

# THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

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### HUMAN SMUGGLING: POLICIES, PRACTICES & LEGISLATION (MEXICO 2000-2003)

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*"I don't know why they don't get a visa to come to Mexico? They prefer to take the easy way: to travel undocumented"*  
Lic. Oscar Romero Maldonado, Delegate of the INM in Coahuila

#### METHODOLOGY

1. This report is anchored in five premises: (1) Mexico is a transit country for thousands of regional, continental and transcontinental migrants; (2) The great majority of these migrants are from Central America; (3) These migrants do not want to remain in Mexico; their stated goal is to enter the United States through its southern border; (4) Mexico's immigration policy's main objective is stopping and immediately deporting these migrants before they reach the Mexico-U.S border; and (5) Only a portion of Central American migrants rely on smugglers, and mainly use them to help them cross the Mexico-U.S. Border.
2. In preparing this report, the Consultant drew on statements and opinions of migrants, government authorities, not-for-profit organisations, academics and journalists. The Consultant accessed that information through documentary sources and surveys of the actors on the field. The Consultant chose to survey the opinions of migrants, authorities and civil society in three locations along the migration path: (1) Mexico City, the site of the federal government and the 'model' detention centre; (2) Tapachula, a city in the Mexican southern state of Chiapas which borders with Guatemala; and (3) Saltillo, the capital of the northern state of Coahuila which, for many migrants, marks the starting point of the last stretch before the border
3. The first segment of this report describes the root causes of the migration flows traversing Mexico and the origin of the border policies and practices with which its government combats immigrants and smugglers alike. The second part of the report examines the national legislation which purpose is to control, deter and sanction undocumented migration and smuggling and contrasts the results of its application with the stated objectives of the *U.N. Convention against*

*Transnational Organized Crime (Convention), and its Smuggling Protocol.* The report aims to discern whether the Mexican government has created mechanisms and applies effective measures to protect migrants from the abusive action of the State or private individuals.

#### **WHY DO THE MIGRANTS WANT TO GET TO THE UNITED STATES?**

4. All the migrants interviewed for this report share similar characteristics and desires. All are poor and young, and yearn to have an opportunity to improve their living conditions. “We cannot make a living at home; we need to find money on the other side.” Simply stated, that is the reason that determines and directs their efforts to cross the border undetected and then to seek employment with “any person, anywhere”<sup>1</sup>.
5. The migrants’ success rate in achieving their stated goal is phenomenal. According to the Inter-American Development Bank (IADB), globally approximately “125 million migrant workers regularly send money to support another 500 million relatives back home (averaging four per household)”.<sup>2</sup> “Today, the number of economic migrants (approximately 175 million) would alone constitute the sixth most populous country in the world. So people move ‘North’ by the millions, and money moves ‘South’ by the billions.”<sup>3</sup>
6. As IADB also reported, in 2004 migrants from the Latin American and Caribbean countries alone remitted to their countries a total of more than 45 billion U.S. dollars, and almost 75% of that amount was sent from the United States.<sup>4</sup> Among Latin American countries, Mexico was the largest recipient of remittances (16,616 billion), Guatemala was the fourth (2,681 billion), El Salvador the fifth (2,548 billion), Honduras the ninth (1,134 billion) and Nicaragua the tenth (810 billion).<sup>5</sup>
7. If these rankings are understood in the context of the poverty that is the migrants’ starting point, it is not surprising that so many Central American countries are among the top ten countries in the world in amount of remittances received from their migrants abroad. “Central America is home of some of the world’s poorest and more densely populated countries.”<sup>6</sup> Among them “Honduras and Nicaragua are considered to be two of the poorest countries in the Western Hemisphere.”<sup>7</sup>
8. As IADB also reported, in 2004 migrants from the Latin American and Caribbean countries alone remitted to their countries a total of more than 45 billion U.S. dollars, and almost 75% of that amount was sent from the United States.<sup>8</sup> Among Latin American countries, Mexico was the largest recipient of remittances (16,616 billion), Guatemala was the fourth (2,681 billion), El Salvador the fifth (2,548 billion), Honduras the ninth (1,134 billion) and Nicaragua the tenth (810 billion).<sup>9</sup>

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<sup>1</sup> Statement of Alonzo Camacho, quoted in *El Universal*. *Una Frontera Porosa*. By Kevin Sullivan of the Washington Post. Mexico. March 14, 2005 p. A4.

<sup>2</sup> Inter-American Development Bank, Multilateral Investment Fund. [Remittances 2004. Transforming Labor Markets and Promoting Financial Democracy](http://www.iadb.org/mif/v2/files/studyMIF_NYMar05.pdf). Washington D.C. March 2005, p.4

<sup>3</sup> Id. 3

<sup>4</sup> Id. 2

<sup>5</sup> Id. 5

<sup>6</sup> U.S. Department of Energy. Energy Information Administration. *Regional Indicators: Central America*. September 2004. <http://www.eia.doe.gov/emeu/cabs/centam.html>

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

9. According to the Pew Hispanic Center, there are 11 million undocumented non-citizens in the U.S. with Mexicans numbering approximately 5.9 million or 57 percent of the total.<sup>10</sup> Other Latin American nationalities account for 2.5 million or 24 percent of the total.<sup>11</sup> The great majority of the immigrant work force does not have legal status in the United States, and despite the many hurdles they have to overcome to place their services in the U.S. labour market undocumented migrants continue to arrive such that the number of newly arrived undocumented migrants added to the U.S. population averages 700,000 to 800,000 a year.<sup>12</sup>
10. The data provided by IADB and the Pew Hispanic Center allows us not only to approximate the size and productive force of the immigrant labour force residing in the United States, but also signals two important facts: (1) that the causes that have pushed people from their communities in the last decade remain unattended as they continue to push them out, and (2) that the existence of a U.S. job market for their labour continues to draw them towards U.S. territory.
11. In the process of reaching some balance between these “push and pull forces”<sup>13</sup>, the seemingly insurmountable immigration floodgates lose their strength, however temporarily, to yield entry to some. Reaching this imperfect equilibrium is a notable feat, considering that the U.S. government constantly recalibrates its border control policies to prevent and deter the arrival of the massive influx of undocumented labour.<sup>14</sup> The dynamic created by the State’s constant enhancement of its security polices and the migrants effort to avert them not only consumes enormous resources but causes incommensurable human suffering.
12. In order to prevent the many tragedies that migrants endure, society and State must agree to deconstruct the policies and statutes that legitimise abusive State action, and concentrate efforts and resources in constructing an efficient system that protects the human rights of migrants. To that end civil society and the State must change their viewpoint in relation to the migrant and migration flows.
13. If State and society continue to regard their infrastructure, possessions and services, as their main active, they could easily justify the use of public force to protect them, and society must be willing to accept as a “necessary evil” the sacrifice of some its liberties and/or people. If, in addition, mass migration is characterised as a discrete phenomenon, policymakers would approach migrants and their plight as an occurrence, however visible, but disconnected from the force by which, or the law in accordance with which, it may be produced. Hence, the State’s policies with respect to massive migration flows would be fragmentary, uncoordinated and devoid of any sense of responsibility and accountability for the suffering caused by their application.
14. If, in the alternative, State and society agree to approach migration flows as a human rights issue – as the right of every individual to search for freedom and development – then the State’s programs and policies would be oriented to uproot its generating causes: “poverty as well as

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<sup>10</sup> Passel, Jeffrey S. 2005. Estimates of the Size and Characteristics of the Undocumented Population. Pew Hispanic Center. p.2 [www.pewhispanic.org/files/reports/44.pdf](http://www.pewhispanic.org/files/reports/44.pdf)

<sup>11</sup> Id. 3

<sup>12</sup> Id.3

<sup>13</sup> Employer sanctions are not an effective deterrent for the U.S. employers who demand and recruit undocumented workers. Furthermore, U.S. legislators have blocked legislation—on behalf of plantation owners – that called for “escalating penalties for those knowingly hiring unlawful aliens.” Grayson, George W. *The United States and Mexico: Patterns of Influence*. Praeger Publishers, New York, 1984, p. 143, 145-150.

<sup>14</sup> The annual budget for enforcement operations increased sevenfold between 1980 and 1995, and then tripled between 1995 and 2001. Eschbach, Karl; Hagan, Jacqueline; Rodríguez, Nestor. Deaths during undocumented migration: trends and policy implications in the new era of homeland security. Washington, DC, April 2003. [www.uh.edu/cir/Deaths\\_during\\_migration.pdf](http://www.uh.edu/cir/Deaths_during_migration.pdf)

tyranny, poor economic opportunities as well as systemic deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states.”<sup>15</sup>

15. Most countries, among them Mexico, have sponsored the first approach, to a large extent responding to the demands of its principal trading partner, the United States. The following paragraphs will describe the facts that demonstrate that Mexico’s free trade policymaking elite has failed to establish a substantial link between its economic development strategies and its mandate to protect people’s fundamental rights and freedoms.
16. This divergence, in purpose and direction, of the public policies and human rights legislation, is the reason why the State’s institutional and legal framework have proven insufficient and/or inadequate to protect, promote and guarantee the protection of the interests of the person above any political, cultural or economic considerations. Furthermore, the contradictory aims of Mexico’s immigration policy on the one hand, and national and international human rights legislation on the other, have created the ethical void from which emerge the stereotypes, prejudice, and discrimination that result in the exclusion and abuse of migrant workers.

### **THE MEXICAN BORDERS: AN ENCOUNTER OF CLASHING INTERESTS**

“Like entrepreneurs who seek markets around the world, foreign workers cross borders in search of comparative advantages.”<sup>16</sup>

17. Mexico’s economic, social and labour policies have earned it its place as the main source of undocumented labour to the United States. An average of 1,100 Mexican nationals cross the U.S. border every day.<sup>17</sup> The 3,141 km imaginary line between the two countries is regarded by many as the endpoint of poverty and exclusion and the doorway to wealth through hard work.
18. Mexicans are not the only ones to hold this view. Thousands of people of other nationalities who also seek to place their services in the U.S. labour market, and who can no longer access that market via the U.S.’s northern border with Canada or through its air and marine ports of entry, will attempt entry into the United States through its southern border with Mexico.
19. It is difficult to ascertain just how many undocumented non-Mexican migrant workers enter and traverse Mexico<sup>18</sup> with the sole purpose of getting to the United States. Nevertheless, we can attempt to approximate the magnitude of the surge by looking at the numbers of Central Americans who are detained and deported by Mexican and U.S. authorities, to then contrast those results with the information provided by the IADB and the Pew Hispanic Centre’s report.
20. Official data from Mexico’s migration service, Instituto Nacional de Migración (INM), shows that in fiscal year 2004, Mexico “returned” 211,218 persons to their countries of origin. The breakdown per nationality reveals that 44.1% were Guatemalan, 33.6% Honduran, 17.5% Salvadorian, 1.3% Nicaraguan and 3.2% other nationalities.<sup>19</sup> In the same fiscal year the U.S.

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<sup>15</sup> Sen, Amartya. Development as Freedom. First Anchor Books. August 2000, p. 3

<sup>16</sup> IADB, Id. *supra* at 1.

<sup>17</sup> La Jornada. Mil cien mexicanos al día han emigrado a EU en este sexenio. By Carlos Fernandez-Vega. June 4, 2005. p. 26.

<sup>18</sup> Mexico is also a destination country for seasonal workers and others seeking permanent residence in Mexico. According to official data from the Instituto Nacional de Migración, between 2001- 2004 6,605 persons were granted permanent resident status (Inmigrado), 1940-1998 136,253 persons received that status. Between 2001-2004 the INM documented 168.6 thousand Guatemalan seasonal agricultural workers. Information available at Instituto Nacional de Migración. México País de Origen, Transito y Destino de Migrantes. <http://www.inm.gob.mx/imagenes/comunicacion/presentaciones/INMparte2eneabril05.swf>

<sup>19</sup> Instituto Nacional de Migración. México País de Origen, Transito y Destino de Migrantes.

Border Patrol, apprehended 53,120 Central Americans at the U.S. southwest border, an increase of 71 percent compared to fiscal year 2003. Of the 53,120 Central Americans apprehended in fiscal year 2004, 45% were Honduran, 31%, El Salvadoran, 20 % Guatemalan, and 3% Nicaraguan.<sup>20</sup>

## U.S.-MEXICO BORDER SECURITY ALLIANCES AND ANTI-SMUGGLING PRACTICES

21. U.S. policy makers have approached this massive influx of undocumented migrants with a defence mentality – the names given some of the border control operatives, for example “Gatekeeper” and “Hold the Line”<sup>21</sup>, are indicative of this outlook. In this defence readiness stance, migrants and their rights become negligible when compared with U.S. sovereignty and security interests. The presence of impoverished migrants within their comfort zone is regarded as a “complex border security problem” that can only be handled with localised border and transportation security management programs.<sup>22</sup>
22. In this context the migrants become “... the flotsam of underground society, fearful of exercising rights we deem the corner stone of society.”<sup>23</sup> Their fear is the product of experience, the experience of exclusion and abuse – in the countries of origin, transit and destination – by the agents of the State and the members of society alike.
23. The United States describes its homeland security efforts as “a series of concentric circles or screens with the outer screen being that of preventive efforts *launched* outside the country...” “...then it moves through progressively smaller circles starting from more distant efforts to closer and more localised measures, ending with emergency preparedness and response.”<sup>24</sup> Mexico and its southern border with Guatemala and Belize<sup>25</sup> are clearly in the outer circle of that strategy. The ethos that sustains this strategy, does not perceive borders as immutable geographic limits in times of peace they are perceived as mere administrative limits, at war they become front lines which imply tension, threats and security demands.
24. The U.S. strategists’ push southward of the imaginary borderline with Mexico has transformed the entire Mexican territory – all the way to its border with Guatemala, into the new U.S. frontier. In a recent interview for a Honduran newspaper Genaro Muñiz, a Nicaraguan minister, declared that “Mexico has turned its entire territory in a border for us” and opined that the north-American border “[supposedly] begins in Chiapas and ends at the Rio Bravo, but in reality the true frontier is not the United States of America, but the Mexican United States”.<sup>26</sup> The presence of that continuous border is evinced by the 45 immigration detention centres located

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<http://www.inm.gob.mx/imagenes/comunicacion/presentaciones/INMparte2eneabril05.swf> (Last modified Feb. 6, 2005)

<sup>20</sup> U.S. Dep’t of Homeland Security. [Southwest Border Apprehensions](http://uscis.gov/graphics/shared/statistics/publications/msrsep04/index.htm).

<http://uscis.gov/graphics/shared/statistics/publications/msrsep04/index.htm>

<sup>21</sup> Between 1994-1995 in the U.S., agents and technology were concentrated in specific areas of California and Texas to deter undocumented entry by a “show of force” to potential illegal border crossers. U.S. Border Patrol History. U.S. Customs and Border Patrol Protection. Department of Homeland Security.

[http://www.customs.gov/xp/cgov/border\\_security/border\\_patrol/history.xml](http://www.customs.gov/xp/cgov/border_security/border_patrol/history.xml)

<sup>22</sup>Seghetti, Lisa M; Lake, Jennifer E., and Robinson, William H. [Border and Transportation Security: Selected Programs and Policies](http://fpc.state.gov/documents/organization/45197.pdf). Congressional Research Service. Domestic Social Policy Division. March 29, 2005, p. 5

<http://fpc.state.gov/documents/organization/45197.pdf>

<sup>23</sup> Grayson George W. Op. cit. p. 153

<sup>24</sup> Id at p.5

<sup>25</sup> Mexico’s southern border is a zigzag line of 1,138 kilometres, 962 of which border Guatemala. This line runs along four states: Campeche, Chiapas, Tabasco and Quintana Roo.

<sup>26</sup> El Heraldo (Honduras). [Migrantes, sin protección de México](http://www.elheraldo.hn/series.php?nid=20&idse=7&fecha=2005-05-29). May 29, 2005

<http://www.elheraldo.hn/series.php?nid=20&idse=7&fecha=2005-05-29>

throughout the country that the INM “dignified” between 2003 and 2004 to house, in admittedly substandard conditions, the increased number of Central American undocumented migrants.<sup>27</sup>

25. Simply stated, the strategic purpose of this border policy is to place the migrants between two walls that slowly close in on them. It is therefore quite remarkable that despite the video cameras, ground sensors, radiation detectors, geographic information systems, and physical barriers,<sup>28</sup> a great number of the strongest, most able, and luckiest ones make it to their destination. One has to wonder, how is it that a group of foreigners travelling with nothing more than a small bag can avert the obstacles of a billion dollar border technology<sup>29</sup> and the war like resolve ‘to eliminate the threat’ of the many different law enforcement agencies they encounter in the journey northward?
26. The answer is threefold. Perhaps it is because the U.S. administration and its society do not want to eliminate migrants from the labour force all together, rather they aim to benefit from them and when the economic need dries up discard the excess. Perhaps it is attributable, in part, to the force of the migrants’ motivation and aspiration to change their living conditions,, undoubtedly helped in many cases to the able assistance of facilitators/ smugglers who, for gain or for solidarity, enable their crossing.
27. The strength of the causes and conditions impelling massive migrations and the deterrence strategies designed to counter them have developed concomitantly. In the American continent, the generating causes for mass migration and deterrence strategies can be traced back to the mid 1980s.<sup>30</sup> They emerged as the direct result of U.S. President Ronald Reagan’s<sup>31</sup> foreign policy of destabilisation in Central America.
28. This policy enlisted the support of right-wing governments in the region in an effort to stop the “spread of communism” near U.S. borders, and also to safeguard their economic interests in the region. As a consequence, more than two million<sup>32</sup> displaced Nicaraguans, Salvadorian, Honduran<sup>33</sup> and Guatemalans<sup>34</sup> fleeing their worn-torn countries sought refuge in the U.S.

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<sup>27</sup> La Jornada, Estrechez presupuestal causa de anomalías en estaciones migratorias, by Alfonso Urrutia. February 11, 2005. Seghetti L, Lake, J and Robinson, W. Op. Cit.

<http://fpc.state.gov/documents/organization/45197.pdf>

<sup>29</sup> The U.S. Congress has tripled spending on border control and enforcement since 1993. Wayne, Cornelius Evaluating Enhanced US Border Enforcement. May 1, 2004.

<http://www.migrationinformation.org/USfocus/display.cfm?ID=223>.

Also see [http://www.washingtontechnology.com/ad\\_sup/solutions-systems/solutions-systems2.html](http://www.washingtontechnology.com/ad_sup/solutions-systems/solutions-systems2.html)

<sup>30</sup> Sandoval Palacios, Juan M. El Plan Puebla-Panamá como Regulador de la Migración Laboral Centroamericana y Del Sur-Sureste de México. II Foro de Análisis, Información y Propuestas Xela 2001. pp. 8-9.

<http://usuarios.lycos.es/xelaju/ponencia3-parte1.htm>

<sup>31</sup> Under the banner of fighting communism, the Reagan administration, with the full support of the U.S. Congress, provided aid to the contra-insurgent forces. These groups were responsible for the "assassination, torture, rape, kidnapping and mutilation of civilians." The Reagan Doctrine. Excerpt from Robert Kagan’s book *A Twilight Struggle: American Power and Nicaragua, 1977-1990*. <http://eightiesclub.tripod.com/id130.htm>

<sup>32</sup> Proxy Wars in Africa, Asia and Central America. The State of the World’s Refugees p. 1, 17-20 <http://www.unhcr.ch/pubs/sowr2000/ch05.pdf>

<sup>33</sup> Recently declassified documents demonstrate that the U.S. provided clandestine assistance and training to anti-communist forces in Honduras. Excerpts from “Selected Issues Relating to CIA activities in Honduras in the 1980s.” [http://www.gwu.edu/~nsarchiv/latin\\_america/honduras/cia\\_ig\\_report/](http://www.gwu.edu/~nsarchiv/latin_america/honduras/cia_ig_report/)

<sup>34</sup> For decades the United States provided “counter-terror” assistance to the Guatemalan security forces, responsible for the genocide of the Indian population. National Security Archive, Electronic Briefing Book No 11. U.S. Policy in Guatemala 1966-1996. Doyle, Kate, Project Director.

<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB11/docs/> Although President Clinton express his regret over the U.S. support lent to security forces in the extermination campaigns against alleged counterinsurgents, he also stated that his administration will “continue to discourage illegal immigration”. The Washington Post. March 11, 1999. Clinton: Support for Guatemala was wrong. By Charles Babington <http://www.washingtonpost.com/wp-srv/inatl/daily/march99/clinton11.htm>

Mexico also received a large number of refugees. Nonetheless, “Mexican and U.S. government archives document Mexico’s ambivalent and at times contradictory policy toward the Guatemalan conflict...” and “...Mexico alternated its policy of granting asylum to the massive tide of fleeing peasants with deportations, harassment and ... forced relocations.”<sup>35</sup>

29. In order to forestall this unprecedented migration, from 1986 to 1989 the U.S. administration devised and implemented contingency plans to reinforce its border to dissuade “alien terrorists and undesirables as far away from its southern border as possible.”<sup>36</sup> This plan entailed deploying intelligence operatives in Mexico and Guatemala to identify the source of the migration flows and the smugglers and facilitators responsible for enabling illegal immigration. The implementation of this policy generated an upsurge of expulsions. The numbers speak for themselves. Under the Salinas administration (1988-1994) the Dirección General de Servicios Migratorios<sup>37</sup> reported 126,440 expulsions – a staggering increase from the reported 3,066 expulsions in 1988.<sup>38</sup> This marked the end of Mexico’s policy of not having an immigration policy that permitted “migration flows to run loose and unmanaged.”<sup>39</sup>
30. In the latter part of the 1990s the U.S. was waging the antiterrorist war and the war against drugs, and was preparing to fight the war against the consequences of Mexico’s inclusion in the North American Free Trade Agreement (NAFTA) – massive forced migration resulting from the displacement of workers from small farms, state-owned and small private enterprises.<sup>40</sup> Accordingly, the United States readjusted its national security agenda to ensure hemispheric security and economic integration.
31. In the late 1980s early 1990s, Mexico was facing its own internal security concerns, focussed in the southernmost tip of the country. In the late 1980’s the civil war in Guatemala displaced thousands of indigenous people, many of who resettled in Mexico. In the 1990s the Zapatista indigenous uprising brought national and international attention to the Mexican State’s systematic exploitation of indigenous nations.
32. Historically, Mexico’s southeast region has been and still is a “hunger and exclusion zone”, but in the 1990s it also became a “conflict zone.” The conjunction of hunger, exclusion and violence provoked the movement northward of thousands of southern Mexicans and Central Americans. The human upsurge needed to be stopped and their demands of inclusion quashed in order to ensure foreign investors the unopposed access to the riches of the Mexican south. Kate Doyle, a senior analyst at the National Security Archive of George Washington University, poignantly remind us that the “...Mexican [human rights] rhetoric about the hemisphere always coexisted with the cold calculus of its own security considerations.”<sup>41</sup>

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<sup>35</sup> Doyle, Kate. Mexico’s Southern Front. Guatemala and the Search for Security. The National Security Archive. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB100/index.htm>

<sup>36</sup> Sandoval Palacios, Juan M. Op. Cit. p. 9. <http://usuarios.lycos.es/xelaju/ponencia3-parte1.htm>

<sup>37</sup> This agency was the predecessor of the Instituto Nacional de Migración, which was created in October 19, 1993.

<sup>38</sup> Castillo, Manuel Angel. Las políticas hacia la migración centroamericana en países de origen, de destino y de tránsito. El Colegio de México. Papeles de Migración No. 24. Abril/Junio 2000. p. 14  
<http://papelesdepoblacion.uaemex.mx/rev24/pdf/castillo.pdf>

<sup>39</sup> Alba, Francisco. Mexico: A Crucial Crossroads. El Colegio de Mexico. July 2002 (*updated March, 2004*)  
<http://www.migrationinformation.org/Profiles/display.cfm?ID=211>

<sup>40</sup> Simcox, D. Immigration and Free Trade with Mexico: Protecting American Workers Against Double Jeopardy. Center for Immigration Studies. December 1991. p. 1 <http://www.cis.org/articles/1991/back491.htm>

<sup>41</sup>“Mexican and U.S. government archives document Mexico’s ambivalent and at times contradictory [same sentence as above – and missing a word] toward the Guatemalan conflict...” “...Mexico alternated its policy of granting asylum to the massive tide of fleeing peasants with deportations, harassment and ...forced relocations.” Doyle, Kate. Mexico’s Southern Front. Guatemala and the Search for Security. The National Security Archive. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB100/index.htm> Posted November 2, 2003

33. The war-driven mentality of the United States fit nicely into the political context of Mexico's southern region. And since wars require armies, the United States was ready to cooperate with Mexico in its efforts to strengthen its capacity to promote border security. The United States offered information and technical training to its army, thus enhancing its effectiveness in the combat of "terrorists and smugglers"<sup>42</sup> In contrast, there was no "collaboration to alleviate the circumstances that render socially marginalised groups vulnerable"<sup>43</sup> and force them to migrate.
34. Once again, the events of September 11, 2001 provided the perfect opportunity for the United States to fine-tune its efforts "to push its borders outward to intercept unwanted people and goods before they reach its territory."<sup>44</sup> The Mexican federal government renewed its adherence to U.S. strategy by adopting and adapting its militarised anti-immigrant policies and practices, which are explained and justified using the "fear and protection" binomial – "we will protect you from evil of terrorism." U.S. Attorney General John Ashcroft articulated this approach with unequivocal clarity, "[O]ur enemy's platoons infiltrate our borders, quietly blending in with visiting tourists, students, and workers. They move unnoticed through our cities, neighbourhoods, and public spaces. They wear no uniforms. Their camouflage is not forest green, but rather it is the colour of common street clothing. Their tactics rely on evading recognition at the border and escaping detection within the United States."<sup>45</sup>
35. The army's targets – terrorists, drugs, weapons and migrant smugglers – all can be found at the border or travelling within the "immigrant flows." One needs to ponder what security interests are threatened by displaced peasants, under-employed professionals, and children<sup>46</sup> to justify military and police action against them? What connects these people to the "enemy platoons"? Perhaps it is the fact that immigrants, terrorists and smugglers stem from similar origins: the violence of poverty and illegitimate power. In the case of Mexico and Central America the economic violence and the interests that engender it are inextricably connected to the interests behind NAFTA, the Plan Puebla-Panama (PPP) and its progeny, and the Central American Free Trade Agreement (CAFTA).
36. These trade agreements have been marketed as the infallible opponents of poverty and exclusion under the strategic term "regional integration." The agreements operate under one premise, investors would gain unrestrained access to oil and water in the southern region<sup>47</sup> and, in exchange, its rightful owners would gain a place, for a the miserable wage and in wretched working conditions, at the assembly line of a *maquiladora* (sweatshop) located in a "free trade" zone.<sup>48</sup> What the traders omit to mention in their promotional campaigns—enabled by the IADB – is that the "integration" scheme that these projects propose would require the "disintegration" of entire communities,<sup>49</sup> which in turn will cause an upsurge of impoverished masses of migrants

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<sup>42</sup> Turbiville Jr, Graham H. Law Enforcement and the Mexican Armed Forces: New Internal Security Missions Challenge the Military. Foreign Military Studies, Fort Leavenworth, KS. 1997.

[http://fmso.leavenworth.army.mil/documents/mxcoparm.htm#N\\_2](http://fmso.leavenworth.army.mil/documents/mxcoparm.htm#N_2); Sandoval Palacios, Juan Manuel. El Area de Libre Comercio de las Américas y la Nueva Seguridad Regional Hemisférica (ALCA). [www.boell-latinoamerica.org/download\\_es/ALCAySeguridad.doc](http://www.boell-latinoamerica.org/download_es/ALCAySeguridad.doc)

<sup>43</sup> See Article 31.7 of the U.N. Convention against Organized Crime.

<sup>44</sup> Seghetti Lisa M. et al. Border and Transportation Security. Po. Cit. *supra* at 7. p. 6-10, 18.

<sup>45</sup> John Ashcroft, "Attorney General Prepared Remarks on the National Security Entry-Exit Registration System," June 6, 2002. Department of Justice transcript. <http://www.parstimes.com/news/archive/2002/ashcroft.html>

<sup>46</sup> Liebel Manfred. Bajo sospecha. Jóvenes y culturas populares en las fronteras de México. p. 4-5. [http://www.derechosinfancia.org.mx/Documentos/ninos\\_bajo\\_sospecha.pdf](http://www.derechosinfancia.org.mx/Documentos/ninos_bajo_sospecha.pdf)

<sup>47</sup> Bull, Benedictine. New Regionalism-Old Elites: Change and continuity in the remaking of Meso America. Centre for Development and the Environment, University of Oslo. December 2002, p. 8-10 <http://folk.uio.no/bbull/BISA%20paper.doc>

<sup>48</sup> La Jornada Sin Fronteras. Explotación laboral en el paraíso maquilador. By Jesus Ramirez Cuevas. Domingo 29 de Julio de 2001. <http://www.jornada.unam.mx/2001/jul01/010729/mas-tehuacan.html>

<sup>49</sup> Navarro, Luis Hernández "Morir un poco: Migración y café en México y Centroamérica", Informe Especial, Programa de las Américas (Silver City, NM: Interhemispheric Resource Center, 3 de noviembre de 2004).

seeking a livelihood in the U.S. Many of them, however, lacking the strength and resources to continue, would stay in the border communities seeking to earn some money to then return to their countries of origin or continue their journey north.<sup>50</sup>

37. The regional integration process has already started. Newly created groups of migrants have set out to seek the riches of the north. They are very much aware of the obstacles ahead, they travel prepared to face the challenges and assume the risks. The first challenge is to traverse the 2,000-3,000 kilometres that separate the southernmost border of Mexico with Guatemala and Belize and the Mexican-U.S. border.<sup>51</sup> In covering this enormous distance—and they cover it mainly by foot and/or as stowaways in cargo trains - they encounter not only harsh terrain and disease, but also extortion and violent and abusive treatment at the hands of Mexican authorities,<sup>52</sup> smugglers and members of the gang known as Maras Salvatruchas. Nevertheless, they embark on the journey.<sup>53</sup>
38. During an official address to the Salvadorian legislative assembly in 2001, Mexican President Vicente Fox apologetically acknowledged that the migrants' journey northbound is "... a dangerous adventure that all too frequently ends in death and violence" and admitted that "... during their passage though my country they are victims of uncountable abuses and humiliations committed by bad authorities." President Fox then promised that "[t]his brutal reality, will disappear under my government."<sup>54</sup>
39. President Fox's administration has tried to fulfil its promise by inhibiting migration as quickly and quietly as possible. To that end, in June 2001 Mexico launched *Plan Sur* ("Southern Plan"). Prior to the introduction of the plan, Secretary of the Interior Santiago Creel, outlined, for the Washington Post, Mexico's immigration policy: "the government is prepared to break the growing influx of migrants that transit through the country in an effort to get to the United States."<sup>55</sup> In order to break the influx, the INM coordinated its law enforcement functions with those of the Federal Preventive Police (PFP); the Federal Judicial Police (PJP); Federal Investigations Agency (AFI); Defence (SEDENA), Navy (SEMAR), the Federal Highway Police (PFC), and a plethora of state and municipal law-enforcement agencies from the border states of Chiapas, Tabasco, Campeche, and Quintana Roo.
40. Gabriela Rodríguez Pizarro, the United Nations Special Rapporteur on the Human Rights of Migrants, expressed her concern to the Mexican government "...that the increased controls and the presence of armed forces may have negative consequences both for international migrants

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"[Central American]Farmers and coffee growers have been condemned to extinction, they have been declared superfluous and unnecessary. Their communities have become big parking lots of hand labor"  
[http://americas.irc-online.org/reports/2004/sp\\_0411migra.html](http://americas.irc-online.org/reports/2004/sp_0411migra.html)

<sup>50</sup> In the border town of Ciudad Hidalgo, Chiapas, around the train station there is a "tolerance zone" where Central American women entertain truck drivers, making time and earning money wishing to continue their journey to the United States. "99% of the sex workers in Cd. Hidalgo are Central Americans" BBC Mundo. Fronteras de dignidad. Pagando con Sexo.  
<http://www.bbc.co.uk/spanish/especiales/humanrights/paganda.shtml>

<sup>51</sup> The migrants can cross the northern west or east border points with the United States. 2072kms from Tapachula, Chiapas to the northeast city of Nuevo Laredo, and 3386 kilometres from Tapachula to Hermosillo.  
<http://www.trace-sc.com/cgi-bin/distance.pl>

<sup>52</sup> Speech of Magdalena Carral, Commissioner Nacional Migración Institute. *Causa y efectos de las Migraciones en México y América Central*. October 7, 2002.  
<http://www.migracion.gob.mx/paginas/discursos/discursos6307oct2002.htm>

<sup>53</sup> **Cesar's main findings.** Situación en la Migración.

<sup>54</sup> The New York Times. *Mexico's Open Southern Border Lures Migrants Headed to U.S.* By Ginger Thompson. Wednesday, February 20, 2002

<sup>55</sup> Quoted in, La Jornada. *Migrantes Centroamericanos: todos sufren en México. El costo de cuidar el patio trasero.* By Alberto Najjar. Domingo 9 de febrero de 2003. <http://www.jornada.unam.mx/2003/feb03/030209/mas-najar.html>

and indeed for Mexicans travelling to the north of the country.”<sup>56</sup> The Mexican federal government answered clarifying that “*Plan Sur* [wa]s an inter-institutional coordination effort involving the Mexican Government's various security forces, the aim of which [wa]s to combat organized crime, including the trafficking and smuggling of migrants. Actions under this plan [we]re not aimed at intercepting or detaining undocumented migrants in transit through Mexico.”<sup>57</sup>

41. The Mexican government’s description of *Plan Sur*’s objectives apparently match those stated in the U.N. Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>58</sup> (*Smuggling Protocol*), which Mexico ratified in November 15, 2000.

42. Article 11 of the *Smuggling Protocol* provides:

Without prejudice to international commitments in relation to the free movement of people, State Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

43. However, it is important to note that *Plan Sur*’s training manual states that the general objective of the Plan is to “Strengthen the surveillance and control of migratory flows from the Tehuantepec Isthmus to the Southern Border.”<sup>59</sup> If there were still any doubt left about the repressive nature of this plan and the ambivalent posture of the federal government, an assessment of the results the Plan confirm its true nature as an anti-immigrant regulation.

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<sup>56</sup> Rodriguez Pizarro, Gabriela. Special Rapporteur. Specific Groups and Individuals: Migrant Workers. Addendum. Visit to Mexico. United Nations. Economic and Social Council. E/CN.4/2003/85/Add.2. 30 October 2002. p. 14, para. 39.

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.G.28.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.G.28.En?Opendocument)

<sup>57</sup> Note verbale dated 18 December 2002 from the Permanent Mission of Mexico to the United Nations Office at Geneva addressed to the Chairperson of the fifty-eighth session of the Commission on Human Rights. in connection with the report of the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, on her visit to Mexico from 25 February to 6 March 2002 (E/CN.4/2003/85/Add.2). United Nations, Economic and Social Council. E/CN.4/2003/G/28. 28 January 2003.

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.G.28.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.G.28.En?Opendocument)

<sup>58</sup> Mexico ratified the U.N Convention against International Organized and its two Protocols in November 15, 2000. <http://tratados.sre.gob.mx/BusquedaIndice.htm>

<sup>59</sup> Secretaría de Gobernación. Instituto Nacional de Migración, *Plan Sur. Programa de Capacitación Integral Propuesta Avances. Centro de Capacitación Migratoria.* “Objetivo General del Plan Sur” (The manual is not paginated)

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<sup>61</sup> Secretaría de Gobernación. Instituto Nacional de Migración, *Plan Sur. Programa de Capacitación Integral Propuesta Avances. Centro de Capacitación Migratoria.* “Objetivo General del Plan Sur” (The manual is not paginated)

repressive nature of this plan and the ambivalent posture of the federal government, an assessment of the results the Plan confirm its true nature as an anti-immigrant regulation.

47. The anti-immigrant operatives under *Plan Sur* – euphemistically designated as anti-smuggling actions – were part of the “largest multinational [U.S backed] anti-smuggling operation ever conducted in the Western Hemisphere” “...which involved the United States, Canada and 12 nations in Latin America and the Caribbean.”<sup>62</sup> Among them were Mexico, Guatemala, Honduras and El Salvador.
48. The U.S. called it “*Operation Crossroads International*”. In Guatemala it became “*Venceremos*” and “*Coyote 2001*”<sup>63</sup>. These operatives involved “putting up police roadblocks in various parts of the country and randomly checking vehicles. The search for smugglers justified searching hotels, parks, bars, brothels, and public areas in border cities like Técun Umán (Guatemala) and Ciudad Hidalgo (Chiapas).<sup>64</sup> Again, these actions could be taken as a showing of full adherence to the “*Prevention and Cooperation*” measures described in article 10.1 and the “*Training and Technical Cooperation*” enunciated in article 14.2(d) of the *Smuggling Protocol*:

“Without prejudice to articles 27 and 28 of the Convention, State Parties, in particular those with common borders or located in routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal administrative systems, relevant information... .”

“State Parties shall cooperate with each other ... to ensure that there is adequate personnel training in their territories to prevent, combat, and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

Improving procedures for detecting smuggled persons, at conventional and non-conventional points of entry and exit.

49. The U.S. Department of Justice raved about the *Crossroads* results. It confirmed the arrest of 75 alleged smugglers and illegal document vendors, and the interdiction of 7,898 immigrants from 39 countries, 5,500 of which were repatriated. For the U.S. authorities those results made that operative “... the largest, most successful operation of its kind.” Moreover, the United States and its partners advanced these results as a clear showing of their commitment to pursue smugglers “... wherever they operate.”<sup>65</sup> The U.S. did not indicate, however, whether the 75 alleged smugglers were convicted, nor did they indicate what kind of assistance, if any, the U.S. government provided to the smugglees.
50. On June 18, 2001, the *Mesa Nacional para las Migraciones en Guatemala (MENAMIG)*, a migrants’ rights organization, issued a public communiqué denouncing the abuses committed during operation “*Coyote 2001*”. Contrary to its alleged purpose, the operation did not render any *coyote*/smuggler arrested or any smuggling ring dismantled. Instead, after the factory and hotel raids, the make-shift detention centres were bursting with detainees who, after being rescued from the smugglers, had to endure inhumane detention conditions.<sup>66</sup>

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<sup>62</sup> U.S. Department of Justice. U.S. Immigration and Citizenship Services. News Release June 27, 2001. <http://uscis.gov/graphics/publicaffairs/newsrels/crossroadsintl.htm> (last modified March 22, 2005)

<sup>63</sup> Coyote and Pollero, terms used in the “immigration” jargon to refer to smugglers.

<sup>64</sup> World Press International. Mexico’s “Southern Plan”: The Facts Crackdown Underway on Migration from Central America. By Velia Jaramillo *Proceso* (liberal magazine), México City, México, June 26, 2001. From the September 2001 of *World Press Review* (Vol. 48, No 9) <http://www.worldpress.org/0901feature22.htm>

<sup>65</sup> U.S. Department of Justice. News Release, supra 49.

<sup>66</sup> Pronunciamiento publico: Plan Coyote 2001- MENAMIG/ Mesa Nacional para las Migraciones en Guatemala. June 18, 2001. <http://miaroba.com/foros/ver.php?foroid=117468&temaid=768619&marcar=coyote+2001+pronunciamenteto>

51. Mexico's continued application at both its northern and southern borders of these anti-smuggling policies and practices (shrouded in the puritanical veil of "protection" by repression) has engendered migrants' distrust of the authorities that should be protecting them and left many migrants with no option but to rely on smugglers with the "know how" to guide them through Mexico and across the U.S.-Mexico border.
52. Referring to the dangers entailed in an encounter with Mexican authorities – which are part of the chain of violence and impunity in the southern region – a *pollero* operating in the region declared: "From here [southern border] to Mexico City you need guts, from Mexico City to Tijuana [northwest border town] you need money."<sup>67</sup>
53. In 2003, after two anti-smuggling operatives conducted by the Federal Preventive Police (PFP) in Altar-Sababe region of the northern state of Sonora, the *polleros*/smugglers reverted to their use of the more dangerous route of Naco-Agua Prieta. "That is because the migration is like a river: when it heats up – in the jargon of the *polleros* it means that the crossing becomes difficult – the immigration flux steers to a different point while the first one cool down, and when the vigilance in that point is reinforced, then go to another or return to the first one."<sup>68</sup> The results of the re-routing rendered approximately 187 immigrants dead. These deaths were foretold by the Gatekeeper's engineers: migrants "forced over more hostile terrain, less suited for crossing and more suited for enforcement, [could] find themselves in mortal danger "and assumed that the "influx will adjust to Border Patrol changing tactics."<sup>69</sup>
54. Between 2000 and 2004, the border death toll at the northern border was 1,646.<sup>70</sup> The causes of this human tragedy (or policy success, for the government) were precisely the anti-immigrant/anti-smuggling policies and practices of "prevention by deterrence", the unrelenting desire of the migrants, the smugglers' ambition, and extreme desert heat – in the summer the thermometer can reach fifty degrees Celsius.
55. The number of casualties at the southern border remains uncertain. Pastor Ademar Barilli, Director of the Casa del Migrante in Tecún Umán, Guatemala believes that the numbers of casualties at the southern border are even higher than at the northern border: "...it is just that they do count them in the United States." The reported causes of death: falls from moving trains; boat wrecks; car accidents; murders during robberies; hunger. "...their bodies lay in common graves in the bush."<sup>71</sup>
56. A growing number of observers believe that the detention and prosecution of alleged smugglers do not justify a policy "...that maximizes the risk to life and ensures that hundreds of migrants die."<sup>72</sup> Last year after a two-day visit to the southern border, the Mexican Senate's Commission for Human Rights issued a report confirming the inadequacy of the government's border policies and practices. Three important facts may be drawn from the Senate's report. First, there

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<sup>67</sup> La Jornada. La frontera sur , territorio sin ley bajo dominio de la Mara Salvatrucha. By Juan Balboa. December 6, 2004 <http://www.jornada.unam.mx/2004/dic04/041206/006n1pol.php>

<sup>68</sup> La Jornada. Nuevo mapa de la frontera de la migración. El reino de la migra y los polleros. By Alberto Najjar. Domingo 19 de Octubre 2003.

<sup>69</sup> Gatekeeper was developed with help from the U.S. Department of Defence's Center for Low Intensity Conflicts. . Border Patrol Strategic Plan for 1994 & Beyond," approved 8/4/94. Quoted in The California rural legal assistance foundation's border project. Stopgatekeeper <http://www.stopgatekeeper.org/English/bullets.htm>

<sup>70</sup>The California rural legal assistance foundation's border project. Stopgatekeeper <http://www.stopgatekeeper.org/English/facts.htm>

<sup>71</sup> Pastor Ademar Barilli quoted in La Jornada. Pagan choferes y guías , no las cabezas. La guerra contra los polleros. 26 de agosto de 2001 <http://www.jornada.unam.mx/2001/ago01/010826/mas-guerra.html>

<sup>72</sup> Hastings, Carol. Crossing the line: bulked-up border patrols are not having any impact on the number of unauthorized immigrants – is it time to reconsider? Civil Rights Journal, Fall 2000. [http://www.findarticles.com/p/articles/mi\\_m0HSP/is\\_1\\_5/ai\\_83698162](http://www.findarticles.com/p/articles/mi_m0HSP/is_1_5/ai_83698162)

is a constant increase in the number of detentions and deportations of undocumented migrants. Second, the smuggling business thrives because it is lucrative. Third, there is a constant increase in the number of violations of migrants' rights by government authorities.<sup>73</sup>

57. Father Pedro Pantoja, the Director of the Albergue Belen, a shelter for migrants in Saltillo, also observed that some segments of society have become part of an industry that feeds on migrants: "they offer food, water and shelter to the migrants passing through their communities, charging excessively and sometimes 'selling' them to the authorities."
58. In light of the aforementioned information and statements, what credence could the international human rights policy and defence organisations give to the Mexican government's claims of success of the anti-smuggling operatives? We have to ask ourselves whether the actions of the government support the assertions of Armando Salinas Torre, Under Secretary of Population, Migration and Religious Affairs, that claim that "...the central axis for the legitimate exercise of the State's power, is the guarantee of respect to the person's dignity and fundamental rights."<sup>74</sup>
59. More importantly, it is imperative that the national and international civil society determine whether Mexico's anti-smuggling policies and statutes – be their source international or legally binding international legislation – are the adequate tools to deracinate the causes that make smuggling a thriving business.

#### **IS MEXICO COMPLYING WITH ANTI-SMUGGLING STATUTES? DO MIGRANTS BENEFIT FROM THAT COMPLIANCE?**

60. Mexicans' undocumented migration to the United States has been metaphorically described as an "escape valve" that relieves the economic and social pressures caused by domestic unemployment and poverty. Within that device, the smugglers have functioned as enablers who ensure the continued passage of the flow; otherwise, the remittances would stop fuelling the Mexican economy, thus jeopardising the fragile economic stability of Mexico.<sup>75</sup> Nonetheless, when the flow reaches a certain level, the valve's safety mechanisms are triggered upon demand of the United States. Those "safety" mechanisms are the anti-smuggling provisions carved in the domestic law of Mexico.
61. Mexico's government stands to lose a great deal if it precludes its unemployed citizens from crossing the border to its north. However, the Mexican ruling elite also feels that their "relationship" with the United States would be irrevocably tarnished if they do not attend to its demand of slowing down migration.<sup>76</sup> Caught between a rock and a hard place, Mexico's government has to consider the advantages and disadvantages of allowing Central Americans to traverse its territory to get to the United States.

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<sup>73</sup> Gaceta Parlamentaria. No. 58 Año 2004. Lunes 13 de septiembre. 2º Año de Ejercicio. Primer Informe Ordinario. Informe del Se. Sadot Sánchez Carreño sobre la visita de los integrantes de la Comisión de Derechos Humanos realizada a la Frontera Sur, los días 12 y 13 de año pasado.

<http://www.senado.gob.mx/sgsp/gaceta/?sesion=2004/09/13/1&documento=6>

<sup>74</sup> "Migración y Seguridad" Lecture delivered by Armando Salinas Torre. Mexico D.F. Mayo 11, 2005

<http://segob.gob.mx/templetas/conferencia.php?id=3838>

<sup>75</sup> Remittances and oil profits are the two sources of income that have sustained the Mexican economy during the last five years. <http://www.sciencedaily.com/upi/index.php?feed=TopNews&article=UPI-1-20050511-20345900-bc-mexico-income.xml>

<sup>76</sup> National Border Patrol Strategy. Prepared by the Office of Border Patrol. Office of Policy and Planning. September 2004

[http://www.customs.gov/linkhandler/cgov/border\\_security/border\\_patrol/national\\_bp\\_strategy.ctt/national\\_bp\\_strategy.pdf](http://www.customs.gov/linkhandler/cgov/border_security/border_patrol/national_bp_strategy.ctt/national_bp_strategy.pdf)

62. The non-Mexican migrants believe that Mexico loses nothing by allowing them to transit across its territory. After all, many Mexicans are going the same way. They often wonder why the authorities "...treat[them] worse than animals: the Mexicans should understand that we are not here to steal, we are seeking an opportunity in the United States, because in our country there isn't work and there is a difficult situation."<sup>77</sup>
63. The authorities reason the situation differently. If the migrants do not want to stay in Mexico, and their countries consider them expendable – in fact they are socially invisible – Mexico could use them to test its anti-smuggling laws. Thus, they are offered in sacrifice to the INM, and in doing so Mexico gains the "favours" of the United States and favourable recognition by the international community for its diligent efforts in combating smugglers
64. Although the great majority of the authorities interviewed for this report were unable to define the meaning of border or national security, they grounded the tightening immigration controls on the fact that the law "demands it." And in fact it does.
65. Mexico, like most countries, has laws to control and punish the undocumented entry by foreigners into its territory. The (*General Population Act*) Ley General de Población (LGP)<sup>78</sup> and the (*Federal Act against Organized Delinquency*) Ley Federal Contra la Delincuencia Organizada (LFDO)<sup>79</sup> contain the legal provisions that lend legitimacy to the Mexican government's anti-immigrant/anti-smuggling border policies and programs.
66. Mexico has also adopted the *U.N. Convention against Transnational Organized Crime (Convention), and its Smuggling Protocol*, which has aims similar to these domestic laws and which, by operation of the Supremacy Clause of the Mexican Constitution, has become the supreme law of the land.
67. Article 133 "This Constitution, the laws of the Congress of the Union that emanate therefrom, and all the treaties that have been made and shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the supreme law of the whole Union. The judges of each State shall conform to the said Constitution, the laws, and treaties, in spite of any contradictory provisions that may appear in the constitutions or laws of the States."<sup>80</sup>
68. The Mexican government has creatively utilised the incorporation of the *Convention* and its two Protocols to its *corpus juris* as an additional tool to legitimise, *Mexican style*, the goals of its immigration policies. The results are paradoxical.
69. The following paragraphs set forth the actions taken by Mexico's government to comply with the strategic guidelines set forth in the *Convention and the Smuggling Protocol*.

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<sup>77</sup> La Jornada, June 1, 2005. [Hacinamiento, insalubridad y maltratos en la estación migratoria de Acayucan](#). By Victor Ballinas p. 18

<sup>78</sup> LGP is a federal administrative statute, enacted in January 7, 1974, amended January 4, 1999. Its regulation was published in April 14, 2000. Its objective, as provided in article 1, is "to regulate the phenomena which affect the population in regard to its volume, structure, dynamic and distribution in the national territory, in order to accomplish a just and equal distribution of the benefits of economic and social development." (Translated by the Consultant).

<sup>79</sup> Enacted November 7, 1996. Amended December 21, 2004.

<sup>80</sup> Article 133 of the Mexican Federal Constitution. <http://www.ilstu.edu/class/hist263/docs/1917const.html>

## Criminalizing the conduct

70. Article 6 of the *Smuggling Protocol* provides:

Each State Party shall adopt such legislative measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or material benefit:

(a) The smuggling of migrants;

(b) When committed for the purpose of enabling the smuggling of migrants;

Producing a fraudulent travel document;

(ii) Procuring, providing or possessing such a document;

(...)

71. Article 138 of the LGP imposes a penalty of six to twelve years in prison and a fine of one hundred to ten thousand minimum salaries<sup>81</sup> to the person, or his/her agent, who with the purpose of smuggling<sup>82</sup> intends to enable or enables the entry of Mexicans or foreigners to another country, without the proper documentation. A similar penalty is imposed to those who, with the purpose of smuggling and without the proper documentation, bring shelter and transport foreigners into Mexican territory, and conceal them in order to avert detection by immigration authorities. The penalty is doubled if the alleged smuglees are under age<sup>83</sup>, or when the smugglers' actions endanger the life or integrity of the undocumented, or if the smuggler is a public official.

72. Article 123 of the LGP punishes with imprisonment of up to two years and a fine of three hundred to five thousand pesos any foreigner who enters the country illegally. This provision is considered dead letter law.

73. Regarding the use of fraudulent documents, article 113.V of the LGP provides sanctions, ranging from suspension for up to 30 days to destitution in more serious cases, for Secretariat of the Interior's<sup>84</sup> employees who wilfully and unlawfully provide immigration documentation to third persons.

74. Article 243 of the Federal Penal Code punishes the forgery of public documents with imprisonment of four to eight years and a fine of two to three hundred minimum salaries. The forgery of private documents could result in imprisonment of from six months to five years and a fine of one hundred and eighty to three hundred and sixty minimum salaries. Article 244 describes the different modalities of forgery, false signature, altering the text, altering dates, and creating an official identity document (i.e., shield).

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<sup>81</sup> as of January 1, 2005 the minimum salary is 46.80 Mexican pesos.

[http://www.gob.mx/wb2/egobierno/egob\\_Sistema\\_de\\_Salarios\\_Minimos](http://www.gob.mx/wb2/egobierno/egob_Sistema_de_Salarios_Minimos)

<sup>82</sup> Please note that the legal term used in Mexico to refer to the conduct known in Anglo-Saxon legal terminology as smuggling is, **TRAFICO**. The term which describes the conduct of human trafficking is, **TRATA**.

<sup>83</sup> In Mexico the age legal majority is attained at 18 years old.

<sup>84</sup> The Secretariat of the Interior is an agency of the executive with the delegated authority to, among others functions, "...design and conduct the population policy and "...ensure the compliance of the country's authorities with the provision of the Constitution especially those regarding the fundamental guarantees... ." Art. 27 §IV, XIII of the Federal Public Administrative Organic Law/ Ley Organica de la Administracion Publica Federal (Enacted January 1, 1977 last amended May 21, 2003).

75. At a practical level, the INM's has provided training to its personnel on "Detection of Fraudulent Documents." using Plan *Sur's* training manual.
76. It important to note that the use of false documentation to enter Mexico is not a widespread practice among Central American migrants, mainly because it is an unaffordable option for the great majority. The use "fraudulent" documents is indicative of a different level of sophistication in a smuggling operation. Such use necessarily entails the involvement of two or more people and "enablers" within the government institutions. These services are expensive and unaffordable for Central Americans.<sup>85</sup>

### **Punishment enhancement measures**

77. Article 6.3(a)(b) of the *Smuggling Protocol*.

Each State Party shall adopt legislative and other measures as may be necessary to establish aggravating circumstances to the offences established in accordance with paragraph 1(a)(b)(i) and (c)...

That endanger or are likely to endanger, the lives or safety of the migrants concerned; or

That entail human or degrading treatment, including exploitation, of such migrants.

(...)

78. Article 2 of LFDO provides that an alleged smuggler's case would be investigated, persecuted, processed and sanctioned under the said Act, when in the commission of the act three or more persons and agree to carry out and/or carry out the conduct in permanent, reiterated and organised manner. Those whose participation entailed administrative, direction, or supervision duties within the "organization" could be sentenced to 8 to 12 years of imprisonment (Article 4.II.a of the LFDO). Co-participants could be sentenced to 4 to 8 years of imprisonment (Article 4.II.b LFDO). Consistent with the orientation of the *Convention* and the *Smuggling Protocol*, article 5. I and II of the LFDO provides for higher penalties to public officials who participate in a criminal organization, or when a minor or disabled person is implicated in the commission of the crime.

### **Border measures**

79. Article 11 of the *Smuggling Protocol*

Without prejudice to the international commitments in relation to the free movement of people, State Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

Each State Party shall adopt the legislative or other appropriate measures to prevent, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6 1(a), of this Protocol.

Where appropriate, and without prejudice to international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner

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<sup>85</sup> Last June 1, 2005 federal USA authorities arrested an Iranian citizen in attempting smuggling charges. The FBI investigation revealed that false visas to enter Mexico were used to "bring Iranians into Mexico and then across the border into Arizona." <http://fsnews.findlaw.com/articles/ap/o/51/06-01-2005/a91a0013117a935c.html>

or the operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State,

(...)

80. Articles 21 to 31 of the LGP describe the administrative measures that ensure the vigilance of commercial, air, maritime and land carriers. Article 21 obliges the air and maritime carriers to check passenger documents; article 23 does not allow crew or passengers to disembark without first going through immigration inspection; article 27 obliges the transportation companies to cover the expulsion cost of stowaways and passengers who do not have the proper documents to enter the country.
81. The INM and the PFP are the two federal agencies with the authority to inspect, verify and control the entry and exit of persons through land, air or maritime designated or provisional ports of entry throughout the country. In 1995 the INM reported 630 arrests of alleged smugglers. That number increased to 1,445 in 2000 and 1,731 by 2004.<sup>86</sup> Comparatively, in 1995 the INM interdicted 105,902 immigrants, 166,457 in 2000 and 215,695 in 2004.
82. The PFP reported a total of 1,371 alleged *polleros* arrested between December 1, 2000 and December 29, 2004. Over the same period the PFP detained 51,430 undocumented migrants.<sup>87</sup> The great majority of these arrests occurred during land interdictions; only 76 alleged smugglers and 826 undocumented migrants were detained at airports.
83. [The airport routes are generally used by transcontinental or extra-regional migrants. The representative of the International Migration Organization in Mexico, Juan Artola, observed that "... the air routes are more expensive, however there some people that pay for them by selling their houses or land. Some accomplish their goal of crossing to the United States; others are deported from Mexico or the United States, others die trying." He asserted that in the Mexican airports "there are networks of agents and public servants of different ranks who act in complicity with smugglers." Artola further stated that the migration is not a problem that could be resolved by building walls or tightening the immigration polices and that, in fact, those "... policies propitiate the smuggling and trafficking of people." <sup>88</sup>
84. Artola's statements were recently corroborated by an article in *The New York Times*. This article reported the growing influx of Brazilian migrants who use Mexico as a bridge to get to the United States. The *Times* article reported that these migrants contract in Brazil "door to door" Brazil to Boston (Massachusetts) smuggling packages at a cost of approximately U.S.\$10,500 dollars. <sup>89</sup> **[Monette, Cesar gave copies of 4 interviews that Gretchen did in connection with her current project. The information elicited during those interviews confirm the NY times article. I was not sure whether to quote from those interviews]**
85. Central American migrants interviewed for this report reached the Mexican border by bus and entered the country walking or swimming across the Suchiate River. They also stated that they would traverse Mexico by van, by foot or riding the train cargo. Some migrants said they knew

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<sup>86</sup> Secretaría de Gobernación. Instituto Nacional de Migración. México País de origen, transito y destino de migrantes. <http://www.inm.gob.mx/imagenes/comunicacion/presentaciones/INMparte2eneabril05.swf>

<sup>87</sup> Secretaría de Seguridad Pública. Policía Federal Preventiva. Boletín de Prensa 403/04. 29 de Diciembre 2004. [http://www.ssp.gob.mx/application?pageid=pfpp\\_sub\\_2&docId=3507](http://www.ssp.gob.mx/application?pageid=pfpp_sub_2&docId=3507)

<sup>88</sup> La Jornada. Alienta EU la migración ilegal para asegurarse mano de obra barata. By Lorenzo Ballinas and Lorenzo Chim. March 11, 2005. p. 45

<sup>89</sup> The New York Times. Brazilians Streaming into U.S. Through Mexican Border. By Larry Rother. June 30, 2005 <http://www.nytimes.com/2005/06/30/international/americas/30brazil.html>

that some smugglers offer packages that for 1,500 to 2000<sup>90</sup> U.S. dollars include transportation from Central American countries to the U.S. border, food and crossing attempts. However, none of them were able to afford this type of package. For them, the options were getting through Mexico on their own or with the aid of friends or acquaintances who knew the way as a result of prior attempts. All the migrants interviewed in Tapachula intimated that not only could they not afford a smugglers' assistance to traverse Mexico, but that they did not trust smugglers in the southern border, preferring to save their money to hire one at the northern border to make successful entry into the United States.

86. Tonatiuh Garcia, Co-ordinator of the INM's Control and Verification Unit interviewed for this report believes that the distance that the migrants have to travel across get to the United States determines the level of sophistication of the smuggling operation. (**Cesar email Quotes**)

### **Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit**

87. Article 14.2(d) of the *Smuggling Protocol*

State Parties shall cooperate with each other ... to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(d) Improving procedures for detecting smuggled persons at conventional and non conventional points of entry and exit; and

(...)

88. In early March 2005, Alejandro Ramos Flores, the former Under Secretary for Legal and International Affairs of the PGR, averred that at the southern border region there are more than 1,200 transit routes used for the illegal transit of people and the ingress of drugs.<sup>91</sup> Regardless of the veracity or accuracy of this statement, the fact is that Mexico has endeavoured to comply faithfully with the directive to tighten security along the migration routes. When travelling northward by land it is unavoidable to encounter elements of all law enforcement agencies – army navy, federal highway police, federal preventive, state police, municipal police – randomly stopping buses and cars and requiring identification documents of those who fit a certain profile, the poor Central American immigrant racial profile.
89. However, the most recent anti-smuggling operatives support the conclusion that the essential pieces of the smuggling rings cannot be found operating along the conventional and/or non-conventional migration routes, but within the government's official ranks.
90. In March 2004, former Secretary of the Interior Santiago Creel and former Attorney General General Raul Macedo de la Concha, – currently under “investigation” for his alleged connection with organized crime – announced that 44 heads of smuggling gangs had been detained. This operative is particularly significant to understand the inroads and reality of the smuggling business in Mexico. Santiago Creel indicated that 26 of the 44 “chiefs” were public servants attached to INM, 10 were police officers, and the rest were “polleros” and former public servants.

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<sup>90</sup> Médecins Sans Frontières. *Irregular Migration: Persecution and Exclusion on Guatemala-Mexico Border*. [http://www.msf.ch/Guatemala\\_irregular.141.0.html](http://www.msf.ch/Guatemala_irregular.141.0.html)

<sup>91</sup> La Jornada. *Narcos y migrantes usan mil doscientos pasos en la frontera sur*. By Lorenzo Chim y Alfredo Valdez. March 12, 2005 p. 12.

91. The results of this operative demonstrate that the smuggling business is thriving thanks to the inside information and collaboration of government officials. Last year, Santiago Creel stated that the government was engaged in a “frontal battle against organized crime” and that President Fox “was committed to combat corruption wherever it might be.” As it turns, a year later corruption is still profoundly entrenched in the Mexican administration.
92. More recently, on June 21, 2005, Mexican authorities detained an anti-Castro (Fidel Castro)<sup>92</sup> smuggling ring that specialised in smuggling Cubans into the United States. The Mexican Office of the Attorney General reported that the group had been operating for at least seven years in the southern region of Mexico. They charged between three to five thousand U.S. dollars for each migrant brought into Mexico. The Mexican authorities received millionaire sums of money in exchange for their complicity.<sup>93</sup>
93. This information begs the question – Who is the government fighting against? Besides the migrants – Who are being detained along those 1,200 transit routes? Arturo Cano, a journalist with the progressive national newspaper, La Jornada, provides one answer:

“For the governments of Mexico and the United States, the polleros are the number one enemy. The crusade against these groups appears like a sort of smoke screen that intends to hide the cost of the border sealing policies, which have propitiated increasingly more dangerous crossings and, paradoxically, the strengthening of the mafias they pretend to fight. In this everyday war, there are casualties, but of course, the majority of those who fall are not the heads of the international organized crime, rather much like in the war against drug trade, the “guides” the drivers, the smallest replaceable pieces of an international machinery.”<sup>94</sup>

## Training and technical cooperation

94. Article 14. 1 of the *Smuggling Protocol*

State Parties shall provide or strengthen specialized training and cooperation for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

95. In 1996, Mexico hosted the Regional Migration Conference.<sup>95</sup> Representatives of the United States, Canada, Mexico and Central America attended the meeting and, at its closure, issued a joint communiqué recognizing that in order to address effectively the causes and manifestations of massive migrations they needed to undertake “comprehensive, objective and long-term” measures. They concluded and agreed to:

(...)

2. Promote a better understanding of the regional and international phenomenon of migration through specialized studies to identify and aid the implementation of measures designed to solve the problems inducing and stemming from it.

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<sup>92</sup> Fidel Castro Rus . President of the Cuban Republic.

<sup>93</sup> El Milenio. *Detiene la PGR en Cancún a mafia de polleros cubanos*. By Fernando Meraz. Junio 21, 2005

<sup>94</sup> La Jornada. *Pagan choferes y guías, no las cabezas. La Guerra contra los polleros*. By Arturo Cano <http://www.jornada.unam.mx/2001/ago01/010826/mas-guerra.html>

<sup>95</sup> Regional Conference on Migration. Joint Comunique. Puebla, Mexico. March 1996. [http://www.migracioninternacional.com/docum/index.html?buttonbot=confregI\\_i.html](http://www.migracioninternacional.com/docum/index.html?buttonbot=confregI_i.html)

3. Promote the economic and social development of the region by fostering trade and productive investment, and implement economic and social policies as factors that, along with international cooperation, can help to address some of the causes of migration.

(...)

Encourage public awareness about the human rights of migrants as a means to promote respect for their dignity, to counteract anti-immigrant attitudes and to eradicate unlawful acts targeting migrants. Promote regional and other forms of cooperation to establish programs to cover the basic needs of populations of undocumented migrants who are in the custody of migratory authorities in each country while their migratory status is being determined.

(...)

13. Affirm the importance of taking measures to facilitate documented migration.

(...)

96. These very lucid conclusions and agreements prove that the governments know how and where to direct their efforts to deracinate massive migrations and the tragedies associated with them. However these thoughts have yet to find their way into concrete actions. On the meanwhile regional governments continue signing bilateral ‘agreements to agree’, such as the Mexico-Guatemala Agreement for the Secure and Orderly Repatriation of Central Americans, June 13, 2002; the Memoranda of Understanding for the Protection of Women and Minors Victims of Smuggling and Trafficking at the Border Mexico-Guatemala. March 23, 2004; the Mexico-El Salvador Plan of Action for the Cooperation in Migrant Affairs and Consular Protection, March 9, 2004; Mexico-Honduras Plan of Action for the Cooperation in Migrant Affairs and Consular Protection, March 24, 2004.
97. None of the aforementioned instruments describe concrete protective measures for the victims of smugglers, traffickers, or Mexican authorities. Their scope and reach is limited to announcing general commitments, declarations of principle and/or promises to act, like: “Strengthening coordination and cooperation mechanisms ... .” “Promote a better communication and collaboration between immigration authorities and consular officials ... .” “Establish multilateral repatriation mechanisms.” “Preventing migrants of the potential risks of undocumented migration.”
98. Nevertheless, the thread that connects the regional anti-smuggling, anti-trafficking cooperation agreements with the U.S. border security controls can be seen with unequivocal clarity in the text of the US - Mexico Plan of Action for Cooperation on Border Security, June 21, 2004.<sup>96</sup> This Plan of Action describes with precision the measures that shall be taken by both governments to “save lives while discharging the State’s sovereign to control its borders.” To accomplish that goal the U.S. Border Patrol initiated a pilot program on use of non-lethal weapons by Border Patrol agents.”<sup>97</sup>
99. Under the pretext of protecting the Mexican immigrant’s integrity and combating smugglers, Mexico sanctioned the Border Patrol’s use of hollow-point bullets against its nationals. Despite

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<sup>96</sup> Copies of the bilateral agreements with Guatemala, El Salvador y Honduras were provided to the Consultant pursuant to a request under the Mexican Freedom of Information Act (Le Federal de Transparencia y Acceso a la Informacion Publica Federal) The U.S- Mexico Plan of Action for Cooperation on Border Security, June 21,2004 is available. <http://www.migracioninternacional.com/docum/indice.html?mundo=mexusplanseg2004.html>

<sup>97</sup> U.S. Department of State. Join Communique: U.S. –Mexico Migration Talks and Plan of Action for Cooperation on border Safety. Washington D.C. June 22, 2001. <http://www.state.gov/r/pa/prs/ps/2001/3733.htm>

the fact that these artefacts were outlawed by the Hague Peace Convention of 1899,<sup>98</sup> the U.S. Border Patrol spokesperson, Mario Villareal, justified their use reminding us that the United States was waging a war, and within it, the Border Patrol was “on the front line, protecting America’s security from terrorists.”<sup>99</sup> It remains unclear, however, just how the U.S. Border Patrol can tell terrorists from smugglers, or a Mexican national from a Central-American one – and there is no evidence that signals that Central American countries have agreed to allow the Border Patrol to play target with their citizens.

## Protection and assistance measures for victims

### 100. Article 16 of the *Smuggling Protocol*:

In implementing this Protocol, each State Party shall take, ..., all appropriate measures, ... necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

... appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

... shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

... shall take into account the special needs of women and children.

101. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

102. Mexico has failed to comply with aforementioned directives. Official government statements and well-documented governmental practices support this assertion.

### *Victim Identification*

103. To effectively protect a victim, the government must be able to discern a victim from an offender or delinquent, and also recognise that victims, regardless of their nationality or immigration status are entitled to the protection of the law and not just subjects of charity. In addition, law enforcement agents and public servants who may come into contact with potential victims must have minimum understanding of the laws that protect victims.

104. Mexican authorities are lacking in those aspects. The statements of Oscar Romero Maldonado INM Chief in Saltillo, Coahuila give us an insight on the authorities capacity and ability to provide protection to migrants victims of crime. Mr. Maldonado told the field researcher during a telephone interview “ that in Mexico, the human rights are only for Mexicans, aren’t they.”

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<sup>98</sup> Quoted in a letter dated December 8, 2000 from Claudia E. Smith, Border Project Director to Michel Nicley, Deputy Chief, U.S. Border Patrol. The California Rural Legal Assistance Foundation’s Border Project. <http://www.stopgatekeeper.org/English/bullets.htm#ft8>

<sup>99</sup> The New Standard. *Mexicans Criticize U.S. Border Patrol’s Use of “Non-lethal” Guns*. By Andrew Kinnis. September 10, 2004 [http://newstandardnews.net/content/?action=show\\_item&itemid=967](http://newstandardnews.net/content/?action=show_item&itemid=967)

This statement helps to understand why many migrants believe that “upon encountering a Mexican authority they lose their rights.”

105. The field researcher also found that with the exception of Axel Garcia, the Southeast Regional Chief of the Mexican Commission for Refugee Assistance (COMAR),<sup>100</sup> none of the authorities interviewed were able to state with reasonable clarity what human rights are, or mention some of the instruments or statutes in which they are contained. **(See Cesar’s main findings)** This impressive lack of knowledge coupled with the overwhelming number of detainees generated by Mexico’s policy of immediate deportation limits its ability to investigate crimes, smuggling and trafficking schemes and its ability to act to prevent them.<sup>101</sup>
106. In the specific case of identifying and protecting potential trafficking victims, the INM acknowledged its present lack of capacity and ability to do so. Pursuant to a freedom of information request, the Consultant obtained an official statement of the INM indicating that “it does not exist a document which describes the methods utilized by the INM to identify and protect the victims of human trafficking, however, the Mexican government is working in sensitising its public servants on this matter.”<sup>102</sup> Unfortunately, the sensitivity training has been fruitless thus far. The interviews with authorities revealed that with the exception of the head of the COMAR, and the National Coordinator of Verification and Control, all the others were unable to ascertain the difference between the smuggling and trafficking concepts. **(Cesar’s main findings)**
107. The governments’ lack of capacity to identify trafficking victims is documented in the 2005 U.S. Department of State Trafficking in Persons Report. This Report emphatically states: “Currently, trafficking victims in Mexico are at risk of being further victimized because of inadequacies in the current legal system, notably the lack of protection for victims.”<sup>103</sup>
108. The INM claims that it “grants trafficking victims temporary status as ‘non-immigrant visitors’ as long as the victims cooperate with the proper authorities in identifying their victimizers.”<sup>104</sup> However, the U.S. Department Trafficking in Persons Report points out that “no victims have been identified and measures to ensure the safety of the victims under this program are not clearly delineated.”<sup>105</sup>

#### *Prosecuting crime or Prosecuting the Victim*

109. Even though the Mexican legal system has the legal mechanisms to prosecute and punish the conduct of traffickers and those who prey on the migrants’ extreme vulnerability, the migrants are dissuaded from reporting them. Paradoxically, the deterrent effect is the product of bad law and misguided enforcement policies.
110. Article 67 of the LGP provides that:

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<sup>100</sup> COMAR is administrative agency of the Secretariat of the Interior, which main function is to receive and process application for refugee status, and recommend the repatriation or resettlement of the applicant. <http://www.gobernacion.gob.mx/templetas/blank.php?idCont=271>

<sup>101</sup> U.S. Department of State. Trafficking in Persons Report 2004. <http://www.state.gov/g/tip/rls/tiprpt/2004/33198.htm>

<sup>102</sup> Official statement of the INM obtained by the Consultant pursuant to a Freedom of Information request dated June 16, 2005.

<sup>103</sup> U.S. Department of State. Trafficking in Persons Report. June 2005 <http://www.state.gov/g/tip/rls/tiprpt/2005/>

<sup>104</sup> See supra 94.

<sup>105</sup> See supra 93

“The authorities of the Republic, federal, local or municipal, as well as the public notaries, their substitutes... are obliged to demand that the foreigners appearing before them, prove their legal status in the country... ”

Article 152 of the LGP stipulates that

If pursuant to the verification process it is established a law or its regulations have been infringed, and the infraction merits the expulsion of the foreigner, the authorised personnel shall precede to his/her detention.

111. Mexican prosecutors have interpreted these provisions using an anti-immigrant code that allows them to favour the prosecution of an immigration infraction over the protection and respect of the foreigners’ fundamental rights and freedoms which are guaranteed by article 1 of the Federal Constitution. “Every person in the United Mexican States shall enjoy the guarantees granted by this Constitution, which cannot be restricted or suspended except in such cases and under such conditions as are herein provided.”<sup>106</sup>
112. The 2004 U.S. Human Rights Country Report describes the results of the Mexican prosecutors’ interpretation of the aforementioned provisions: “Illegal immigrants rarely filed charges in cases of crimes committed against them because the authorities generally deported such persons who came to their attention. Many pending cases brought by illegal immigrants were subject to dismissal because the complainant was no longer present in the country.”<sup>107</sup>
113. It should be noted that the directors of the non-for profit organisations that the field researcher interviewed also believe that many migrants do not report the crimes committed against them because they are “in a hurry to get to the United States”. (**Cesar’s main findings**)
114. Mexico defends its commitment to safeguard the immigrants’ human rights, with the work of the Migrant’s Protection Beta Groups.<sup>108</sup> The Beta groups were created pursuant to article 137 of the LGP regulations. The objective of these groups is to safeguard the rights of the migrants, offering them aid and protection in cases of high-risk situations where attempted abuse is by authorities and private individuals. In practical terms this means they distribute water, food and a “know your rights” leaflet to the migrants they encounter along the border. There are fifteen groups operating in the northern and southern borders. The effectiveness and honesty of these groups is questionable.
115. Most of the migrants interviewed indicated that the “Betas” had been helpful. Others, however, thought that the Betas offered migrants food and water to ferret them out so that INM could

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<sup>106</sup> The Federal Constitution limits the foreigner’s right of petition Article 8. Public officials and employees shall respect the exercise of the right of petition, provided it is made in writing and in a peaceful and respectful manner; but this right **may only be exercised in political matters by citizens** of the Republic. (emphasis added). Freedom of association and assembly, Article 9. The right to assemble or associate peaceably for any lawful purpose cannot be restricted; **but only citizens of the Republic may do so to take part in the political affairs of the country.** (emphasis added). Freedom of transit, Article 11. Everyone has the right to enter and leave the Republic, to travel through its territory and to change his residence without necessity of a letter of security, passport, safe-conduct or any other similar requirement. The exercise of this right shall be subordinated to the powers...of the administrative authorities insofar as concerns the limitations imposed by the laws regarding emigration, immigration and public health of the country, or in regard to undesirable aliens resident in the country. Property rights, Article 27 I. Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometres along the frontiers and of fifty kilometres along the shores of the country.

<sup>107</sup> Country Reports on Human Rights Practices- 2004, Released by the Bureau of Democracy, Human Rights, and Labor February 28, 2005. <http://www.state.gov/g/drl/rls/hrrpt/2004/41767.htm>

<sup>108</sup> Secretaria de Gobernación . Instituto Nacional de Migración. Programas Especiales. Grupos Beta de Protección al Migrante. Bases legales <http://www.migracion.gob.mx/paginas/420000.htm>

detain them. Francisco Aceves, the Coordinator of the Beta Group in Tapachula, told the field researcher that the fact the Beta groups are formed of former law enforcement personnel (state and municipal police), and that many of them are transferred to the Beta groups as punishment for some misdeed, made it very difficult to train them to provide humanitarian assistance.

### *Systemic violence, Corruption and Political discourse*

116. Foreign migrants and the Mexican civil society are quite aware that Mexico's legal system is deficient and so corrupt that it is incapable of offering certainty of protection or access to justice for the great majority. Last March, national *Ombudsman* Jose Luis Soberanes addressed the content of the most recent U.S. Department of State Human Rights Report, acknowledging that "[u]nfortunately it is true... it is difficult to defend the government... [w]e cannot deny the mistreatment of immigrants or that the public safety has not failed, we have to accept facts as they are...." Soberanes further stated that the topic of human rights has been favoured in the political discourse, but he admonished that "...we cannot leave it only to good intentions".<sup>109</sup>
117. Because Mexico's government has not been able to transform its human right rhetoric into concrete actions, thirteen international Rapporteurs and committees of the Nations and the Organization of American States visited Mexico between 2000-2003.<sup>110</sup> Their findings confirm that despite the Mexican government's commitment to protect and promote human rights, arbitrary detentions, unlawful deprivation of life, torture and other cruel, inhuman, degrading treatment or punishment, denial of core due process rights, impunity, corruption, kidnapping, extortion, discrimination against migrants, homosexuals, women, indigenous people, are still common place.
118. After so many reiterated negative evaluations, Mexican officials developed a pattern of responding to them with acrimonious statements of foreign intervention in national matters, followed by dramatic acts of contrition, partially acknowledging the situation and offering to engage the government's political will, effort and resources in corrective measures. However, despite the government's bids, the U.S. Department of State<sup>111</sup> and Amnesty International 2004 human rights reports coincide in observing that Mexico's "...initiatives were insufficient to stem frequent and widespread human rights violations. Structural flaws in the criminal justice system remained a key source of human rights violations and impunity."<sup>112</sup>

### *Racial Profiling and State Victimisation*

119. These structural flaws can be observed with intense clarity during the migrants' detection, detention and deportation. During the detection process the government has the burden of establishing the alienage of the presumed non-citizen. To do so, Mexican law enforcement agents resort to racial profiling – asking suspects to sing the Mexican national anthem and/or provide the name of the Mexican President, or to prove citizenship by showing the Mexican national electoral card (*credencial de elector*). These actions are not only absurd, but illegal.

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<sup>109</sup> La Jornada. "EU tiene razón, aunque no calidad moral" by Jesús Aranda. Miércoles 2 de Marzo, 2005. <http://www.jornada.unam.mx/2005/mar05/050302/011n1pol.php>

<sup>110</sup> Secretaría de Relaciones Exteriores, *Compilación de recomendaciones a México de los mecanismos internacionales y comités de derechos humanos de las Naciones Unidas y de la Organización de Estados Americanos*. México, Septiembre de 2003, p. 13.

<sup>111</sup> Country Reports on Human Rights Practices- 2004, Released by the Bureau of Democracy, Human Rights, and Labor February 28, 2005. <http://www.state.gov/g/drl/rls/hrrpt/2004/41767.htm>

<sup>112</sup> Amnesty International, Report 2004 <http://web.amnesty.org/report2004/mex-summary-eng>

120. Considering that the average Mexican is functionally illiterate with little capacity to understand what he reads and difficulty expressing ideas,<sup>113</sup> it would not be difficult to find many Mexican nationals who could not answer those questions. Similarly, imputing alienage to a person solely on the basis of his/her race would make many Mexicans in Mexico vulnerable to immigration detention, since southern Mexicans and Central Americans share similar ethnic roots. Finally, the requirement to present a Mexican electoral card as proof of citizenship is illegal. The electoral card is one of several “official” identity documents that a Mexican may opt to show, when and if necessary. Mexicans are not mandated to get this card or show it, since they are not obliged to vote. All of this is to say that the anti-smuggling practices impinge on the fundamental rights of immigrants and Mexican nationals alike.<sup>114</sup>
121. Upon detection, law enforcement agents can choose to extort the migrants and let them proceed, and/or remand them to INM’s custody. The INM would, in turn, take them to any of its “overcrowded and insalubrious” detention centres.<sup>115</sup> Many examples of the substandard detention conditions may be found at the detention centre in Tapachula, Chiapas, which has a capacity for 150 people but usually houses 350 to 500. Migrants who are sick and/or afflicted by contagious ailments are not separated from the general population. Medical services are substandard when available. The detention facilities are poorly ventilated and the water supply is insufficient. Furthermore, all the migrants held in 35 of the 45 immigration detention centres inspected by the office of the *Ombudsman* in 2004, claimed that the INM had not enabled any communication with their Consulate and/or their relatives.<sup>116</sup> The INM recognises that it has a legal duty to provide consular notification, but also admits that “they do not have a document describing the mechanisms according to which they comply with article 36 of the Vienna Convention on Consular Relations.”<sup>117</sup>

*Detention and Deportation are not Protective Measure*

122. The INM’s detention facilities are clearly insufficient to house all the migrants it detains. Nevertheless, rather than stopping the raids, the INM places the excess detainees in facilities that are legally and structurally unsuitable for that purpose. The office of the National *Ombudsman* reported last February that “migrants are treated like delinquents; they are sent to municipal jails when they haven’t committed any crime that warrants to be sent to those places.” The Ombudsman’s office also reported that in the southern state of Tabasco migrants have been sent [for detention] to the psychiatric hospital.”
123. The degrading detention conditions have provoked a number of riots in the past months. On March 12, special army forces were called in to subdue a riot at the Mexico City detention center.<sup>118</sup> On June 10, agents of the INM used tear gas to control the protest of a group of

<sup>113</sup> Secretaria de Educación Pública. Centro Nacional de Evaluación para la Educación Superior. April 4, 2005 [http://www.sep.gob.mx/wb2/sep/sep\\_02cro040405](http://www.sep.gob.mx/wb2/sep/sep_02cro040405)

<sup>114</sup> En Línea, from Campeche. Prevalen Prejuicios Raciales en el INM. (Barvariedades 1/08/04) By. Ermilo Ramos. Campeche, Cam. June 28, 2005. <http://www.enlineacampeche.com/Barv2004/barva01.htm>

<sup>115</sup> La Jornada. En las estaciones migratorias, la SG [Secretariat of the Interior] viola sus propias reglas. By Victor Ballinas, March 3, 2005 p. 46; La Jornada. Hacinamiento, insalubridad y maltratos en la estación migratoria de Acayúcan. By Victor Ballinas. June 1, 2005 p. 18; El Universal. Asaltan presuntos policías a ilegales. By Alberto Lopez Morales, June 10, 2005, p. A22.

<sup>116</sup> El Universal. Migrantes: Omiten autoridades Mexicanas dar aviso de detenciones a los consulados. By Liliana Alcantara. January 1, 2005 <http://www.apiavirtual.com/html/modules.php?name=News&file=article&sid=4967>

<sup>117</sup> The Consultant obtained this official statement of the INM pursuant to a Freedom of Information request dated November 11, 2004.

<sup>118</sup> La Jornada. Riñen ilegales en la estación migratoria, Sobre población la causa. March 12, 2005 p. 14.

detainees at the Tapachula detention centre “...at the time there were 500 migrants between man, women and children housed in the detention center.”<sup>119</sup>

124. Last February, when former Secretary of the Interior Santiago Creel was confronted by reporters regarding the atrocious detention conditions that led to the closure of the detention centre in Tabasco, he commented that the situation was “lamentable, but we do not have resources.” This comment evinces a lack of recognition that holding migrants in inhumane and degrading conditions is a violation of the migrants’ rights and a transgression of Mexico’s Constitution and its international commitments.
125. After a usually very short stay at a detention centre, and pursuant to the Mexico-Guatemala Agreement for the Secure and Orderly Repatriation of Central Americans, regional migrants from Guatemalan, Honduran, Salvadorian and Nicaraguan citizens are deported to Guatemala in an “orderly and secure fashion.” Guatemala would then bus them to their respective borders.<sup>120</sup> The motivation behind this bilateral mechanism is to “inhibit the Central American migrants’ zeal to try to cross our border again; largely, due to the difficulties that the distance and the lack of money creates, hence diminishing the immigrations flows.”<sup>121</sup>
126. The office of the National *Ombudsman* determined that the repatriation process is not as orderly and secure as the government purports it to be – at least not for children.
127. Under the terms of an internal directive<sup>122</sup> issued by the INM Control and Verification Unit in December of 2003,

First - Every foreign unaccompanied minor who falls under the jurisdiction of the immigration authority, must be referred immediately to the facilities of Sistema de Desarrollo Integral de la Familia (DIF) – the national children protection institution – to be housed and receive care and attention until his/her immigration situation is resolved.

(...)

Third - The immigration authority must without delay notify the situation to the Consular representative of the minor’s country of origin... .

Fourth - The immigration authority must care scrupulously that the return of the undocumented minor to his/her country of origin, is carried out in coordination with the Consular representation to ensure that an authority or designated person receives the minor at his/her final destination. In any, event the minor must be accompanied by a migrant services officer of the Institute.

128. Despite having a clear mandate to provide special and preferential care to unaccompanied minors, and to ensure that their integrity and rights are fully protected, the INM repeatedly violates its own guidelines. The national *Ombudsman* reported that “ in April, May and June of last year [2004] and January of this year, we detected minors –children and teenagers travelling alone – mixed together with adults... .” and “Mexico does not notify Consulates of the retention of undocumented migrants, especially those coming from Central America.”<sup>123</sup>

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<sup>119</sup> El Universal. Migrantes denuncian abusos en Chiapas. By Maria de Jesús Peters. June 10, 2005 p. A22.

<sup>120</sup> Under the terms of this agreement, Guatemala assumes custody, control and deportation costs of Central Americans.

<sup>121</sup> Plan Sur-Training Manual. Supra at 48.

<sup>122</sup> On October 18, 2004, the Consultant received a certified copy of the internal directive pursuant to a Freedom of Information request. The directive’s number is illegible, but it is dated October 13, 2003

<sup>123</sup> La Jornada. CNDH: policías y militares, parte de la red de extorsión a migrantes. By Víctor Ballinas. February 10, 2005 <http://www.jornada.unam.mx/2005/feb05/050210/044n1soc.php>

## CONCLUSIONS

129. Without condoning the existence or actions of smugglers, this report concludes that at the end of the day, smugglers provide a service that a number of immigrants demand, despite the known risks. The routes, the mechanisms used to deliver the passengers to their destiny, their multiple contacts, and the complicities with government officials, enable the transportation network to function. And it does work for many of those who can afford it. “If the migrant felt that the risk of dealing with smugglers outweigh those involved in crossing Mexico from one extreme to the other without support, then the network of *polleros* and their trade would disappear.”<sup>124</sup>
130. More importantly, if the opportunities to work and develop in freedom existed in their communities the migrants would not exist as a group. They would be and/or continue being farmers, musicians or whatever they chose to be.
131. It is therefore necessary that the governments of the source, transit and destination countries assume their role as a link in the cause-consequence chain of abuse that generates massive migration flows. They must accept that their policy choices, their regime types, and the orientation of their laws contribute to the emergence of the *de facto powers* like smugglers and organised crime, which in the absence of a humanitarian, well-organised, non-corrupt state become the only viable means of access to resources and opportunities.
132. A self-aggrandizing human rights discourse is insufficient to deconstruct the causes of massive migration and abuse to traversing migrants. To achieve the goals of “freedom and protection for all”, the States must implement extensive educational policies and land reform, support small medium, and small sized business, and provide adequate medical care to the poor. Those measures would necessarily inconvenience the ‘safety’ of the power elites and privileged workers, but in the only way to stop people from searching elsewhere for what they can get at home.

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<sup>124</sup>Centro de Investigaciones Económicas y Políticas de Acción Comunitaria (CIEPAC). [La Migración en México y en Chiapas](http://www.ciepac.org/bulletins/100-200/bolec157.html). By Michel Packard 28 de Mayo, 1999. <http://www.ciepac.org/bulletins/100-200/bolec157.html>

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