication "*Derechos y Reglas de Convivencia del Extranjero en la Estación Migratoria*" (the foreigner's rights and rules of coexistence in the migrant holding centre)<sup>119</sup> to familiarize them with their rights and obligations inside the centre. Secured migrants who are unable to read, illiterate or non-Spanish speaking are assisted by a translator or interpreter.

301. At the same time, INM is working to train its staff in the practical application of the Vienna Convention on Consular Relations, in order to avoid the violation of migrant workers' rights.

302. Moreover, on 11 February 2004, a visit to the Iztapalapa migrant holding centre was organized for the consular representatives of 28 countries. At the same time, INM sent all consuls details of the staff of that centre, a map showing its location and layout and information on members of the bar and the Bar Association, in order to make it easier to work together and for consulates to assist their nationals. Likewise, on 22 September 2004, INM organized a visit to Mexico City International Airport (AICM) for members of the Group of Latin American and Caribbean Consuls to show them how the migration authorities operate there.

303. It should be mentioned that on 3 and 4 May and from 10 to 12 June 2004, INM invited consular representatives accredited to Mexico to take part in two visits, the first to the Tapachula - Ciudad Hidalgo - Comitán - San Cristóbal de las Casas area in Chiapas and the second to the Tijuana - Tecate - Mexicali area in Baja California, to analyse in situ the situation of migrants on the country's northern and southern borders.

304. In addition, in the context of the first Regional Conference on Migration, or Puebla Process, held in 1996, the Government of Mexico proposed to the Central American countries<sup>120</sup> the establishment of consultation mechanisms on consular protection, in order to create an institutional forum for settling differences and problems arising from the application of migration provisions in Mexico and for exchanging migration information between the Mexican migration authorities and the consular representatives of countries of origin of

migrants experiencing problems. Those mechanisms can be activated at any moment and operate 24 hours a day, 365 days a year, in order to handle migration disputes arising between the States parties.

305. Likewise, the Agreement issuing norms for the functioning of INM migrant holding centres establishes that consular representatives may make visits to such centres during working hours on any working day.<sup>121</sup>

306. It should be mentioned that after Mexico became a member of the International Organization for Migration,<sup>122</sup> INM was given videoconferencing equipment in 2004 with which to launch the implementation of a project entitled “Advanced information technology for speeding up the identification and documentation in Mexico of extraregional irregular migrants and thereby expediting their return to their countries of origin”.

307. The project involves facilitating the interviewing of migrants secured in the Itzapalapa migrant holding centre by their consular representatives in Washington, D.C., with responsibility for Mexico, in order to speed up their full identification and expedite their return to their countries of origin by obtaining the necessary travel documents.

308. The videoconferencing system can be used by consular representatives accredited to Mexico to interview their secured nationals from INM offices, without having to travel to the migrant holding centre.

309. IOM donated four sets of equipment, of which one is located at Mexico City International Airport, one is at the INM Control and Verification Coordinating Centre, one is at the Itzapalapa migrant holding centre and one is at the Mexican Embassy in Washington.

310. Article 153 of the General Population Act also authorizes the Ministry of the Interior, in special cases, to deliver a secured foreigner into the temporary custody of an institution or person of trust.<sup>123</sup>

311. In criminal matters, the Federal Code of Criminal Procedure (CFPP) establishes that when an accused foreigner is arrested or surrenders voluntarily to the Federal Public Prosecutor’s Office, the corresponding consular office must be informed of the arrest without delay.

312. Furthermore, the world’s biggest consular network in a single country is that of Mexico in the United States: 48 consulates general, career consulates or consular agencies. In turn, the biggest United States embassy abroad is in Mexico (over 1,000 employees nationwide). Mexico is the principal foreign destination for American tourists and the United States is the principal foreign destination for Mexican tourists.

313. In this context and in order to enhance the well-being of Mexicans living abroad, the process of modernizing Mexico’s consular network has been strengthened. The implementation of the final phase of the consular protection system in Mexico’s consular offices throughout the world and in the foreign representations of the Ministry of Foreign Relations in Mexico was completed in May 2003. Through the mobile consulate programme, communities far away from consular offices were able to access document issuance, advisory and consular protection services.

314. In April 2003, the Institute for Mexicans Abroad (IME) was set up to promote strategies, put together programmes and gather proposals and recommendations from organizations and advisory bodies for strengthening Mexican communities abroad.<sup>124</sup>

315. It should be mentioned that in order to concentrate efforts on issues of common interest and to direct actions benefiting Mexicans and persons of Mexican origin living in the United States and Canada, IME has an advisory board composed of Mexican leaders and leaders of Mexican origin living in the United States and Canada.<sup>125</sup>

316. In addition, there are a number of agreements that the Government of Mexico, and consulates in particular, have negotiated with authorities in the United States in order to provide greater protection to Mexicans. For instance, there are the Memorandum of Understanding on Consular Protection of United States and Mexican Nationals and the Memorandum of Understanding on Consultation Mechanisms, mentioned earlier in this report. The two mechanisms have ensured that most Mexicans arrested by United States authorities are able to talk to consuls about their rights and, inter alia, to recover any entitlements and wages due to them before they are deported. There are also legal aid programmes under which the Mexican Government hires specialized lawyers to defend Mexicans who have been sentenced to capital punishment and Mexicans facing emergency employment, migration, civil or penal situations.

**Articles 25, 27 and 28. Principle of equality of treatment in respect of remuneration and other conditions of work and employment; social security; and right to receive urgent medical care**

317. The principle of legal equality must, of course, be guaranteed by the various levels of government and by government bodies in general. Compliance with this principle is important for the interests of society and the individual.<sup>126</sup>

318. In this connection, migrant workers in Mexico have the same rights as nationals with regard to remuneration. The Constitution states: “For equal work there must be equal pay, without taking into account sex or nationality”.<sup>127</sup>

319. In keeping with the above, the procedure for setting general minimum wages is universally applicable in Mexico, regardless of the person’s migration status.

320. Mexico has a system of minimum wages that establishes that such wages shall be general or professional. General minimum wages apply in specified geographical areas, whereas professional minimum wages apply in specified branches of economic activity or in professions, occupations or special jobs.<sup>128</sup>

321. In Mexico, minimum wages acquire force of law when they are set by the National Minimum Wage Commission (CONASIMI) by means of a decision that observes all the formalities and procedures referred to in the Federal Labour Act.

322. The labour authorities are responsible for monitoring compliance with labour law, particularly minimum wage law.

323. In the event of violation of the principle of legal equality or other labour rights, workers, their beneficiaries and their trade unions have the legal remedies granted to them by the Federal Labour Act in order to demand their labour rights. The Federal Procurator's Office for the Defence of Workers (PROFEDET) of the Ministry of Labour and Social Security offers free advisory, conciliation and representation services to workers and their unions, promoting a culture of prevention and emphasizing conciliation as a means of settling disputes expeditiously. Where necessary, PROFEDET also represents workers, their beneficiaries and their unions before labour courts, legal and administrative bodies and any other public or private institution.

324. Workers who fulfil the requirements of the Social Security Act have access to social security. There is no prohibition whatsoever on migrant workers becoming members of the Mexican Social Security Institute (IMSS).

325. The Social Security Act is a public service and provides disability benefits, old-age pensions, life insurance, sickness benefit and accident insurance and any other benefit intended for the protection and well-being of workers and their families, without distinction between nationals and foreigners.

326. It should be mentioned that employers are responsible for registering their workers with IMSS by notifying the Institute of the workers' Single Population Registration Code, once they have determined the migration status of any foreigners whom they hire and checked whether they are authorized by the competent authority to engage in the remunerated activity in question.<sup>129</sup>

327. Under the Social Security Act,<sup>130</sup> if migrant workers are registered with IMSS, they own the resources deposited in their individual accounts, bearing in mind that people who retire or reach retirement age through old age or unemployment in old age receive, in addition to the corresponding pension, the funds that have accumulated in their retirement insurance sub-account.

328. In addition, IMSS concluded an Agreement on Social Security with the Government of Spain, signed on 25 April 1994 and in effect since 1 January 1995, which applies to workers who are nationals of one or other of the Parties and can prove that they are or have been registered with the corresponding social security system, as well as to members of their families recognized as their beneficiaries. The Agreement establishes that the compulsory and voluntary schemes envisaged in the Social Security Act and relating to benefits arising from industrial accidents, disability benefits, old-age pensions, benefits for unemployment in old age and death benefits will apply in Mexico, while the general social security scheme and the special schemes relating to benefits arising from industrial accidents and occupational diseases, disability benefits, old-age pensions, death benefits and survivors' benefits will apply in Spain.

329. On 27 April 1995, Mexico signed an Agreement on Social Security with the Government of Canada, which applies equally to any person who is or who has been subject to the social security legislation of either Party.<sup>131</sup> On 29 June 2004, Mexico and the United States signed an Agreement on Social Security, which is currently before the Senate of the Republic for ratification, and negotiations are currently under way on the signing of an Agreement for the Export and Control of Social Security Benefits with the Government of the Netherlands.

330. With regard to Mexicans working abroad who do not benefit from the above-mentioned agreements, article 28 (c) of the Federal Labour Code states that the worker shall be entitled to the benefits provided by social security and social insurance institutions to foreigners in the country in which the worker is to provide his/her services, as well as to compensation for industrial accidents.

331. With regard to the right of migrant workers to urgent medical care on an equal basis with nationals, article 36 of the General Health Act provides that foreigners who enter the country primarily in order to use its health services will be charged the full cost of such services, save in cases of emergency.

332. Aside from private medical care, health services in Mexico are provided by institutions that care for insured and uninsured persons - IMSS and ISSSTE for the former and IMSS-*Solidaridad* and the Ministry of Health for the latter.<sup>132</sup>

333. To assist foreign migrants and Mexican nationals living on the border, a process of restructuring the Beta Groups for migrant protection, created in 1990 under the authority of INM, was begun in October 2003. New coordinators have been appointed in 7 of the 15 groups currently in operation,<sup>133</sup> eminent doctors specialized in traumatology have been selected and the newly recruited operational staff are paramedics and/or rescue workers. The purpose of all these changes is to be able to offer migrants emergency medical care in case of need.

334. INM has signed two cooperation agreements with the Red Cross, the first on the holding of training courses for Beta Group staff and the second making the Red Cross responsible for checking the health conditions of all secured persons throughout the country.

335. INM is currently intending to propose to the Red Cross the signing of a framework cooperation agreement covering both training and the provision of medical assistance to secured foreigners. It is also hoping to have Red Cross doctors on the premises of migrant holding centres and that any migrant in need of medical care will be referred to the Red Cross.

336. With the support of the Mexican Red Cross, a programme of humanitarian assistance to vulnerable populations has also been established, which involves setting up two mobile clinics operated by emergency medical technicians and first-aid workers, which will take turns in covering the San Luis Rio Colorado, Sonoyta, Sásabe and Naco area in the state of Sonora, which has the highest number of migrant deaths of any area on the border with the United States.

337. Nevertheless, it must be acknowledged that, on occasion, the undocumented situation of the thousands of migrants who enter the country each year, most of them from Central America, prevents them from accessing health care and makes them more vulnerable, making it a priority to expand health-care coverage and coordinate action with migrants' countries of origin in order to ensure continued attention to health problems, such as tuberculosis and HIV/AIDS, that must be subject to epidemiological monitoring.

338. In the case of the Mexican migrant population in the United States,<sup>134</sup> the national health programme for 2001-2006 incorporated the *Vete Sano, Regresa Sano* (go healthy, come back healthy) programme of action, which offers a comprehensive package for health maintenance in the place of origin, during travel and in the place of destination and return. Dissemination,

education and communication, training and medical care activities are being carried out to that end. These include the creation of a network of support services for migrants' families that envisages the holding of binational health weeks in the United States with simultaneous, complementary and ongoing actions for the promotion of health messages; the conduct of a Mesoamerican survey of the health of migrants between Mexico and Central America starting in January 2005; the design and dissemination of the "ABC of Migrants' Health"; and the dissemination of maps of migration routes showing the location of medical units and homes.

339. Thus far, migrant health actions have developed along various lines: health outreach aimed at establishing direct contact with the migrant population through exchanges of outreach workers and health professionals; systematization of information that may be of use to migrants; and support for binational research on migrant health issues.

340. IME has *Ventanillas de Salud* (health windows) in Mexican consulates that provide Mexicans with information and advice on health issues to ensure that they have access to prompt medical care, regardless of their immigration status. The health windows have achieved positive results in assisting, educating and counselling Mexicans by providing them with information on clinics, hospitals and all the services available to them and their families in the United States.

**Articles 29, 30 and 31. Right of a child of a migrant worker to a name, registration of birth and a nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families**

341. With regard to access to education, under article 3 of the Constitution every individual has the right to receive an education. In seeking to preserve this right, Mexico has signed various international instruments, including the Convention on the Rights of the Child, 1990, ILO Convention No. 138, 1973 and the Agenda for Action of the Oslo Conference on Child Labour, 1997.

342. It is important to mention that, since 1981, the Ministry of Public Education has had a primary school programme for migrant children (PRONIM),<sup>135</sup> which provides primary education to school-age children who travel with their families to different Mexican states to work as seasonal agricultural workers. In 2004, the programme operated in 15 of the country's 31 states: Sinaloa, Baja California, Baja California Sur, Colima, Durango, Hidalgo, Jalisco, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, San Luis Potosí, Sonora and Veracruz. The first three of these - Sinaloa, Baja California and Baja California Sur - account for 54 per cent of primary school enrolment of migrant children, while Oaxaca is also one of the main states of origin of migrants. The programme applies to internal migrants, but if adequate resources were available it would be advisable to extend it to the children of international migrants.

343. With regard to access to education, IME establishes and cultivates, through its information days on education, a close relationship with the United States leaders, authorities and educators responsible for education programmes aimed at Hispanics. These information days serve to publicize the educational opportunities offered by the Mexican Government and public and private institutions in the United States to Mexicans and people of Mexican origin in that country.



344. IME also seeks to ensure that migrant workers and their families maintain their cultural links with Mexico, their country of origin. To this end, the Institute carries out the following programmes:

- “*Lazos*”, a news service produced by IME and launched on 2 June 2003. It is published in two versions: a news round-up, distributed from Monday to Friday and featuring a selection of the news published in the Mexican and United States press on the Mexican and Hispanic population in the United States, and a news bulletin, issued when important news arises, that reports on issues and events of interest to the Mexican and Hispanic community in the United States;
- An IME Internet portal that not only tells the user about IME itself but also provides information on important issues such as the immigration debate, overseas voting, statistics, competitions and institutions offering services, as well as bringing together the Internet sites of the different communities of Mexicans or people of Mexican origin living in the United States;<sup>136</sup>
- Competitions for young people of Mexican origin abroad, such as “*Este es mi México*” and “*Otra Mirada*”. These competitions foster pride in their country of origin among Mexican children and Mexican-American children living in the United States in order to tighten their links with their roots and traditions.

345. Various civil society organizations have said that, in their view, the General Population Act and its regulations contain provisions that make it difficult for irregular migrants to demand their rights.<sup>137</sup> They have also said that cases have arisen in which public servants infringe the law by not allowing undocumented migrant workers to register the birth of their children, even though the General Population Act permits the timely registration of the birth of children of foreigners in the national territory, without requesting proof that the parents are in the country legally. The Constitution provides that Mexican nationality is acquired by birth by virtue of either *ius soli* or *ius sanguinis*.<sup>138</sup> Moreover, the General Population Act establishes that when foreigners have children who were born in Mexico, the Ministry of the Interior may authorize their legal entry or stay in the country.

**Articles 32 and 33. Right to transfer to the State of origin their earnings, savings and personal belongings;<sup>139</sup> right to be informed of the rights arising from the Convention and to dissemination of information**

346. Mexico does not impose any restrictions on the transfer of international funds and has sought to make the implementation of international payments more efficient.

347. The United States Federal Reserve Bank and the Bank of Mexico (BANXICO) established a system of international electronic funds transfers, which recently became operational for transfers from the United States to Mexico and is expected to operate in both directions in 2005, providing an easy, secure and inexpensive way of transferring funds between bank accounts in the two countries.<sup>140</sup>

348. Mexico and the United States included the issue of remittances in their bilateral initiative “Society for Prosperity”, created at the end of 2001 and designed essentially to increase competition so as to reduce the costs of such transfers and link them with production projects. The main achievements of this initiative include: reducing the average cost of remittances from US\$ 31 to US\$ 14 per transaction between 1999 and 2003, with transactions now costing around or even below US\$ 10; the growing incorporation of Mexican migrants into the formal financial sector in the United States through the use of the Mexican consular registration certificate as identification; the expansion and diversification of innovative financial products and services; and the regular dissemination of information on the exchange rate and the cost of remittance services.<sup>141</sup>

349. In 2002, BANXICO issued a set of rules with which credit institutions and companies providing funds transfer services would have to comply, thereby compelling providers of these services to supply information that will make them more transparent and improve accounting. In 2003, nearly 98 per cent of all remittances to Mexico were sent through formal channels. Efforts continue to be made to enhance the efficiency and effectiveness of formal transactions, in order to incorporate migrants and their families into the financial system so that they will benefit from the reduction in costs and will be able to channel their resources to production projects.

350. It should be mentioned that in 2003 remittances increased by 35.16 per cent over the preceding year. Mexicans living in the United States sent a record US\$ 13.265 billion to Mexico in 2003 and over US\$ 16 billion in 2004, making remittances Mexico’s second largest source of foreign income.<sup>142</sup>

351. To foster the sense of identity linking Mexicans living abroad with their communities of origin and promote productive use of remittances and migrants’ initiatives, thereby contributing to the development of those communities, the Mexican Government set in motion in 2002 the “3 x 1 Citizens’ Initiative Programme” (3 x 1 Programme), which is designed to support and strengthen citizens’ initiatives for implementing projects that will help improve residents’ quality of life by pooling national, state and municipal resources and contributions from migrant groups and organizations.<sup>143</sup>

352. The 3 x 1 Programme forms part of the microregions strategy, since the generation of basic social infrastructure through projects put forward by migrants and the community contributes to the local development of communities.

353. Among the principal results achieved by the 3 x 1 Programme by the end of 2004, its coverage extended to 23 states and 343 municipalities and it supported a total of 1,263 investment projects. In addition, scholarships have begun to be provided for children of migrants and greater emphasis is being placed on joint investment programmes.

354. Pursuant to commitments made by Mexico in the Working Group on Migration of the Organisation for Economic Cooperation and Development (OECD),<sup>144</sup> a technical seminar on migration, remittances and development was held on 17 and 18 November 2004 with the participation of OECD officials, government entities, academics and civil society. Among the principal conclusions reached by the seminar were that in order to tap the productive

potential of remittances, it is necessary to design a State migration policy that is comprehensive, cross-cutting and inclusive of the migrant community in considering their economic, political and cultural needs and aspirations, by systematically evaluating local demand from a transnational perspective.

355. The development of a comprehensive policy must also include as fundamental premises, firstly, the need for a climate of trust, safety and certainty so that migrants can invest in their communities of origin and, secondly, the duty of the State to support migrants' initiatives, in order to optimize the resources sent, by ensuring project viability and access to financing for project implementation and strengthening existing programmes such as the 3 x 1 Programme, in a context of greater institutional coordination among all the actors involved. This does not mean, however, that the State can evade its responsibility for generating development and productive investment. It is important to let the migrant population know what programmes, initiatives, options and successful examples exist for the productive use of remittances and to whom they should turn to put them into effect.

356. Although the decline in circular migration and the trend towards permanent migration is causing a reduction in their total amount, remittances have been decisive in halting macroeconomic disequilibrium, totalling over US\$ 16 billion in 2004 and accounting for 2.4 per cent of GDP. As a result, it is necessary to identify the migrant populations that have the economic potential to invest in their communities, bearing in mind that one in every four Mexicans in the United States is living in poverty and thus unable to save and invest and that most of them send remittances to support their families. Collective remittances for project funding account for only 1 per cent of the total sent.

### **Dissemination of rights**

357. As indicated earlier, when a foreigner is secured, he/she is informed without delay of his/her rights. One very important instrument is the leaflet *Cartilla de Derechos Humanos de los Migrantes* (human rights of migrants), published in English, French and Spanish and produced jointly by the Ministry of the Interior, the National Human Rights Commission, the National Women's Programme (PRONAM) and the Office of the United Nations High Commissioner for Refugees (UNHCR). The leaflet contains useful information on how to enter the country, how to regularize one's stay, how to request refugee status, obligations and human rights in general, telephone numbers of embassies and consulates accredited to Mexico and information on the government bodies to which migrants can turn if they suffer an abuse of authority. Where necessary, the services of a translator are provided.<sup>145</sup>

358. On the occasion of the entry into force of the International Convention on the Rights of All Migrant Workers and Members of Their Families on 1 July 2003, the Ministry of the Interior held a commemorative event at which Mexico's commitment to fulfilling all its obligations under that instrument was reiterated. Three thousand copies of the Convention, printed specially for the occasion, were distributed to the entire staff of INM to ensure that they were familiar with it and would comply with it. The Convention can also be consulted on the INM website.<sup>146</sup>

359. With respect to the right of migrant workers to information about the Convention, INM organized a workshop on the human rights of migrant women and minors in the city of

Veracruz on 9 and 10 December 2003, at which the Convention was discussed. Migration officials, Beta Groups and operational staff of the Veracruz, Puebla, Hidalgo, Tlaxcala and Tabasco regional offices and the Ciudad Juárez Beta Group took part in the workshop, the aim of which was to raise migration officials' awareness of the importance of respecting the rights of migrant women and minors, bearing in mind that they are a population at major risk of suffering abuse at the hands of the authorities.

360. INM is disseminating 5,000 copies of an information leaflet<sup>147</sup> designed to publicize the Convention's main provisions among the migrant population, its own staff and public servants whose functions involve working with INM in applying migration laws.

361. On 16 June 2004, INM organized a dialogue workshop to follow up the Convention, at which the Government, academics and civil society discussed the fulfilment in Mexico of the commitments made in the Convention. The workshop's principal conclusions included the following: (a) although the workshop identified specific actions and programmes being carried out by different government bodies at the federal and state levels to provide care and protection to migrants, these need to be interlinked and to form part of a State policy permitting the creation of comprehensive monitoring and evaluation mechanisms in which all governmental and social actors are involved in the effective oversight of public policies; (b) the Mexican Government's report must include and recognize the action taken by civil, social and religious organizations, academics, migrant assistance offices and other social actors involved; (c) it is recommended that policies and programmes should take a comprehensive approach to human rights and lead to effective inter-agency and intersectoral cooperation, with a view to their strengthening and to generating a short-, medium- and long-term impact benefiting the migrant population; (d) migration policy should be linked to national development policy at the three levels of government and to regional development policy and create conditions for development in communities of origin; (e) migrant workers should be treated as international workers with the rights granted by the Convention; (f) domestic legislation on various issues must be harmonized in order to fulfil the commitments made under the Convention and the necessary immediate actions and structural reforms must be identified.

362. At the workshop, the Government stated its readiness to continue creating opportunities for a dialogue on how best to apply the Convention and migration policies in general.

### **C. Other rights of migrant workers and their families who are documented or in a regular situation**

#### **Article 37. Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activity**

363. The dissemination of reliable, objective and up-to-date information on migration policies and procedures enables migrants to take informed decisions. Such information is available on various websites, particularly the INM website, and refers to the requirements for the admission and stay of foreigners in the national territory, depending on their nationality and the work they intend to do in the country; these requirements derive from the General Population Act and its regulations.<sup>148</sup>

364. In order to disseminate the rights and obligations conferred by Mexican law on Guatemalan migrant workers and their families, a seminar on the General Population Act, the Federal Labour Act and the Social Security Act was held in Tapachula, Chiapas, on 28 November 2003 to inform Mexican employers of the aforesaid rights and obligations.

365. On 14 February 2004, the Ministry of Labour and Social Security provided the Ministry of Labour and Social Security of Guatemala with 3,000 copies in various indigenous languages of the leaflet “*Carta de Derechos y Obligaciones Laborales*”, prepared in cooperation with the National Commission for the Development of Indigenous Peoples (CDI), which is being distributed by the Guatemalan authorities.

366. At the same time, INM is disseminating an information leaflet explaining the rights and obligations of holders of a Visiting Agricultural Worker Migration Form (FMVA) valid in Mexican territory.<sup>149</sup> The leaflet is aimed at all staff of entities other than INM who assist in enforcing the General Population Act and is being distributed through the INM regional office and the Mexican Embassy and Mexican consulates in Guatemala. Guatemalan consulates accredited in Chiapas were asked to assist in disseminating it.

367. The Ministry of Labour and Social Security (STPS) also disseminates information on the labour rights of Mexican migrant workers in the United States and Canada and on the rights of foreign migrant workers in Mexico, in cooperation with other parties involved and in multilateral forums such as the International Labour Organization, the Organisation for Economic Cooperation and Development and the Inter-American Conference of Ministers of Labour (IACML).

368. There are also the agreements on safety, justice and equality in the workplace signed by a number of Mexican consulates in the United States with authorities of the United States Department of Labour and other governmental and non-governmental institutions for the protection and promotion of the labour rights of Mexican workers. The key component of these agreements is the establishment of a telephone helpline in either consulates or non-governmental organizations to receive and direct requests for information and complaints of breaches of labour laws. Joint efforts are also being made to educate Mexican workers about their rights and provide them with information on those rights through leaflets, videos and seminars.

369. Lastly, written information is being distributed among the migrant population in various United States cities, through the mobile consulates and preventive protection programmes, to make Mexican nationals aware of their rights in the United States and encourage them to report any violation of their civil and labour rights to the consulates or the relevant institutions.

**Articles 38 and 39. Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose residence in the territory of the State of employment**

370. A foreigner entering the country temporarily, in other words, as a visiting non-immigrant (holder of an FM3) may remain in the country for a period of one year, extendable up to four times for further periods of one year, with multiple entries and departures.<sup>150</sup> Immigrants (foreigners seeking residence in the country), for their part, are authorized by article 47 of the

Act to absent themselves from the country for up to 18 months, either for one continuous period or intermittently, during a five-year stay. Article 56 of the Act establishes that permanent residents (foreigners with residence rights) may enter and leave the country freely, but if they remain abroad for more than three consecutive years they lose their permanent residence status.

371. Without contravening the relevant provisions of the Act, consideration is being given to the usefulness of incorporating in employment contracts concluded with migrant workers specific provisions allowing them to absent themselves from work temporarily to attend to personal matters.

372. With regard to liberty of movement and freedom to choose residence, while article 11 of the Constitution guarantees freedom of movement in the national territory, the General Population Act provides that the Ministry of the Interior may determine the place or places of residence of foreigners who enter the country.

373. The Act also empowers the Ministry of the Interior temporarily to close air and sea ports and borders to international traffic for reasons of public interest. This provision is more important nowadays, given that since the 11 September 2001 terrorist attacks, the security paradigm has permeated the borders of almost all countries and influenced the positions they take in bilateral and multilateral forums. Mexico is no exception, but the present Government's migration policy is based on reconciling strict respect for the human rights of migrants, regardless of their migration status, with the safeguarding of national security, bearing in mind that migrants are not terrorists and that Mexico shares responsibility with its immediate neighbours for tackling the phenomenon.

**Articles 40, 41 and 42. Right to form associations and trade unions;  
right to participate in public affairs of their State of origin and to vote  
and to be elected at elections of that State; procedures and institutions  
taking account of the needs of migrant workers and possible enjoyment  
of political rights in the State of employment**

374. Article 372 of the Federal Labour Act provides that workers and employers have the right to form trade unions without prior authorization. However, the Act prohibits foreign workers from forming part of the leadership of trade unions.

375. With regard to the voting rights of Mexicans living abroad, on 16 July 2004 the executive branch sent to the Congress a bill on voting by Mexicans abroad. On 30 June 2005, the proposal to accept such voting was adopted. Voting will take place by postal ballot. These changes are important recognition of the enormous contribution to national development made by Mexicans living abroad.

376. Under the proposal, only Mexican citizens living abroad who are registered on the electoral roll and have a voting card with a photograph will be able to vote in presidential elections.

377. Between 1 October of the year preceding the election and 15 January of the year of the election, interested parties will have to advise the Federal Electoral Institute (IFE) in writing of their intention to vote, requesting their inclusion in the list of names of voters residing abroad

and their temporary removal from the list of the electoral section of the district where they have their domicile in Mexico. They will have to send this request by certified mail, accompanied by a photocopy of their voting card and a document proving their residence abroad.

378. The forms for this procedure will be available to interested parties on the Internet. It is also envisaged that, by prior agreement between IFE and the Ministry of Foreign Affairs, Mexican embassies and consulates will make these forms available to Mexican citizens abroad.<sup>151</sup>

379. After 15 February 2006, the Federal Register of Electors (RFE) will draw up lists of names of Mexicans living abroad. These lists may be reviewed by political parties, but only in the central offices of RFE and by electronic means.

380. IFE will take the necessary steps for the approval of the ballot papers, legal and other documents and materials needed for voting abroad. It will also have to prepare voting papers with attached instructions for sending by certified mail, return receipt requested, to every citizen entered on the list of names of overseas voters.

381. By 20 May 2006, the IFE general executive board will have to have finished sending ballot papers to the homes of Mexican citizens voting abroad.

382. Based on the instructions for the legal, correct use of ballot papers, citizens will mark the box corresponding to their preference, fold the ballot paper in two and place it in the special envelope for sending to IFE by certified mail as soon as possible.

383. The deadline for the receipt of envelopes containing ballot papers will be 24 hours before the beginning of election day.

384. Voters abroad will be ordered according to domicile, section and district in the national territory, based on the details given on their voting card. In every electoral district where there are voters registered abroad, there will be at least one ballot counting and computing table, which will be responsible for up to 1,500 votes.

385. IFE will also have what it needs to select and train citizens to act as officials at ballot counting and computing tables installed on election day in the IFE premises designated by the Institute in the Federal District. At these tables, there will be a representative of each political party and general representatives.

386. In this case there will also be spot counts to indicate voting trends among voters abroad.

387. The executive secretary of IFE will inform the board of the overall results and the results by district of the overseas ballot and order their incorporation in the overall ballot count.

388. Furthermore, citizens living abroad will be able to appeal against decisions of the administrative authorities, as currently envisaged in the General Act on the System for Contesting Election Results.

389. It is important to point out that the network of embassies and consulates will have no direct involvement in the electoral process. IFE will be completely responsible for the tasks of organizing and receiving ballots from abroad, thereby maintaining the independence achieved since its reform for the holding of elections. IFE is thus recognized as the only institution responsible for organizing elections in the country and outside it.

390. Moreover, the reform prohibits election campaigning abroad, understood as the use of resources to finance activities, events or electoral propaganda. Violations of this provision will be punishable under Mexican electoral and criminal law.

391. In this connection, the introduction of voting for Mexicans abroad is consistent with the Government's obligation to create a system enabling Mexican migrant workers abroad to participate in the public life of their country of origin, thereby complying with the Convention.

392. It should be explained that in Mexico, under article 33 of the Constitution, foreigners may not interfere in any way in the country's political affairs.

**Articles 43, 54 and 55. Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity**

393. Although national labour legislation does not envisage unemployment benefits, the Ministry of Labour and Social Security operates an employment support programme designed to address the employment requirements or needs of various population groups.

394. Concerning protection against dismissal, the Constitution provides that an employer who dismisses a worker without just cause must, at the option of the worker, reinstate the worker or pay him/her compensation equal to three months' wages.<sup>152</sup> Article 50 of the Federal Labour Act also states that when the employment relationship is for an indefinite period, compensation shall be equal to 20 days' wages for every year worked.<sup>153</sup>

395. Furthermore, employment fairs provide opportunities for workers by bringing jobseekers and job suppliers together in the same physical space and linking them up with each other, so that companies seeking workers and workers seeking jobs can directly choose people or work, as the case may be, that meet their expectations. Employment fairs are organized by the employment services of states in Mexico.<sup>154</sup>

396. There is also the State Employment System (SEE), whose essential function is to keep in touch with the staff recruitment, selection and hiring services of each state's production sector, by means of regular working meetings at which qualitative and quantitative information on manpower supply and demand is exchanged, enabling companies to meet their staffing needs promptly and adequately. SEE is responsible for placing greater numbers of jobseekers and at the same time permits decision-making on joint strategies for improving the operation of job markets.



397. In 2002, the Government, through the Ministry of Labour and Social Security, designed a support mechanism, the Jobseekers Economic Support Scheme (SAEBE), intended basically to make the jobseeking process easier and less costly for unemployed persons. SAEBE is not an unemployment benefit, but a mechanism designed to provide certain facilities to unemployed persons to help them achieve their goal of entering the labour market.

398. Accordingly, SAEBE provides resources to cover certain basic expenditures that unemployed persons have to make and the provision of support is conditional on recipients taking a number of steps to link up with employment sources. It is aimed basically at unemployed persons in the formal sector, i.e. workers who have been displaced from the labour market, who have paid at least six months' social security contributions, have been looking for work for at least three months, have economic dependants and are aged at least 18.

399. It should be mentioned that the Constitution establishes that disputes between workers and employers must be referred for a decision to a Conciliation and Arbitration Board comprising an equal number of representatives of workers and employers and a representative of the Government.<sup>155</sup>

400. The Ministry of Labour and Social Security has also set up a telephone helpline, *Chambatel*, which provides jobseekers with free information on employment options.<sup>156</sup> This service provides rapid, timely information on up to three employment options tailored to workers' job experience and knowledge, enabling them to call companies immediately to arrange a job interview and negotiate their hiring.

401. Likewise, an online labour exchange, *Chambanet*,<sup>157</sup> was designed, developed and put into action to meet the needs of qualified business personnel and also of jobseekers with access to the Internet. These two services are new schemes designed to link up jobseekers with employers and also to expand the coverage of the National Employment Service (SNE).

402. Another new employment information and linkage scheme designed to meet the need for more accessible, modern services is the fortnightly newspaper *Mi Chamba*, a free publication designed to offer the public a readily accessible source of job information. Consisting of 16 pages in an eye-catching, easy-to-read format, it contains information on job offers and on SNE and STPS programmes.

403. In order to transform and promote a new employment culture, the Ministry of Labour and Social Security has the following training and technical training programmes:

**Cross-cutting programmes.** Training programmes on human development issues aimed at all the country's workers, irrespective of their occupational, educational or hierarchical level. Their objective is to promote a cultural change that makes it possible to humanize labour relations through the design and teaching of workshops that increase recognition of the dignity of the individual.

**Multiskill programmes.** These programmes are aimed at occupations for which there is considerable demand in the country and which, for the most part, employ people with low educational levels and low incomes. They offer workers an opportunity to train as

instructors in occupations for which there is considerable demand in the country. Using manuals designed on the basis of technical norms of labour competence, the workers thus trained operate as extension workers by disseminating the manuals' contents within their companies.<sup>158</sup>

404. With regard to migrant workers' access to housing, article 4 of the Constitution states that every family has the right to decent housing. To comply with this obligation, companies must contribute to the Institute of the National Workers' Housing Fund (INFONAVIT) 5 per cent of the wages of workers in their employment.

405. The Fund does not distinguish among potential beneficiaries on the basis of nationality. However, the worker must be a member of the Mexican Social Security Institute and fulfil the other requirements laid down by law.<sup>159</sup>

**Articles 44 and 50. Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage**

406. The Government of Mexico is aware that the family is the basic unit of society and as such deserves special attention. Facilitating family reunification maximizes the positive impact of migrants' social and cultural integration in the host community. To this end, one of the basic premises of Mexico's migration policy is respect for the principle of family unity and family reunification. Accordingly, article 39 of the General Population Act establishes that any foreigner entering the country may request entry for his/her spouse and immediate family members, with the same migration status and for the same period of time, as economic dependents.

407. The right to family reunification for documented migrants who have resided in the country for a long time is also enshrined in Mexican law. Thus, the General Population Act states that when foreigners marry Mexicans or have children born in Mexico, the Ministry of the Interior may authorize their entry or legal stay in the country.<sup>160</sup>

408. The General Population Act regulations provide that when families are secured, they must be housed in the same facility and the authorities must allow them to live together, in keeping with the applicable administrative provisions.<sup>161</sup>

**Articles 45 and 53. Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right freely to choose a remunerated activity for members of a migrant worker's family**

409. INM authorization is required for a foreigner to engage in any activity involving a labour relationship and direct financial remuneration by a company constituted in Mexico. As a result, a foreigner wishing to enter the country for this purpose must request permission to engage in remunerated activities. The same is true for spouses and dependent family members of such foreigners.<sup>162</sup>

410. Under the Constitution, foreign immigrants in Mexico are free to choose a remunerated activity and to engage in it, without requiring prior authorization.<sup>163</sup>

**Articles 46, 47 and 48. Exemption from import and export duties and taxes in respect of particular belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle**

411. With regard to the payment of import and export duties on personal effects, the Customs Act establishes that foreign trade taxes shall not be paid on the entry to or departure from the national territory of the following goods: passenger baggage of international travellers; household effects of immigrants and repatriated or deported nationals used during their residence abroad; and scientific instruments and tools in the case of professionals, workers and craftsmen. This exemption does not apply to goods that interested parties have had abroad for commercial or industrial activities.

412. With respect to the right of migrant workers to transfer their earnings and savings, the Government of Mexico, through the Institute for Mexicans Abroad (IME) and the consular network, among other bodies, has taken many measures to, inter alia, guarantee the flow of remittances and make the most efficient use of them. Based on these objectives, IME in particular has promoted mechanisms for reducing the cost of sending money transfers and projects providing financial opportunities for Mexican nationals.

413. Mexican workers living in the United States are not only a factor in the economic growth of that country but also, by sending remittances, an important source of economic support for their families and their regions of origin.

414. The Group of Eight Summit Meeting held in Evian, France, from 1 to 3 June 2003 reached the conclusion that remittances from migrant workers are the most stable, abundant and reliable source of financial transfers to the least developed countries.

415. According to the Inter-American Development Bank, one in five Mexicans receives money from relatives working in the United States, making Mexico one of the main recipients of remittances.<sup>164</sup>

416. In March 2004, the Congresses of Mexico and 25 European countries condemned the levying of taxes on sending remittances as a violation of human rights.<sup>165</sup> Meanwhile, European lawmakers noted that Mexico would solve its problem of expulsion of Mexican nationals if it allocated more resources to regional development.

417. Mexico has also concluded agreements for the avoidance of double taxation with 43 countries and is engaged in an ongoing effort to reach such agreements with other countries. Double taxation agreements apply only to income taxpayers and benefit nationals and foreigners without distinction.<sup>166</sup>

**Articles 51 and 52. Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized freely to choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity**

418. Under article 5 of the Constitution, no person may be prevented from engaging in a lawful profession, industry, trade or work. The laws of each state shall determine which professions require a licence for their exercise, the conditions that must be met to obtain such licences and the authorities that will issue them.

419. Article 34 of the General Population Act regulations provides that foreigners may engage only in activities expressly authorized by the Ministry of the Interior, i.e. those where the worker's competence to carry out the activity in question has been confirmed and other migration requirements have been fulfilled. The Act and its regulations establish that permission from the Ministry of the Interior is required for a foreigner to engage in activities other than those for which he/she has been authorized.<sup>167</sup>

420. Migrant workers have the right to request a change in their migration status and characteristics, in line with the activity they are seeking to carry out, without having to leave the country, subject to fulfilling the corresponding requirements and paying the corresponding duties.<sup>168</sup>

421. It is important to note that the Constitution establishes the posts and functions for which Mexican nationality by birth is required. It also states that Mexicans will be given preference over foreigners, all other circumstances being equal, for government posts, jobs and commissions for which citizenship is not indispensable.<sup>169</sup>

422. Article 7 of the Federal Labour Act, for its part, stipulates that at least 90 per cent of the workforce in any company or establishment must be Mexican.<sup>170</sup>

423. Technical and professional workers must be Mexican unless there are no Mexicans available in a given area of specialization, in which case an employer may temporarily fill up to 10 per cent of positions in that area with foreign workers. Likewise, the article stipulates that the employer and the foreign workers will be required to train Mexican workers in the area of specialization concerned. Company doctors must be Mexican, but this requirement does not apply to company directors, administrators and general managers.

**Articles 49 and 56. Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion**

424. Migration law does not provide for residence or employment authorizations. Instead, depending on the activity in which the migrant worker is hoping to engage and its duration, he/she will be assigned a specific migrant status and characteristics, subject to proving that he/she is competent to engage in the activity in question and complying with the other corresponding requirements.

425. The Federal Labour Act stipulates that no person engaged in a lawful profession, industry or trade may be prevented from working. It also specifies the conditions under which a person may be denied the right to work in specific cases by means of a judicial ruling.<sup>171</sup>

426. Article 61 of the General Population Act states that persons who have foreigners working for them or economically dependent on them are required to inform the Ministry of the Interior within 15 days of any circumstance that alters the migration conditions to which those foreigners are subject. In this connection, civil society organizations have argued in various forums that an employer who reported an irregular migrant worker could use the foregoing provision to his/her advantage. However, in such cases, the worker would generally be issued an official notice to leave, giving him/her a deadline within which to settle his/her employment situation and then leave the country.

427. It should be mentioned that the migration authorities have a margin of discretion to consider humanitarian grounds on which an expulsion decision might be suspended or revoked, for instance, the migrant worker's health, political persecution in the State of origin, etc.<sup>172</sup>

#### **D. Provisions applicable to particular categories of migrant workers and members of their families**

##### **Article 58. Frontier workers**

428. On 16 May 2000, INM, acting pursuant to article 48 of the General Population Act,<sup>173</sup> issued a decision granting new migration facilities for Guatemalan local visitors. The Local Visitor Migration Form (FMVL), valid for five years, authorizes the holder to visit the state of Chiapas as far as the cities of Tapachula and Comitán de Domínguez during a period of three days per visit, thereby facilitating migrant flows which benefit cultural, tourist and commercial exchanges in that state.<sup>174</sup>

429. The number of entries of local visitors by land over Mexico's southern border using the FMVL declined from 1.96 million crossings in 2001 to 1.23 million in 2004, a reduction of 37.18 per cent.<sup>175</sup>

430. It should be mentioned that the scheme is also applicable to nationals of Belize. Currently, over 80 per cent of local visitors from Belize use the FMVL to enter Mexico. In 2004, there were 1,562,000 crossings, of which 393,443 were made using the FMVL.<sup>176</sup>

431. In order better to control migration flows of Guatemalan local visitors and avoid forgeries of the documents issued at present, INM has decided to replace their design by computer-readable migration forms, like those currently issued to nationals of Belize, that can be used with optical scanners.

##### **Article 59. Seasonal workers<sup>177</sup>**

432. Guatemala shares a long border, cultural patterns and ethnic roots with Mexico. Their proximity and ongoing social relations, combined with instability and political conflict in Guatemala, have resulted in large numbers of Guatemalan nationals migrating in search of new opportunities for survival.

433. This movement of Central America's population, especially of Guatemalans to Mexico, provides a large labour force that is recognized on Mexico's southern border by contractors and owners of coffee, banana, mango and sugar plantations, among others, although it is also being recognized and sought after in the construction industry, domestic employment and other production sectors.<sup>178</sup>

434. It should be mentioned that most of the coffee in Chiapas is grown by Guatemalan workers. According to some coffee plantation owners, almost 90 per cent of output depends on them, making the entry of Guatemalan workers essential to the survival of the coffee industry in Chiapas.<sup>179</sup>

435. In October 1997, in recognition of this demand for labour in the agricultural sector of southern and south-eastern Mexico and as a result of the Fifth Mexico-Guatemala Binational Meeting held on 28 June 1996, it was agreed to establish procedures for the temporary documentation of Guatemalan nationals to enable them to work in the crop-growing areas of the state of Chiapas. To that end, the Government introduced a documentation programme for the legal and migration security of Guatemalan agricultural workers.<sup>180</sup> The purpose of the programme is to provide such workers with a Visiting Agricultural Worker Migration Form (FMVA) authorizing them to enter the country and engage in activities as visiting non-immigrants pursuant to article 42, section III, of the General Population Act.

436. The FMVA authorizes the entry of Guatemalan seasonal agricultural workers and specifies the activities they are to carry out. It is issued at all entry points to the state of Chiapas, does not require the payment of charges and allows the holder to stay in the state for up to a year, with the possibility of multiple entries and departures during its period of validity. The holder is authorized to work only on the farm or landholding and with the employer specified. The FMVA also gives the worker freedom of movement within the state of Chiapas.<sup>181</sup>

437. In the course of 2003, some 45,000 workers were issued an FMVA, an annual increase of 1.9 per cent, of whom 73 per cent were men, 26 per cent were women (especially wives entering with similar authorization) and the remainder were minors.<sup>182</sup> Their stay in Mexico is temporary and they return to their communities of origin when the employment season ends, having spent approximately six months in Chiapas.<sup>183</sup>

438. In 2004, 41,894 workers were documented. From January to May 2005, 21,361 Guatemalan workers were documented.<sup>184</sup>

439. Guatemalan workers who migrate to Mexico come mainly from the four departments bordering the state of Chiapas (San Marcos, Huehuetenango, Quiché and Petén). The documented agricultural labour force is concentrated among the 327 farms located in the 118 municipalities of the state of Chiapas, the greatest number of farms being in Tapachula (83) and in the Soconusco corridor, for instance, Ciudad Hidalgo (42), Motozintla (31) and Huixtla (11).

440. Guatemalan agricultural workers have the right to social security and to be registered with the Mexican Social Security Institute (IMSS), since they enter Mexico legally with an FMVA. In 1997, the Social Security Regulations for Agriculture were issued, granting social

security benefits to permanent and casual agricultural workers. Under the new regulations, agricultural employers are required to register their workers with IMSS, even if they use intermediaries to hire them.

441. The Government of Mexico has also conducted negotiations with the Guatemalan authorities on addressing the needs of these agricultural workers. To that end, on 12 February 2002, an ad hoc group on Guatemalan seasonal agricultural workers was set up in the city of Tapachula, Chiapas, with the aim of improving the labour situation of these workers by giving them access to economic and social benefits, promoting monitoring of and compliance with each country's labour laws and implementing alternative mechanisms for facilitating the solution of labour problems experienced by workers employed in production activities in Mexico.

442. At the same time, a subgroup on agricultural employment issues was set up comprising representatives of the authorities of both countries responsible for this issue and officials of the state of Chiapas.

443. Important measures have been taken to upgrade the areas where these workers are documented. These include roofing the areas over, building benches in the waiting area and providing sanitary installations.

444. In addition to the foregoing, the INM Centre for Migration Studies (CEM) is making an overall survey of seasonal worker flows on Mexico's southern border. This will include specific mapping to reflect the geographical location of concentrations of documented and undocumented seasonal migrants; identification of the different production sectors where they work; a description of the social networks arising within this population; and the forecasting of possible trends in these flows. Qualitative information will also be obtained from a comprehensive evaluation of the seasonal agricultural workers who currently enter with an FMVA. The way in which workers are hired, the present conditions of migrants on farms and landholdings, the services provided to them and the organizational structures of both migrants and contractors will also be studied.

445. This study will enable INM to strengthen the bases for the efficient management and control of flows of Guatemalan migrant workers and, at the same time, give it a broad understanding of the labour problems experienced by seasonal migrant workers.

446. On 11 November 2003, the Ministry of the Interior, the Ministry of Labour and Social Security, CONAPO and the College of the Northern Border signed a cooperation agreement for the conduct of a survey of migration on the Mexico-Guatemala border (EMIF), which will provide ongoing information on the volume and characteristics of the migrant flows that cross the border between Guatemala and Mexico, identifying the most significant economic, social, family and demographic aspects of the people who make up these flows. The first survey was launched in 2003-2004 and the second will end in October 2005. The data derived from the surveys are being processed by the migration authorities for subsequent publication.

### **Article 60. Itinerant workers**

447. Migration law does not define itinerant workers as a specific migrant category. Such workers would be documented as visiting non-immigrants engaging in remunerated or unremunerated activities, depending on the activity to be carried out, for a one-year period with multiple entries and departures.<sup>185</sup>

### **Article 61. Project-tied workers**

448. INM documents project-tied workers as visiting technicians, allowing foreigners to engage in technical activities in the development of an investment project, design or launch the operation or construction of a plant, train other technicians under contracts for the provision of previously agreed services or provide services envisaged in a contract for the transfer of technology, patents or trademarks.<sup>186</sup>

449. If a project-related migrant worker enters Mexico as part of an intra-company transfer, INM will document him/her as a visiting non-immigrant engaging in unremunerated activities, as envisaged in the General Population Act and its regulations.<sup>187</sup> Although this is not explicitly mentioned, the category of engaging in unremunerated activities covers persons with a university degree or equivalent technical qualification who are transferred with a view to their career development or to receive training in business techniques or methodologies. The requirements established by Mexico for approving such transfers include a letter of instruction from the foreign firm indicating the activity that the foreigner will carry out in Mexico and a commitment to defray the costs of his/her stay.

450. Migrant workers who have been admitted to employment for a defined period of time to work solely on a specific project have the same rights and obligations as other workers and may therefore seek the assistance of the competent authorities if their employer fails to comply with the terms of the employment contract.

451. The General Agreement on Trade in Services of the World Trade Organization (WTO), to which Mexico is a party, envisages four different modalities for the supply of services, the fourth of which involves the temporary entry of natural persons of a Member to the territory of any other Member with a view to supplying a service. The Government of Mexico, through INM, follows up the negotiation of that service modality, to which end it has taken part in bilateral meetings to analyse initial requests from WTO member countries for the strengthening of commitments in the various modalities for the supply of services. Most requests for the fourth modality are compatible with current migration law and consistent with the objective of progressive liberalization of trade in services set forth in article XIX of the Agreement.

452. Mexico has also signed a variety of free trade agreements<sup>188</sup> that, with the exception of those signed with the European Union, the European Free Trade Area (EFTA)<sup>189</sup> and Israel, contain a section on the temporary entry of persons, who may be business people, investors, intra-company transfers or professionals, to whom facilities for entering the country are granted on a reciprocal basis.



### **Article 62. Specified-employment workers**

453. Migration law does not contain any provisions on specified employment. The worker will be documented as a visiting non-immigrant engaging in remunerated activity for a one-year period renewable up to four times, subject to proving that he/she is competent to engage in the activity and presenting a request for admission from the company, institution or person seeking to use his/her services. Both workers and their family members will be entitled to the guarantees accorded by the Constitution and described in this report.

### **Article 63. Self-employed workers**

454. The General Population Act regulations<sup>190</sup> provide that a foreigner may request entry himself/herself when seeking to work independently.<sup>191</sup>

### **E. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families**

#### **Article 65. Creation of appropriate services to deal with the international migration of workers and members of their families**

455. It is important to point out that the labour policy of the Government of Mexico establishes five strategies for promoting a new labour culture among the country's workers and employers, thereby creating favourable conditions for the employment, training, productivity, competitiveness and standard of living of workers. These strategies are:

- To include all actors in the process of labour development;
- To effect the necessary changes gradually;
- To use dialogue as a tool for change and for generating agreements;
- To ensure legality in order to give investors and workers legal certainty;
- To promote labour peace as a propitious environment for investment and development.

456. The Ministry of Labour and Social Security, through the National Employment, Training and Skills Service (SNE), has various tools in the areas of information, linkage of workers with employers, training and specific support in finding jobs or productive activities, which are aimed at diverse population groups such as women, young people, vulnerable groups, indigenous communities and, of course, migrant workers, thereby guaranteeing equal access for all.<sup>192</sup>

457. SNE operates in coordination with state governments and the Federal District so that the services and supports of an active labour market policy included in the employment support programme (PAE) reach the entire population through the state employment services (SEE).

The aim of PAE is to enhance the employability of the unemployed and underemployed population by providing them with vocational guidance, technical assistance and information and, in some cases, training and economic support or support in kind.<sup>193</sup>

458. Another component of STPS actions is the training support programme, aimed at carrying out (jointly with state governments, companies and their workers and other agents involved in the labour market) ongoing training and improvement activities that will contribute to the development of workers active in micro, small and medium-sized businesses, so as to raise their quality of life and productivity and, hence, enhance the competitiveness of the businesses to which they belong.<sup>194</sup>

459. As a supplementary action to strengthen the *Abriendo Espacios* (creating opportunities) programme,<sup>195</sup> the Ministry of Labour promotes the formation of labour transition centres (CTL), which may be production plants, services plants, factories, in-bond assembly plants or others developed to give jobs to people with unequal opportunities to obtain employment.<sup>196</sup>

460. Moreover, the Government of Mexico is convinced that migration and development are closely linked and that by giving this link an appropriate channel, it is possible to promote countries' development. One way of channelling and ordering migrant flows is to negotiate migration agreements. For that reason, Mexico launched the Mexico-Canada Seasonal Agricultural Workers Programme in 1974, designed to benefit both countries by hiring Mexican seasonal agricultural workers to meet the demand of the Canadian agricultural labour market. In the programme's first year of operation, 203 workers took part. In the 2002 season, 10,856 Mexican workers, including 328 women, took part. In the 2003 season, 10,595 Mexican workers were documented and in the 2004 season, 10,708.

461. The purpose of the programme is to offer an option of safe, income-producing employment to Mexican agricultural workers who, because of the seasonal nature of farm work, are temporarily unemployed, so that their families can reap the economic benefits of their work. To that end, the Mexican Government undertakes to recruit, select and send farm workers with extensive agricultural employment experience to work on Canadian farms under seasonal contracts and without the intention of settling in that country.<sup>197</sup>

462. It should be mentioned that Mexican workers receive free board and lodging. Income tax, contributions to the Canadian pension scheme and employment insurance premiums are deducted from their wages, although they are not entitled to unemployment benefit when their contracts end.

463. Canadian producers are entitled to "claim" their workers and, in this way, many Mexican immigrants return to Canada year after year; some have been making the trip north for as many as 20 years. At the end of the season, employers fill out a questionnaire on each worker, who must take this evaluation back to Mexico in a sealed envelope and hand it over to a Ministry of Labour official. A positive evaluation is a virtual guarantee that the worker will be able to return the following year. Workers who receive a negative evaluation are generally not accepted the following year.

464. With regard to migration to and from the United States, the Government of Mexico has tried to find a coherent solution to the migrant problem with the support and cooperation of its American counterpart. Some 7.3 per cent of the United States population are Mexicans or people of Mexican origin. All in all, the United States has a population of almost 282 million, of whom 12.5 per cent, or 35 million, are Latinos. Of these, around 26 million are of Mexican origin. Official figures show that there are 5.1 million undocumented immigrants in the United States, while unofficial figures show that there are in fact as many as 10 million undocumented persons, which makes them an easy target for discriminatory policies and labour abuses, and that half of them are Mexicans.<sup>198</sup>

465. In this context, migration on the northern border is one of the key items on the Mexico-United States bilateral agenda. For that reason, work has been ongoing to negotiate a migration package whose main elements would be: regularization or documentation of Mexicans in an irregular situation; border security; exemption of Mexico from the visa quota system; a seasonal workers' programme; and regional social cohesion or infrastructure funds designed to channel resources to communities with high rates of outward migration.<sup>199</sup>

466. The Mexican Government's position on the negotiation of a migration agreement with the United States is based on the principle of shared responsibility for undocumented migration, recognition of the need to administer borders and increased cooperation in the sphere of border security.

#### **Article 66. Authorized operations and organs for the recruitment of workers in another State**

467. Under the regulations governing employment agencies, private, for-profit employment agencies and official and private non-profit agencies are responsible for providing services for the recruitment of workers.<sup>200</sup> This service must take into account the demand for work and, all other things being equal, give preference to jobseekers who are their family's only source of income. The service must also be free for workers. Private agencies are expressly prohibited from refusing to provide the service on grounds of race, sex, age, religion or for any other reason.

468. In the case of Mexican workers who are going to work abroad, the General Population Act establishes that contracts between Mexican workers and foreign employers must be legalized by the corresponding municipal authority and endorsed by the consul of the country to which the worker is moving.

469. In many municipalities in some states, the production infrastructure and basic conditions for agricultural production and related activities are insufficient to meet the needs of the unemployed rural population living there. As a result, the demand for labour and the opportunities for working on a self-employed basis are scarce or non-existent, forcing the local population to look for work in other parts of the country or abroad where the economy is stronger. This results in large flows of agricultural workers from one state to another and even to other countries.

470. The conditions in which some of these agricultural workers move around to work are very poor in terms of food, transport, housing in the place where they find work, education and basic health services, among the most important aspects. These circumstances have made it necessary to establish mechanisms for addressing these aspects and helping improve conditions for such workers both in transit and during their stay in areas of outward and inward migration.

471. To deal with the problems described above, the federal Government has pooled the actions and resources of various Ministries and public institutions. In this connection, the Ministry of Labour and Social Security, within its sphere of competence, designed and developed two economic assistance schemes, the economic support scheme for internal labour mobility (SAEMLI) and the economic support scheme for labour mobility abroad (SAEMLE).<sup>201</sup>

472. The overall objective of SAEMLI is to provide mechanisms for assisting agricultural day labourers with training and in moving from their places of origin to the areas where they will work, thereby enhancing their employability and helping them to move to areas where there are employment opportunities.

473. SAEMLE, for its part, is intended as a mechanism for enabling the agricultural population living in states far removed from the Federal District to complete the necessary formalities for joining the Seasonal Agricultural Workers Programme with Canada (PTAT), thereby facilitating that population's access to the Programme's benefits.

474. Assistance is targeted essentially at the population of states characterized by the outward migration of agricultural day labourers, the states of inward migration of this population group and first-time applicants from all states in Mexico interested in joining PTAT.

**Article 67. Measures regarding the orderly return of migrant workers and members of the families to the State of origin, their resettlement and their cultural reintegration**

475. Article 82 of the General Population Act establishes that the Ministry of the Interior will encourage the repatriation of Mexicans and promote their settlement in places where they may be of use, according to their knowledge and skills. The Ministry will propose to official bodies and private companies such measures as it deems appropriate for providing returnees with facilities for carrying on their occupations.

476. In March 2005, the Ministry of Labour and Social Security announced the launching of a pilot programme, "*Repatriados Desalentados*" (discouraged returnees) (REDES), with resources from the Inter-American Development Bank, the federal Government, through the National Employment Service, and the governments of the five states that border the United States.<sup>202</sup>

477. The aim of the programme is to help Mexican returnees settle in the country and thereby discourage them from seeking to return to the United States. It provides support to Mexicans deported from the United States by finding them work or giving them training to improve their chances of being hired, and also envisages buying bus tickets to enable them to return to their places of origin and work on a self-employed basis.

478. The National Employment Service, in coordination with the northern border states taking part in the pilot programme, will assist returnees who are interested in receiving training by providing them with resources enabling them to live for a month from the date of their repatriation<sup>203</sup> and then join a training scheme under the *Bécate* programme<sup>204</sup> in a company that employs at least 70 per cent of those who complete their courses.

479. The programme will be launched in Reynoso and Nuevo Laredo in Tamaulipas; Ciudad Juárez in Chihuahua; Piedras Negras in Coahuila; and Sonora. In this first phase of the project, some 12 million pesos from IDB will go to the five localities mentioned, where the intention is to help some 3,000 migrants either to return to their homes or to stay in the border area to work.

480. In Coahuila, where the programme has already begun in the municipality of Piedras Negras, around 3 million pesos were allocated in 2005 to support some 750 people. In September 2005, the programme began in the Nogales border area, in Sonora.

481. The Mexican Government is hoping to negotiate migration agreements with other countries that include provisions on the return and reintegration of migrant workers, in order to promote their reintegration in Mexico with the added value of their emigration experience as a factor of economic, social and technological development. This will help to promote truly circular migration, with benefits for both the country of origin and the country of destination.

482. Cooperation and the negotiation of bilateral or multilateral agreements that promote efficient migration management are essential tools for addressing the migration phenomenon. As mentioned earlier, since 1974 Mexico has had a seasonal agricultural workers programme with Canada, which in the 2004 season alone benefited nearly 11 million Mexican workers. The Mexican Government is negotiating a similar agreement with the Government of Spain to promote truly circular migration that offers real benefits for both countries.

483. Furthermore, the Governments of Mexico and the United States have made progress in applying the principle of shared responsibility for undocumented migration, recognizing the need to administer borders and the obligation to respect human rights. To that end, on 20 February 2004 the two countries signed a Memorandum of Understanding on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals, which is comprehensive and seeks to ensure that repatriations fully respect migrants' human rights, thereby avoiding unilateral acts.<sup>205</sup>

484. As a result of the implementation of the Memorandum, the number of Mexicans repatriated by the United States declined by 8 per cent in 2004 compared with 2003, from 559,949 to 514,944 persons.<sup>206</sup> The border state with the greatest reduction in relative terms in repatriated Mexicans was Baja California with 13.9 per cent, followed by Tamaulipas with 12.7 per cent. By contrast, the state of Chihuahua experienced a 7.5 per cent increase, from 84,136 repatriations to 90,451.<sup>207</sup>

485. Between 12 July and 30 September 2004, the Mexican Government operated jointly with the United States immigration authorities the Interior Repatriation Programme designed to reduce the number of migrant deaths in the Sonora-Arizona area. Under this programme,

14,087 Mexican migrants were successfully returned to their places of origin, including 2,086 minors who were returned to their families. All the migrants returned voluntarily and their human rights were strictly respected, ensuring their safe return home.

486. From 20 June to 30 September 2005, the Interior Repatriation Programme was implemented again. The states of Chiapas (2,831 migrants), Veracruz (2,821), Oaxaca (1,591) and Puebla (2,054) received the largest numbers of returnees in the course of its implementation.<sup>208</sup>

487. According to INM data, 15,051 men and 2,522 women, as well as 3,017 minors, were transferred to Mexico City on flights that operated twice daily.<sup>209</sup>

488. In 2005, the number of daily repatriations increased, with 182 migrants on average being sent each day from Tucson, Arizona to Mexico City International Airport, as compared with 173 in 2004. The Government of Mexico maintained a vigilant attitude to ensure that in all cases the voluntary nature of the repatriation process and the human rights of the migrants were respected.<sup>210</sup>

489. With regard to the southern border, in June 2002 the Department of Migration of the Republic of Guatemala and the National Institute for Migration signed an Agreement for the Safe and Orderly Repatriation of Central Americans on the Borders of Mexico and Guatemala, which established procedures, places and specific times for the repatriation of Guatemalan and Central American nationals. On 2 July 2004, a new agreement was signed, changing the times and procedures established in the previous agreement in order to adapt it to the prevailing situation. Of the 211,218 foreigners returned in 2004, 93,667 were Guatemalans, 73,046 were Hondurans and 35,270 were Salvadorans.<sup>211</sup>

490. Furthermore, on 17 May 2005, the Republic of El Salvador and the Government of Mexico signed an Agreement for the Orderly, Swift and Safe Repatriation of Salvadoran Nationals by Land from Mexico.<sup>212</sup> The agreement establishes the times, repatriation points and procedures for repatriating the most vulnerable groups, such as women, minors, older persons and differently abled persons, etc.

491. Also with respect to repatriation, on 3 August 2004 the Ministry of the Interior and the International Organization for Migration signed a Memorandum of Understanding on the Voluntary and Assisted Return of Extraregional Migrants,<sup>213</sup> which establishes a programme under which the Government of Mexico will save up to 50 per cent of the costs of buying air tickets and, through the network of IOM offices, the procedure for obtaining travel documents for migrants whose countries do not have diplomatic representation in Mexico will be streamlined. Approximately 1,930 secured foreign migrants would benefit from this arrangement.

492. To establish this programme, work has been done on the following aspects:

(a) Operating procedures establishing the responsibilities of the Parties for successfully returning migrants secured in Mexico;

(b) The design of an information leaflet for migrants and possibly also posters for placing in the Iztapalapa migrant holding centre, which will have to be translated into English and French and later into other languages;

(c) The drafting of a presentation document on the programme for embassies and consulates accredited both to Mexico and to the United States.

493. The formal launch of the programme took place on 20 July 2005, with the participation of the diplomatic and consular corps, non-governmental organizations and the press.

494. At the Ninth Meeting of the Regional Conference on Migration (CRM), held in Panama City from 17 to 21 May 2004, the Deputy Ministers of member countries agreed to endorse the General Framework for the Dignified, Safe and Orderly Return of Regional Migrants by Land and the Programme on Multilateral Cooperation for the Assisted Return of Extraregional Migrants Stranded in CRM Member Countries, drawn up by Mexico and OIM, which envisage the participation of the bodies responsible for the reception of migrants in each country, guaranteeing consular access and the protection of their human rights. In the case of regional migrants, Mexico will have to continue promoting with Guatemala, El Salvador, Honduras and Nicaragua the signing of a bilateral or multilateral agreement as a follow-up to the arrangements already established between Mexico and Guatemala.

495. In the area of inter-agency cooperation, in 2003 INM received support from the National Valuation and Property Commission in setting aside an area at the Mexicali I border port in Baja California so that civil society organizations working with migrants would have a space there. Currently, *el Albergue del Desierto*, Caritas and the state DIF have offices enabling them to offer immediate assistance to Mexicans repatriated through that crossing point.

496. With respect to migrant workers' access to cultural life, the National Council for Culture and the Arts (CONACULTA) concluded a cooperation agreement with the Ministry of Foreign Affairs, through the Programme for Mexicans Abroad, to develop a programme for the promotion of reading in Spanish aimed at Mexican communities and communities of Mexican origin abroad. It was decided to put into practice the strategies of the National Reading Rooms Programme,<sup>214</sup> but the programme was suspended temporarily in April 2003 because of budgetary problems.

497. Moreover, in the framework of the *Alas y Raices* children's cultural development programme, a meeting of children's cultural outreach workers in the northern border area was held, at which children's cultural outreach workers from the entire border area were invited to take part in training courses held from 19 May to 9 July 2004. These included the *Manos a la Brocha* summer mural painting day, in which some 1,300 children took part, 60 murals were painted and 13 municipalities of the 8 participating states benefited. As part of the programme, working meetings were held at which agreement was reached on the *Más Allá de las Fronteras* (Beyond Borders) project, which took place in November 2004 and to which children's cultural outreach workers and children from throughout northern Mexico and the southern United States were invited in order to take part in training courses.

498. With support and financing from the Mexican Foundation for Productivity in the Countryside,<sup>215</sup> CONACULTA designed a pilot project for organizing the first diploma course in cultural outreach and management with a specialization in productive cultural projects for migrants, based in San Diego, California.

499. In this context, it is important to note that within the migrant population, indigenous people are a vulnerable group that routinely suffer discrimination and lack opportunities and support for the dissemination and reproduction of their forms of artistic expression. For that reason, in the context of action under the Programme for the Comprehensive Development of the Cultures of Indigenous Peoples and Communities, a component for supporting the culture of indigenous migrants is being implemented with the aim of helping to strengthen indigenous culture and identity.

**Article 68. Measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation**

500. Although international migrant flows have declined in relative terms, with around 1.5 per cent of the labour force working in a place other than their country of origin and only 2 per cent of the population living in a place other than that of their birth, migration has become a more complex phenomenon because of the incidence of irregular migrant flows.<sup>216</sup>

501. The recommendations made by the Special Rapporteur of the Commission on Human Rights following her official visit to Mexico in 2002 refer, inter alia, to the need to disseminate information to potential irregular migrants concerning the dangers involved in crossing the border in certain areas.

502. For this reason, despite budgetary constraints and in order to provide guidance and create awareness about the dangers of undocumented migration to the United States, the Government of Mexico set up the migrant protection programme in the belief that providing more information about the dangers involved would help to prevent the deaths of people who take the risk of crossing through the desert and over rivers and mountains.

503. Among the information and prevention activities carried out under the programme, particular mention should be made of the work of the Beta Groups for the protection of migrants on the northern border, set up by INM in 1990. INM has 4 such groups on the southern border and 11 on the northern border, which carry out preventive operations to protect migrants' physical integrity and property, combat criminal activities detected *in flagrante* and inform migrants about their rights and the natural risks they face in trying to cross the border in dangerous areas.<sup>217</sup>

504. Beta Group training is continuous and ongoing. In 2003, 19 courses were taught in which 125 migrant protection agents were trained. Special mention should be made of the following courses: (a) the second Binational Academy, taught by the United States Border Patrol (BORSTAR), on topics such as first aid, life-saving, search and rescue, aquatic rescue, cardio-pulmonary resuscitation (CPR) and personal defence techniques; (b) the course "Ethics and Values, Mystical Theology in the Public Service", taught by ITAM; and (c) a human rights seminar taught by INM. In 2004, a total of 355 Beta Group agents were trained on 59 courses



covering a range of topics, such as first aid, aquatic rescue, CPR, rappelling, human rights, dehydration, fainting and coma, teamwork and ethics of the public servant. It should be mentioned that in March and April 2004, a course leading to a Diploma in Migrant Protection and Rescue Operations, taught in two 19-day modules, trained 60 Beta agents in key aspects such as first aid, search and rescue, medical emergencies, personal defence, human rights, individual guarantees and ethics of the public servant. This has been followed by the ongoing consolidation of know-how through weekly practical sessions within each group, using video recordings provided by the Border Patrol.<sup>218</sup>

505. In order to achieve comprehensive welfare and counselling coverage for migrants, especially migrants repatriated to Mexico by the United States authorities, the Beta Groups on the northern border have established appropriate coordination channels so that they can be present at repatriation points at the times when repatriation occurs, as well as at migrant holding centres, while stepping up patrols along the migrant transit routes for which each Beta Group is responsible, thereby assisting a greater number of people.

506. The necessary control mechanisms have been established to ensure that complaints of violations of migrants' human rights dealt with by the Beta Groups are channelled to the appropriate authority. Also, in cases involving public servants, complaints are referred to the Ministry of the Civil Service for appropriate action. Moreover, inter-agency coordination meetings attended by all the public security forces are held to report on the situation observed within the Beta Groups' area of operations, so that the necessary measures can be taken to prevent attacks on migrants' person or property.

507. The Beta Groups install and permanently maintain warning signs in high-risk areas with high migrant flows to alert migrants to the climate- and mountain-related risks they face in crossing to the United States, in order to prevent, wherever possible, harm to migrants' physical integrity. In 2004, INM purchased 1,359 signs, which have already been installed. The Beta Groups also periodically update the Atlas of Risks and the maps of migration routes.

508. In this connection, in the desert areas of the state of Baja California, especially Tecate and Mexicali, 25 water tanks were installed which are being operated with the assistance of international humanitarian organizations, ensuring that they are kept clean and contain sufficient water for migrants crossing through this desert area.

509. As a result of the rescue and life-saving activities carried out by the Beta Groups, in 2004 over 3,000 migrants who were injured, wounded or at imminent risk of death were rescued.<sup>219</sup>

510. Although under the terms of the Constitution the Beta Groups are not security forces, they have the power to arrest and secure *in flagrante* persons linked to crimes committed against migrants, who are then brought before the appropriate authorities without delay.

511. The Beta Groups also distribute various publications containing information on the human rights of migrants, such as the *Cartilla de Derechos Humanos para los Migrantes* (leaflet on migrants' human rights),<sup>220</sup> preventive guides,<sup>221</sup> radio<sup>222</sup> and television programmes and newspaper and magazine supplements.

512. In the course of 2004, more than 200 copies of the documentary “*Del Sur al Norte*” and 250 copies of the “*Grupos Beta*” news video warning migrants of the dangers of crossing the border without documents were provided to the land transport company *ADO y Servicios Coordinados* for free broadcasting through its 400 stations in the south and south-east of Mexico. The “*Grupos Beta*” video was produced by Canal 22 for the programme “*Conexión México*”.

513. It should be mentioned that in August 2003, a publicity campaign for the migrant protection programme, with the slogan “*Cuida tu Vida*” (take care of your life), aired on 1,240 radio stations, as well as 9 television channels in the Federal District and 90 in the country’s interior.

514. To make the work of the Beta Groups more efficient, in 2003 INM purchased high-tech radio-communication equipment comprising 460 MATRA mobile and portable radios, and a telecommunications mast was installed in the Sásabe area of the state of Sonora in April 2004, permitting coverage of the heavily used Altar-Sásabe migration route and facilitating inter-agency coordination to increase the effectiveness of migrant protection throughout the national territory.

515. To prevent and combat illicit trafficking in migrants, migration control and verification subcommittees have been set up nationwide with the participation of different security forces of the three branches of government. These subcommittees meet regularly to exchange intelligence and logistical information with a view to designing joint operational plans.

516. With respect to the imposition of penalties on persons or groups that organize or direct illegal movements, article 138 of the General Population Act establishes that a penalty of 6 to 12 years’ imprisonment and a fine equivalent to 100 to 10,000 times the daily minimum wage in force in the Federal District will be imposed on anyone who, for purposes of trafficking, either himself/herself or through an intermediary takes or seeks to take Mexicans or foreigners into another country without the corresponding documentation. The foregoing penalties are increased by up to a half when the conduct described involves minors or takes place in conditions or by means that endanger the health, physical integrity or life of undocumented persons or when the author of the crime is a public servant.<sup>223</sup>

517. In 2003, 1,498 complaints were brought against traffickers in undocumented persons, helping to remand 710 individuals in custody and imprison 129. In 2004, 1,950 complaints were brought, in which 3,500 people were found to be involved. Of these, 1,222 people were remanded in custody for this crime.<sup>224</sup>

518. In the period 2003-2004, more than 1,057 members of the so-called “*Mara Salvatrucha*” (Salvatrucha gangs), most of them from Central America, were arrested in 21 states in Mexico. These gangs, of Salvadoran origin, are linked with crimes such as abduction of minors, retailing of narcotic drugs, procuring, trafficking of undocumented persons, forgery of documents and racketeering, while their victims are mainly Central and South Americans who use Mexico as a transit point to the United States. Eighty-five per cent of these groups are concentrated in and operate in the states of Chiapas, Veracruz and Oaxaca, but they are beginning to operate in the Federal District.<sup>225</sup>

519. To combat these criminal groups, the *Acero I* and *Acero II* operational plan was set up, in which the Governments of Mexico, Guatemala, El Salvador, Honduras and the United States participate by implementing strict measures in their own countries to dismantle gangs.<sup>226</sup>

520. The Attorney-General's Office of the state of Chiapas, in coordination with the Ministry of Public Security, INM and the different police forces of municipalities served by the Ciudad Hidalgo-Arriaga railway line, has designed a strategy for halting the wave of attacks and rapes on that line. The strategy includes police surveillance of the railway line, handing over detainees to the Public Prosecutor's Office and handing over undocumented persons to the migration authorities for their return home.

521. "Operation Costa" was launched on 25 November 2004 and concluded on 6 December of the same year. Over 1,200 staff of INM, PFP, PDR and the Ministry of Finance and Public Credit, as well as the Ministry of Health and territorial units of the Ministries of Defence (SEDENA), the Merchant Marine and the Navy, took part in the operation, which through the coordinated efforts of these various bodies achieved the following results: 68 members of the *Mara Salvatrucha* arrested; 47 people traffickers arrested; and 4,000 migrants rescued.<sup>227</sup>

522. In the area of bilateral cooperation, the Governments of Mexico and the United States agreed to exchange intelligence information in order to combat trafficking in undocumented persons, as part of the plan of action of the Mexico-United States Border Partnership signed during the Monterrey Summit in 2002.

523. Based on actions under the plan, in March 2004 INM launched a summer plan for the Sonora-Arizona area, with the following objectives: to discourage the irregular entry of migrants, to reduce the number of deaths in the area, to increase rescues and to tighten border security. The summer plan includes training new Beta Groups in San Luis Rio Colorado and Sonoyta, extending the coverage of the Agua Prieta Beta Group to Naco and formalizing the Beta Group in Sásabe, Sonora.

524. It should be mentioned that at the Regional Conference on Migration, or Puebla Process, a network of liaison officers to combat migrant trafficking was established to organize regional activities for the interception of undocumented or improperly documented migrants. A module on the definition of the crime of trafficking in the laws of CRM member countries was also designed and taught.

525. On 4 March 2003, Mexico deposited with the United Nations Secretariat the instruments of ratification of the Convention against Transnational Organized Crime, which entered into force on 28 September 2003, and its two supplementary protocols on the smuggling of migrants and the prevention and punishment of trafficking in persons, especially women and children, which entered into force on 28 January 2004 and 25 December 2003 respectively.

526. The Mexican Government's decision to sign those instruments reflected its commitment to combating all illicit conduct related to such crimes and to taking preventive action in that regard.

**Article 69. Measures taken to ensure that the irregular situation of migrant workers does not persist in the territory of the State party and circumstances that must be taken into account in regularization procedures**

527. One basic approach to migration management is, undoubtedly, to provide proper channels for regular migration. For this reason, in 2001 a programme for the regularization of migrants was implemented to make it easier for foreigners to legalize their stay in the country. Between 1 March and 31 August 2001, INM applied the programme throughout the national territory. During this period, 6,432 applications were received from foreigners, of which 4,680 were approved.

528. The migrant regularization programme was repeated in 2004.

529. By 31 December 2004, INM had received 4,369 regularization applications, of which 2,968, or 67.9 per cent, were approved. INM rejected 186 applications (4.3 per cent) and 1,182 (27.1 per cent) are being processed. In 98.9 per cent of regularizations (2,925 cases), migrants were documented as visitors and in 1.1 per cent (33 cases) as students.

530. The main nationalities of applicants under the 2004 programme were: Guatemalan, 30.3 per cent (1,329 applications); Honduran, 23.9 per cent (1,045 applications); and Salvadoran, 11.3 per cent (492 applications).

531. In the last week of November 2004, the Government of Guatemala set up mobile consulates in some parts of the state of Chiapas to issue passports free of charge to Guatemalan nationals in an irregular situation in Mexico wanting to avail themselves of the 2004 migrant regularization programme. Moreover, to assist Guatemalans who did not have the means to pay the corresponding fine, INM charged people whose prior stay in the country had been irregular a symbolic amount of 10 pesos; of the 549 applications received at mobile consulates, 432 were approved.

532. During his visit to Mexico in May 2005, the President of El Salvador, Antonio Saca, requested the Government of Mexico to carry out a further regularization programme. President Vicente Fox agreed to do so in 2005.

533. The 2005 migrant regularization programme would be modelled on the 2004 programme, with the necessary legal adjustments, and would take place from 1 September 2005 to 31 March 2006.

**Article 70. Measures taken to ensure that the living conditions of migrant workers and members of their families are in keeping with the standards of fitness, safety and health and principles of human dignity**

534. The Constitution establishes the employer's duty to protect, inter alia, the health and safety of migrants.<sup>228</sup> The Federal Labour Act, for its part, stipulates that employers must obey certain safety norms; provide proper equipment; establish controls on hazardous substances;

facilitate the operation of joint occupational health and safety committees; provide workers with training and information on workplace risks; and protect pregnant and nursing women.<sup>229</sup> These requirements are included in Mexican official standards.

535. Labour law states that workplaces are subject to initial inspections when they open, annual inspections, and special inspections in response to complaints by workers or trade unions.

536. Under the Federal Labour Act, the Federal Labour Inspectorate is required to verify that no more than 10 per cent of a company's workforce are foreigners. In 2004, a total of 16,701 inspections were carried out, none of which thus far has found migrants working in an irregular situation.

537. As established by the labour laws in force, the Labour Inspectorate has a duty to report to other bodies or institutions any irregularities observed during its inspections of companies.

538. The regulatory framework in the area of occupational health and safety is applicable throughout the national territory and in all workplaces, irrespective of the nature of their activities.

539. In most cases, workers' rights are not only protected by the Constitution and by law, but also set forth in employment contracts, whether collective or individual. The absence of contracts does not preclude employers from respecting workers' rights, since these are also established in the corresponding laws. Where these rights are not respected, workers may have judicial recourse to the Conciliation and Arbitration Boards.

540. In addition, workers have trade unions whose aims are to study, improve and defend workers' rights, enabling them to demand respect for these rights, inter alia, by exercising the right to strike.

#### **Article 71. Repatriation of bodies of deceased migrant workers or members of their families and compensation for death**

541. Since the 1990s, consular departments for the protection of Mexicans abroad have been given a small budgetary allocation with which to defray all or part of the costs of repatriating bodies of deceased indigenous Mexicans or Mexicans with very few resources. This allocation was recently increased by the Congress, with the result that since 2004 all Mexican consulates in the United States have had sufficient funds to support most requests for the repatriation of bodies.

542. Moreover, through their protection departments, consulates provide assistance and protection to Mexicans in migration, labour, penal, civil and family matters. They have a network of consultant lawyers for that purpose, who provide free advice either to the departments themselves or directly to Mexican nationals.

## Conclusions

543. The preparation of this report represents a great opportunity for the Government of Mexico to evaluate the measures taken to comply with the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. This exercise also helped to identify shortcomings and areas where greater efforts need to be made.

544. It is important to mention that members of civil society were involved in the preparation of this report and that their comments were taken into account in its drafting.

545. The Government of Mexico, a country of origin, transit and destination of migrants, believes that dealing with migration means taking both its causes and its consequences into account. As a result, it is extremely important to handle the phenomenon in a way that fully respects the human rights of migrants and their families. Accordingly, Mexico's foreign policy in this area has been governed by the following principles:

- (a) Absolute and unrestricted respect for the human rights of all persons who emigrate, regardless of their migration status on entering Mexican territory;
- (b) Shared responsibility of countries of origin, transit and destination of migration;
- (c) Legality, safety and order;
- (d) Combating of trafficking in persons;
- (e) Non-criminalization of migrants;
- (f) Viewing migration as a tool for promoting national development.

546. The Mexican Government has also been implementing various measures to assist migrants as a vulnerable group and, in particular, to provide special protection to migrant women and minors within this group.

547. The Mexican Government has made undeniable progress in the defence and protection of migrants' human rights, in keeping with the provisions of the international instruments to which Mexico is a party, in particular the present Convention. However, on an issue where change must keep pace with the vertiginous dynamic of social transformation, it is essential that standards rise steadily and that the country stay abreast of the evolving situation. The Mexican Government is committed to achieving this.

## Notes

<sup>1</sup> See: <http://www.sre.gob.mx/servicios/consulares/memo.htm>.

<sup>2</sup> See: [http://www.sre.gob.mx/laredo/asf\\_mef.htm](http://www.sre.gob.mx/laredo/asf_mef.htm).

<sup>3</sup> See: <http://www.sre.gob.mx/eventos/repatriación/default.htm>.

- <sup>4</sup> Information provided by the National Population Council.
- <sup>5</sup> See migration statistics of the National Institute for Migration, page 3, annex 1 and annex 36.
- <sup>6</sup> Migrants tend to be more heterogeneous (greater proportion of migrants from urban areas, growing proportion of women, higher educational levels) and work in very diverse occupations and sectors.
- <sup>7</sup> Production of goods and services is classified into three production sectors: the primary sector comprises activities involving the direct extraction of natural goods, without processing. This sector includes mining, agriculture, livestock production, forestry and fisheries. The secondary sector comprises activities involving the processing of foodstuffs and raw materials by means of production processes. This sector includes the iron and steel, engineering, chemical and textile industries, production of consumer goods, computer hardware, etc. The tertiary sector comprises services or activities that use different kinds of equipment and human labour to meet the demand for transport, communications and financial activities such as banking, investment, insurance, etc. Of the economically active population, 18 per cent work in the primary sector, 24 per cent in the secondary sector and 58 per cent in the tertiary sector.
- <sup>8</sup> Information provided by the National Population Council.
- <sup>9</sup> The southern border is 982 km long. The combined population of the Mexico-Guatemala-Belize border area is approximately 1.5 million. The border area comprises 12 municipalities (Chiapas: 8; Tabasco: 2; and Campeche: 2). Fifty per cent of formal entries throughout the national territory take place on the southern border, meaning that some 7,171,982 people cross this border annually. See general migration statistics, pages 24 and 25, annex 1 and annex 36.
- <sup>10</sup> See migration statistics of the National Institute for Migration, page 14, annex 1 and annex 36.
- <sup>11</sup> Denied entry: when a foreigner is not allowed to enter the country because he/she does not have migration documents or such documents are not in order. Article 27 of the General Population Act, annex 37.
- <sup>12</sup> See migration statistics of the National Institute for Migration, page 11, annex 1 and annex 36.
- <sup>13</sup> Article 42 of the General Population Act. See general migration statistics, page 8, annex 1 and annex 36.
- <sup>14</sup> Cf. articles 44 and 48 of the General Population Act.
- <sup>15</sup> See articles 52 of the General Population Act, annex 37. From January to October 2003, INM issued 1,827 declarations of permanent residence. From January to October 2004, it issued 1,347 declarations. Information from the National Institute for Migration.

<sup>16</sup> See *Forma Migratoria de Turista, Transmigrante, Visitantes personas de negocios o Visitante Consejero*, annex 2.

<sup>17</sup> This system comprises 11 modules: migrant flow, secondary review, migration control, embarkations, repatriation, complaints, secured migrants, electronic FMI, migration archive, migration procedures and migrants' rights. The first nine of these were set up in the first phase, while the remaining two are currently being developed. The migrant flow, secondary review, migration control and embarkations modules are significant because of their links to tourism.

<sup>18</sup> The Mexican Government decided in November 2003 to join SIEMMES.

<sup>19</sup> IMO *World Migration Report 2005*. See: <http://www.iom.int>.

<sup>20</sup> *Idem*.

<sup>21</sup> *La Tribuna Hispana*, article: "Mexicanas, las peor pagadas entre los migrantes", 29 September 2003.

<sup>22</sup> "Reports, studies and other documentation for the Preparatory Committee and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Discrimination against migrants - migrant women: in search of remedies. Contribution of the Special Rapporteur on the human rights of migrants" (A/CONF.189/PC.1/19 of 14 March 2000, para. 53).

<sup>23</sup> See migration statistics of the National Institute for Migration, pages 2 and 6, annex 1 and annex 36.

<sup>24</sup> See migration statistics of the National Institute for Migration, page 10, annex 1 and annex 36.

<sup>25</sup> See attached leaflet on the Beta Groups, annex 3.

<sup>26</sup> See attached copy of *Cartel INM Informa*, annex 4.

<sup>27</sup> The Convention on the Elimination of All Forms of Discrimination against Women was published in the *Diario Oficial de la Federación* on 12 May 1981.

<sup>28</sup> The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) was published in the *Diario Oficial* on 19 January 1999.

<sup>29</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was published in the *Diario Oficial* on 13 August 1999.

<sup>30</sup> The founding countries of the Regional Conference on Migration are those belonging to the North and Central America region (Belize, Canada, Costa Rica, El Salvador, Guatemala,



Honduras, Mexico, Nicaragua, Panama and the United States). In 1999, they agreed to a request by the Dominican Republic to become a member, so that 11 countries are now represented. Five countries also participate as observers: Argentina, Colombia, Ecuador, Jamaica and Peru.

Various international organizations, such as the International Organization for Migration (IOM), the Office of United Nations High Commissioner for Refugees (UNHCR) and the Economic Commission for Latin America and the Caribbean (ECLAC) attend as observers. They are included because of their expertise in this area but do not have the same role as a member State. Non-governmental organizations of member countries are also welcome at meetings.

<sup>31</sup> See attached INMUJERES/INM general cooperation agreement, annex 5.

<sup>32</sup> For the programme and participants at these events, see: <http://www.inmujeres.gob.mx./pprincipal/index.html>.

<sup>33</sup> Information from the National Institute for Migration.

<sup>34</sup> Ibid.

<sup>35</sup> See attached INM document with the repatriation procedure for unaccompanied Mexican minors and foreign minors, annex 8.

<sup>36</sup> In 1977, DIF was decentralized, with the result that Mexico City has only two nurseries for minors up to age 6 and two homes for minors aged 6 to 18: one for boys and one for girls. They do not function simply as shelters - the care provided is comprehensive.

<sup>37</sup> See the attached document "*Derechos y Deberes de los Niños y Niñas Migrantes*" (rights and duties of migrant children), annex 8.

<sup>38</sup> See attached cooperation agreement establishing joint action for repatriated unaccompanied Mexican and foreign migrant children and adolescents, annex 10.

<sup>39</sup> Information from the National Institute for Migration.

<sup>40</sup> Information from the National Institute for Migration.

<sup>41</sup> Article 217 of the General Population Act, annex 17.

<sup>42</sup> Seven local agreements for the safe and orderly repatriation of Mexican nationals are attached in annex 6.

<sup>43</sup> See attached Agreement for the Safe and Orderly Repatriation of Central Americans on the Borders of Mexico and Guatemala, annex 7.

<sup>44</sup> See attached survey of the situation of human rights in Mexico, annex 11.

<sup>45</sup> See attached National Human Rights Programme, annex 12.

<sup>46</sup> At the sixtieth session of the Commission on Human Rights, Mexico put forward the following resolutions: 2004/52 entitled “Human rights of persons with disabilities”, submitted jointly with Sweden and adopted without a vote; 2004/53 entitled “Human rights of migrants”, adopted without a vote; 2004/56 entitled “International Convention on the Rights of All Migrant Workers and Members of Their Families”, adopted without a vote; 2004/62 entitled “Human rights and indigenous issues”, submitted jointly with Guatemala and adopted without a vote; and 2004/87 entitled “Protection of human rights and fundamental freedoms while countering terrorism”, adopted without a vote.

<sup>47</sup> At the fifty-ninth session of the General Assembly of the United Nations, the following resolutions, among others, were put forward: 59/260 entitled “Future functioning of the International Research and Training Institute for the Advancement of Women”, submitted jointly with Morocco and adopted without a vote; 59/262 entitled “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”, adopted without a vote; 59/191 entitled “Protection of human rights and fundamental freedoms while countering terrorism”, adopted without a vote; 59/198 entitled “Ad Hoc Committee on the drafting of a comprehensive international convention for the protection and promotion of the rights and dignity of persons with disabilities”, adopted without a vote; and 59/194 entitled “Protection of migrants”, adopted without a vote.

<sup>48</sup> At the sixty-first session of the Commission on Human Rights, the following resolutions were put forward: 2005/80 entitled “Protection of human rights and fundamental freedoms while countering terrorism”, adopted without a vote; 2005/47 entitled “Human rights of migrants”, adopted without a vote; 2005/65 entitled “Human rights of persons with disabilities”, submitted jointly with Sweden and adopted without a vote; 2005/51 entitled “Human rights and indigenous issues”, submitted jointly with Guatemala and adopted without a vote; and 2005/25 entitled “Women’s equal ownership, access to and control over land and the equal rights to own property and to adequate housing”, adopted without a vote.

<sup>49</sup> See report submitted by the Special Rapporteur of the Commission on Human Rights on the human rights of migrants (E/CN.4/2003/85/Add.1 and E/CN.4/2003/85/Add.3 and Corr.1), annex 13.

<sup>50</sup> Ibidem.

<sup>51</sup> Ibidem.

<sup>52</sup> Report submitted by the Special Rapporteur of the Commission on Human Rights on the human rights of migrants (E/CN.4/2003/85/Add.2 and E/CN.4/85/Add.3 and Corr.1), annex 13.

<sup>53</sup> See attached document on the recommendations of the office of the Special Rapporteur on migrant workers and members of their families of the Inter-American Commission on Human Rights, annex 14.

<sup>54</sup> Resolutions AG/RES.2130 (XXXV-O/05) and AG/RES. 2141 (XXXV-O/05) of the General Assembly of the Organization of American States.

<sup>55</sup> See attached list of civil society organizations and the Subcommittee's agenda, annex 15.

<sup>56</sup> See attached agreement setting up the Commission on Governmental Human Rights Policy, annex 16.

<sup>57</sup> See: <http://www.pdhumanos.org/>.

<sup>58</sup> See attached copy of the publication "Human rights of migrants", Mexico-European Commission Cooperation Programme on Human Rights, annex 17.

<sup>59</sup> The text of the reservation is the following: "The Government of the United Mexican States makes an express reservation with regard to article 22, paragraph 4, of this Convention, insofar as it refers to the application of article 33 of the Political Constitution of the United Mexican States and article 125 of the General Population Act". See: <http://www.ohchr.org/english/countries/ratification/13.htm#reservations>.

<sup>60</sup> See article 125 of the General Population Act, annex 37.

<sup>61</sup> According to article 126 of the General Population Act, the Ministry of the Interior shall specify the period during which the foreigner may not re-enter the country. During that period, the foreigner may be readmitted only with the express agreement of the Minister of the Interior or the respective deputy minister.

<sup>62</sup> Article 3 of the Federal Labour Act.

<sup>63</sup> Article 58 of the Federal Act to Prevent and Eliminate Discrimination.

<sup>64</sup> To make a private or official complaint concerning an alleged discriminatory act, it is sufficient to send a letter of complaint to the chairperson of CONAPRED, giving the following:

1. Name of the complainant.
2. Details of the person(s) who suffered discrimination.
3. Description of the facts.
4. Signature or fingerprint of the complainant.

Private or official complaints may also be made by telephone or e-mail ([quejasyr@conapred.org.mx](mailto:quejasyr@conapred.org.mx)), but they must be confirmed in writing within five working days after making the complaint (article 49 of the Federal Act to Prevent and Eliminate Discrimination).

<sup>65</sup> Article 44 of the Federal Act to Prevent and Eliminate Discrimination.

- <sup>66</sup> Article 206 of the Federal District Criminal Code.
- <sup>67</sup> Article 83 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>68</sup> Under article 1915 of the Federal Civil Code, reparation for injury must comprise, at the choice of the injured party, either restoration of the pre-existing situation, where this is possible, or payment of damages.
- <sup>69</sup> Article 16, paragraph 8, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>70</sup> Article 2 of the Convention.
- <sup>71</sup> Frontier worker, seasonal worker, seafarer, worker on an offshore installation, itinerant worker, project-tied worker, specified-employment worker and self-employed worker.
- <sup>72</sup> Article 59, paragraph 2, of the Convention.
- <sup>73</sup> See attached copy of the “*Guia Paisano*”, annex 18.
- <sup>74</sup> See Mexico’s report to the Committee against Torture, submitted pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Measures taken in the period 1997-2004 to comply with the obligations established in the Convention: [www.sre.gob.mx/substg](http://www.sre.gob.mx/substg).
- <sup>75</sup> Convention No. 29 concerning Forced or Compulsory Labour was ratified by Mexico on 12 May 1934.
- <sup>76</sup> Convention No. 105 concerning the Abolition of Forced Labour was ratified by Mexico on 1 June 1959.
- <sup>77</sup> The Slavery Convention was signed in Geneva on 25 September 1926 and entered into force on 9 March 1927 pursuant to article 12. Mexico has been a party since 3 February 1954.
- <sup>78</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Adopted by a Conference of Plenipotentiaries convened by the Economic and Social Council in resolution 608 (XXI) of 30 April 1956. Entered into force on 30 April 1957 pursuant to article 13. Mexico has been a party since 7 September 1956.
- <sup>79</sup> Information from the National Institute for Migration.
- <sup>80</sup> See: <http://www.unicef.org/mexico>.
- <sup>81</sup> See attached provisions of state laws criminalizing trafficking in persons, annex 19.
- <sup>82</sup> See attached agreement on the protection of foreign victims, annex 20.

<sup>83</sup> See attached Memorandum of Understanding for the Protection of Women and Minors Victims of Trafficking in Persons on the Border between Mexico and Guatemala, annex 21.

<sup>84</sup> See Mexico-El Salvador Memorandum of Understanding for the Protection of Persons, Especially Women and Minors, Victims of Illicit Trafficking, annex 22.

<sup>85</sup> Information from the National Institute for Migration.

<sup>86</sup> Article 6 of the Political Constitution of Mexico.

<sup>87</sup> Article 7 of the Political Constitution of Mexico.

<sup>88</sup> Article 16 of the Political Constitution of Mexico.

<sup>89</sup> See migration statistics, page 13, annex 1 and annex 36.

<sup>90</sup> Article 27, section I, of the Political Constitution of Mexico: I. Only Mexicans by birth or naturalization or Mexican companies have the right to acquire ownership of land, waters and access thereto or to obtain concessions to exploit mines or waters. The State may grant the same right to foreigners, provided that they agree before the Ministry of Foreign Affairs to consider themselves Mexicans with respect to such property and therefore not to invoke their governments' protection in that regard, subject, in the event of non-compliance with the agreement, to the penalty of surrendering to the nation the property thus acquired. Within a 100-kilometre zone along the borders and a 50-kilometre zone along the coasts, foreigners may not for any reason acquire direct ownership of land and waters.

The State, in keeping with the domestic public interest and the principles of reciprocity, may, at the discretion of the Ministry of Foreign Affairs, grant foreign States authorization to acquire, in the permanent place of residence of the federal authorities, private ownership of real estate necessary for the direct service of their embassies or legations.

<sup>91</sup> Article 16 of the Political Constitution of Mexico.

<sup>92</sup> Information from the National Institute for Migration.

<sup>93</sup> For instance, article 123 of the General Population Act (annex 37) states that a penalty of up to two years' imprisonment and a fine of 300 to 5,000 pesos shall be imposed on any foreigner who enters the country illegally. Although, in practice, this does not happen, since undocumented migrants are expelled from the country without remedy or criminal trial, the resulting legislative ambiguity creates a distinction between the law, practice and official statements that migrants are not treated as criminals. Accordingly, work is under way on an amendment to migration law.

<sup>94</sup> Article 71 of the General Population Act, annex 37.

<sup>95</sup> Information from the National Institute for Migration.

<sup>96</sup> The figure does not include staffing and investment costs. Information from the National Institute for Migration.

<sup>97</sup> Information from the National Institute for Migration.

<sup>98</sup> See attached performance parameters of the National Institute for Migration, annex 23.

<sup>99</sup> See attached list of complaints dealt with by the National Human Rights Commission in the period January-August 2005, annex 24.

<sup>100</sup> See attached Agreement issuing norms for the functioning of INM migrant holding centres, annex 25.

<sup>101</sup> Information from the Department of Consular Protection and Consular Affairs of the Ministry of Foreign Affairs.

<sup>102</sup> Articles 16, 18 and 19 of the Political Constitution of Mexico.

<sup>103</sup> To remedy the moral injury, the Government of Mexico published on 3 March 2004 in the newspaper *El Universal* an acknowledgement of its responsibility in Case 11,610, signed jointly by the Ministry of the Interior, INM and the Ministry of Foreign Affairs. It also paid 900,000.00 Mexican pesos as reparation for the economic injury.

<sup>104</sup> Articles 145 to 156 of the General Population Act, annex 37.

<sup>105</sup> Article 227 of the General Population Act regulations, annex 37.

<sup>106</sup> Article 28, section IV, of the Federal Code of Criminal Procedure.

<sup>107</sup> Articles 16 and 19 of the Constitution provide that no detention before the judicial authority may exceed a period of 72 hours, from when the accused was brought before the judicial authority, without a formal detention order indicating the crime of which the person is accused, the place, time and circumstances of its commission and the results of the preliminary investigation.

<sup>108</sup> Article 23 of the Political Constitution of Mexico.

<sup>109</sup> Article 19, paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>110</sup> Article 18 of the Political Constitution of Mexico.

<sup>111</sup> Articles 14 and 16 of the Political Constitution of Mexico.

<sup>112</sup> Article 114 of the General Population Act regulations, annex 37.

- <sup>113</sup> Article 195 of the General Population Act regulations, annex 37.
- <sup>114</sup> “The Government of the United Mexican States makes an express reservation with regard to articles 18 and 22 of this Convention, insofar as they refer to the application of article 33 of the Political Constitution of the United Mexican States and article 125 of the General Population Act.”
- <sup>115</sup> Article 22, paragraph 6, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- <sup>116</sup> Article 146 of the General Population Act regulations, annex 37.
- <sup>117</sup> Article 212 of the General Population Act regulations, annex 37.
- <sup>118</sup> Article 36 of the Vienna Convention on Consular Relations.
- <sup>119</sup> See attached copy of “*Derechos y Reglas de Convivencia del Extranjero en la Estación Migratoria*”, which has been translated into Chinese, English, French and Portuguese, annex 26.
- <sup>120</sup> Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.
- <sup>121</sup> From 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. on Tuesdays, Thursdays, Saturdays and Sundays.
- <sup>122</sup> The Senate of the Republic approved Mexico’s accession to membership of the International Organization for Migration (IOM), in which it had been an observer since 1983, in November 2001. As soon as Mexico became a member of IOM in June 2002, close communication and cooperation were established with the Ministry of the Interior, through INM, which has translated into specific projects benefiting migrants.
- The main areas of cooperation between IOM and INM/Ministry of the Interior are the following: (a) repatriation of migrants; (b) minors victims of illicit trafficking of persons; (c) training of government officials; (d) transformation of the SIEMCA project into SIEMMES; (g) technical cooperation in migration management; and (h) IOM presence in Mexico.
- <sup>123</sup> Article 153 of the General Population Act. Such cases are: when some legal action, such as a remedy of *amparo*, or some complaint is in the process of being resolved; when there is some physical or mental impediment; on occasions where the person is secured for a period beyond 90 days. Annex 37.
- <sup>124</sup> See: [www.sre.gob.mx/ime](http://www.sre.gob.mx/ime).
- <sup>125</sup> See: [www.sre.gob.mx/ime](http://www.sre.gob.mx/ime).

<sup>126</sup> Article 1 of the Constitution: “In the United Mexican States, all individuals shall enjoy the guarantees accorded by this Constitution, which may not be restricted or suspended except in the cases and under the conditions established by the Constitution.

Slavery is prohibited in the United Mexican States. Slaves entering the national territory from abroad thereby automatically gain their freedom and the protection of Mexican laws.

All discrimination on grounds of ethnic or national origin, gender, age, different abilities, social status, health conditions, religion, opinions, preferences, marital status or any other discrimination that violates human dignity and is intended to cancel or restrict the rights and freedoms of persons is prohibited.”

Article 4: “Men and women are equal before the law”.

<sup>127</sup> Article 123, section VII, of the Political Constitution of Mexico.

<sup>128</sup> Under article 90 of the Federal Labour Code, the minimum wage is the minimum amount that the worker must receive in cash for the services provided in a day’s work.

<sup>129</sup> Article 141 of the Social Security Act regulations states that before giving a foreigner work, interested parties must verify whether the conditions attached to the foreigner’s migration status allow him/her to engage in the activities in question and, if not, must refrain from hiring him/her. Such verification must be carried out using the migration documentation in force. In case of doubt, they must consult the migration authorities.

<sup>130</sup> Article 169 of the Social Security Act.

<sup>131</sup> In the case of Mexico, to the compulsory and voluntary schemes envisaged in the Social Security Act and its regulations with regard to disability benefits, old-age pensions, benefits for unemployment in old age and death benefits; in the case of Canada, to the Old Age Security Act and its regulations and the Canada Pension Plan.

<sup>132</sup> According to the Ministry of Health, to provide health care for the entire population, the national health system currently has 18,557 health units, 15.7 per cent more than in 1966, with 130,469 doctors and 179,634 nurses, almost 44 per cent of whom provide health care to the legal population.

<sup>133</sup> There are currently 15 migrant protection groups: 11 Beta Groups on the northern border, at Tijuana, Tecate and Mexicali in Baja California; San Luis Rio Colorado, Sonoyta, Nogales, Sásabe and Agua Prieta in Sonora; Piedras Negras in Coahuila; Ciudad Juárez in Chihuahua; and Matamoros in Tamaulipas; and four Groups on the southern border, at Comitán and Tapachula in Chiapas; Tenosique in Tabasco; and Acayucan in Veracruz.

<sup>134</sup> According to the National Population Council, 53 per cent of the Mexican population in the United States do not have access to health care. See <http://www.conapo.gob.mx>.



- <sup>135</sup> The model for teaching migrant children and the norms for evaluating and certifying the programme will be phased out by the end of 2005.
- <sup>136</sup> See <http://portal.sre.gob.mx/ime/index.php?option=displaypage&Itemid=112&op=page&SubMenu=>
- <sup>137</sup> Articles 29, 30 and 31 of the General Population Act and its regulations, annex 37.
- <sup>138</sup> Article 30 of the Political Constitution of Mexico.
- <sup>139</sup> Information from the Ministry of Finance and Public Credit.
- <sup>140</sup> Ministry of Finance and Public Credit. See: [www.shcp.gob.mx](http://www.shcp.gob.mx).
- <sup>141</sup> Ibidem.
- <sup>142</sup> Information from the Ministry of Finance and Public Credit.
- <sup>143</sup> See: [http://www.sedesol.gob.mx/transparencia/transparencia\\_iniciativa\\_3x1.htm](http://www.sedesol.gob.mx/transparencia/transparencia_iniciativa_3x1.htm).
- <sup>144</sup> Mexico joined OECD in 1992 and, in the migration sphere, belongs to the Continuous Reporting System on Migration and the Working Group on Migration, whose main activities are: exchanging information on national policies and practices and other economic and social aspects; gathering and distributing information systematically on migration trends, relevant statistical data, practices and policies of member and non-member countries; promoting and facilitating cooperation between countries of emigration and immigration.
- <sup>145</sup> See attached copy of the *Cartilla de Derechos Humanos de los Migrantes*, annex 27.
- <sup>146</sup> See: [www.inami.gob.mx](http://www.inami.gob.mx).
- <sup>147</sup> See attached information leaflet on the International Convention on the Rights of All Migrant Workers and Members of Their Families, annex 28.
- <sup>148</sup> See: <http://www.inami.gob.mx>.
- <sup>149</sup> See attached information leaflet on the Visiting Agricultural Worker Migration Form (FMVA), annex 29.
- <sup>150</sup> Article 162 of the General Population Act regulations, annex 37.
- <sup>151</sup> See Federal Electoral Institute website: <http://www.ife.org.mx>.
- <sup>152</sup> Article 123, section XXII: An employer who dismisses a worker without just cause or for joining an association or trade union or taking part in a lawful strike shall be obliged, at the option of the worker, to pay him/her compensation equivalent to three months' wages. The law shall determine the cases in which an employer may be exempted from the obligation to honour

the contract, through the payment of compensation. An employer shall also be obliged to pay a worker compensation equal to three months' wages when the worker withdraws from service because the employer is dishonest or mistreats the worker or his/her spouse, parents, children or brothers or sisters. An employer may not be exempted from this responsibility when dependants or family members inflict such mistreatment with his/her consent or tolerance.

<sup>153</sup> Article 50 of the Federal Labour Code: The compensation referred to in this article shall be the following:

- I. If the employment relationship is for a fixed term of less than one year, an amount equal to the wages for half the period of service; if the relationship is for a fixed term of over one year, an amount equal to six months' wages for the first year and 20 days' wages for each subsequent year of service;
- II. If the employment relationship is for an indefinite period, an amount equal to 20 days' wages for each year of service; and
- III. In addition to the compensation referred to in the preceding paragraphs, three months' wages and any wages owing from the date of dismissal to the date on which the compensation is paid.

<sup>154</sup> For more information, see the Directory of the National Employment Service on the website of the Ministry of Labour and Social Security, [www.stps.gob.mx](http://www.stps.gob.mx).

<sup>155</sup> Article 123, section XX, of the Political Constitution of Mexico.

<sup>156</sup> The jobseeker has simply to dial the toll-free number 01-800-111-6000 from anywhere in the country and his/her call will be dealt with by specialized staff at the *Chambatel* call centre of any state.

<sup>157</sup> See: [www.chambanet.gob.mx](http://www.chambanet.gob.mx).

<sup>158</sup> Information from the Ministry of Labour and Social Security.

<sup>159</sup> Information from the National Workers' Housing Fund.

<sup>160</sup> Article 48, section VII, of the General Population Act, annex 37.

<sup>161</sup> Article 209, paragraph VIII, of the General Population Act regulations, annex 37.

<sup>162</sup> Article 42, paragraph III, of the General Population Act, annex 37.

<sup>163</sup> Articles 52 and 53 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>164</sup> See: <http://www.iadb.org/aboutus/index.cfm/language=Spanish>.

<sup>165</sup> Information from the Ministry of Finance and Public Credit.

<sup>166</sup> See: [www.shcp.gob.mx](http://www.shcp.gob.mx) and also explanation under article 32.

<sup>167</sup> See article 60 of the General Population Act and article 140 of the General Population Act regulations, annex 37.

<sup>168</sup> Articles 112 and 114 of the General Population Act, annex 37.

<sup>169</sup> Article 32 of the Political Constitution of Mexico.

<sup>170</sup> Article 7 of the Federal Labour Act.

<sup>171</sup> Article 4 of the Federal Labour Act. No person may be prevented from working or from engaging in a lawful profession, industry or trade. The exercise of these rights may be prohibited by a ruling of the competent authority only when the rights of third parties are threatened or those of society are flouted.

I. The rights of a third party are threatened in the cases provided by law and in the following cases:

(a) When an attempt is made to replace a worker who has been separated from service, or that worker is definitively replaced, without the case being resolved by the Conciliation and Arbitration Board;

(b) When a worker who has been separated from service by reason of illness or force majeure or with leave of absence is denied the right to resume his previous post when he returns to work; and

II. The rights of society are flouted in the cases provided by law and in the following cases:

(a) When, after a strike has been declared on the terms established by this Act, an attempt is made to replace the strikers in their work, or the strikers are definitively replaced, without the dispute that gave rise to the strike being settled, except as provided in article 468;

(b) When, after a strike has been declared on equally lawful terms by the majority of a company's workers, the minority seek to resume work or continue working.

<sup>172</sup> Information from the National Institute for Migration.

<sup>173</sup> Article 42, section IX, of the General Population Act, annex 37.

<sup>174</sup> See attached National Institute for Migration circulars CRE/003-2000 and 006-2000 granting nationals of Belize and Guatemala the Local Visitor Migration Form (FMVL), annex 30.

<sup>175</sup> Information from the National Institute for Migration. See: [www.inami.gob.mx/paginas/710000.htm](http://www.inami.gob.mx/paginas/710000.htm).

<sup>176</sup> Information from the National Institute for Migration. See: [www.inami.gob.mx/paginas/710000.htm](http://www.inami.gob.mx/paginas/710000.htm).

<sup>177</sup> See migration statistics, page 5, annex 1 and annex 36.

<sup>178</sup> Guatemalans and Salvadorans who work in construction and domestic employment (in the case of women) in Mexico's border area are generally undocumented migrants and thus not covered by the current documentation programme for migrant seasonal agricultural workers, who are issued an FMVA exclusively for agricultural work.

<sup>179</sup> Information from the Centre for Migration Studies of the National Institute for Migration.

<sup>180</sup> See attached National Institute for Migration circular No. CRE/247/97 establishing guidelines for the entry of Guatemalan agricultural workers using the Visiting Agricultural Worker Migration Form (FMVA), annex 31.

<sup>181</sup> Information from the National Institute for Migration.

<sup>182</sup> According to INM, a large number of undocumented workers also enter the country through informal crossing points in order to engage in an economic activity in construction, restaurant work, domestic employment, manufacturing or street trading.

<sup>183</sup> Information from the Centre for Migration Studies of the National Institute for Migration.

<sup>184</sup> Information from the National Institute for Migration. See: [www.inami.gob.mx/paginas/estadisticas/enerodic04/registro.mht](http://www.inami.gob.mx/paginas/estadisticas/enerodic04/registro.mht).

<sup>185</sup> Article 142, section III, of the General Population Act, annex 37.

<sup>186</sup> Idem.

<sup>187</sup> Idem.

<sup>188</sup> Mexico has signed free trade agreements with: Colombia and Venezuela, the United States and Canada, the European Union, the Northern Triangle (made up of Guatemala, Honduras and El Salvador), Nicaragua, Costa Rica, Chile, Israel, Bolivia, the European Free Trade Area, Uruguay and Japan.

<sup>189</sup> Iceland, Norway, Liechtenstein and Switzerland.

- <sup>190</sup> Article 162, paragraph IV, of the General Population Act regulations, annex 37.
- <sup>191</sup> See explanation under article 62 above.
- <sup>192</sup> Information from the Ministry of Labour and Social Security.
- <sup>193</sup> Information from the Ministry of Labour and Social Security.
- <sup>194</sup> Information from the Ministry of Labour and Social Security.
- <sup>195</sup> The *Abriendo Espacios* programme is a network of specialized linkages which seeks to coordinate public and private inter-agency efforts in order to promote access to jobs for people with disabilities and older adults, with full respect for and the exercise of their human, political and social rights. Ministry of Labour and Social Security.
- <sup>196</sup> Information from the Ministry of Labour and Social Security.
- <sup>197</sup> Mexico also has consular offices in Canada, in Toronto, Montreal and Vancouver, which monitor the correct implementation of the programme.
- <sup>198</sup> Information from the National Population Council.
- <sup>199</sup> Information from the National Institute for Migration.
- <sup>200</sup> Article 11 of the regulations defines as a for-profit employment agency any private individual or legal entity that, in return for payment, directly or indirectly puts jobseekers in touch with persons requiring their services.
- <sup>201</sup> Information from the Ministry of Labour and Social Security.
- <sup>202</sup> Information from the Ministry of Labour and Social Security. See: [www.stps.gob.mx](http://www.stps.gob.mx).
- <sup>203</sup> The amount of the envisaged support is 2,000 pesos and it is paid in two equal instalments. The first payment is made in the first days following repatriation and the second payment is made between two and three weeks after the first. The period of support comprises a first month beginning on the date on which the person is transferred to Mexico as a returnee and one to three additional months for the training process. This support may be granted only once. Ministry of Labour and Social Security.
- <sup>204</sup> The Ministry of Labour *Bécate* programme comprises a one- to three-month scholarship, transport assistance, accident insurance and primary health care. Ministry of Labour and Social Security.
- <sup>205</sup> See attached Memorandum on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals, annex 32.
- <sup>206</sup> Information from the National Institute for Migration.

- <sup>207</sup> Information from the National Institute for Migration.
- <sup>208</sup> Information from the National Institute for Migration.
- <sup>209</sup> Information from the National Institute for Migration.
- <sup>210</sup> Information from the National Institute for Migration.
- <sup>211</sup> Information from the National Institute for Migration.
- <sup>212</sup> See attached Agreement for the Orderly, Swift and Safe Repatriation of Salvadoran Nationals by Land from Mexico, annex 33.
- <sup>213</sup> See attached memorandum of Understanding on the Voluntary and Assisted Return of Extraregional Migrants, annex 34.
- <sup>214</sup> In 2002, there were 231 reading rooms in operation, in the states of Illinois, California, Arizona, Texas, Georgia, Oregon and Florida. National Council for Culture and the Arts.
- <sup>215</sup> This Foundation works with organized groups in California, Texas and New York to promote binational production projects with migrant communities. National Council for Culture and the Arts.
- <sup>216</sup> Information from the International Organization for Migration.
- <sup>217</sup> See general migration statistics, pages 16 to 21, annex 1 and annex 36.
- <sup>218</sup> Information from the National Institute for Migration.
- <sup>219</sup> Information from the National Institute for Migration.
- <sup>220</sup> The *Cartilla de Derechos Humanos para los Migrantes* contains information on, inter alia, the rights of undocumented migrants, the risks they face in crossing the border and the institutions with which they can file complaints. National Institute for Migration.
- <sup>221</sup> In 2001, the following were distributed: 25,000 leaflets on migrant protection (in English and Spanish, annex 35), respect for human rights (in English and Spanish) and the Seasonal Agricultural Workers Programme (in Spanish). In addition, 5,000 copies of the migrant protection poster “*Nuevas Acciones del INM*” and 5,000 copies of the migrant protection poster “*Más Acciones del INM*” were distributed.

Eight issues of the mural newspaper *INM Informa* have so far been distributed, with a total of 40,000 posters issued and 15,000 more in production.

<sup>222</sup> In 2004, 12 radio programmes in the *Realidades Migratorias* series were produced and broadcast by the XEB station, 1229 AM. The 30-minute programmes were on the following topics: upgrading of migrant detention centres, migrant protection, summer 2004, safe and orderly repatriation of migrants, consuls' visits to the northern and southern borders, voluntary repatriation of Mexicans (two programmes), migrant protection, signing of the Memorandum of Understanding between the International Organization for Migration and the Ministry of the Interior on Cooperation on Assisted Returns of Migrants, quarterly meeting with consuls, evaluation of the voluntary repatriation programme, trafficking in women, adolescents and children in the Americas for purposes of exploitation, and migrant minors.

<sup>223</sup> Article 138 of the General Population Act, annex 37.

<sup>224</sup> See migration statistics, page 15, annex 1 and annex 36.

<sup>225</sup> Information from the National Institute for Migration.

<sup>226</sup> Information from the National Institute for Migration.

<sup>227</sup> Information from the National Institute for Migration.

<sup>228</sup> Article 123, section XV, of the Political Constitution of Mexico.

<sup>229</sup> Article 372, sections III and IV, of the Federal Labour Act.

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