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**PRELIMINARY OBSERVATIONS OF THE IACHR'S RAPPORTEURSHIP ON THE RIGHTS OF  
MIGRANT WORKERS ON ITS VISIT TO MEXICO**

Mexico City, Mexico, August 2, 2011 – The Rapporteurship on the Rights of Migrant Workers and Members of their Families of the Inter-American Commission on Human Rights (IACHR) visited Mexico from July 25 to August 2, 2011. The following are the Rapporteurship's preliminary observations on the visit. The IACHR will prepare a Final Report on this visit and publish it in early 2012.<sup>1</sup>

The main objective of the visit was to observe the human rights situation of migrant persons in Mexico. The delegation was composed of Commissioner Felipe González Morales, the Rapporteur on the Rights of Migrant Workers and Their Families; Santiago A. Canton, Executive Secretary of the IACHR; Álvaro Botero Navarro, Attorney Specialist with the Rapporteurship, and María Isabel Rivero, Director of Press and Information.

During the visit, the IACHR delegation visited Mexico City; Oaxaca and Ixtepec in the state of Oaxaca; Tapachula and Ciudad Hidalgo in the state of Chiapas; Tierra Blanca and Veracruz in the state of Veracruz; and Reynosa and San Fernando in the state of Tamaulipas. During the visit, the Rapporteurship met with federal, state and municipal authorities;<sup>2</sup> with civil society organizations;<sup>3</sup> and with international organizations with offices in Mexico.<sup>4</sup>

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<sup>1</sup> This is the second time that the Commission's Rapporteurship on the Rights of Migrant Workers and Their Families has visited Mexico. The first visit was by Rapporteur Juan Mendez back in 2002.

<sup>2</sup> The Secretariat of Foreign Affairs, the Instituto Nacional de Migración [National Institute of Migration], the Comisión Mexicana de Ayuda a Refugiados [the Mexican Refugee Assistance Commission], the Comisión de Derechos Humanos del Distrito Federal [the Federal District's Human Rights Commission], the Office of the Attorney General of the Republic, the Secretariat of Public Security, the Secretariat of the Interior, the Permanent Commission of the Honorable Congress of the Union, the Secretariat of Health, the Secretariat of Social Development, the Secretariat of Public Education, the Instituto Nacional de las Mujeres [National Institute of Women] and the Sistema Nacional para el Desarrollo Integral de la Familia [National System for Integral Development of the Family], Oaxaca state government officials, Chiapas state government officials, Veracruz state government officials, the Comisión Estatal de Derechos Humanos de Veracruz [the Veracruz State Human Rights Commission], Tamaulipas state government officials, the Comisión Nacional de los Derechos Humanos [National Human Rights Commission] and the Consejo de la Judicatura [Federal Judiciary Council].

<sup>3</sup> Amnesty International (Mexico Section), the Centro Mexicano de Derecho Ambiental (CEMDA) [Mexican Environmental Law Center], Centro de Derechos Humanos de la Montaña Tlachinollan [Montaña Tlachinollan Human Rights Center], Centro de Derechos Humanos Miguel Agustín Pro Juárez [Miguel Agustín Pro Juárez Human Rights Center], Centro de los Derechos del Migrante [Center for the Rights of Migrants], Cohesión Comunitaria e Innovación Social [Community Cohesion and Social Innovation], Dimensión Pastoral de la Movilidad Humana (DPMH) [Human Mobility Pastoral Outreach], ENLACE Comunicación y Capacitación [LIAISON, Communication and Training], Foro Migraciones [Migrations Forum], Fundación para la Justicia y el Estado de Democrático de Derecho [Foundation for Justice and the Democratic Rule of Law], Fundar, Centro de Análisis e Investigación [Analysis and Research Center], *i(dh)reas* - Litigio Estratégico en Derechos Humanos [Strategic Human Rights Litigation], Iniciativa Ciudadana y Desarrollo Social [Citizen Initiative and Social Development], *INCIDE Social*, Iniciativa Frontera Norte [Northern Border Initiative], Instituto de Estudios y Divulgación sobre Migración (INEDIM) [Institute of Studies and Information on Migration], Instituto para las Mujeres en la Migración (IMUMI) [Institute for Women in Migration], *Movimiento Migrante Mesoamericano* [Mesoamerican Migrant Movement], *Organización de Refugiados en México* [Organization of Refugees in Mexico], *Proyecto El Rincón de Malinalco*, Sin Fronteras [Without Borders], Mesa Nacional para las Migración en Guatemala (MENAMIG) [National Council for Migration in Guatemala], Procuraduría de los Derechos Humanos de Guatemala [Guatemala's Office of the Ombudsman for Human Rights], Asociación Red Comités de Migrantes y Familiares de Honduras (COMIFAH) [Honduran Network of Committees of Migrants and Families]

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The IACHR's Rapporteurship appreciates the invitation that Mexico extended to make this visit. The Inter-American Commission is especially grateful to the federal authorities and the authorities of the states of Oaxaca, Chiapas, Veracruz and Tamaulipas for the cooperation they provided prior to and during the visit.

The IACHR Rapporteurship would also like to acknowledge the work done by organizations defending the human rights of migrants in Mexico and in other countries of the region. It is also grateful to the national and regional civil society organizations whose cooperation made this visit a collaborative effort, as they supplied information and testimony on the various issues affecting migrant persons.

Created in 1997, the mandate of the Rapporteurship on the Rights of Migrant Workers and Their Families is to take measures to protect and promote migrant workers and their families, whose circumstances are often such that they are particularly vulnerable to violations of their human rights. To fulfill this mandate, the Rapporteurship's main functions are as follows: to create an awareness of the states' obligation to respect the human rights of migrant workers and their families; to make specific recommendations to the member states on matters pertaining to the protection and promotion of the rights of migrant workers and their families, so that measures on their behalf are taken; to prepare reports and special studies on the situation of migrant workers and, more broadly, studies on issues pertaining to migration; and to act promptly on petitions or communications asserting that the human rights of migrant workers and their families are being violated in an OAS member state.

The Rapporteurship has received reports on the situation of migrants in various countries of the region and, in exercise of its mandate and functions, has responded by preparing thematic and country reports, requesting information from the States, conducting hearings and *in loco* visits to the States, and assisting with individual cases and requests seeking precautionary measures. The organs of the Inter-American Human Rights System –the Inter-American Commission and the Inter-American Court- have been instrumental in establishing the inter-American standards that the States are to implement. Of particular importance in this regard was the Report prepared by the Inter-

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Relatives], Foro Nacional para las Migraciones en Honduras (FONAMIH) [Honduran National Forum on Migrations], Consejería en Proyectos [Project Advisory Office], Equipo Argentino de Antropología Forense (EAAF) [Argentine Forensic Anthropology Team], Red Regional de Organizaciones Civiles para las Migraciones [Regional Network of Civil Organizations for Migrations], Centro de Derechos Humanos del Usumacinta [Usumacinta Human Rights Center], Comité de Derechos Humanos de Tabasco [Tabasco Human Rights Committee], Doctors of the World, Centro de Derechos Humanos Fray Matías de Córdoba [Fray Matías de Córdoba Human Rights Center], Red Nicaragüense de la Sociedad Civil para las Migraciones [Nicaraguan Civil Society Migrations Network], Universidad Nacional de Lanús (Argentina), Centro de Dignificación Humana [Center for Human Dignity], Albergue de Migrantes de Acayucan [Acayucan Migrants Shelter], Albergue de Migrantes Hermanos en el Camino de Ciudad Ixtepec [Ciudad Ixtepec 'Brothers on the Road' Migrants Shelter], the Albergue Decanal Guadalupano de Tierra Blanca [Tierra Blanca Our Lady of Guadalupe Migrant Shelter], Albergue Nuestra Señora de Guadalupe de Reynosa [the Reynosa Our Lady of Guadalupe Refuge], Albergue Cristiano Senda de Vida de Reynosa [Reynosa Path of Life Christian Shelter], Casa del Migrante de Saltillo [Saltillo Migrant Center], Centro Diocesano de Derechos Humanos Fray Juan de Larios [Fray Juan de Larios Diocesan Human Rights Center], Casa San Juan Diego y San Francisco de Asís de Matamoros [Matamoros Saint Juan Diego and Saint Francis of Assisi Center], Centro de Derechos Humanos del Migrante de Ciudad Juárez [Ciudad Juárez Migrant Human Rights Center], Red de Casas YMCA de Menores Migrantes de Baja California [Baja California Network of YMCA Homes for Migrant Youth], Coalición Pro Defensa del Migrante de Tijuana [Tijuana Coalition for the Protection of Migrants], Centro Interdisciplinario de Investigación para el Desarrollo Integral Regional (CIIDIR) [Interdisciplinary Research Center for Regional Integral Development], Unidad Oaxaca del Instituto Politécnico Nacional (IPN) [the Oaxaca Unit of the National Polytechnical Institute], Comité de Familiares Migrantes Fallecidos y Desaparecidos de El Salvador (COFAMIDE) [the Salvadoran Committee of Relatives of Deceased and Missing Migrants], La 72, Hogar Refugio para Personas Migrantes [Shelter for Migrant Persons], Grupo Civil de Honduras, Las Patronas de Orizaba, Albergue Por la Superación de la Frontera Sur, Albergue Jesús el Buen Pastor [the Good Shepherd Shelter], Albergue Belén [Bethlehem Shelter], Colegio de la Frontera Sur.

<sup>4</sup> The Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM).

American Commission on Human Rights on Immigration in the United States: Detention and Due Process, and the Advisory Opinion issued by the Inter-American Court of Human Rights on the *Juridical Condition and Rights of Undocumented Migrants* (OC-18/03) and the Court's recent judgment in the *Case of Vélez Loo v. Panama*.

## GENERAL OBSERVATIONS

The figures on migration worldwide indicate a sizeable increase in recent decades. According to the International Organization for Migration (IOM) there are currently 214 million international migrants globally; of these, 65 million migrated in the last ten years. The IOM's predictions are that by 2050 there will be 405 million migrants around the world. Mexico is in the unique position of being a country of origin, transit, destination and return for migrants. According to the IOM, Mexico is the top emigration country in the world. It currently has 10.1 million citizens living abroad, which represents around 10% of the country's total population. According to the National Institute of Statistics and Geography, in 2010 Mexico had 3,290,310 migrants within its borders. Furthermore, at the present time the Mexico-United States migration corridor carries more traffic than any other in the world, with 11.6 million emigrants in transit in 2010. As for the number of undocumented migrants in transit through Mexico, the National Institute of Migration (INAMI) has said that approximately 140,000 undocumented migrants enter Mexico each year, most from Central America. However, state officials and civil society organizations believe that the figure is much higher, and could be as many as some 400 thousand people per year. Most of these international migrants are traveling through Mexico on their way to the United States, the country with the highest number of international immigrants, numbering 42.8 million. Approximately one quarter of these are Mexican immigrants.<sup>5</sup>

International law recognizes that countries can establish mechanisms to control the entry and departure of foreigners into and out of their territory. At the same time, it also provides that such control must be practiced in a manner that is fully respectful of human rights and that the observance of basic principles such as non-discrimination and the rights to liberty and humane treatment cannot be made subordinate to public policy objectives. Therefore, any regulations and policies that States adopt to control immigration must not be at variance with the international obligations they have undertaken.

Notwithstanding the obligation incumbent upon every State to respect the human rights of migrants within its territory, the phenomenon of migration must also be examined from a regional and multilateral perspective that considers the responsibilities of all the countries involved: the countries of origin, transit countries, and destination countries. The Rapporteurship takes this approach to the issue in the belief that because migration is a human phenomenon that transcends borders, the States' response must involve all the countries concerned in the human mobility process. Thus, the regional hearings that the IACHR convened on the human rights situation of migrants and the visits made to specific countries, look at migration as a regional rather than national phenomenon.

During its visit to Mexico, the IACHR Rapporteurship received information on the significant progress made in the area of migration, especially the passage of the new Immigration Law approved in 2011. The Rapporteurship also confirmed the serious perils that migrants, both foreign and Mexican, encounter in their travels through Mexico. The Rapporteurship received information to the effect that migrants have to cope with serious security problems as they travel through Mexican territory, and fall victim to murder, disappearance, abduction and rape. Foreign immigrants are victims of discrimination. If it is properly regulated and implemented, passage of the new Immigration Law can be a first step toward resolving some of these problems; however, it will also

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<sup>5</sup> IOM, World Migration Report 2010 - The Future of Migration: Building Capacities for Change, Geneva, p. 156.

create new challenges that will only be resolved through international coordination with other States, especially those that are geographically proximate to Mexico.

## **PRELIMINARY OBSERVATIONS**

The IACHR's Rapporteurship on the Rights of Migrant Workers and Their Families applauds the recent legislative and administrative reforms undertaken by the State in order to better protect the human rights of migrants. The Rapporteurship recognizes the commitment that the Mexican State has demonstrated at the international level to promote international and regional human rights treaties, and the fact that the State has ratified all inter-American human rights conventions. Mexico has played a prominent role in promoting the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Rapporteurship congratulates Mexico for the State's recent decision to recognize the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to receive and consider individual communications.

Also of fundamental relevance to migrants and to all inhabitants of Mexico was the recent constitutional amendment on the subject of human rights, published in the Official Record of June 10, 2011. This amendment elevates all international human rights treaties ratified by Mexico to the rank of constitutional law and provides that the State has an obligation to prevent, investigate, punish and make reparations for human rights violations in accordance with the secondary law.

The Rapporteurship also appreciates the importance of the July 21, 2008 decree under which undocumented persons who enter Mexican territory are no longer committing a criminal offense. That decree struck down the provisions of the General Population Law that had set a penalty of imprisonment for 18 months to 10 years for any undocumented migrants.<sup>6</sup> Another positive measure was the 2010 amendment of the article that set the penalties for undocumented migrants who were repeat offenders. Another major amendment was introduced in Article 67 of the General Population Law, in force since November 23, 2010, under which foreigners, no matter what their immigration status, cannot be denied their right to have their human rights complaints addressed and to seek justice, thereby guaranteeing, by law, equal access to justice.

Another development of major importance was the passage of the Immigration Law, which entered into force on May 26, 2011. This law represents meaningful progress in the recognition and protection of migrants' human rights. Its implementation and regulation can be a paradigm shift in the observance of and respect for migrants' human rights. Some of the major advances embodied in the law include freedom of movement for migrants, recognition of the best interests of the child and the nuclear family as a guiding principle, recognition of the rights to justice, education, health and civil registry for migrants and members of their family, irrespective of their immigration status, increasing efforts to regularize immigration status, the definition of statelessness and extension of visas in the case of persons requiring special protection, such as persons applying for refugee status, additional protection and a declaration of statelessness. While many of these rights were already deemed to be constitutional rights, their inclusion in a special law will strengthen their observance.

All the changes that have occurred since 2008 represent the start of an immigration reform process that is without precedent in Mexico's recent history. Furthering this change by introducing new amendments to the laws and regulations, after Mexican civil society is consulted and once implemented and disseminated nationwide, will represent a shift in the immigration paradigm that

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<sup>6</sup> In keeping with the recommendations made by the Rapporteurship in the Report it prepared after its first visit to Mexico in 2002.

will have a substantial impact on Mexico and the world. The Commission stands ready to assist the Mexican State in bringing about these important developments.

The Commission understands that because the law only recently entered into force, many aspects have not yet been put into practice. The State should move swiftly and efficiently to publicize and promote the law, so as to ensure that anyone who will have a role in its implementation is given proper training as soon as possible.

Despite the progress made, the Rapporteurship is concerned over a number of matters that warrant the State's attention. A substantial part of the new Immigration Law has yet to be regulated. Regulation of the law will be pivotal to full and effective enjoyment of the rights recognized therein. The IACHR's Rapporteurship is concerned over the fact that many sectors are not being adequately consulted about the law's regulation, particularly civil society organizations, and very little time remains to conduct that consultation process efficiently. The deadline date for approving the Regulations is November 26. It is vital that all sectors of the State and of civil society that are somehow involved in the situation of migrants be consulted as the rules that will regulate the law are being established.

The Rapporteurship is also troubled by the fact that the Immigration Law does not include the principle whereby detention shall be the exception, not the rule. In the Report on *Immigration in the United States: Detention and Due Process*, the Commission wrote that "to be in compliance with the guarantees protected in Articles I and XXV of the American Declaration, member States must enact immigration laws and establish immigration policies that are premised on a presumption of liberty --the right of the immigrant to remain at liberty while his or her immigration proceedings are pending-- and not on a presumption of detention. Detention is only permissible when a case-specific evaluation concludes that the measure is essential in order to serve a legitimate interest of the State and to ensure that the subject reports for the proceeding to determine his or her immigration status and possible removal. The argument that the person in question poses a threat to public safety is only acceptable in exceptional circumstances in which there are certain indicia of the risk that the person represents. The existence of a criminal record is not sufficient to justify the detention of an immigrant once he or she has served his or her criminal sentence. Whatever the case, the particular reasons why the immigrant is considered to pose a risk have to be explained. The arguments in support of the appropriateness of detention must be set out clearly in the corresponding decision."<sup>7</sup>

According to the official figures from Mexico's National Institute on Migration, in 2010 the authorities detained 69,903 undocumented migrants at immigration stations. The reports received during the visit indicate that neither the law nor current practice guarantees the principle that holds that detention is permissible only in exceptional circumstances.

### **Detentions and Immigration Stations**

Because the detention of immigrants must be an exceptional and purely administrative measure, detention conditions are particularly relevant. The IACHR finds that, on the whole, the facilities and treatment of persons held in the Immigration Stations are unsuitable given the administrative nature of immigration detention. In many cases, the Rapporteurship was able to establish that the rooms in which the migrants are held are not properly ventilated; instead of windows, they have narrow openings that obstruct the natural lighting. They use bars like one would find in a prison to divide up the area in which the detained migrants are held. There were also reports of practices such as locking the migrants in their rooms at night and, in some cases, the use of punishment cells.

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<sup>7</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*, 2010, paragraph 39.

The Rapporteurship would remind the State that entering a country without satisfying its entry requirements is at most an administrative misdemeanor. Hence the vast majority of the persons detained there should not be deprived of their liberty. A new immigration paradigm that conforms to international human rights standards must include the exceptional nature of detention and make alternatives to detention the general rule. In those cases where detention is necessary, strict protocols must be followed that take into account that immigration detention must be the exception and is a purely administrative measure.

The Rapporteurship received information about the difficulties that migrants encounter in securing adequate legal representation. It was also told that on occasion, civil society organizations that wish to serve as the migrants' legal representatives are unable to do so because they are denied access to the immigration stations and hence are unable to obtain the necessary power of attorney. This situation creates a vicious circle whose effect is to deny immigrants their access to justice.

The IACHR confirmed that civil society organizations encounter serious difficulties when they attempt to gain entry into immigration stations. Advocates of immigrants' rights and representatives of civil society told the Rapporteurship that broad discretionary authority is exercised when deciding who can and who cannot enter. Specifically, it was reported that organizations that perform psychological counseling, religious and other services are permitted to enter, but that organizations that monitor the human rights situation find it very difficult to get inside these facilities. When asked about this matter, government officials said that the only requirement is that the organization be registered as a civil association. The Delegation, however, found that this was not the case in practice. The Rapporteurship is of the view that access to immigration stations for purposes of monitoring and inspection must be allowed, even without advance notice, so long as the visiting hours are observed.

The standard established by the Inter-American Court of Human Rights is that "[a]lthough Article 8 of the American Convention is entitled "Right to a Fair Trial," its application is not limited to judicial remedies in a strict sense, "but [to] all the requirements that must be observed in the procedural stages, (...) in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them. That is to say that the due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or of a judicial nature."<sup>8</sup>

In reference to detention review procedures, the IACHR wrote that they "must respect the guarantees of due process, including the defendant's right to an impartial hearing in decisions that affect his or her fate, his or her right to present evidence and refute the State's arguments, and the opportunity to be represented by counsel."<sup>9</sup>

Consular notification must be observed, as required under the Vienna Convention on Consular Relations, the Inter-American Court's Advisory Opinion OC-16/99, *The Right to Information on Consular Assistance, in the Framework of the Guarantees of Due Process of Law*, and as decided by the International Court of Justice in the *Case of Avena and Other Mexican Nationals (Mexico v. United States)*. In order for consular notification to accomplish its objective of protecting the rights of migrants, there must be coordination and cooperation with the authorities of the migrants' States of origin. The Rapporteurship confirmed that the Immigration Stations do have offices for the consular officials to meet with detained persons who are citizens of their countries. However, the detained immigrants and staff at the Immigration Stations said that many of those in detention have not been visited by a consul or any other diplomatic official. The situation is exacerbated in the

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<sup>8</sup> I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment on the Merits, Reparations and Costs. February 2, 2001, paragraph 124.

<sup>9</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*, 2010, paragraph 40.

case of countries outside the region, whose consuls virtually do not make visits to the facilities, according to what the IACHR was told.

The Rapporteurship received information, both from the Government and from civil society, of cases in which migrants have remained in detention for prolonged periods, several months and occasionally more than a year. This is especially true when remedies like petitions seeking *amparo* relief are filed to stop deportation. Since migrant detention should be exceptional in nature, it is particularly troubling that the lawful exercise of the right to appeal an administrative decision should so seriously affect one's right to liberty, ultimately forcing migrants to choose between the lawful exercise of their right or their individual liberty.

The situation of migrant children is especially disturbing. The Rapporteurship spoke with a number of children who are being held in Immigration Stations and recognizes that those in charge of the Stations take particular care to ensure that the children are given special attention. The Rapporteurship witnessed how well they are treated; they are given the opportunity to stay in especially prepared areas in order to be with their families; they receive special medical and psychological care and are given opportunities for learning and recreation. These favorable circumstances notwithstanding, and based on the principle of the best interests of the child which the new law currently recognizes, the detention of a minor in an Immigration Station must only be for the purpose of preserving the family unit. But even in those cases, the first consideration has to be the best interests of the child and alternatives to detention have to be used that also serve to preserve the family unit. The Rapporteurship was informed that no protocols are in place by which to evaluate the special situation of minors and determine, on a case-by-case basis, which procedure to follow to ensure that a child's best interests are served.

As for detention conditions, on its visits to the Iztapalapa Immigration Station in the Federal District and the Siglo XXI Immigration Station in Tapachula, state of Chiapas, the Rapporteurship found that, overall, their infrastructure and hygienic facilities are adequate. The detained migrants did not have any significant complaints regarding the food they receive, except in some particular instances where the diet has to be modified to accommodate their religious beliefs. A number of detained men complained that there were times when their requests for medical treatment were not heeded. The Siglo XXI Immigration Station, which has one section for men, another for women and a third for minors and families, has a library, Internet access, fields for playing sports and psychological counseling. These services could be improved, especially by providing e-mail and other Internet-based communication services. A number of persons at the Iztapalapa Station said that they received phone cards to enable them to make telephone calls, but others said they had to pay for the cards. Persons held at that facility do not have internet access. The availability of an economical, secure and regular means of communication is particularly important in immigration-related matters. The special circumstances in which immigrants find themselves, far from family and friends, heightens their sense of insecurity, vulnerability and emotions.

The IACHR delegation also received complaints from detained children and adult men about the foul odor in the bedding at the Siglo XXI Station, a fact corroborated by members of the delegation. One of the children said that the smell was so bad that a number of them prefer to sleep on the floor or on stone benches rather than sleep on the bedding. The Rapporteurship must emphasize how important it is that an immigration station be kept clean and hygienic. Every person detained at the center must be able to go outside and breathe fresh air every day. The authorities at this center must make certain that the detainees have a variety of activities and diversions available.

The Rapporteurship heard the testimony of one immigrant who was detained for a number of months in 2010, who pointed that on one occasion, he was locked in a "punishment cell" for 48 hours, incommunicado and in the dark; he had to sleep on the floor. He said that the "walls of the punishment cell were covered with excrement". The Rapporteurship also took testimony from other migrants, both men and women, who said that they were held in solitary confinement in

“punishment cells”. The Rapporteurship observes that the IACHR’s Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas provides that “[t]he law shall prohibit, in all circumstances, incommunicado detention of persons and secret deprivation of liberty since they constitute cruel and inhuman treatment.”

### **The Perils that Migrants Face**

The chief concern for the Rapporteurship is the grave perils that immigrants face. According to information received from the State, from civil society organizations and through the testimony given by the immigrants and their family members, migrants in Mexico fall victim to forced disappearances, murder, sexual exploitation, abduction, discrimination, and other violations of their rights.

It is public knowledge that in recent months clandestine graves were discovered containing the remains of numerous bodies, indicating that massacres had occurred. The Rapporteurship took testimony from immigrants who had been abducted and managed to escape, and from persons who are searching for family members who attempted to emigrate but who haven’t been heard from for months and even years. In San Fernando, state of Tamaulipas, the delegation visited bus terminals where various episodes of kidnapping occurred in March of 2011. The delegation received hundreds of person traveling from El Salvador, Honduras and Guatemala in the *Caravana Paso a Paso hacia la Paz*, which was composed of 500 people, among them 150 relatives of immigrants who had disappeared and immigrants who had been kidnapped. The testimony received reveals the tragedies that befall the immigrants as they travel through Mexico.

Particularly troubling was the testimony given by persons who said they had been detained by agents of the National Immigration Institute and/or police, who had allegedly then turned them over to criminal gangs. Considering the information on the existence of numerous kidnappings, the Rapporteurship is urging the Mexican State to investigate the possible involvement of State agents in human rights violations, an obligation that the State undertook upon ratifying the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons; Mexico is a State party to both these conventions. The Rapporteurship believes that the arrest of 17 municipal police officers in San Fernando, Tamaulipas, as part of the investigations into the discovery of the clandestine graves, is a positive signal of the State’s readiness to investigate, prosecute and punish those responsible for these crimes.

The IACHR also received testimony from a woman who was abducted and who, while in captivity, witnessed the slaughter of dozens of persons. Another woman recounted how she was abducted and, during her captivity, was forced to beat other migrant women with planks, while other migrant women were forced to beat her. The delegation also heard testimony from immigrants who were abducted along with several hundred other persons; one of them said that she was held inside a house in the countryside, along with 200 other people; yet another testified that some 400 people were in captivity with her. The Rapporteurship heard testimony from mothers who are looking for their missing children, and from wives, brothers and sisters in search of their loved ones. Others testified that they were raped or gang raped while held captive. Another witness described the case of a migrant who was abducted and whose family was forced to sell their land in order to pay the ransom. They explained that once the kidnap victim was released, the family continued to receive threats and had to make monthly payments to the kidnappers. The Rapporteurship heard corroborating testimony about kidnappings for extortion, for sexual exploitation and for human trafficking. In general, the persons who provided this testimony to the Commission said that they had not reported these cases to the authorities for fear of reprisals on the part of organized crime or state agents. For their part, the migrants and the relatives of migrants who filed complaints were skeptical about the possibility of the investigations moving forward and the guilty parties being prosecuted and ultimately punished.

As for the cases of human trafficking, the Rapporteurship was told that Central American women are particularly victimized by this type of crime and are forced into prostitution. This problem occurs with greater frequency, although not exclusively, in states along the country's southern border, such as Chiapas, Oaxaca and Tabasco. The victims are female, especially young girls and teenage girls who are more vulnerable to sexual exploitation in bars and cantinas. Women who are victims of sex trafficking are sold by their abductors, coyotes or *polleros* (another term for smugglers of undocumented migrants) to organized crime groups that force them into prostitution or domestic work in safe houses or places where kidnapped migrants are held. Women, however, are not the only victims of trafficking. The Rapporteurship received information concerning migrant men who, upon being abducted, are forced to work in various ways for organized crime groups; they are even forced into criminal activities. The civil society organizations pointed out that because of the particular circumstances in which victims of sex trafficking and the trafficking in migrants find themselves and the dangers they face, it is difficult to provide assistance to the victims. They also observed that while systematic data and reporting on persons who are victims of sex trafficking and the trafficking in persons are needed to craft public policies to prevent these violations, that kind of data and reporting do not exist.

In the *Report on Citizen Security and Human Rights*, the Commission pointed out that a public policy on citizen security "must devote special attention to the relationship between the police and migrants and their families, recognizing that migrant women, children and adolescents are the most vulnerable. In many countries of the region, migrants are stigmatized; large sectors of the population blame them for the increase in violence and crime. On the other hand, they are easy targets of crime and state and private violence."<sup>10</sup> The lack of security that migrants in Mexico experience is a situation that is so complex and serious that it calls for a comprehensive response not just on the part of the areas usually in charge of security, like the police, but by other areas as well. Indeed, all sectors of the State must be involved in order to ensure observance of the migrants' human rights.

The IACHR would remind the Mexican State that it has an obligation to investigate these facts and identify, prosecute and punish those responsible. As the Inter-American Court of Human Rights has repeatedly held, the duty to investigate "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty."<sup>11</sup> The Court has also written that "[t]he State's obligation to investigate must be complied with diligently in order to avoid impunity and the repetition of this type of act ... impunity encourages the repetition of human rights violations."<sup>12</sup>

The IACHR would also remind the Mexican State of its obligation to take measures in addition to the investigation and punishment of the responsible parties, with a view to preventing these crimes. Failure to prevent these serious crimes may engage the State's international responsibility, especially in those situations where the State is aware that there is a real and immediate danger that migrants might be murdered, sexually assaulted and subjected to abuses of various kinds. The organs of the inter-American system have held that not every alleged threat to life requires that the authorities take action to prevent the threat from materializing. Instead, this obligation arises when the actions of third parties pose an immediate and real threat to the life of an identified individual or group of individuals. This obligation is not fulfilled when the authorities fail to take measures within their power and that they might have reasonably been expected to take to avoid the risk. The Court

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<sup>10</sup> IACHR, *Report on Citizen Security and Human Rights*, 2010, paragraph 90.

<sup>11</sup> I/A Court H.R., *Case of Anzaldo Castro v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment of September 22, 2009, paragraph 123, and I/A Court H.R., *Case of Garibaldi v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 23, 2009, paragraph 113.

<sup>12</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2011, paragraph 289.

has also written that “as soon as State authorities are aware of the fact, they should initiate, *ex officio* and without delay, a serious, impartial and effective investigation using all available legal means, aimed at determining the truth and the pursuit, capture, prosecution and eventual punishment of all the perpetrators of the facts, especially when public officials are or may be involved.”<sup>13</sup> The Court has held that this obligation is binding no matter which agent is blamed for the violation, even when private individuals are blamed; if the facts are not investigated in a serious manner, the public authorities would somehow be complicit, which would engage the State’s international responsibility.<sup>14</sup>

In meetings with the Office of the Attorney General of the Republic (PGR) and with civil society organizations, the Commission was told of the progress being made in the investigations into the murders of migrants whose bodies were discovered in common graves. Officials in the Attorney General’s Office told the IACHR that since the investigation was turned over to the Attorney General’s jurisdiction, 82 people have been arrested, 81 of whom are standing trial. Arrest warrants have been issued for two other people who are fugitives from justice. The Attorney General’s Office also identified 23 of the bodies and their remains were handed over to the next of kin; in some cases, the Attorney General’s Office underwrote the cost of transporting the remains. The Attorney General’s Office also observed that after the experience of the first graves discovered in Tamaulipas, problems were identified with the handling of the lifeless bodies exhumed. According to the PGR, this resulted in an agreement in 2010 establishing the chain of custody, and identification albums were put together in order to establish the identity of the victims. However, none of the persons who gave the Rapporteurship testimony about their search for their missing family members were aware of the identification albums. The Rapporteurship was troubled to learn of the serious difficulties that the offices of the state public prosecutors encounter in doing their job. Information was received about exhumations of bodies buried in clandestine graves in the state of Tamaulipas, which were conducted in a highly irregular manner, without the necessary human and material resources. Some graves were exhumed before photographs were taken, making the job of victim identification that much more difficult. The Rapporteurship found the information regarding the existence of protocols for the handling of human remains and gravesites, and on the establishment of chains of custody to be confusing. In response to a request from the Rapporteurship, the State supplied documentation setting out certain general guidelines on the subject, which were developed especially for the Tamaulipas situation, but that would not constitute an official nationwide protocol that would guarantee, throughout Mexican territory, uniform handling of gravesites and the bodies discovered there. Civil society told the Rapporteurship that no such protocols exist.

The Mexican State must take measures to ensure that migrant persons have access to justice and are able to file complaints of human rights violations committed against them and their family members, without fear of reprisals. The amendment of Article 67 of the General Population Law represents an important step in this direction, as does the creation of offices of Special Prosecutors for Crimes against Migrants. Nevertheless, urgent measures must be taken to strengthen the state public prosecutor’s offices, providing them with adequate security and human and material resources.

One suggestion put forward by both federal and state authorities and by civil society organizations as a rapid means to alleviate the dangers that migrants currently face, is to act quickly to comply with the provisions of the new law and issue migrants some form of documentation. Regularizing

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<sup>13</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2011, paragraph 290.

<sup>14</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of January 31, 2006, paragraph 145; and *Case of Kawas Fernández v. Honduras*, Merits, Reparations and Costs. Judgment of April 3, 2009, paragraph 78.

the status of migrants can also help ease their fear of being detained and sent to Immigration Stations, and will make it easier for migrants to file complaints with the authorities concerning the human rights violations to which they fall victim. All this would also make it easier for migrants to move freely through Mexican territory, ending the dangers to the migrants' safety and the possibility of exploitation that clandestine crossings involve.

The State must also facilitate alternative means of safe and efficient transit along the routes that migrants tend to travel and must punish those persons and authorities who allow transit under unsafe conditions that put people in danger and exploit the vulnerability of migrants. The State must also provide migrant care centers along the migration routes to ensure that their human rights are respected.

The Rapporteurship received and confirmed information on the particular perils to which child migrants are exposed. In Ixtepec in the state of Oaxaca, the delegation witnessed the arrival of a freight train known as "La Bestia", coming from Arriago. Atop and between the rail cars were hundreds of migrants, among them migrant children whose lives and personal safety were in great jeopardy. The presence of a few agents from the National Institute of Migration on hand to provide protection and assistance to the migrants is insufficient for the large number of migrants arriving with each train. The Rapporteurship observed the same situation in Tierra Blanca, Veracruz, where children were awaiting the arrival of the freight train, sleeping alongside the tracks without any type of protection. Most of the children who transit through Mexico sleep on the street or sleep and eat in shelters run by private individuals and civil society organizations.

The Rapporteurship appreciates the work being done by civil society organizations and individuals in this area, by providing shelter, food, drinking water and other services to the migrants transiting through Mexican territory. The shelters provide security, food and information to thousands of people who pass through Mexico every year. These individuals and organizations are performing a vital social service, filling a void that the State has left for many years. It is important that the State provides these services to migrants and that it supports civil society organizations by providing them with adequate and sufficient resources to perform these functions. The Rapporteurship also places a high premium on the work performed by those who defend migrants' human rights, who carry on their mission despite the risks that their work involves.

The purpose of the Rapporteurship's visit was to observe the human rights situation of the international immigrants, given the particularly vulnerable circumstances in which they find themselves. However, many of the concerns expressed also apply to Mexican migrants traveling to other countries, who also fall victim to human rights violations. Many of the recommendations made in this preliminary report will protect the rights of Mexican migrants as well.

Although the final report on the Inter-American Commission's visit will make a number of specific recommendations to the State of Mexico, the Rapporteurship will avail itself of this opportunity to make the following preliminary recommendations.

### **Preliminary Recommendations**

1. Take steps to immediately guarantee the life and personal integrity of migrants within Mexican territory through concrete measures to facilitate safe travel by all the inhabitants, such as establishing migrant care centers along the migration routes, providing support to civil society organizations that work with migrants, conducting massive campaigns to educate migrants about their rights, and other measures;
2. Provide safe means of transportation and adapt the existing means of transportation to be in compliance with minimum safety standards;

3. Ensure security at all transportation terminals and migrant shelters;
4. Immediately undertake a far-reaching, transparent consultation with civil society and all areas of the federal and state government that are involved in immigration-related matters, with a view to drafting the Regulations to govern the Immigration Law;
5. Ensure that the future Regulations clearly state that immigration detention is to be the exception, in keeping with inter-American standards; provide as broad a guarantee as possible that documentation will be issued to facilitate migrants' transit;
6. In the future Regulations, make provision for alternatives to detention;
7. Give civil society organizations access to immigration stations to check the condition of the immigrants detained there. An organization's accreditation must be sufficient to allow it access during visiting hours;
8. Ensure the security of defenders of migrants' human rights;
9. Guarantee that migrants have access to justice through measures such as *pro bono* legal services and establishment of a protection program for victims of and witnesses to crimes committed against migrants;
10. In consultation with civil society, establish protocols for the handling and identification of corpses;
11. Consult with specialized civil society organizations and independent experts on matters related to the identification of dead bodies discovered;
12. Periodically train all federal and state officials in crime prevention and investigation;
13. Coordinate its immigration policies with all the countries in the region, so as to ensure the human rights of all inhabitants.

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