



INVISIBLE VICTIMS

MIGRANTS ON THE
MOVE IN MEXICO

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Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2010

Index: AMR 41/014/2010
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

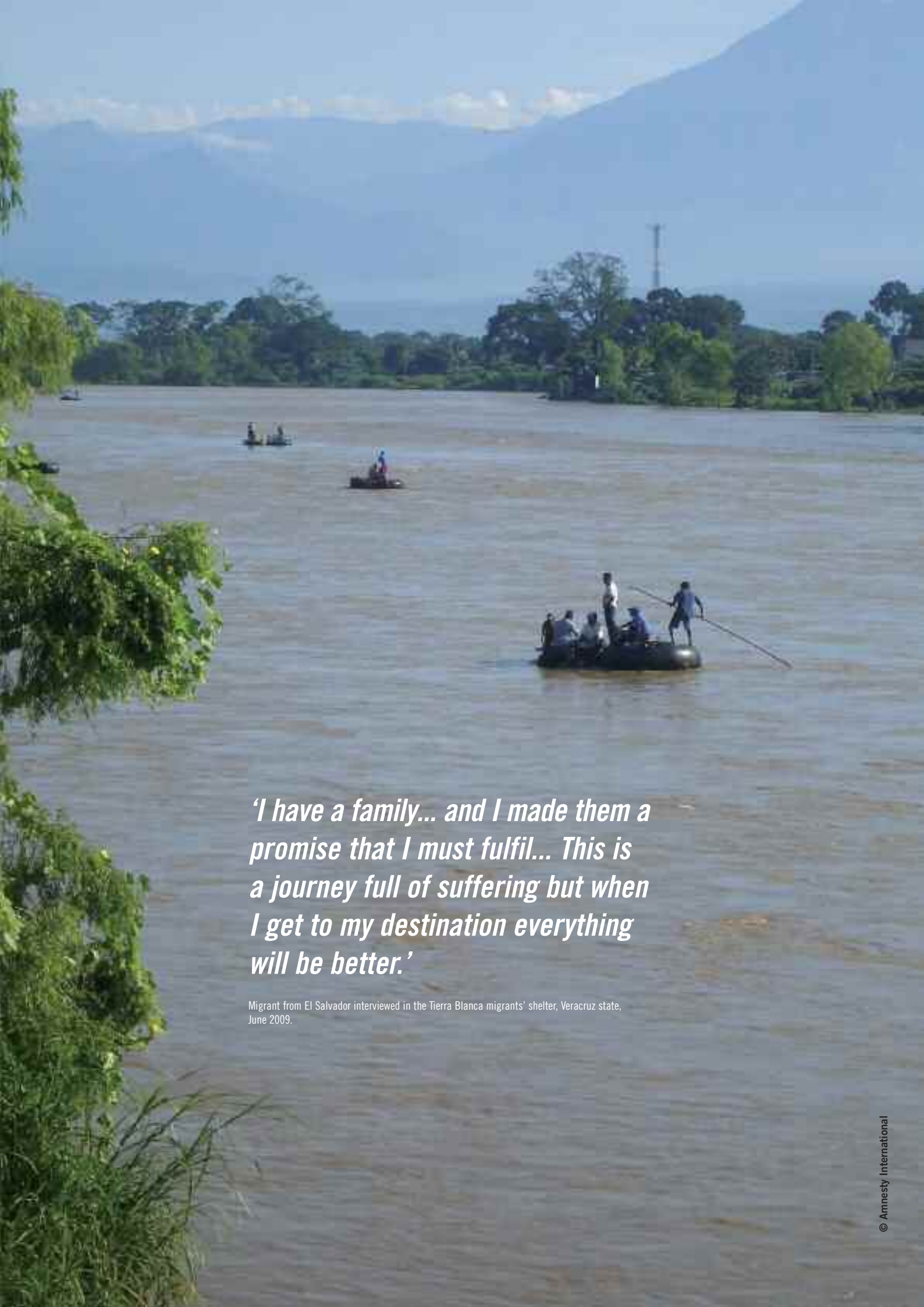
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Cover photo: One of the main ways migrants travel towards Mexico's northern border is on the network of freight trains. Here migrants in Tierra Blanca, Veracruz state, board "La Bestia" (The Beast) also known as "El tren de la muerte" (The Train of Death).

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'I have a family... and I made them a promise that I must fulfil... This is a journey full of suffering but when I get to my destination everything will be better.'

Migrant from El Salvador interviewed in the Tierra Blanca migrants' shelter, Veracruz state, June 2009.

LIST OF TERMS

■ CNDH – The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) is an autonomous state institution mandated to receive human rights complaints. Its 5th Inspectorate was established in 2005 to handle complaints of abuses of authority against migrants. The CNDH has legal authority to obtain information from civilian and military authorities and to conduct non-judicial investigations. If the CNDH concludes there is evidence to support a complaint, it may either facilitate a confidential agreement between the parties or issue a public recommendation urging the authority to remedy the abuse. CNDH recommendations usually call for administrative enquiries by internal enquiry bodies and/or criminal investigations by the relevant public prosecutor's office. CNDH recommendations are not binding.

■ CONAPRED – National Council for the Prevention of Discrimination (Consejo Nacional para la Prevención de la Discriminación, CONAPRED).

■ Federal Police – The Federal Police (formerly the Federal Preventive Police and the Federal Investigation Agency), which comes under the authority of the Ministry of Public Security, is the only law enforcement agency with specific legal authority to apply the General Population Law (see below) and support the National Migration Service in operations to detain migrants and to determine their status.¹

■ FEVIMTRA – Special Federal Prosecutor's Office for Violent Crimes against Women and Trafficking of Women and Children (Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas, FEVIMTRA)

■ Grupo Beta – The Grupo Beta (Grupos Beta de Protección a Migrantes) is an unarmed humanitarian assistance force set up by the National Migration Service to provide help to migrants, regardless of their legal status, who are at risk of abuse, dehydration, starvation or exposure. There are 144 agents divided between 16 Grupo Beta units, primarily operating near the northern border and some on the southern border. Agents also inform migrants about the dangers they face and their rights. They are not authorized to carry out migration status checks.

■ INM – The National Migration Service (Instituto Nacional de Migración, INM) is a decentralized unit within the Ministry of the Interior. It is responsible for migration services² and is headed by a Commissioner appointed by the Minister of the Interior. The INM operates 47 migration detention centres around the country. Only INM officials and Federal Police are authorized "to verify and check the status of migrants".³

■ INMUJERES – National Institute for Women (Instituto Nacional de las Mujeres, INMUJERES)

■ Irregular migrants – Migrants who do not have legal permission to enter or remain in the country.

■ LGP – The 1974 General Population Law (Ley General de Población, LGP) and its regulatory law (Reglamento del Ley General de Población, RLG) set out the controls and procedures governing migration.

■ PGJE – There are State Attorney Generals' Offices (Procuradurías Generales de Justicia de los Estados, PGJEs) in each of Mexico's 31 states and the Federal District. They are responsible for investigating and prosecuting non-federal crimes as well as offences committed by state or municipal officials.

■ PGR – The Federal Attorney General's Office (Procuraduría General de la República, PGR) is responsible for investigating and prosecuting federal criminal offences, such as crimes against federal laws and international treaties; organized crime; trans-state and border offences; drug-related crimes; firearms offences; as well as crimes committed by and against federal officials and the federal administration.

■ SEGOB – The Ministry of the Interior (Secretaría de Gobernación, SEGOB) is responsible for the implementation of the laws governing migration, including verifying the legal status of foreign nationals, as well as the detention, repatriation or deportation of irregular migrants.

Left: Many migrants start their journey through Mexico at the Suchiate River crossing between Guatemala and Mexico. Rafts made of chipboard strapped to plastic tubes regularly make the crossing carrying merchandise, day labourers and undocumented migrants between Guatemala and Mexico.



METHODOLOGY

Amnesty International delegates visited Mexico in 2008 and 2009 to conduct interviews with migrants, representatives of human rights organizations, people working in migrants' shelters, lawyers, academics, members of Congress, members of the National Human Rights Commission and federal and state authorities. Delegates visited Mexico City and the states of Chiapas, Oaxaca, Tabasco and Veracruz where, according to the National Migration Service, the vast majority of migrants are detained by the authorities.

Amnesty International also conducted a survey of 110 migrants who were interviewed in June 2009. Their statements reinforced the findings of other surveys by NGOs indicating that a large number of abuses are committed against irregular migrants travelling through Mexico, and that they are almost never reported. The names and other details of some of those interviewed have been withheld for their protection.

1/INTRODUCTION

“You don’t imagine that your dreams can end in a moment on this journey... He [the soldier] pulled me by the hand and told me to walk further into the bushes. He took me far away from the train tracks until we were completely alone. He told me to take my clothes off so that he could see if I was carrying drugs. He said that if I did what he said he would let me go.”

Margarita (not her real name), a 27-year-old Salvadoran migrant, describing how she was sexually abused by a soldier, Amnesty International interview, June 2009

Every year, tens of thousands of women, men and children travel through Mexico without legal permission as irregular migrants. More than nine in every 10 are Central Americans, mostly from El Salvador, Guatemala, Honduras or Nicaragua. The vast majority are headed for the US border in the hope of new life far from the poverty they have left behind. Their journey is one of the most dangerous in the world.

Mexico is one of the few countries in the world that is both a destination and transit route for migrants, and a starting point for emigration as thousands of Mexicans try to cross the border with the USA in search of work. This generates complex social, economic, political and cultural consequences for Mexico and its regional neighbours.

The conditions that lead people to become irregular migrants are the same in Central America as in other parts of the world: grinding poverty, insecurity, lack of opportunity and a determination to risk all in the hope of a better future. The reality for many migrants who make the journey across Mexico, however, can be

devastating. Riding precariously on the tops of freight trains, many are met with discrimination and xenophobia, targeted by people smugglers and prey to kidnapping by criminal gangs. Every year thousands of migrants are ill-treated, abducted or raped. Arbitrary detention and extortion by public officials are common.

It is a testament to their determination that despite the litany of abuses they encounter, many migrants will risk making the journey several times in order to achieve their aim. However, some disappear without trace, kidnapped and killed, or robbed, assaulted and thrown off speeding trains by one of the many criminal gangs that prey on irregular migrants. For most of Mexican society, their deaths, like their lives, remain largely hidden from view. For the families back home, there is little hope of ever finding out what happened.

All irregular migrants are at risk of abuse, but women and children – particularly unaccompanied children – are especially vulnerable. They face serious risks of trafficking and sexual assault by criminals, other migrants and corrupt public officials. Although few cases are officially registered and virtually none are ever prosecuted, some human rights organizations and academics estimate that as many as six in 10 women and girl migrants experience sexual violence during the journey.⁴

There are no accurate statistics on the number of irregular migrants who enter Mexico or cross undetected into the USA. The only figures available are those compiled by the National Migration Service (Instituto Nacional de Migración, INM) on the number of migrants detained and returned to their countries of origin. Irregular migrants and asylum-seekers are routinely subject to administrative detention in migrant detention centres. In the case of non-Central Americans, this can be for prolonged periods of time while their cases are submitted to a statutory migration process. INM figures indicate there has been a steady reduction in the numbers of migrants detained since 2006. However, even with this decline, large numbers of migrants continue to be held. In 2009, 64,061 foreign nationals were detained by the INM, of whom 60,383 were from El Salvador, Guatemala, Honduras and Nicaragua. Some 60,143 were voluntarily repatriated or deported, 2,846 were allowed to regularize their migration status and 87 asylum-seekers were



© Amnesty International (Photo: Ricardo Ramirez Arriola)

Sixteen-year-old José (not his real name) washes his clothes in a migrants' shelter in Tierra Blanca, Veracruz state. José left home with his 14-year-old brother to find work in the USA and send money back to support his family in Honduras. When Amnesty International met him, he was travelling alone. He explained how a few days earlier he had been separated from his brother when immigration officials raided the train they were travelling on. He said he hoped that his brother had been deported and had not fallen into the hands of criminal gangs.

granted refugee status.⁵ One in five was a woman or girl. One in 12 was under 18 years old and, although most were teenagers, some were under 10.⁶

Despite media coverage of abuses against irregular migrants, there is very little reliable official data available. In recent years, human rights organizations, church-based migrants' shelters and academics have used surveys of migrants to document, quantify and expose the scale of abuses experienced by migrants during the journey. For example, the Belén Posada del Migrante in Saltillo, Coahuila state, conducted 828 interviews with migrants arriving at the shelter between May 2007 and February 2008.⁷ It documented 3,924 different incidents of abuses. These included 1,266 acts of intimidation (threats, insults, shooting into the air); 475 physical attacks (beatings and stoning); and 42 cases of sexual assault or violence. In 2009, 10 migrants' shelters began collating reports of abuses in co-ordination with the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH). No comparable initiative to collect information about abuses has been undertaken by the federal or state governments.⁸

Human rights defenders, particularly local priests and lay workers who run a network of migrant shelters providing humanitarian aid, are the backbone of the support extended to migrants. It is thanks to their efforts that many more migrants do not succumb to exhaustion, exposure and starvation on their journey. Defenders also play a crucial role in registering abuses by agents of the state and by private individuals or groups (non-state actors) and in encouraging migrants to seek justice.

Human rights defenders also help counter the xenophobia against migrants that sometimes flares up in local communities. The courage and conviction of these individuals, often supported by lay volunteers and congregations that donate food and clothing, demonstrate a profound commitment to the protection of the human rights of the most vulnerable. Those who stand up for irregular migrants are themselves often targeted for attack. Some have received death threats. In some cases, shelters have been physically attacked.⁹ Others have been subjected to smear campaigns and threats of false charges of people smuggling. In March 2008, the National Supreme Court ruled that people



who give shelter to or assist migrants but do not seek financial gain are not committing the offence of people smuggling.¹⁰ Prior to this ruling, those who provided humanitarian assistance to irregular migrants were open to criminal prosecution. However, Amnesty International found that many people living near migrant routes were unaware of the Supreme Court ruling and continued to fear prosecution if they provided any assistance to migrants.

Irregular migrants' lack of legal status means that effective recourse to the justice system is denied them. This puts irregular migrants at heightened risk of abuse. Excluded from mainstream society and effectively denied the protection of the law, Mexico's irregular migrants are condemned to a life on the margins, vulnerable to exploitation by criminal gangs and corrupt officials and largely ignored by many of those in authority who should be protecting them from human rights abuses.

In 2009, the CNDH issued a special report documenting the alarming levels of abductions of migrants by criminal gangs, and related abuses. The

Migrants shower and wash their clothes at a shelter in Tierra Blanca, Veracruz state. Migrants can only stay for a maximum of two days at most of Mexico's chain of shelters run by the Catholic Church. Once they have caught up on lost sleep and eaten a few hot meals, they begin the next leg of their journey to the US border.

DUE DILIGENCE

Under international law, governments have an obligation to use their power to ensure that human rights are respected, protected and fulfilled.¹¹ This includes not only ensuring that their own officials comply with human rights standards, but also acting with “due diligence” to address abuses committed by private individuals or groups (non-state actors).¹² Indicators of the lack of due diligence include: failure to punish or prevent the abuses; failure by officials to intervene; the absence of legal prohibition or other measures to eradicate the abuses; and the failure to provide reparation or compensation to victims.

States are required to make sure that the rights recognized under human rights law are made a reality in practice. In addition, if a right is violated, the state must restore the right violated as far as is possible and redress the harm. This must include the investigation and punishment of those responsible for violations.

When states know, or ought to know, about violations of human rights and fail to take appropriate steps to prevent them, they, as well as the perpetrators, bear responsibility. The principle of due diligence includes obligations to prevent human rights violations, investigate and punish them when they occur, and provide redress and support services for victims.¹³

report concluded that, on the basis of the interviews conducted, as many as 9,758 migrants had been kidnapped over a six-month period between 2008 and 2009, including at least 57 children.¹⁴ The report suggested that Mexico was experiencing a hidden epidemic of kidnappings, with the majority of the most severe abuses occurring in the states crossed by the freight trains on the principal routes used by migrants, such as Chiapas, Oaxaca, Tabasco, Veracruz and Tamaulipas.

Many of the abuses committed by criminal gangs constitute serious criminal offences which the state has an obligation to prevent, punish and remedy with due diligence. In response to unprecedented levels of violent crime in several parts of the country, the federal and state governments frequently highlight their obligation to meet people’s need for personal security. However, irregular migrants, perhaps the most vulnerable section of the population, rarely feature in the government’s prevention and protection measures.

The Mexican government faces major challenges in dealing with violent organized criminal networks. Since 2007, according to the media, more than 15,000 people have been killed in gang-related violence in Mexico and hundreds of people have been kidnapped. Members of the security forces are also frequently the target of attacks by criminal gangs. Managing migration controls on Mexico’s lengthy borders and addressing abuses against irregular migrants require substantial logistical and financial resources as well as tackling transnational issues such as Central American criminal gangs operating in parts of Mexico. However, whatever the public security demands faced by federal and state authorities, the Mexican government has an obligation to promote, respect and ensure the human rights of all, including irregular migrants.

The Mexican government has been active in promoting respect for migrants’ rights. For example, it has highlighted abuses against Mexican migrants in the USA, such as discrimination and the denial of economic and social rights.¹⁵ Mexico has ratified virtually all the principal human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers’ Convention). It has officially recognized that these

rights should also be enjoyed by irregular migrants in Mexico and has taken some steps in recent years to reduce abuses by state officials against irregular migrants. For example, irregular migration is no longer an imprisonable criminal offence, conditions in some detention centres have improved and the time most Central American irregular migrants spend in detention pending their repatriation or deportation has been reduced. In addition, legislation criminalizing people trafficking has been enacted and measures to improve protection for unaccompanied children and women have been developed.

Amnesty International's research indicates that, despite such steps, abuses against irregular migrants continue to be a low priority for many state and federal authorities, especially if there is no clear evidence that state officials are directly implicated. However, in many cases that would appear at first glance to be the work solely of criminal gangs, there is evidence that state officials are involved at some level, either directly or as a result of complicity and acquiescence.

Long-standing concerns have been raised by NGOs, the Inter-American Commission of Human Rights and UN thematic mechanisms about human rights abuses against migrants in detention, the denial of labour rights to migrant workers, and shortcomings in the migration and asylum determination process. However, this report focuses specifically on abuses against migrants largely by criminal gangs who are frequently assisted, either directly or by omission, at some level by public officials. These abuses, although widespread, are almost never reported. The report focuses on the failure of the state to ensure effective prevention, detection, investigation, punishment and redress for these abuses, thereby creating a climate of neglect and impunity. It ends with a series of recommendations to the authorities to comply with their international responsibilities in order to ensure respect, protection and fulfilment of the rights of irregular migrants in transit in Mexico.



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A poster welcomes migrants at one of the migrants' shelters run by the Catholic Church, Tierra Blanca, Veracruz state.



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Migrant jumping from one wagon to the next in Arriaga, Chiapas state. For many undocumented migrants, the journey through Mexico is a leap into the unknown in the hope of fulfilling their dreams of a better life. The obstacles and dangers they face are daunting. That so many survive is a testament to the strength of their determination and the defiant solidarity extended to them along the way.

2/THE DANGERS OF THE JOURNEY

Every year, thousands of migrants are kidnapped, threatened or assaulted by members of criminal gangs. Extortion and sexual violence are widespread and many migrants go missing or are killed. Few of these abuses are reported and in most cases those responsible are never held to account. Cases in this report show that the federal and state authorities are frequently implicated at some level in abuses against migrants. Persistent involvement in such abuses, and/or failure to address widespread abuses by non-state actors against migrants, breach Mexico's legal obligations to exercise due diligence to respect, protect and fulfil human rights.

KIDNAPPING, THREATS AND ASSAULT

The migrants' routes through Mexico have become a lucrative source of income for criminal gangs and the kidnapping of migrants for ransom has become almost routine. In many ways, the experience of Ramón (not his real name) reflects that of many irregular migrants. In November 2008, he and 35 other migrants were abducted by armed men from a freight train in Veracruz state. They were taken to a ranch in Reynosa, Tamaulipas state, where scores of other migrants were being held by a gang, and forced at gunpoint to reveal the phone numbers of their relatives from whom ransoms could be demanded. The ranch was later raided by the military and some of the kidnapers were detained. Ramón and others made statements to officials from the Federal Attorney General's Office (Procuraduría General de la República, PGR) investigating the case, but no one told them that they

could file a complaint about the kidnapping or threats to their lives, or that they could secure a temporary visa pending the investigation into abuses at the ranch. Instead, Ramón was placed in detention in Iztapalapa Migrant Detention Centre. From there, he spoke to a human rights organization to tell them that other members of the kidnap gang who had not been identified by the authorities were held with the migrants in the detention centre and were posing a serious threat to witnesses. In December 2008, Ramón was returned to Honduras. There is no further information on whether members of the criminal gang were charged or prosecuted.

Some migrants who had been kidnapped and survived told Amnesty International they were so traumatized by their experiences that they had voluntarily handed themselves over to the INM to be deported rather than risk falling into the hands of criminal gangs again. Others had made their way back over the southern border, fearing INM agents might pass them on to gangs. They described how the gangs operated with apparent impunity, regularly seizing more than 100 migrants at a time. The victims were then forced to reveal the telephone numbers of relatives in Central America or the USA who were contacted and given days to transfer money to pay the ransom. Several of those interviewed described how migrants would be tortured or killed if the money failed to arrive on time.

The alarming rise in kidnappings has been highlighted by local human rights NGOs for several years. Lack of official action – whether due to a failure to prioritize the protection of migrants or the result of officials' complicity or acquiescence with those responsible for the abuses – has allowed the problem to become entrenched. The Migrant Workers' Committee¹⁶ and the UN Special Rapporteur on the human rights of migrants have long highlighted abuses by organized criminal gangs against migrants in Mexico.

"Transnational migration continues to be a business in Mexico, largely operated by transnational gang networks involved in smuggling and trafficking in persons and drugs, with collaboration of the local, municipal, state and federal authorities. These practices are directly related to the rise in cases of violence against women and children, especially along the northern and southern borders, and at transit



Migrants in El Santuario, Macuspana Municipality, Tabasco state, gather round to read an article in the local newspaper about a mass kidnapping of migrants by the Zetas, a notorious criminal gang, the previous day, June 2009.

points. As such, impunity for human rights abuses against migrants is rampant. With the pervasiveness of corruption at all levels of government and the close relationship that many authorities have with gang networks, incidences of extortion, rape and assault of migrants continue. The majority of the cases seem to be against migrants from Guatemala, El Salvador, Honduras and Nicaragua.”

Report of the UN Special Rapporteur on the human rights of migrants, 24 March 2009¹⁷

However, the June 2009 special report published by the CNDH was the first official recognition by the Mexican authorities of the scale of the problem and of the federal and state authorities' obligation to address these crimes more actively.¹⁸ The CNDH interviewed 238 victims and witnesses of 198 kidnapping incidents involving migrants carried out between September 2008 and February 2009. It estimated that during this period 9,758 migrants were kidnapped. Ninety-one of the migrants interviewed stated that public officials were directly responsible for their kidnapping and a further 99 victims observed police colluding with kidnapers during their captivity. Of the 157 women confirmed kidnapped, at least two were murdered and

others raped. At least one was forced to stay with the gang-leader as a “trophy”. The CNDH calculated that, “[n]ine out every 10 victims (8,478) suffered death threats against them and their relatives... and were threatened with guns and knives... and at least 1,456 migrants were hit with fists, feet, guns, clubs, sticks and other objects.” The CNDH urged the authorities to improve measures to prevent such abuses and remove the obstacles faced by migrants in filing criminal complaints.

On 12 October 2008, about 60 irregular migrants from El Salvador, Honduras and Nicaragua escaped from the house where they were held captive into the streets of the town of Rafael Lara Grajales, Puebla state. The CNDH later gathered testimony from a Guatemalan migrant. He described how on 9 October 2008, he and five other migrants were ordered to get off the train on which they were travelling north by two armed men in civilian clothes. A little later, a white police patrol car arrived and the migrants were detained. The police took them to a house where they were handed over to six other policemen. The six municipal police officers took them to another house where they were held by members of the Zetas (a notorious criminal gang). The migrants were made to take off their clothes and provide telephone numbers of relatives. Their captors beat them and burned them with cigarette lighters.¹⁹ Several migrants escaped and ran through the streets naked and bleeding. Townspeople gave them first aid, clothing and food, but they did not inform the local police as, according to the migrants, municipal police officers had been involved in detaining the migrants and in handing them over to the kidnap gang.

Municipal officials refused to help residents identify and detain gang members and police involved in the kidnapping. Instead, representatives of the Puebla State Attorney General’s Office (Procuraduría General de Justicia del Estado, PGJE) tried to detain the migrants who had not fled. Fearing the detained migrants would be returned to the kidnap gang, local residents intervened to prevent their removal until INM agents arrived. In the resulting clash between municipal officials and residents, several arrests were made and criminal damage was caused to police vehicles. Nevertheless, residents ensured migrants were handed over directly to INM officials later that day.



Donar Ramírez Espiral left Honduras in 2004. His dream of reaching the USA was shattered when he fell off a train and lost both of his lower legs. When Amnesty International met him, he had been living in a shelter in Tapachula, Chiapas state, for five years. The Jesús el Buen Pastor del Pobre y el Migrante shelter was founded by Olga Sánchez Martínez, a local volunteer, in order to provide a place where migrants who have lost limbs after falling from freight trains, or after being thrown from moving trains by criminal gangs, can recuperate.



Municipal police detain Father Alejandro Solalinde Guerra, Ciudad Ixtepec, Oaxaca state, 10 January 2007. Father Solalinde has been threatened and intimidated by local gangs and officials because of his work defending migrants' rights.

The CNDH documented the municipal authorities' failure to provide it with accurate information and to investigate adequately police involvement with the gang. However, as far as Amnesty International is aware, no official has faced any charges or disciplinary procedures in connection with the case.

In January 2007, 12 migrants – four children, three women and five men – were reportedly detained and taken off the train in Ciudad Ixtepec, Oaxaca state, by state police. Among the officers present was the local commander of the state judicial police. Other migrants who witnessed the incident informed Father Alejandro Solalinde Guerra, who runs the local migrants' shelter (Albergue "Hermanos en el Camino").

Aware of a pattern of abductions involving police officers transferring migrants to criminal gangs, Father Solalinde went to the press. He informed two reporters on national newspapers, who accompanied him and a group of 40 migrants to inspect premises where they suspected migrants were held by a criminal gang. In one house the group found evidence that the migrants had been there very recently, including international money transfer slips, clothes and a mobile phone. As they left the property, municipal police officers used excessive force to arrest Father Solalinde and 18 of the migrants with him, severely beating at least nine migrants. Father Solalinde was released without charge after four hours. The migrants were not charged, but were immediately subject to repatriation proceedings by the INM.

In December 2007 the CNDH issued a recommendation (065/2007) on the incident confirming the involvement of municipal police in criminal activity and the unlawful detention of both Father Solalinde and the migrants, and calling for an investigation. However, to Amnesty International's knowledge, neither police nor prosecutors carried out a substantive investigation into the conduct of officials and no one has faced criminal or disciplinary proceedings.

These incidents are exceptional only in that human rights defenders or members of the local community took action to protect migrants in the face of apparent complicity between local officials and criminal gangs. Not all abuses by criminal gangs involve omission,

complicity or acquiescence on the part of municipal, state or federal authorities, although in many cases officials are implicated at some level. However, the failure of the authorities to effectively investigate reports of abuses against migrants has contributed to a climate of impunity in which no one – neither criminal gangs nor corrupt officials – is held to account. As these cases show, even when a CNDH recommendation calls for investigations into abuses against migrants, substantive investigations are not carried out and officials are not held to account.

In September 2008, Marcos (not his real name) and five other young men from Nicaragua crossed into Chiapas state and were detained by a Grupo Beta agent and taken to a local police lockup in Jaltenango where they were held for three days. According to Marcos' testimony, the migrants were then driven to a remote ranch in a municipal police vehicle and forced to provide their relatives' phone numbers. He said that when one of the migrants refused, he was raped as punishment.

After several days, the six were told they had five minutes to reach a distant tree otherwise they would be shot. As they ran, shots were fired and the migrants dispersed in panic. Marcos eventually made his way to the migrants' shelter (Casa del Migrante Hogar de la Misericordia) in Arriaga, Chiapas state, run by Father Heyman Vázquez Medina. On 13 September 2008, Marcos filed a complaint with the newly established Special Prosecutor for Crimes against Migrants of the Chiapas PGJE.²⁰ He provided a detailed description of the Grupo Beta agent who initially detained them and of the gang members. Investigators located two possible ranches where the migrants might have been held. However, Marcos, who had filed for a special humanitarian visa to remain in the country pending the criminal investigation, disappeared from the migrants' shelter, leaving his possessions behind. He has not been heard of since and workers at the shelter fear that he may have been threatened or killed. Following his disappearance, investigators argued no more could be done without the sole witness; no one was ever charged in connection with the case.

Even when migrants have been rescued from their captors by the federal or state authorities, they are frequently not treated as the victims of crime with

rights to justice and reparation, but are simply asked to make a statement and then repatriated. As a result, criminal investigations focus on prosecuting people smugglers, but do not tend to gather evidence on abuses committed against migrants.

VIOLENCE AGAINST MIGRANT WOMEN

"From Arriaga I decided to take the train. Many people said, 'don't it's dangerous here', but my vision has always been to help my children, and I wanted to travel on top of the train, I wanted to feel like a princess."

Teresa, a 25-year-old Salvadoran woman with two children, Amnesty International interview October 2008

Women and girl migrants, especially those without legal status travelling in remote areas or on trains, are at heightened risk of sexual violence at the hands of criminal gangs, people traffickers, other migrants or corrupt officials. Sexual violence, or the threat of sexual violence, is often used as a means of terrorizing women and their relatives. Many criminal gangs appear to use sexual violence as part of the "price" demanded of migrants. According to some experts, the prevalence of rape is such that people smugglers may require women to have a contraceptive injection prior to the journey as a precaution against pregnancy resulting from rape.

It is a widely held view – shared by local and international NGOs and health professionals working with migrant women – that as many as six in 10 migrant women and girls are raped.²¹ A study in 2006 interviewed 90 migrant women held in Iztapalapa Migrants' Detention Centre, of whom just over half were from Central America. Twenty-three women reported experiencing some kind of violence, including sexual violence. Of these, 13 stated the person responsible was a state official.²² Researchers carrying out the study believed the figures may significantly understate the problem because of the reluctance of women to discuss sexual violence, particularly when they are in detention.

Many women migrants are deterred from reporting sexual violence by the pressure to continue their journey and the lack of access to an effective complaints procedure. This is compounded by the lack



© Amnesty International (Photo: Ricardo Ramirez Arrola)

Young woman at a shelter for migrants in Tierra Blanca, Veracruz state. It is widely believed that as many as six in 10 migrant women and girls experience sexual violence.

‘Of every 10 women who pass through this shelter, six have suffered sexual assault.’

Father Heyman Vázquez Medina, migrants’ shelter, Arriaga, Chiapas state

of avenues to secure effective protection and the absence of reliable sources of assistance or support for survivors. Migrants who have been raped have to deal not only with the stigma associated with sexual violence, but also with the risk that if they report the crime they may be deported or that seeking treatment will deprive them of their one chance of reaching the USA. As a result, women migrants rarely report sexual violence and are very unlikely to file criminal complaints.

Criminal gangs often operate with the co-operation of, or in collaboration with, train drivers, engineers or private security guards on the train routes. For example, on 5 November 2008, 12 migrant women were abducted from a freight train at Las Anonas, Oaxaca state, by a group of armed men. Eyewitnesses testified that the train driver stopped the train for the gang to specifically target the women. A complaint was filed, but the women, who may have been trafficked, were never found.

On 1 March 2008, a Salvadoran couple, Marta and Juan (not their real names), were passing near the INM post at Huixtla on the Tapachula-Arriaga road, Chiapas state. Three uniformed municipal policemen stopped them and stole their money. Then, three armed men arrived and took Marta away. One of the policemen told her husband to disappear, but he scoured the area looking for his wife until the following day, when he made his way to the shelter run by Father Solalinde in Ciudad Ixtepec, Oaxaca state. He filed a complaint with the PGJE in Tapachula. Father Solalinde told Amnesty International that later, when Marta was located in El Salvador, she confirmed that the armed men had blindfolded her and forced her to walk for a day before repeatedly raping her. After five days in captivity, Marta woke alone. Traumatized, she made her own way back to El Salvador, reluctant to pursue a criminal complaint against the perpetrators. The Special Rapporteur on the human rights of migrants raised the case with the Mexican government which offered to provide Marta with a visa to file a complaint, but she refused to return to Mexico. To Amnesty International's knowledge, no further efforts were made to identify the perpetrators.

Marta was attacked in an area near the town of Huixtla known as La Arrocerá. Scores of attacks against migrants, particularly women, have been reported in La Arrocerá since 2001. Migrants interviewed by Amnesty International repeatedly highlighted assaults, rapes, kidnappings and murders they had experienced or witnessed in La Arrocerá and the municipal rubbish tip outside Arriaga, another notorious site where numerous abuses have reportedly been carried out. Both locations have been drawn to the attention of the authorities by migrants' rights defenders. Despite periodic police patrols in the area and the establishment of a new regional PGJE office, abuses persist.

On 10 June 2009, Ana (not her real name) and her two brothers entered Tabasco state from Guatemala, having travelled from their home in Nicaragua. The stretch of countryside from the Guatemalan border, through the state of Tabasco to reach the main railway junction in the next state of Veracruz, is notorious for abuses against migrants making the journey on foot or riding the freight trains. Many fall victim to assaults and abduction. Ana and her brothers were captured by 10 armed men and taken to an unknown ranch. Ana told Amnesty International that she was kept in a room

alone from where she could hear the screams of her brothers as they were beaten with a wooden plank. She was then told that she would be beaten and raped by each member of the gang until she provided phone numbers of relatives who would pay a ransom for their release. One of the armed men forced her to the ground violently and threatened to rape her. Ana pushed him away repeatedly and he eventually left her alone. Ana said that she and her brothers were released four days later. They were so traumatized by their ordeal that they handed themselves to the INM in order to be repatriated.

Ana, like many migrant women, was held in Tapachula in the INM's largest and most modern migrants' detention centre. Despite the prevalence of rape of migrant women and girls, there is very limited access at the centre to appropriate psychological or medical care or to other support services to help women and girls traumatized by their experiences and, potentially, to enable them to file a legal complaint. According to migrants at the centre, the statutory medical examination carried out on newly arrived migrants was often cursory, with little attempt to encourage traumatized women to report sexual violence.

"All the time they swore at us, slapped us, pushed and kicked us all over and hit us with a whip, they covered our eyes and mouths... they killed my friend because she didn't have any [relatives] to help her and she couldn't given them [phone] numbers, so they shot her twice in the head and they left her bleeding in front of me for three hours to intimidate me... The place they held me captive is a big, dark, dirty house that smelled bad. The two days I was there I slept on the ground with no blanket. They only gave me something to eat once and a little water. The men who kidnapped me also stripped me naked and raped me. In that place, I heard the whole time the moans, cries and groans of other people".

Salvadoran woman quoted in the 2009 CNDH special report on kidnapping²³

In recent years, the National Institute for Women (Instituto Nacional de las Mujeres, INMUJERES) and the Chiapas State Institute for Women (Instituto Estatal de las Mujeres) have set up small clinics in Tapachula and Arriaga to provide medical and psychological care for migrant women who have experienced sexual

violence. The hostel in Tapachula is run by the Chiapas state Family Social Services (Desarrollo Integral de la Familia, DIF) and also provides temporary shelter for women migrants at risk, usually pending their repatriation. The International Organization for Migration also operates in Tapachula to identify young women at risk, particularly those at risk of being exploited by people traffickers. These are positive developments in Chiapas. However, lack of inter-agency co-ordination continues to hamper the development of legal and medical measures to prevent and punish the rape of migrants and to provide treatment for survivors. In particular, those responsible for providing services and treatment should take steps to overcome lack of confidence in state officials by ensuring that reports of sexual violence are taken seriously and initiating effective investigations. They should also ensure that the barriers to survivors' co-operation as witnesses in ongoing criminal investigations are overcome.

MISSING OR KILLED

In February 2009 a delegation of Salvadorans belonging to the Committee of Relatives of Dead and Disappeared Migrants (Comité de Familiares de Migrantes Fallecidos y Desaparecidos, COFAMIDE) visited southern Mexico. Representing more than 700 families, the COFAMIDE delegation reported that 293 Salvadorans had been killed or gone missing in Mexico in the previous two years and pressed the Mexican federal and state authorities for information and effective investigations.²⁴

Hundreds of irregular migrants go missing or are killed every year as they travel north. The journey is fraught with dangers, both from the precarious forms of travel and from the violence of criminal gangs. There are no reliable statistics of the numbers involved – no official comprehensive data is available – and this has played a part in limiting public awareness of the extent of the problem. In contrast, the Mexican authorities have played an important role in highlighting abuses against migrants on the US border. For example, in January 2010, Mexican parliamentarians presented a report indicating that 750 Mexican migrants had died while crossing into the USA during 2009.²⁵

When a body is found, the local PGJE and its forensic unit are responsible for establishing the person's identity and the cause of death. If identity papers are found on the body, the relevant consul is alerted so that the relatives in the home country can be informed. However, many bodies have no identifying documentation on them when they are found. Sometimes, witnesses give information about the identity of the person to the PGJE or the police, but consuls are often reluctant to act on such information unless there are identity papers to corroborate it. If the person's identity cannot be confirmed or relatives cannot be traced, the body is buried in an unmarked grave in Mexico. The cemetery in Tapachula, Chiapas state, contains scores of such unmarked graves.

If PGJE investigators and forensic teams conclude that a migrant died as a result of an accident or violence, the PGJE must open a preliminary enquiry. However, in the context of large numbers of violent deaths in many parts of Mexico, the investigation is unlikely to progress unless relatives are actively involved, for example, in demanding a full autopsy, providing witnesses or identifying possible suspects and leads.

In most cases, relatives in Central America or elsewhere either do not know the fate of their loved ones, or, if they do, are not in a position to keep up the necessary pressure on the authorities. Most cases are archived without a full autopsy and with only minimal steps taken to investigate the causes of death. As a result, in many cases the only official record is a death certificate which contains a one-line description of the cause of death. The failure to investigate effectively and fully all migrant deaths and record evidence that a crime has been committed can amount to concealment of a crime.

The failure of the federal and state authorities to gather, analyze and publish data on migrant deaths means that there is no comprehensive, accurate information on the extent of migrant killings. The absence of this data prevents the development of effective measures to combat killings and hold perpetrators to account, and denies relatives access to truth and justice.

Central American consular officials informed Amnesty International that they were co-operating with state-level Mexican officials to establish the identity of dead migrants, locate families and assist with the repatriation



© Amnesty International (Photo: Ricardo Ramirez Arriola)

of remains when relatives could contribute to costs. However, they recognized the obstacles to the effective investigation of deaths or disappearances of migrants, including the absence of a national database of missing migrants.

The Mexican government did not appear to have any plans to institute such a scheme. As a result, there is no cross-referencing between lists of missing migrants and unidentified bodies other than those informally kept by members of Grupo Beta.

The absence of such a co-ordinated scheme is a major obstacle facing relatives and consuls in their search for information about the fate and whereabouts of loved ones. In 2009, the Chiapas state government agreed to COFAMIDE's request for the establishment of a database, but at the time of writing this had yet to be put in place.

Rubbish gathers over the spot where migrants are buried in Tapachula cemetery, Chiapas state. The bodies of migrants are buried in the passageways between graves.



© Amnesty International (Photo: Ricardo Ramírez Arriola)

Woman at a migrants' shelter in Tierra Blanca, Veracruz state. Women and girls make up about one in five migrants travelling through Mexico on their way to the USA.

3/ABUSES DURING MIGRATION CHECKS

“There is constant extortion by the Mexican authorities of migrants. It wasn’t always like this, but recently has got worse”.

Rubén Figueroa, migrants’ rights defender, Tabasco

While the number of cases where officials are directly involved in human rights violations against irregular migrants has fallen over the past 10 years, such abuses persist. Mostly they occur during authorized operations to enforce migration law carried out by the INM or when military or police officials unlawfully detain irregular migrants for personal gain.

There have been a number of recent initiatives to improve professionalism and weed out corruption in public security agencies through honesty reviews. For example, in 2009, the INM carried out such a review on a third of its agents. This resulted in the dismissal of several agents and a number of criminal investigations. Similar reviews have taken place within the Federal Police and other security agencies. However, such measures have had a very limited impact on failures to respect and protect migrants’ rights and the state agents responsible are almost never held to account. In February 2010, the INM informed Amnesty International that no INM official had been dismissed for human rights violations as these did not constitute grounds for dismissal under federal labour laws, but that nine officials had resigned from the INM between 2007 and 2009 on the basis of repeated violations in their duties documented by the CNDH.²⁶

The case reported by Ireneo Mujica illustrates the continuing abuse of power by state agents against migrants, and the impunity which has helped to entrench such violations. On 31 March 2008, Ireneo Mujica, a Mexican photo-journalist, boarded the freight train between Arriaga, Chiapas state, and Ciudad Ixtepec, Oaxaca state, to document the journey of irregular migrants. En route, next to the community of Las Palmas in Niltepec municipality, the train was intercepted by INM agents supported by 50 members of the Mexican Navy armed with rifles and batons. According to the photographer and other eyewitnesses, the migrants tried to flee, but navy personnel chased them and beat them with batons, forcing them to the ground. Navy personnel spotted the photographer taking pictures and detained him, threatening to charge him with people smuggling. A medical examination of the detained migrants carried out in the INM migration detention centre in Oaxaca claimed that they had “some contusions, cuts and bruises which do not seem to be the result of the [INM/Navy] operation”.²⁷ The migrants did not file a formal complaint and the authorities did not open an investigation into the reports of ill-treatment. The migrants were then returned to their country of origin.

As a result of the publicity surrounding the case, a joint delegation of migrants’ rights defenders, INM officials and representatives of the CNDH and the navy visited Las Palmas to gather testimony in the days after the incident. Despite apparent collusion between navy officials and community representatives to direct the delegation away from those who had seen the events, several eyewitnesses confirmed that migrants had been repeatedly beaten around the body and head. According to the CNDH recommendation (029/2009) issued on 6 May 2009, the navy recognized that excessive force had been used and stated that those responsible would be investigated. The CNDH also pointed out that the navy were not legally empowered to carry out migration status checks and should only have acted in support of the INM. It also criticized the INM failure to exercise chain-of-command control over the navy and the efforts by both navy and INM officials to cover up the abuses, including the failure to conduct a full medical examination of the victims, leading to an incorrect medical assessment of their injuries. It recommended an enquiry by both institutions to establish responsibility for the abuses. However, this

DETENTION

Tens of thousands of migrants, including children, are routinely held in detention centres pending their repatriation or deportation from Mexico. Under Mexican law, migrants who are held in administrative detention after migration status checks are said to be “secured” (*asegurados*) rather than detained. Those who subsequently agree to be repatriated are said to be “housed” (*alojados*). However, the use of such terms does not alter the fact that under international law there are strict limitations on when such deprivation of liberty is permissible or that the routine detention of migrants in Mexico frequently breaches these limits. International law requires that less restrictive alternatives to detention be considered in each case and that the authorities resort to detention only when it is justified, necessary and proportionate. States are obliged to develop alternatives to routine detention and unaccompanied children and victims of trafficking in particular should not be detained. The UN Convention on the Rights of the Child states that children should only be detained as a measure of last resort for the shortest possible period of time. Despite measures to reduce the detention of unaccompanied adolescent children, Amnesty International delegates visiting detention centres in 2009 observed that the practice still continues.

resulted in only minor disciplinary measures against a handful of navy personnel, which the naval authorities have failed to specify. No action was taken against officials who attempted to cover up abuses. The civilian authorities, notably the PGR, failed to conduct a criminal investigation into the abuses.

INM agents are responsible for operations to verify the legal status of migrants, detain irregular migrants and initiate migration status determination proceedings. The Federal Police are also legally empowered to carry out controls at the request of the INM, to verify the status of suspected irregular migrants and to detain those that cannot demonstrate their legal right to be in the country.²⁸ However, there are strict rules on how verification procedures should be carried out. For example, the official carrying out the verification must have written authorization giving detailed information such as the location and objective of the operation. Although INM and Federal Police agents can also check migration status on routes or provisional points outside the locations set out in the authorization, these operations must be registered in writing beforehand.²⁹ Authorized officials must show their INM or Federal Police identity cards to the foreign national and written reports must be made which are witnessed by two observers.³⁰ The INM can request support from other police or security agents. Although this can be done verbally in urgent cases, this must be followed by written confirmation.³¹ Cases documented by Amnesty International and other organizations show that elements of these regulations are routinely flouted.

If irregular migrants are found during a migration control operation, they must be handed over immediately to the competent authorities.³² Outside this context, security force agents can legally detain irregular migrants only if they encounter them in the course of their normal duties – they do not have the authority to initiate verification operations – and irregular migrants who are detained must be handed over to the INM.

In 2006, the CNDH issued a general recommendation to the PGR, the Ministry of Defence, and state and municipal police forces, reminding them of their obligation “to refrain from carrying out illegal verification of migration documents of foreigners in Mexico and consequently cease detentions made on

this basis".³³ It also recommended that the INM ensure such unlawful detentions of migrants were reported and investigated.³⁴

"This type of illegal migration check by unauthorized agents who have not received the appropriate training, creates a climate in which migrants are subjected to other types of abuses, such as sexual assault, principally against women and children, physical injury, robbery and extortion, amongst others."

CNDH, General Recommendation 13, 17 November 2006

During operations to verify legal status and detain migrants on the freight trains travelling north from Chiapas, INM and federal police officials often fail to identify themselves, state the legal basis of the operation or provide a witnessed written account of the verification operation.³⁵ Instead, Amnesty International's research indicated a pattern of surprise operations by the INM and Federal Police carried out since 2006, often in dangerous locations in which excessive force was sometimes used to detain migrants. As the majority of migrants are almost immediately repatriated, abuses rarely come to light, unless there are independent witnesses.

EXCESSIVE FORCE

On 9 January 2009, state police opened fire repeatedly on a truck carrying around 45 irregular migrants from El Salvador, Guatemala, Honduras, Ecuador and China.³⁶ Three migrants were killed and another eight seriously wounded in the incident, which took place near the town of San Cristóbal de las Casas, Chiapas state. According to several of the survivors, four officers were in the police car that followed the truck. The officers ordered the truck to pull over and, when the truck failed to stop, fired several rounds of live ammunition. One migrant said that the state police "shot at us like animals". The injured migrants received medical treatment for gunshot wounds and other injuries. However, the other migrants detained at the scene were handed over to the INM two days later and those from Central America were repatriated, effectively preventing them from participating in any criminal investigation. The Chiapas PGJE concluded that the police had shot at their own car to falsely claim migrants had opened fire. Three state police officers

were arrested and charged with murder and wounding. Their trial was continuing at the time of writing.

On 18 September 2009 a similar incident occurred in Comitán, Chiapas state, at a roadblock manned by military personnel and police. When a vehicle containing seven migrants failed to stop, the security forces pursued the vehicle and opened fire, killing one migrant and wounding several others. The man at the wheel was later arrested for people smuggling. According to witnesses, police at the scene repeatedly beat the injured migrants, apparently as a punishment for not stopping at the roadblock, until the Red Cross arrived to offer medical care. The CNDH opened an investigation which was continuing at the time of writing.

The use of lethal force in such cases, where there was no threat to the security forces or passers-by, is in breach of international standards.

International human rights standards set out criteria for the use of force by law enforcement officials, including the principles of necessity and proportionality.³⁷ UN guidelines state that officers should apply non-violent measures wherever possible before resorting to the use of force. They also state that force should be applied only where strictly necessary, in proportion to the threat posed and in a manner designed to minimize damage or injury. However, Mexico has no national statutory regulations on the use of force by security and police forces. This lack of a clear regulatory framework undermines efforts to ensure that detentions, particularly the administrative detention of migrants, who are not criminal suspects, are conducted appropriately. It also creates a situation where officers on the ground are routinely using their discretion without clear guidelines.

Amnesty International also received one report of the unauthorized use of less-than-lethal weapons that breached international standards.

On 22 April 2009, approximately 65 migrants were resting and eating in and around a church in El Santuario, Macuspana Municipality, Tabasco state. Two INM vans arrived and three migration officials entered the church without a warrant and detained one of the migrants. Villagers described to Amnesty International



A member of the Mexican Navy wields a baton during an assault on migrants near Las Palmas in Niltontepec municipality, Oaxaca state, 31 March 2008.

how one migrant fled and was chased by an INM official holding a short baton that he placed on the man's neck. Villagers said the man was convulsed by an electric current and fell dazed to the floor. He was then forced to his feet and taken away by the INM agents. The man may already have been effectively in custody when the stun baton was applied and posed no threat to the officials or to bystanders.³⁸ When villagers complained about the treatment of the migrants, INM officials threatened to arrest one woman for people smuggling because of the humanitarian assistance she and others provided for migrants. CNDH officials arrived the following day to investigate; their findings have yet to be published. The INM has consistently denied that its agents use electric shock batons in any circumstances.

EXTORTION

Until 2008, irregular entry into Mexico was an offence punishable by up to 10 years in prison. It was widely recognized that the severity of the penalty for irregular migration was encouraging some officials to detain

migrants and threaten them with imprisonment in order to extort money and commit other abuses.³⁹ In 2008, the penalty for irregular entry was reduced to a fine in order to remove the incentive for such abuses. Nevertheless, extortion at the hands of members of the military and police on the pretext of carrying out unlawful migration checks remains widespread and frequently provides the context for other human rights violations against migrants such as ill-treatment, sexual violence, threats or worse.

On 8 January 2007, Hugo (not his real name), a migrant from Honduras, was stopped by four soldiers in Ciudad Hidalgo, Chiapas state, after crossing the Suchiate River. The soldiers took him aside, stole 500 pesos (approximately US\$39) and told him to undress. One of the soldiers then forced his finger into Hugo's rectum to search for more money. Hugo saw the soldier threaten to put his rifle into another migrant's rectum while two other soldiers searched other migrants. Hugo was released and filed a complaint with the CNDH. The military responded to the CNDH that there was no evidence of abuses and the CNDH closed the case for lack of evidence.

On 24 January 2007, shortly after Miguel and Sara (not their real names) arrived in Ciudad Hidalgo, Chiapas state, from Tecún Uman in Guatemala, they were stopped by seven soldiers. The soldiers forced them to hand over money. Sara was then taken aside by the soldiers and forced to strip. The soldiers claimed that they needed her to undress so that they could check her clothes. Sara later filed a complaint with the CNDH. When the CNDH requested information from the army's internal investigations unit, the unit responded that the abuse could not have occurred at such a location. The CNDH concluded that there was insufficient evidence and the case was closed.

On 28 June 2009, Mary, a long-standing Mexican volunteer at the migrants' shelter in Tierra Blanca, Veracruz state, and a young migrant man were arbitrarily detained by a municipal policeman. Mary told Amnesty International that she had been walking down the street with the young man when a municipal police officer asked where she was from. When she refused to answer, the policeman grabbed her and accused her of being a people smuggler. He then grabbed the migrant and stole 200 pesos

(approximately US\$20) out of the man's pockets. When Mary protested, they were both handcuffed and taken to the police station in the Town Hall. Both were released without charge after Deacon Miguel Ángel Ochoa, who runs the migrants' shelter where Mary volunteers, protested to the police chief. Amnesty International is not aware of any disciplinary action taken against the policeman.⁴⁰

On 23 January 2010, three Federal Police vehicles stopped a freight train carrying more than 100 irregular migrants. The train was travelling from Arriaga, Chiapas state, to Ciudad Ixtepec, Oaxaca state. According to several migrants, uniformed and armed police forced the migrants to get off the train and lie face down, and then stole their belongings. After going through the migrants' possessions, the police let the migrants go and told them that if they did not continue their journey on foot along the railway tracks, they would be killed. Late that night, as the migrants walked along the railway tracks, several groups of migrants were attacked by criminal gangs who killed at least one migrant and raped one of the women. The survivors managed to walk to Ciudad Ixtepec and received help from the migrants' shelter to file criminal complaints and obtain medical attention. Three days later, several of the migrants returned to the scene of the crime with migrants' rights defenders and state officials, to try to identify members of the criminal gang who had attacked them. Two suspects were arrested. As they were leaving the area, they were stopped by Federal Police and members of the army who tried to claim jurisdiction over the case and take the suspects away. While the federal and state officials argued over jurisdiction and who should hold the suspects, a witness recognized two of the Federal Police officers who had stopped the train and robbed and threatened the migrants. Although Father Solalinde told federal and state officials of the positive identification, no action was taken and he was threatened with arrest. A complaint was subsequently filed, recording the identification of the Federal Police officers. However, at the time of writing, none of the victims had been questioned or asked to identify the police involved.



Agents of the Grupo Beta in Chiapas state search for migrants in need of assistance. The Grupo Beta was started in 1991 in Tijuana, Baja California state, to protect northbound migrants from criminals and has since been expanded to cover the southern border states. The support and assistance provided is important, but the Grupo Beta does not have the resources to cope with the number of migrants in need of its help.

4/REPATRIATION, REMEDY, REDRESS AND PROTECTION

“If a migrant tries to make a complaint, many times they will refuse to register it. If we do manage to get them to register the complaint, it doesn’t move forward. The investigation is just frozen and those responsible are never punished. A large proportion of the crimes are committed by public officials.”

Father Heyman Vázquez, who runs a migrants’ shelter in Arriaga, Chiapas state

VOLUNTARY REPATRIATION

On 27 April 2009, Francisco (not his real name) from El Salvador and 24 other migrants were arrested by soldiers in a house in Piedras Negras, Coahuila state. The migrants had paid a people smuggler to take them over the US border illegally. According to Francisco, the soldiers threw the migrants to the ground and hit and kicked them repeatedly. The soldiers then reportedly held the people smuggler on the ground, kicking him repeatedly in the ribs. Francisco and the other migrants were handed over to INM officials. When he was transferred to the detention centre in Tapachula, Chiapas state, Francisco asked to file a complaint against the military for ill-treatment. Despite requesting a temporary visa, he was informed that the complaint could only be made in Coahuila and that he would have to spend several weeks, at least, in detention. Francisco chose not to file a complaint and accepted voluntary repatriation so he could start his journey again.

In 2006 and 2007 Mexico signed bilateral memorandums of understanding with the governments of El Salvador, Guatemala, Honduras and Nicaragua to ensure “the dignified, ordered, rapid and safe repatriation” of irregular migrants. These agreements establish the right of irregular migrants from these countries to pursue the administrative migration process established under Mexican law, which usually results in deportation; to request voluntary repatriation; or to seek refugee status.

Most irregular migrants opt for voluntary repatriation to avoid being registered as deported, as their ability then to re-enter Mexico is not affected. In 2009, of the 58,681 Central Americans deported or repatriated from Mexico, 49,112 (84 per cent) were voluntarily repatriated while only 5,247 were deported after migration proceedings.

The advantages of voluntary repatriation for the Mexican government are clear. Shorter periods of detention are less costly and help reduce overcrowding in detention centres – a long-standing problem. For many irregular migrants, voluntary repatriation is preferable to deportation as they are detained for shorter periods – sometimes just a matter of hours or days, depending on the number of migrants awaiting removal – and will not face increased penalties if they subsequently re-enter Mexico and are detained again.

However, the application of the voluntary repatriation process has raised concerns about effective access to information, consular officials, independent advice and remedies for migrants. The administrative nature of the process also frequently means no priority is given to recording and investigating abuses against migrants. In addition, the strong incentives to encourage voluntary repatriation are not adequately counter-balanced by guarantees to ensure that migrants are effectively assessed both in terms of the abuses they may have experienced or witnessed, and also to identify individuals who may be entitled to refugee status.

RIGHT TO INFORMATION AND LEGAL ADVICE

According to INM detention centre procedures issued in October 2009, migration officials must obtain information, such as basic biographical details and a photograph, and fill in a form for migrants who choose voluntary repatriation.⁴¹ Migrants should also be informed of their right to apply for asylum and receive a medical examination. However, officials do not appear to enquire about or record abuses the migrant may have suffered or witnessed, and rarely offer to document complaints.

Once in detention, migrants' access to assistance and the outside world is strictly controlled by INM officials. Migrants can only receive assistance from specific registered lawyers or authorized human rights organizations. Very few irregular migrants are detained knowing the names of accredited lawyers or human rights organizations. In addition, human rights organizations and lawyers are only allowed access to parts of detention centres where interviews with migrants take place and so cannot assess whether other migrants in the centre may need their services. Central American consular officials regularly visit the Tapachula detention centre, but these visits are largely focused on providing assistance to child rather than adult migrants.

Migration officials need to obtain information in order to assess the individual's case. They should also provide full and clear information, in a language the migrant understands, about his or her rights, the migration process, consular access, legal advice, asylum and the right to file a legal complaint. The INM informed Amnesty International that officials routinely provide this information. However, none of the migrants interviewed by Amnesty International who were either in detention or had been detained in the past by the INM could confirm that they had received even basic information about their rights, other than their right to request voluntary repatriation.

The INM, in conjunction with the International Organization for Migration and UNICEF (the UN Children's Fund), has developed procedures and established Child Protection Officials to assess and guarantee the rights of child migrants and ensure

consular access. This is a positive step and needs to be extended to other migrants at particular risk, such as women.

However, overall in the states studied by Amnesty International it was evident that the INM often failed to provide migrants with sufficient information about their rights and available assistance. Accessible mechanisms for migrants to report abuses suffered or witnessed during their journey do not exist.

The INM is not responsible for collecting information relating to criminal investigations, but it does have an obligation to obtain reliable information about abuses in a way that does not place victims at greater risk. Failing to gather basic information about abuses – which migrants may not wish to file as criminal complaints – seriously hampers efforts to identify patterns of abuses in particular regions. The INM has also not facilitated migrants' access to remedies and compensation. The net result of these failures and shortcomings is that criminal offences against migrants continue to be under-reported. The failure to adequately interview migrants may also mean that migrants who should benefit from international protection are not identified and made aware of their rights.

FILING A COMPLAINT

"The Committee recommends that the State party should ensure that: (a) In legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and have access to redress mechanisms before the courts; (b) Any person whose rights or freedoms, as recognized in this Convention, have been violated may obtain effective redress..."

The Committee recommends that the State party should continue and step up its efforts to address as a matter of urgency the problem of ill-treatment and other acts of violence against migrant workers and their families, regardless of who is responsible. In particular, the Committee urges the State party to ensure that such acts are investigated and the culprits brought to trial and punished."

Concluding observations of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Mexico, 20 December 2006

Victims of human rights abuses have the right to remedy, redress and protection.⁴² However, impunity for human rights violations remains the norm in Mexico, seriously undermining the right to remedy.⁴³

For irregular migrants, even registering a complaint poses major obstacles, let alone securing justice and safety. According to Article 67 of General Population Law (Ley General de Población, LGP) and Article 201 of its regulatory code (Reglamento del Ley General de Población, RLGP), all federal, state and municipal authorities are obliged to demand that foreign nationals who request services from them provide evidence of their legal status. If someone cannot provide proof of their legal right to be in the country, the official is legally bound to hand him or her over to the migration authorities.⁴⁴ This clearly is a major deterrent for irregular migrants who might want to make a report. It is also a disincentive for officials receiving a report of abuses experienced or witnessed by migrants as most migrants handed over to the INM will face deportation or repatriation and will not be available should the case be pursued.

Articles 67 and 201 have been criticized as discriminatory against migrants and in violation of Mexico's human rights obligations because their effect is to prevent equal access to the courts and equal treatment before the law. The Mexican government has argued that Supreme Court jurisprudence recognizes equal access to the courts,⁴⁵ but this does not alter the fact that officials are obliged to comply with Articles 67 and 201. Migrants interviewed by Amnesty International repeatedly expressed the view that they would be deported if they approached the authorities while in transit to report an abuse or a crime. Several migrants said that they had been threatened with being taken to the INM if they persisted with their demand to file a complaint with the PGR.

In 2009, human rights organizations began a campaign for reform of Articles 67 and 201 to ensure that all migrants had equal access to justice and to the protection of the law. However, at the time of writing, reforms had yet to be introduced.

TEMPORARY VISAS

In 2007, the INM issued a directive allowing irregular migrants who had been the victims of crime or witnesses to a crime to secure temporary visas pending the resolution of the criminal process.⁴⁶ However, in all but a handful of cases the only irregular migrants who successfully obtain such visas are those who first inform a human rights defender, usually a priest working in one of the shelters, who accompanies them to make a legal complaint, secures copies of the documentation and supports the visa application. In some cases, consular officials have also assisted in these applications. In 2009, INM officials informed Amnesty International that 10 such temporary visas were issued in 2007, 14 in 2008, and eight between January and June 2009. The INM acknowledged that in almost all cases the visas had been granted when supported by a priest from one of the shelters.

The majority of migrants are unaware of the existence of such visas and have virtually no means of accessing them. Most migrants interviewed by Amnesty International who had experienced or witnessed abuses had not been informed by INM officials that such visas existed or how they could apply for one. Temporary visas are only available to migrants who can prove they have lodged a criminal complaint. Migrants who make a criminal complaint and who are not accompanied by a human rights defender are likely to be deported rather than be granted a temporary visa.

Those migrants who do manage to apply for a visa have to remain in a migrants' shelter while their application is processed. Although the procedures allow the INM to issue visas within 12 hours, Amnesty International met applicants who had had to wait several weeks or months in legal limbo. During this time, migrants are exposed to potential reprisals and intimidation and often rely on the charity of the shelter to support them. In such circumstances, it is not surprising that many migrants choose either not to file a complaint or leave before the case is resolved.

Even the temporary papers provided to those requesting a visa are not a guarantee of safety. In June 2009, a Salvadoran woman who had witnessed migrants being kidnapped and had applied for a visa was hauled off a bus by municipal police in Chiapas

state. They destroyed her papers and threatened to deport her. Only the intervention of Father Solalinde from Oaxaca prevented this and ensured that the papers were reissued.

INVESTIGATION

"A Mexican peasant farmer who seeks remedy from the justice system is often not listened to and treated very poorly, but for a migrant it is far worse."

Felipe Solís, Fray Matías de Córdoba Human Rights Centre, Chiapas state, June 2009

Even when a criminal complaint is filed with the PGJE, the investigation may take months or years and there is no guarantee that it will be thorough or effective.

Despite the introduction of new federal legislation in recent years – for example laws criminalizing people trafficking and giving some victims of crime access to temporary visas – there is no information available on the prosecution of those responsible for abuses against irregular migrants.

In reality, the onus remains almost entirely on migrants to come forward to file a criminal complaint with the PGJE or PGR. Almost half of the migrants interviewed by Amnesty International who said they had experienced an abuse during their journey said that they had not filed a complaint because they feared deportation or thought that the authorities would not do anything anyway. The failure to carry out rapid and effective investigations on the basis of criminal complaints not only obstructs justice in individual cases, but also sends a message to migrants that filing a criminal complaint is at best pointless and at worst may result in deportation.

For example, on 31 July 2008, four Guatemalan migrants reported that they were robbed by members of the Federal Investigations Agency (Agencia Federal de Investigación, AFI) at a checkpoint near Tenextepec, Chiapas state. With the assistance of Father Solalinde, whom they informed on arriving in Ciudad Ixtepec, Oaxaca state, they filed criminal complaints with the PGR against the officers and requested temporary visas. Two months after filing the complaint and making their initial statements, they had

still not received their visas. The migrants were then asked to identify the agents from a number of distorted photos that did not correspond to the information provided in their complaint, raising serious questions about the good faith of investigators. The victims filed a request for an identity parade of AFI agents. The PGR wrote back to them three months later, by which time financial necessity had forced them to leave the area. The PGR closed the case.

In those cases in which criminal gangs are involved, migrants are extremely reluctant to file a complaint or provide evidence for fear of reprisals. However, Amnesty International is not aware of any cases in which victims or witnesses have been offered or provided with protection. At least one witness interviewed by Amnesty International was detained alongside undetected gang members.

In 2009, the National Public Security System stated that most states had established specialist police anti-kidnapping units and implemented anti-corruption measures in line with the recommendations contained in the CNDH special report on the kidnapping of migrants. However, it is not clear whether the aim of these units is to address the kidnapping of migrants or to focus on other more high-profile kidnappings of Mexican citizens. It is also unclear how these units will overcome the vulnerability of irregular migrants or their distrust of prosecutors and police officials whom they believe are frequently indifferent to their situation and sometimes linked to criminal gangs.

In 2006, the Mexican government informed the UN Migrant Workers' Committee that the National Security and Investigation Centre and other criminal intelligence agencies were combating abuses against migrants by organized criminal networks. The Assistant Attorney General for Special Investigations and Organized Crime, a department of the PGR, also established a specialist unit to investigate the kidnapping and trafficking of migrants and organ trafficking. However, the activities and impact of these specialist units in combating the criminal gangs preying on irregular migrants is unclear as the government has failed to publish any official reports or make data available.

In January 2008 the Federal Attorney General established the Special Federal Prosecutor's Office

for Violent Crimes against Women and Trafficking of Women and Children (Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas, FEVIMTRA)⁴⁷ to implement new legislation criminalizing people trafficking. The FEVIMTRA has focused on training to implement legislation, but there is no information available on its prosecution of trafficking cases or provision of assistance to women migrants who have been victims of violence.

The Chiapas state government is the only state authority that has established a Special Prosecutor for Crimes against Migrants. Under pressure from local NGOs and Central American consuls in Tapachula to end impunity for abuses against migrants, this new unit has produced some successes. It has arrested five members of an elite local police unit who were targeting migrants for assaults and it has begun to gather intelligence from migrants who are unwilling to file complaints but could provide valuable information to identify perpetrators of abuses against migrants. New regional offices have also been established. However, the unit has limited resources and jurisdiction. For example, a commitment made in February 2009 to establish, in conjunction with Central American consuls and NGOs, a database of migrants reported missing by their relatives in Central America, has yet to be fulfilled.

THE NATIONAL HUMAN RIGHTS COMMISSION

The CNDH plays a crucial role in receiving complaints of abuses against migrants. It has received more than 500 complaints against the INM since establishing the 5th Inspectorate to handle migrants' rights in 1995 and has issued numerous recommendations to the INM and other institutions in response to violations of migrants' rights. Its 2009 special report on the kidnapping of migrants by criminal gangs was a first tentative step towards identifying the duties of the state to prevent such crimes and improve access to justice in cases of abuses committed by non-state actors.

While the CNDH provides an important non-judicial mechanism for investigating human rights violations, its enquiries are extremely slow and the results often have very limited impact on criminal investigations. In recent

years, the CNDH has increasingly functioned as a form of pre-criminal enquiry rather than as a supplementary oversight mechanism, with institutions accused of abuses failing to conduct an enquiry until the CNDH confirms that an abuse has been committed. As a result, institutions may wait more than a year for the CNDH findings before initiating their own disciplinary or criminal investigations. Even where the authorities agree to comply with a CNDH recommendation, the CNDH has generally failed to monitor the quality of the investigation undertaken. None of the CNDH recommendations cited in this report have resulted in criminal charges against those implicated in human rights violations against migrants, or in reparations for the victims.

Nevertheless, the CNDH has worked with the network of migrants' shelters to improve the collection of information relating to reports of abuses and has been particularly vocal on the plight of Mexican migrants in the USA.⁴⁸ In November 2009, a new president of the CNDH was appointed by Congress, providing a new opportunity for the CNDH to strengthen its credibility and commitment to international human rights standards.



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A man at a migrants' shelter, Tierra Blanca, Veracruz state. Central American migrants live in the shadows. Travelling through unfamiliar territory and trying to avoid the attention of immigration officials, they are at risk of attacks by criminal gangs and unscrupulous officials.

5/INTERNATIONAL AND NATIONAL LAW

“1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.”

Article 16, Migrant Workers’ Convention

INTERNATIONAL HUMAN RIGHTS LAW

Mexico has been a leading promoter of international and regional mechanisms to protect migrants’ rights. It has frequently made important criticisms of the USA and other countries for their failure to recognize and guarantee the rights of migrants enshrined in international law, particularly the rights to non-discrimination and equality before the law. Nevertheless, this progressive approach has not been matched with the same commitment domestically.

All international human rights treaties contain guarantees that protect the human rights of migrants as well as non-migrants. Most contain specific equality and non-discrimination provisions that apply to

everyone, subject to certain specified limitations such as legitimate distinctions between citizens and non-citizens. Regardless of citizenship, everyone is guaranteed the right to life, to freedom from slavery, arbitrary arrest and torture, to humane treatment in detention, to fair trial and access to justice, to equality before the law and equal protection of the law.⁴⁹

States’ obligations to protect the human rights of migrants are set out in numerous international treaties including the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Migrant Workers’ Convention.⁵⁰

The Committee on the Elimination of Racial Discrimination, which monitors states’ compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, requires states “to ensure that non-citizens enjoy equal protection and recognition before the law and... to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence”.⁵¹ The Committee on the Rights of the Child has stated that “[s]eparated and unaccompanied children are vulnerable to various risks that affect their life, survival and development such as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death. Accordingly, Article 6 necessitates vigilance by States parties in this regard, particularly when organized crime may be involved.”⁵² The Committee on the Elimination of Discrimination against Women has recommended that “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women”,⁵³ and that “states parties should take active measures to prevent, prosecute and punish all migration-related human rights violations that occur under its jurisdiction, whether perpetrated by public authorities or private actors”.⁵⁴

Mexico has ratified key international treaties, but has filed several important interpretative declarations and reservations on some in an attempt to limit their application to existing domestic legal provisions. For example, its interpretative declaration to the Migrant Workers' Convention states, "All the provisions of this Convention will be applied in conformity with its national legislation." Mexico has also filed a reservation to Article 22 of the Migrant Workers' Convention in favour of Article 33 of the Mexican Constitution, allowing the executive to expel foreign nationals it deems "inconvenient" without the right to due process or appeal.⁵⁵ Amnesty International believes the interpretative clause and reservation violate Mexico's treaty obligations which require that state parties take the necessary steps to remove domestic obstacles to compliance with treaty obligations.⁵⁶

A 2003 advisory opinion by the Inter-American Court of Human Rights, granted at the request of the Mexican government, concluded that states have a general obligation to respect and ensure fundamental rights of migrants.⁵⁷ To this end, they must take affirmative action, avoid taking measures that limit or infringe on a fundamental right, and eliminate measures and practices that restrict or violate fundamental rights.⁵⁸ The Court made clear that states have an obligation to act with due diligence (see page 8) to prevent and punish abuses against migrants, whether the perpetrator is a state agent or a private individual.⁵⁹

The scale and range of abuses against migrants in Mexico and the failure of federal and state authorities to meet their obligations has led to numerous visits by international human rights bodies to the country. In 2008, the UN Special Rapporteur on the rights of migrants issued a report following a visit to Mexico. He recommended that, "appropriate legislative reforms address impunity of human rights violations, as a major weakness of the judicial system." He called for annual reports on the number of cases involving judicial actions such as arrests and convictions of perpetrators of human rights violations against migrants and in particular of cases against perpetrators of child labour abuses.⁶⁰

In 2009, the Mexican government agreed to implement recommendations by the UN Human Rights Council "to take all necessary measures to protect the rights of migrant workers and members of their families, particularly by ensuring their access to justice/ their access to an effective remedy before a competent authority for the protection of their rights/; and prosecute and punish civil servants responsible for acts of ill-treatment and offences against them."⁶¹

LEGAL FRAMEWORK IN MEXICO

In 2007, the National Supreme Court confirmed its previous position that, in terms of legal hierarchy, international human rights treaties are situated immediately below the Mexican Constitution, but above federal and state legislation (including local state constitutions) in domestic law.⁶² The ongoing failure to reform the Constitution to ensure that international human rights treaties are accorded constitutional status continues to hamper their application and enforcement in Mexico. Despite various commitments to reform migration and refugee legislation to bring it into line with Mexico's international obligations, this has failed to materialize.

Nevertheless, Mexico's Constitution establishes important rights and guarantees for all those in its jurisdiction. These include the right of entry, movement and exit from the country, subject to judicial and legal controls (Article 11). The Constitution also grants foreign nationals without legal status all the rights established in the first chapter of the Constitution (Article 33).⁶³ These include the right to non-discrimination; the right not to be unlawfully detained, tortured or held incommunicado; and the right to due process and legal remedy. In 2003, the National Council for the Prevention of Discrimination (Consejo Nacional para la Prevención de la Discriminación, CONAPRED) was established to promote the prevention and elimination of discrimination, including on the basis of national and ethnic origin. In addition, Strategy 10.1 of the 2007 National Development Plan, the principal instrument of policy, legally commits the



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government to, “respect and protect the rights of migrants in Mexico.”⁶⁴ Strategy 1.7 of the National Human Rights Programme also commits government institutions to “promote the measures necessary to strengthen respect for migrants’ rights and comply with international commitments.”⁶⁵

Mexico remains at the forefront of international initiatives to address the challenges of mass migration. In December 2009, Mexico officially assumed the Chairmanship of the Global Forum on Migration and Development (GFMD) 2010. The fourth meeting of the GFMD is scheduled to take place in Puerto Vallarta, Mexico, in November 2010.

Central American migrants riding the freight trains, pictured here as one of the women from La Patrona community, Amatlán municipality, Veracruz state, throws food and water to migrants.

Women of La Patrona, like those in some of the other communities that line the train route, collect donated food and water to throw to exhausted and hungry migrants passing on the train.



“We want to change the view that migrants bring danger. We’ve always been told on the television that the train is where drugs and arms are trafficked but this is all a lie. The train carries hundreds of lives, human beings who have suffered. They leave their homes because of the extreme poverty of where they come from, the journey north is a nightmare for them but they do it for the families they have left behind.”

Rubén Figueroa lives by the railway tracks in San Manuel, Tabasco state. He and his mother provide migrants in need of assistance with shelter and food.

6/CONCLUSIONS AND RECOMMENDATIONS

The increase in organized crime and gang-related violence in different areas of the country has created intense challenges for the Mexican authorities in fulfilling their obligation to provide security for those living within their borders. However, to achieve meaningful improvement in the security situation, it is vital not only that state officials respect human rights, but also that those groups on which criminal gangs prey, and who are at greatest risk of abuse, are not excluded from the state's protection.

Irregular migrants are at serious risk of widespread abuses in Mexico. Marginalized from mainstream Mexican society, irregular migrants remain largely invisible, their voices rarely heard. Experience has taught them not to trust anyone, particularly the authorities.

Access to redress is limited and sometimes non-existent. Migrants who experience or witness abuses are offered few options. They can opt not to make a complaint and endure the terrible hardships in order to continue their journey in the hope of a better future in the USA. Or they can risk reporting abuses to officials in Mexico, who may dismiss their complaints or further compound the abuses suffered. Even if migrants succeed in registering a complaint, they then face a system which has routinely failed to deliver justice.

The federal and state authorities have consistently failed to investigate abuses against migrants promptly and effectively. The lack of access to protection and justice means that all but a few migrants simply continue their journey or are deported or repatriated

without filing legal complaints. This invisibility and lack of recourse to justice make migrants, and particularly migrant women and children, easy targets for criminal gangs and corrupt public officials.

Persistent failure to address abuses against migrants by non-state actors, and in particular abuses in which a level of official involvement is often apparent, breaches Mexico's national and international legal responsibility to exercise due diligence to respect, protect and fulfil human rights.

On their journeys through Mexico, migrants continue to face abuses at the hands of criminal gangs, including kidnapping, extortion and torture. Sexual violence is widespread and every year an unknown number of migrants are killed or go missing. These abuses are often carried out with the complicity or acquiescence of federal, state or municipal officials. Furthermore, despite some improvements in recent years, reports persist of excessive use of force and arbitrary detention by public officials carrying out migration checks. The vast majority of these abuses are never seriously investigated and perpetrators rarely held to account, fostering a climate of impunity.

Amnesty International's research, as well as the reports of local NGOs and of the CNDH, all have consistently revealed the major human crisis facing thousands of migrants travelling in the shadows. Nevertheless, the true dimensions of the crisis remain largely invisible to the wider population. The failure of state and federal governments to properly record abuses and publish reliable data contributes to this lack of knowledge and to misinformation, often spread by the media which portrays migrants as the source rather than the victims of crime. The discrimination and intolerance that irregular migrants sometimes encounter can generate hostility and greater exclusion.⁶⁵

The vulnerability and marginalization of irregular migrants means that equality before the law and equal protection before the law rarely exist in practice.

The Mexican government has championed international measures to improve protection of migrants' rights and has taken important steps in recent years to address some long-standing concerns regarding the treatment of irregular migrants,

particularly in relation to overcrowding in detention centres and the plight of unaccompanied children. Indeed, the government's National Development Plan includes a specific commitment to protect migrants' rights in Mexico. However, federal and state authorities have yet to institute co-ordinated and concerted measures to address these abuses, calling into question their real determination to bring perpetrators, whether state agents or private individuals, to justice.

Many of the cases detailed in this report highlight the involvement of the authorities at some level in many abuses against migrants. Far too often, officials provide criminal gangs with cover to commit abuses or simply fail to intervene to prevent a crime being committed against a migrant. Failure to take action to prevent a crime or to record and effectively investigate a crime amounts to concealment and needs to be taken as seriously as complicity or acquiescence.

International law is clear that treaty obligations must be enforced and that remedy must be available in practice. The Inter-American Court of Human Rights has clearly determined that states must act with due diligence to protect, respect and fulfil the rights of migrants, including when private individuals are responsible for the abuses. The crisis facing irregular migrants in Mexico demands practical and comprehensive measures to stop abuse, to improve access to justice and reparations for those whose rights are violated, and to end the climate of impunity that is fuelling the crisis.

Lack of access to justice or reparations can be overcome. What is needed is for the authorities at federal, state and municipal level to fulfil their obligations and bring to justice the criminal gangs and corrupt officials who are violating migrants' human rights.

RECOMMENDATIONS

Amnesty International calls on Mexico's federal authorities to lead and co-ordinate the development and implementation of an action plan, in conjunction with state governments, to respect, protect and fulfil the rights of irregular migrants in Mexico. In particular, it calls on them to ensure the prevention, punishment and remedy of abuses committed against migrants by state and non-state actors.

STRENGTHENING RESPECT FOR THE RIGHTS OF MIGRANTS

Amnesty International calls on the Ministry of the Interior, the National Migration Service, state governments, the National Human Rights Commission and the National Council for the Prevention of Discrimination to:

1. Promote recognition of the rights of migrants among all federal, state and municipal authorities, as well as in the media and with the wider public. Condemn and actively combat discrimination against migrants.
2. Disseminate in Mexico and Central America, with the assistance of Central American authorities and civil society, information to irregular migrants or potential migrants on the dangers they face, their rights as migrants, and the means of filing complaints and receiving assistance.

FILING COMPLAINTS AND INVESTIGATION

Amnesty International calls on the legislature, the National Migration Service, the Federal Police, the Federal Attorney General's Office, State Attorney Generals' Offices and state police to:

3. Ensure in practice equal access to justice and equal protection of the law for irregular migrants. Reform Article 67 of the General Population Law (Ley General de Población, LGP) and Article 201 of its regulatory law (Reglamento del Ley General de Población, RLGP) to ensure that irregular migrants, whether in detention or not, are able to report and/or

file legal complaints for abuses suffered or witnessed, without fear of immediate deportation or repatriation.

4. Ensure that all reports of abuses, regardless of whether the perpetrator is a state agent or non-state actor, are promptly, impartially and effectively investigated, so that those responsible are brought to justice and victims receive reparations.
5. Develop mechanisms for migrants in transit and in detention to provide confidential information about abuses suffered or witnessed and to help identify perpetrators without placing migrants at risk of reprisal.
6. Facilitate awareness of and access to humanitarian visas and witness protection programmes for irregular migrants who experience or witness abuses and whose lives or safety may be at risk.
7. Ensure full and effective investigation and recording of all violent deaths of irregular migrants in order to establish the identity of the victim and the cause of death, and where there is evidence, conduct a full criminal enquiry.

SEXUAL VIOLENCE AND THE RIGHTS OF WOMEN AND CHILDREN

Amnesty International calls on the National Migration Service, the Ministry of Public Security, the Federal Attorney General's Office, the State Attorney Generals' Offices, the Special Federal Prosecutor's Office for Violent Crimes against Women and Trafficking of Women and Children, the National Institute for Women, the Family Social Services (Desarrollo Integral de la Familia, DIF), the Health Ministry and state governments to:

8. Ensure that all migrants who may be survivors of sexual violence have access to appropriate medical and psychological services. Efforts should be made to develop mechanisms for recording allegations of sexual violence and, whenever possible, to conduct effective criminal investigations which do not re-victimize the survivor or deter access to services.
9. Review and evaluate the impact of measures to detect and protect victims of people trafficking and of

the National Migration Service Child Protection Officers established to protect the rights of irregular migrant children.

ASSISTANCE AND OVERSIGHT

Amnesty International calls on the Ministry of the Interior, the National Migration Service, the National Human Rights Commission and the Grupo Beta to:

10. Extend the mandate, resources and monitoring of the Grupo Beta, particularly near the southern border, to ensure it provides effective assistance, legal advice and support to irregular migrants.
11. Ensure the National Human Rights Commission conducts prompt, impartial and thorough investigations into all reports or allegations of abuses against migrants, regardless of the perpetrator, in line with international human rights standards. The Commission should regularly publish detailed evaluations of measures taken by the authorities to comply with its recommendations.

GATHER AND PUBLISH RELIABLE DATA

Amnesty International calls on the Ministry of the Interior, the National Migration Service, state governments, the National Human Rights Commission, the Federal Attorney General's Office and the State Public Prosecutors Offices and the National Statistics Institute (Instituto Nacional de Estadísticas y Geografía, INEGI) to:

12. Gather, collate and publish centralized and disaggregated data on reports of abuses against migrants – such as kidnapping, rape, murder, torture and other ill-treatment, unlawful detention and killings – and on actions taken to bring to justice those responsible, regardless of whether the perpetrator is a state agent or non-state actor.
13. Ensure that national records are kept of deaths of migrants and that these cases are effectively investigated to establish identity, nationality and cause of death. In co-ordination with the governments of El Salvador, Guatemala, Honduras and Nicaragua,

facilitate measures for civil society and relatives to record all reports of migrants who are presumed missing or killed in Mexico and ensure these are investigated and cross-checked against recorded deaths and reports of missing persons in other countries.

VERIFICATION OF LEGAL STATUS AND DETENTION

Amnesty International calls on the National Migration Service, federal, state and municipal police, the military and the legislature to:

14. Clarify and enforce legislation on the verification of legal status and on the administrative detention of migrants to ensure only authorized public security officials carry them out and that they do so according to the law. Ensure that abuses of these powers are investigated and punished.

15. Ensure all verification operations, particularly those on freight trains, are carried out in strict accordance with the law and do not take place in circumstance which put migrants at unnecessary risk of accidents or involve excessive use of force. Legislate to regulate the use of force by all security forces in order to ensure compliance with the international human rights standards of proportionality and necessity. Ensure effective investigation when such abuses are reported.

UPHOLD MIGRANT RIGHTS IN DETENTION

Amnesty International calls on the National Migration Service and the federal government and legislature to:

16. Ensure that migrants arrested and/or held in administrative detention are informed orally and in writing, in a manner and language they understand, about their rights, consular access, the migration process, complaint mechanisms and international protection. Ensure detained migrants have access to adequate medical attention, independent legal advice and human rights NGOs. Regardless of whether a migrant is subject to migration procedures or voluntary repatriation, these due process guarantees should be strictly upheld.

17. Reform Article 33 of the Constitution to ensure that those facing deportation can challenge individually the decision to deport, and guarantee access to independent legal advice and the right to a review.

18. Remove the reservation and interpretative declaration applied to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

MIGRANTS' RIGHTS DEFENDERS

Amnesty International calls on the Ministry of the Interior, the National Migration Service, state governments, the Ministry of Public Security, the National Human Rights Commission, and the Federal Attorney General's Office to:

19. Recognize and support the work of migrants' rights defenders. Prevent and punish unfounded accusations of people smuggling against human rights defenders and ensure effective investigation of threats against defenders and rapid action to protect defenders at risk.

20. Publicize widely the National Supreme Court ruling that establishes that humanitarian assistance provided to irregular migrants without the aim of obtaining financial benefit does not constitute a crime.

RECOMMENDATIONS TO THE GOVERNMENTS OF EL SALVADOR, GUATEMALA, HONDURAS AND NICARAGUA

21. Strengthen bilateral and regional co-operation to improve the protection of the rights of irregular migrants, including a review of the application of existing bilateral agreements, to strengthen the right of migrants to access justice.

22. Co-ordinate measures with the Mexico government to combat criminal gangs that commit abuses against migrants travelling through Mexico;

23. Disseminate widely, in co-ordination with civil society, accessible information among communities liable to undertake irregular migration, particularly children and women. The information should clearly

explain migrants' rights, outline patterns of abuse experienced by migrants in Mexico, provide telephone numbers for services in Mexico, and detail how to file complaints and secure consular assistance.

24. Support and strengthen consular representation in Mexico, particularly in areas where most migrants travel, to ensure availability to assist migrants in detention or in transit.

25. In conjunction with the Mexican authorities, develop mechanisms to enable migrants returned to their country of origin to file complaints with the Mexican authorities or provide information on serious abuses committed against them during their journey in Mexico, regardless of whether the perpetrators were state officials or non-state actors.

26. In conjunction with civil society and the Mexican authorities, ensure that relatives of migrants missing or killed during the journey are able to file an official report which is cross-referenced with other available information on missing or dead migrants. Support the efforts of relatives to locate missing irregular migrants.

ENDNOTES

1 Ley de la Policía Federal, Article 7, para XXXVIII.

2 Reglamento Interior de SEGOB, Article 55.

3 RLGP, Article 195.

4 M. Bronfman and R. Leyva (1999), *Migración y SIDA en Centroamérica, México y EEUU*, Mimeo, Cuernavaca, México; Pastoral de la Movilidad Humana (1998), *Para los que no llegaron. Un sueño hecho cenizas*, Serviprensa, Guatemala; *Mujeres que Cruzan Fronteras* (2006), UNIFEM.

5 The remainder were in detention awaiting the outcome of their applications for asylum or for their status to be regularized.

6 Instituto Nacional de Migración, Centro de Estudios Migratorios, *Boletín mensual de estadísticas migratorias*, 2009; available at <http://www.inm.gob.mx/estadisticas/2009/BoletinEst09.pdf>, last visited 5 March 2010.

7 *Cuarto Informe Sobre la Situación de los Derechos Humanos de los Migrantes en Transito por México*, Belén, Posada del Migrante, Humanidad Sin Fronteras and Frontera con Justicia, Saltillo, Coahuila, 23 May 2008.

8 The National Statistics Institute (Instituto Nacional de Estadísticas y Geografía, INEGI) only collects general migration-related data.

9 See the case of Father Alejandro Solalinde in Amnesty International's report, *Standing up for justice and dignity – Human rights defenders in Mexico* (AMR 41/032/2009).

10 *Semanario Judicial de la Federación y su Gaceta*, XXVIII, July 2008, p.389, Tesis: 1a./J. 33/2008.

11 See, for example, Article 2 of the International Covenant on Civil and Political Rights.

12 Paragraph 141 of the Advisory Opinion refers to the Inter-American Court of Human Rights' ruling that: "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention." Judgement in the case of *Velásquez Rodríguez*, 29 July 1988. Series C No.4, para.172. See also judgement in the case of *Godínez Cruz*, 20 January 1989, Series C No. 5, paras 181, 182 and 187.

13 See, for example, General Comment 31 of the UN Human Rights Committee, the expert committee that monitors states' implementation of the International Covenant on Civil and Political Rights. See also, UN Committee on the Elimination of Discrimination against Women, General Comment 19.

14 *Informe Especial de la Comisión Nacional De Los Derechos Humanos sobre los Casos de Secuestro en contra de Migrantes*, June 2009; available at, <http://www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra.pdf>, last visited 1 March 2010.

15 In 2009, Amnesty International issued a report highlighting concerns regarding the prolonged detention of irregular migrants, including Mexicans and Central Americans, in the USA as well as the conditions of detention, *Jailed without justice: Immigration detention in the USA*; available at <http://www.amnestyusa.org/immigration-detention/page.do?id=1641031>.

16 The UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by state parties.

17 A/HRC/11/7/Add.2, para. 65.

18 *Informe Especial de la Comisión Nacional De Los Derechos Humanos sobre los Casos de Secuestro en contra de Migrantes*.

19 CNDH recommendation 50/2009, August 2009; available at <http://www.cndh.org.mx/recomen/2009/050.html>, last visited 1 March 2010.

20 Chiapas is the only state to have established such a specialist unit.

21 Luis Mora, *Las Fronteras de la Vulnerabilidad: Género, Migración y Derechos Sexuales y Reproductivos*, 2002. The report itself cites a 1999 report, M. Bronfman and R. Leyva, *Migración y SIDA en Centroamérica, México y EEUU*, Mimeo, Cuernavaca, México. Interviews with then UN Development Fund for Women (UNIFEM), UN High Commissioner for Refugees (UNHCR) and CNDH.

22 Gretchen Kuhner and Gabriela Díaz, Seminario "*Migración y Género, San Salvador, El Salvador*, 19-20 July 2007.

23 *Informe Especial de la Comisión Nacional De Los Derechos Humanos sobre los Casos de Secuestro en contra de Migrantes*, Anexo.

24 "En dos años, 293 salvadoreños han muerto o desaparecido en México", *La Jornada*; available at, <http://www.jornada.unam.mx/2009/02/13/index.php?section=estados&article=029n1est>, last visited 1 March 2010.

25 *La Jornada*, 3 January 2010, <http://www.jornada.unam.mx/ultimas/2010/01/03/muerenmas-de-750-mexicanos-al-intentar-cruzar-hacia-eu-en-2009>, last visited 5 March 2010.

26 Letter received from INM, 2 March 2010, Of No. CR11/DR1/ 2010.

- 27** INM reply to Urgent Action 109/2007 (Index: AMR 41/014/2007), Oficio No INM/300/08, dated 15 May 2008.
- 28** LGP Article 151 and RLGP Article 195.
- 29** “Revisión migratoria en rutas o puntos provisionales distintos a los establecidos”, LGP Article 151, V and 156.
- 30** RLGP Article 196.
- 31** LGP Articles 73 and 98.
- 32** LGP Article 198.
- 33** CNDH, General Recommendation 13, 17 November 2006.
- 34** In March 2010, the INM informed Amnesty International that in 2009 it had filed reports with internal affairs bureaux (Organos Internos de Control) of separate police forces on 12 occasions regarding unlawful detentions of migrants. There was no information on the outcome of these complaints. Letter received from INM, 2 March 2010, Of No. CR11/DR1/2010.
- 35** The INM also informed Amnesty International that a series of procedures are undertaken before and during such operations, including consultation with the rail company, planning meetings, inspection of proposed site of operation to carry out a risk assessment and protection of the physical safety of migrants, particularly women and children. Letter received from INM, 2 March 2010, Of No. CR11/DR1/2010.
- 36** UA 11/09 (Index: AMR 41/002/2009), 15 January 2009.
- 37** See, for example, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- 38** Research shows that use of Conducted Energy Devices (CED) – such as electro shock weapons – carries a number of risks. The dangers of electro shocks from CED devices on the heart or respiratory system have been raised by medical experts and by Amnesty International in its reports on post-Taser deaths in the USA and Canada. Amnesty International’s recommendations include that use of such weapons should be authorized only when strictly necessary, only when lesser options are unavailable to an officer and where there is an immediate threat of death or serious injury. The stun gun function of a CED projectile weapon should never be used to force a person to comply with an order given by an officer where there is no immediate threat to the life or safety of the officer or others.
- 39** CMW/C/MEX/CO/1, 8 December 2006, paras 32 and 33.
- 40** In March, scores of police officers, including some 90 members of the municipal police force in Tierra Blanca, were arrested in connection with the kidnapping of irregular migrants. At the time of writing, the investigation was continuing and it was not clear if any of the officers would face criminal charges.
- 41** “ACUERDO por el que se emiten las normas para el funcionamiento de las estaciones migratorias del Instituto Nacional de Migración”, *Diario Oficial de la Federación*, 7/10/2009, Article 15.
- 42** The right to effective remedy for grave human rights abuses under international law is established in Article 8 of the Universal Declaration of Human Rights; Article 2 of the International Covenant on Civil and Political Rights; Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 8 of the International Convention for the Protection of All Persons from Enforced Disappearance; and Article 25 of the American Convention on Human Rights. Article 11 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law stipulates: “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms.”
- 43** *Standing up for justice and dignity – Human rights defenders in Mexico* (AMR 41/032/2009; *Mexico: New reports of human rights violations by the military* (Index: AMR 41/058/2009); *Women’s struggle for justice and safety: Violence in the family in Mexico* (Index: AMR 41/021/2008); *Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system* (Index: AMR 41/002/2007); *Mexico: Indigenous women and military injustice* (Index: AMR 41/033/2004); *Mexico: Unfair trials: unsafe convictions* (Index: AMR 41/007/2003); *Mexico: Intolerable killings – 10 years of abductions and murder of women in Ciudad Juárez and Chihuahua* (Index: AMR 41/026/2003).
- 44** LGP Article 67 and RLGP Article 201.
- 45** CMW/C/MEX/1, 18 November 2005, Submission to Committee on Rights of Migrant, 2006.
- 46** CRM 189/2007 adopted by the INM on 20 March 2007.
- 47** The new office created out of the former Special Federal Prosecutor’s Office for violent crimes against women (Fiscalía Especial para la atención de delitos violentos contra las mujeres, FEVIM).
- 48** In 2009, in co-ordination with academics and some migrants’ shelters, the National Network for the Registration of Attacks against Migrants was established to collect complaints registered at migrants’ shelters. See <http://www.cndh.org.mx/progate/migracion/index.htm>, last visited 1 March 2010.
- 49** Human Rights Committee, General Comments: Enjoyment of rights under the International Covenant on Civil and Political Rights must be available to all individuals, including migrant workers (General Comment 31), and states must respect and ensure the rights laid down in the Covenant to anyone *within the power or effective control* of that State Party, *even if* not situated within the territory of

the State Party (General Comment 31). The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens (General Comment 15). The right to liberty and security of person extends to deprivation of liberty for the purposes of immigration control (General Comment 8).

50 The main area of international criminal law affecting migrants is that of international organized crime which includes trafficking in persons and smuggling of migrants. It is an area of international law where migrants, including refugees, enjoy little protection or recognition of their human rights. Under international criminal law, the main instruments affecting migrants are: the UN Convention against Transnational Organized Crime (2000), the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000).

The two protocols, known as the Palermo Protocols, contain clauses designed to ensure that the provisions of the Protocols do not affect rights, obligations and responsibilities under international humanitarian, human rights and refugee law. They also require that the provisions of the Protocols be interpreted and applied in a way that is not discriminatory to people *on the grounds that* they are smuggled migrants or victims of people trafficking.

51 General Comment 30, CERD, 01/10/2004, para 18.

52 CRC/GC/2005/6 para 23, 24

53 CEDAW, General Recommendation 24, Women and health, para. 6.

54 CEDAW General Recommendation 26, Migrant women, para. 25(b).

55 “[E]l Ejecutivo de la Unión tendrá la facultad exclusiva de hacer abandonar el territorio nacional, inmediatamente y sin necesidad de juicio previo, a todo extranjero cuya permanencia juzgue inconveniente.” Article 33 of the Mexican Constitution.

56 Article 27 of the UN Vienna Convention on the Law of Treaties, ratified by Mexico on 25 September 1974, stipulates that domestic law cannot be an excuse for the non-fulfilment of a treaty.

57 Advisory Opinion OC-18/03, “Juridical Condition and Rights of the Undocumented Migrants”, Inter-American Court of Human Rights, 17 Sept 2003.

58 Advisory Opinion OC-18/03, “Juridical Condition and Rights of the Undocumented Migrants”, Inter-American Court of Human Rights, X Opinion, paras 1 and 2.

59 State parties “must punish public officials, other persons acting in the name of the State, and individuals, who carry out torture and cruel, inhuman or degrading treatment or punishment, and should also take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.” Advisory Opinion OC-18/03, “Juridical Condition and Rights of the Undocumented Migrants”, Inter-American Court of Human Rights, X Opinion, para. 144.

60 A/HRC/11/7/Add.2, 24 March 2009, para.92.

61 A/HRC/11/27, Universal Periodic Review Report of the Working Group on the Universal Periodic Review H81.

62 See <http://www.scjn.gob.mx/MediosPub/Noticias/2007/Paginas/Noticia20070213.aspx>, last visited 1 March 2010.

63 International human rights mechanisms have repeatedly called for amendments to Article 33 of the Mexican Constitution, which allows the executive to expel foreign nationals it deems “inconvenient” without the right to due process or appeal, so that those facing expulsion have the right to appeal.

64 Plan Nacional de Desarrollo, http://pnd.calderon.presidencia.gob.mx/pdf/PND_2007-2012.pdf

65 National Human Rights Programme 2008-2012, http://www.derechoshumanos.gob.mx/archivos/anexos/PROGRAMA_NACIONAL_DE_DERECHOS_HUMANOS_2008-2012.pdf

66 CONAPRED califica como discriminación la xenofobia contra migrantes, Boletín de prensa 073/2009, México D.F., a 13 de octubre de 2009; available at: <http://www.conapred.org.mx/boletinesg.php>, last visited 17 March 2010.



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CONFLICT OR A FORGOTTEN
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INVISIBLE VICTIMS

MIGRANTS ON THE MOVE IN MEXICO

Every year, tens of thousands of people travel through Mexico without legal permission as irregular migrants. Most are Central Americans on their way to the US border, hoping for a new life far from the grinding poverty they have left behind.

Their journey is one of the most dangerous in the world. Criminal gangs target the main routes used by irregular migrants. Kidnapping, extortion, ill-treatment and sexual violence by these gangs are widespread. Some migrants disappear without trace, abducted and killed, or robbed, assaulted and thrown off speeding trains.

Many of the cases detailed in this report highlight the involvement of the authorities at some level in many abuses against migrants. Far too often, officials provide criminal gangs with cover or simply fail to intervene to prevent a crime being committed. The lack of access to protection and justice makes migrants, and particularly migrant women and children, easy targets for criminal gangs and corrupt public officials. Excluded from mainstream society and effectively denied the protection of the law, irregular migrants remain largely invisible, their voices rarely heard.

Migrants in Mexico are facing a major human rights crisis fuelled by widespread impunity for those responsible for abuses. The federal and state authorities have consistently failed to investigate abuses against migrants promptly and effectively, despite their international obligations to do so. This Amnesty International report ends with a series of recommendations calling on the authorities at all levels to improve protection and access to justice for migrants and to end impunity for those who carry out abuses against them.

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Index: AMR 41/014/2010
April 2010

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