

# fidh

Fédération Internationale des Ligues des Droits de l'Homme  
International Federation for Human Rights  
Federación Internacional de Derechos Humanos  
الفدرالية الدولية لحقوق الانسان

## **United States - Mexico**

### **Walls, Abuses, and Deaths at the Borders**

#### **Flagrant Violations of the Rights of Undocumented Migrants on their Way to the United States**



FIDH's photo 2007



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## INTRODUCTION

The International Federation of Human Rights (FIDH) is a non-governmental, apolitical, nonsectarian, nonprofit international organization, of recognized public interest. FIDH aims to promote the application of all the rights provided for in the Universal Declaration of Human Rights and other international instruments created to protect such rights.

FIDH, created in 1922, is currently comprised of 155 human rights organizations in about 100 countries. It coordinates and supports their actions, particularly by collaborating in the international sphere. The member organizations of FIDH in Mexico are the Mexican League for the Defense of Human Rights (LIMEDDH) and the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH); in Guatemala, the Center for Legal Action in Human Rights (CALDH) and the Commission of Human Rights of Guatemala (CDHG); and in the United States, the Center for Constitutional Rights (CCR).

FIDH has a consulting status with the United Nations, OAS, UNESCO and the European Council, and an observer status with the African Commission of Human and Peoples' Rights.

As a part of its mandate, FIDH conducts international judicial research and observation missions periodically. These are aimed at giving elements of judgment on human rights violations to the public opinion and the international community, at contributing to improve human rights promotion and protection standards, the protection of victims and the strengthening of the work of human rights' advocates.

The mission and investigation object of this report is in line with FIDH Campaign on Migrations and Human Rights launched in December 2007 on the occasion of the 60th anniversary of the Universal Declaration of Human Rights and until December 2008.

One of the central themes of the campaign is the relation between the legitimate sovereignty of the United States and the essential respect for the fundamental rights of migrants, especially the right to life, physical integrity, effective proceedings and respect for private and family life.

The vulnerability of the undocumented migrants is especially obvious in the southern border of Mexico (with Guatemala) and in the southern border of the United States (with Mexico). Such vulnerability is a result of their foreigner status and frequently from being victims of people smuggling and trade. FIDH considered necessary to carry out research in both areas with the purpose of viewing and documenting the serious violations of human rights that usually affect migrants of the region, as well as highlighting the pressing need to turn the implementation of human rights into the first priority of the migration flow schemes in these two countries.

### 1. Mission's Agenda

FIDH's mission was developed from February 25th to March 13th, 2007. The people in charge were Geneviève Jacques, Economist and former director of *La Cimade* (Ecumenical center for migrants) Vilma Núñez, Vice President of FIDH and President of the Nicaraguan Center for Human Rights (CENIDH), Jimena Demougin-Reyes, Director of the Americas Division of FIDH, and Claire Tixeire, FIDH representative before the United Nations in New York.

During this mission interviews were held with several institutional representatives (national, regional and local) and members of civil society<sup>1</sup>:

#### In Tapachula

*Albergue Belén* with Father Flor María Rigoni.

*Albergue del Buen Pastor* with Donar Antonio Ramírez.

*Centro de Derechos Humanos Fray Matías de Córdova* (Human Rights Center) with Fermina Rodríguez Nolasco.

Migration station: detention center of the regional office of the National Migration Institute (*Instituto Nacional de Migración* - INM), with Manuel Cobo and Alejandro De Gyves Cifuentes.

*Una mano amiga en la lucha contra el sida* with *Rosemberg and Yadira*.

Save the Children, with Carlos Bermúdez Cortes.

*Por la superación de la mujer* with OLE, Elsa Simón Ortega.

Sin Fronteras with Santiago Martínez Junco (Adviser).

Shelter of the Human Development Institute.

Office of the National Human Rights Commission (CNDH)

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with Héctor Pérez García.  
*Grupo Beta de protección al migrante* (Beta Group for Migrants Protection) with Francisco Aceves Verango.

**In Ciudad Hidalgo and Tecún Umán**

Tecún Umán's House for Migrants with Walter Arraiga Najera.  
Alfredo Valladares, Guatemala's Consul.

**In Arriaga**

House for Migrants with Father Vázquez.

**In Tuxtla Gutierrez**

Migration Station.  
Ministry of Public Safety of Chiapas, with Schroder and Daniel Roque Figueroa.

**In Florence and Tucson, Arizona**

Mark R. Rios, Patrol Agent in Charge, and Lisa Reed, Community Relations, of the Tucson Border Patrol Sector  
Yendi Castillo-Reina, Federal Defense Attorney, Arizona District.  
Victoria A. Lopez, Executive Director and Raha Jorjani, Staff Attorney, the Florence Immigrant and Refugee Rights Project.  
Jennifer Allen, Executive Director, Border Action.  
Mike Wilson, member of the Tohono O'odham Nation Tribe.  
Volunteers of Humane Borders.  
Reverend John Fife, founder of the Sanctuary Movement, and co-founder of the Samaritan Patrol and No More Deaths.  
Kathryn Ferguson, member of the Samaritan Patrol.

**In Albuquerque, New Mexico**

Albuquerque's Detention Center, Bernalillo County's Metropolitan.  
Sister Marlene, Staff Attorney at Las Americas

**In El Paso, Texas**

Office of the El Paso Sector Border Patrol, with Chief Paul A. Beeson, Office of Public Affairs with Martin Hernández, and Irene Mortensen, Community Relations Officer, Border Patrol in the El Paso Sector.

Children Foster Care, Center for Migrants.  
Sister Liliana Alam, Executive Director of Las Americas.  
Annunciation House (House for Migrants).

**In Ciudad Juárez**

Migrants' Human Rights Center with Blanca Navarrete and Diana Morales.  
Migration Station. Detention Center of the regional office of the National Migration Institute (INM) with Jorge Barragán, Jesús Moreno Cano and Hirosaki Lopez Pedroza.  
National Migration Institute with Julieta Núñez.

**In Mexico D. F.**

National Migration Institute (INM) with Hugo Rodríguez Nicolat and Rolando Garcia Alonso.  
Member of Parliament Omeheira López Reyna, President of the Parliament's Human Rights Commission.  
Migration Station of Ixtapalapa, Detention Center of the regional office of the National Migration Institute (INM), with Francisco Rodríguez, Jose Israel Cardenas  
Ministry of Foreign Affairs with Minister Rodrigo Labardini and Ambassador Juan Manuel Gómez Robledo.  
National Human Rights Commission (CNDH) Fifth General Inspection Unit, with Mauricio Farah Gebara, Alberto Piedra, Alejandro Hernández, Salvador Beltran Santana, Eduardo Ruiz Rodríguez-Casares, Armando Torres Sasia.  
*Centro de Investigación para el Éxito y la Calidad Educativa* (Research Center for Education Success and Quality) with Rosaura Galeana.  
*Comisión episcopal para la Movilidad* with *Sonia Delforno*.  
*Caritas* (Program for Migrants Assistance) with Angélica Fernández Bautista.  
*Comisión Mexicana de Ayuda a Refugiados* (Mexican Commission for Aid to Refugees), with Norma Sabido.  
*Fomento cultural y educativo* (Cultural and Educational Promotion) with Alfredo Zepeda and Sergio Cobo.  
*Servicio Jesuita al Migrante* (Jesuit Service to Migrants) with Vladimiro Valdés.  
Gretchen Kuhner.  
*Sin Fronteras*: Fabienne Venet, Karina Arias, Melissa Vertiz, Elba Coria, Siria Oliva.

**In Washington**

Representative Luis V. Gutiérrez, Member of the Congress, and Susan Collins, Legislative Director of Mr. Gutiérrez;  
Todd A. Kushner, Senator Edward M. Kennedy's advisor,

U.S. Senate Judiciary Committee;  
Kevin Landy, assistant to Senator Joe Lieberman;  
Blake Chisam, jurist and advisor of congresswoman Zoe Lofgren, of the Immigration Subcommittee, Border Security and Claims, U.S. House of Representatives.  
Christina DeConcini, Director of cabinet, National Immigration Forum.  
Kerri Sherlock, director of cabinet, Rights Working Group.  
Christopher V. Nugent, Staff Attorney at Holland and Knight, Senior Counsel in the Women's Commission for Refugee Women and Children.

## **2. Acknowledgments**

The FIDH would like to express its deep gratitude to all the people who, on behalf of state and federal authorities and of civil society organizations, assisted FIDH's investigation by providing reports, opinions and proposals, making the achievement of its objectives possible. The FIDH especially thanks the support of the member leagues in the region and of Sin Fronteras I.A.P. in Mexico and in the United States, Arnoldo Garcia from the National Network for Immigrant and Refugee Rights, Paromita Shah from the National Immigration Project of the National Lawyers Guild, Andrea Black from Detention Watch Network, and Sister Liliane Alam, from Las Americas.

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1. For obvious reasons, names of most migrants interviewed by the mission are not mentioned in the report.

## I- GENERAL CONTEXT OF THE MIGRATION FLOWS BETWEEN CENTRAL AMERICA, MEXICO, AND THE UNITED STATES

There are few places in the world where tensions, due to mass migration of population in the globalization era, are as outrageous as in the geographical area that extends from Central America to the south of The United States. This space, comprising Mexico and its southern and northern borders, is a customary route followed by poor people who walk and travel overland to get to the territory and labor market of the United States. This area also traces the breakpoint line between a rich and dominant America, in economic and political terms, and a poor America that is subject to the game rules established by its northern neighbor. The borders, intended to establish the limits of national sovereignty, are the place where the main contradictions between the logics of global liberal economy, one of the main migration causes, and national policies to handle this migration flows take place, almost in a caricature way.

Beyond the hydraulic metaphors of migration flows or currents, we have to remember that we are talking about human beings who take part in survival strategies but who are also victims of contradictions, inconsistencies and injustices of the region's migration policies in force. The price they have to pay, in economic terms but especially in terms of suffering, humiliation and violation of their human rights and dignity, are very high, at the level of the extreme tensions prevailing in this part of the world.

The following three figures give an idea of the extension and seriousness of the phenomenon:

- In 2006, Mexican authorities questioned and deported 179,000 foreigners in transit for the United States (94 percent from Central America)<sup>2</sup>;
- During the same year, Border Patrols of the United States deported 858,000 foreigners to their home country<sup>3</sup>, between which 514,000 Mexicans, and immigration services apprehended and deported about 50,000 migrants from other Central American countries.

It is estimated that, during the last 12 years, over 4,000 migrants died crossing the "wall" (both physical and virtual) that separates Mexico from the United States, this is 15 times more the number of people who died crossing the Berlin Wall during the 28 years it existed. Since new border control measures were established by United States authorities in 2001, the number of deaths has

increased dramatically and reached 473 in 2005, from which 260 occurred in Arizona's desert.

According to authorities and to most of the mass media, these migrants are "illegal". We do not agree with the use of this term, which leads to saying that human beings are illegal. The "illegality" is created by migration policies that do not correspond with reality. Furthermore, this adjective entails a tendency to criminalize immigration, making migrants that enter national territories, without all their administrative papers in order, pass for "criminals". This semantic transfer is often accompanied by a real amalgam between migrants, undocumented people and terrorists. This evolution, particularly obvious since the current United States' administration assumed office, has severe consequences because it leads the public opinion to legitimize the most repressive measures in the name of national security and to divert its attention from the violations of this population's main human rights.

## 1. Mass Migration Due to Multiple Causes



Mural at the migrants' house in Tecún Umán.

Migrations towards the United States coming from Mexico and Central American countries (mainly Guatemala, El Salvador, Honduras and Nicaragua) are in line with the long history of relations between these two parts of the American continent; but nowadays there are new factors that explain the changes involved in the migration causes and the policies that have governed them for the last ten years.

In the 2000 census, the population of the United States registered 11 million 156 thousand people who were born in Central America (from which 9 million came from Mexico). Thirty years before, in the 1970 census, they were only 873,000<sup>4</sup>, meaning that the annual growing rate was on the order of 7 percent between 1980 and 2000. This spectacular growth on migration flows can be associated with the acceleration of the “asymmetric” globalization process of a model of liberal market

economy, that aggravates the initial inequalities between countries and countries' regions, weakening the regulating role of the state, creating tensions and social violence and putting the most vulnerable people into positions of risk that they cannot afford to take.

Using the classic scheme to explain the migration causes in terms of “push and pull factors”, these causes and the attraction factors that lead migrants from the Central American isthmus towards the United States can be outlined as follows:

a) The need to escape poverty and social violence is among the reasons that lead increasingly younger men and women to leave their country, their land and their communities to go, no matter what, to the powerful northern neighbor.



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During the last decade, poverty continued increasing in rural or semi-urban areas of the region's countries. Out of 35 million inhabitants of the small countries in Central America, 19 million are considered poor; from which 8 million are considered extremely poor, this is to say, they earn less than a dollar per day. The worsening of poverty is due to structural reasons, even when temporary climate accidents, such as hurricanes Mitch and Stan, made the situation worse; and it is mainly a result of the impact of an economic model that only benefits a few national players who are able to compete with global companies. It excludes everyone incapable of entering this field, who have less and less resources to survive day by day and to guarantee a future for their children.

The North American Free Trade Agreement (NAFTA) signed by the United States, Canada and Mexico in 1994, has increased even more the initial inequalities between the economies of Mexico and the United States and it has contributed to create new inequalities inside Mexico. It is estimated that from 1994 to 2004, 1.3 million Mexican agricultural workers abandoned their lands due to a massive import of wheat and corn from the United States at subsidized prices. Many of them have joined the ranks of migrants to the North. The free trade agreement signed in 2006 between the United States and countries of Central America (CAFTA), countries where economic and social asymmetries are even more marked than in Mexico, presages equally disastrous consequences for the poorest people. This creates stronger migratory pressures if the governments of the countries involved do not establish internal sustainable development alternatives, to allow their citizens to live with dignity in their countries, which would give them other choices besides leaving.

These vulnerable economies, weakened by globalization, rely a lot on money sent by migrants that work in the United States, preventing millions of families from falling into extreme misery. Putting an end to this income source would be catastrophic on the short term. For instance, Mexican workers in the United States have sent their families over 20 billion dollars in 2005<sup>5</sup> (to be compared with 6.5 billion sent in 2000). Mexican authorities estimate that "in rural areas of Mexico, one out of 10 homes depends on money sent by relatives who emigrated". In a country like El Salvador, money sent by migrant workers accounts for 15 percent of the GDP and more than 3/4 of the total value of the country's exports in 2004. According to a research by the Inter-American Development Bank, between 2004 and 2006, migrants working in the United States sent on average from 2800 to 3600 dollars a year to

their families in about ten small remittances. This financial dependence creates a social and family pressure that "forces" young dynamic men and women to depart to the North. On the other hand, whole areas are being left with no workforce, stopping any local initiative to establish real development programs to benefit the poorest people. The same causes produce the same effects: poverty and emigration.

The lack of alternatives and short and medium-term prospects in countries like El Salvador and Guatemala promotes a *culture of social violence* that reaches alarming proportions. The consequences of civil wars that traumatized these countries until the beginning of the 90's have not been solved: the absence of a State under Rule of Law, the persistence of corruption, impunity and the illegal circulation of about 2 million light weapons encourage forms of criminal violence (especially armed gangs called Maras) that incite parents to leave for their own safety and their children's safety.

b) One of the main factors that "attract" migrants to the United States is the prospects of finding a job or a better paid job, possibility of social improvement, access to education for their children and the presence of welcoming communities of the same origin already living in the United States territory.

United States labor market: in order to adapt to the rules of global competition, it is necessary to count with flexible labor: people willing to take precarious jobs that are poorly paid, with minimum levels of social protection and under conditions that are far below the rules in force for United States citizens. Since a long time ago, migrant workers with little or no qualifications coming from Mexico or Central America constitute the "reserve components" for those kinds of jobs, which are currently offered in a wide variety of fields (construction, services, shops, manufacture, food and agriculture) and spread over many regions of the country. Hiring foreign workers, without protection or possibilities to defend themselves due to the precariousness of their status, represent a bargain for employers who can avoid United States labor laws with impunity and who can exercise the maximum pressure to keep labor costs as low as possible. Nowadays, the presence of about 11 to 12 million officially "unauthorized" immigrant workers in the United States territory is an obvious illustration of the incoherence and hypocrisy of policies that intend to forbid "illegal" immigration without offering alternatives to a legal immigration, consistent with

the needs of economy, and allow companies to easily benefit from the exploitation of undocumented men and women. It is estimated that during the last five years the number of foreigners without legal status has increased 500,000 per year (see table). During the same period only 5,000 work visas per year have been granted authorizing “legal” immigrant entries!

The presence of a large Diaspora of Mexican and Central American origins in the United States is a powerful attraction factor. Most current migrants have a relative or a friend who has managed to cross, with or without documents, and has found a job. Many people start the journey encouraged by, or even receive financial aid from, friends already living in the United States, who represent an evidence of the possibility to achieve the “American dream”: have a job, a house, send money to family back in their home country and have access to consumer goods that are widely advertised in newspapers and on TV, even in the most impoverished neighbors of the South.

The combination of the above factors causes irreversible and almost irrepressible dynamics of migration flows. For that reason, it is not surprising that issues related to the “undocumented” migrants’ situation, already working in or trying to go to the United States, have become hot topics in domestic policy debates in the countries involved and in intergovernmental talks. This was highlighted in a report by the Latin American Faculty of Social Sciences (FLACSO) in 2005: “international migration of Central American societies due to work reasons is nothing new but its dimensions and dynamics have increased exponentially during the last 20 years, causing deep changes both in the country of departure and in the destination country”. So far such changes have not led to the creation of policies capable of diminishing tensions, but all the contrary. The lack of global policies, that treat migration flows with a human development perspective encouraging respect for all the human, political, economic, social and cultural rights of those that are most vulnerable wherever they are, in their home countries, host countries and on the exile routes, is still the general rule in the whole region unfortunately.

## 2. Inconsistent National Policies which Infringe on Human Rights

### *Escalation of a Security-based, Inefficient, Costly, and Dangerous “Deterrence Policy” in the United States*

When debates are about to start in the United States Congress to elaborate a “project on global reform of national immigration policies”, many papers on the policies analysis and assessments were published with the initiative of civil society organizations or academic researchers<sup>6</sup>. Their balance is overwhelming.

It is significant to note that as of 1994, when the NAFTA was signed by the United States, Canada and Mexico advocating the reduction of trade barriers for merchandise and capital flow, barriers to stop migration have been considerably reinforced by the United States.

A “deterrence strategy” of migration flows has been developed progressively with outrageous operations<sup>7</sup> along the border that stretches from California to Texas. These campaigns have marked the beginning of the militarization process of the border which resulted in a significant increase of human and material resources to stop and detain migrants that try to cross the border: the number of *Borders Patrols* (BP) were tripled, miles of metallic wall were built in the urban areas of California and Texas, new technologies are used to detect population movement, helicopters, all terrain vehicles, etc.

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A Border Patrol Jeep stands watch over the U.S.-Mexico border in El Paso, Texas.

According to a report by the Department of Justice, this strategy aimed at making the border crossing every day more difficult and expensive. At the beginning it was about stopping immigration of undocumented people in the urban areas where the border crossings were traditionally concentrated and then deploy the operations in further regions where the terrain was thought to be so difficult and dangerous that it would deter future candidates from starting the journey. The prospect of a rise in the number of deaths was officially taken as a complementary deterrence argument.

Security-based fears and obsessions after September 11th, 2001, have offered new arguments to justify an increase in control and repression measures that affect foreign populations in general and, particularly, migrants that cross the border without authorization. Militarization

has been intensified even more in border areas during the last five years, and migration topics have been politicized and integrated to national security plans. An evidence of the above is that the service in charge of immigration matters in the federal administration, Immigration and Custom Enforcement (ICE), used to be under the authority of the Department of Justice, but since 2003 is under the Department of Homeland Security (DHS). Therefore, migrants are being associated to national security threats, an ironic situation in a country that exists and developed due to the contribution of mass immigration.

The increasing militarization of the border and immigrants' criminalization are a result of the repressive nature of the immigration laws adopted during this period, as explained later on.

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FIDH's photo 2007

A Border Patrol custody facility in the desert of the Tohono O'odham reservation, where migrants caught are first brought to and locked behind these grids, under the sun.

The strategy consists of moving crossing points towards dangerous areas; it has worked well but its result did not deter the border crossing but increased the human price dramatically: for many of them the forced crossing of deserted or mountainous regions under extreme weather conditions has become a “death sentence” and, for all of them, it is a disastrous physical and psychological experience. The United States government acknowledges that the number of migrants who died crossing the border has tripled between 1995 and 2005<sup>8</sup>, and this increase is attributable to the crossing conditions of inhospitable areas at the south of Arizona. Between 2004 and 2007, the number of deaths officially registered has been around 225 per year<sup>9</sup>. Humanitarian organizations on that field believe that such figures underestimate reality and that there are at least three times more deaths, since many corpses are never found in a huge desert where vultures and other animals clear mortal remains quickly.

Furthermore, the number of people in danger helped by Border Patrols<sup>10</sup> or humanitarian organizations is another indicator of this “humanitarian crisis on the border”<sup>11</sup> denounced by civil society organizations as a consequence of deterrence tactics enforced in recent years.

Decreasing the number of illegal entries by increasing the number of apprehensions on the border and deterring new attempts through considerable human and material investment is an objective that has not been accomplished, taking into account, on the one hand, the evolution of B.P. staff (Customs and Border Protection agents, members of the Department of Homeland Security) and of the number of interrogations carried out, and on the other hand, the estimated volume of population without legal status living in the United States<sup>12</sup>:

	1990	2000	2005	2007
B.P. staff	3715	9078	11106	14,923
Apprehensions by the B.P. (thousands)	1,103	1,676	1,189	876
Population without legal status (estimated in thousands)	3,500	8,500	between 11.500 and 12.000	

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Even if the increase in undocumented population is not caused by new illegal entries only (they account for 50 to 60 percent of the total), we consider mandatory to realize that the trebling of police staff in charge of border control has not

led to an appreciable rise in processing of undocumented migrants at the borders<sup>13</sup> nor has stopped the spectacular growth of the population officially considered illegal, a population that will be tripled in 15 years.



A Border Patrol agent in a small watchtower is looking out for migrants a few miles away from Sasabe's port of entry in Arizona.

The economic cost of all the border control infrastructures and repressive operations is huge: since 1994, the United States government has spent about 30 billion dollars to "secure" its border with Mexico, obtaining debatable levels of efficiency. New measures taken in 2006 by President George W. Bush, which include sending 6000 National Guards to give support to Border Patrols during two years, increasing the number of agents and equipment even more, and lastly, the enforcement of a law that provided the construction of a 700 mile-long fence on the border (Secure Fence Act of 2006), overload the bill and worsen the risks of causing more human drama by moving the migration routes even further.

As a whole, the militarization measures at the southern border of the United States, spectacularly reinforced since the beginning of this century, have so far resulted in a dramatic worsening of crimes against life and fundamental rights of men, women and children that cross the borders illegally and in a considerable increase of expenses, without reducing or controlling migration flows.

All the economic and ethic questions arising out of these incoherencies are the main point of debate on the immigration policies reform of the United States. All supporters of a global approach who take into account the reality of the needs of the United States economy, the respect for the rights of all workers and the reality of the needs of the neighbor countries of the south, believe the political moment is propitious to reform the admission policies for legal workers in order to find a solution for the "unauthorized" population living and working in the United States territory and to consider realistic border control measures focused on criminal activities related to smuggling and drug dealing. Other political forces insist in favoring the security-based approach and the increase of repression means against new immigrants, especially Latin-American immigrants. The main tension causes are far from being solved.

### ***Contradictions and Paradoxes of Mexican Policies***

Mexico is the stage for all complexities and contradictions which characterize current migratory phenomena created by economic globalization and stopped by national security obsession: growth of migration pressures on the one hand, more obstacles in legal immigration policies on the other.

Due to its geographic location, between the most powerful country on earth and small countries that are among the world's poorest, and being a country that faces internal economic and social asymmetries, Mexico is one of the rare countries where, at a massive scale, migrants are exported and immigrants are expelled. It faces unprecedented political, economic, social and moral contradictions due to *de facto* dependence on the United States immigration policies, for two reasons:

- It depends financially on money sent from citizens who immigrated to the United States and is a direct victim of measures that infringe on the rights and dignity of its workers and that threaten the continuance of this situation.
- The country is submitted to the dominant influence of the United States policies that require Mexico to become a "filter" for migrations coming from countries of Central America and is to be held accountable for the enforcement of a tough control and repression policy against migrants in transit to the United States, a contradiction with its international commitments regarding the protection of migrants and their families, and with its declared concern to promote respect for human rights within its territory.
- The foregoing leads some people to say that Mexico is nowadays a "victim and offender"<sup>14</sup> at the same time.

The first contradiction has been the center of discussions between President Calderón and President Bush during his last visit to Mexico in March 2007. For Mexico, the objectives are considerable. Around 12 million Mexicans live on the other side of the Bravo River, and almost half of them do not have a legal status (it was estimated in 2004 that 57 percent of "unauthorized" migrants were from Mexico), and a considerable flow continues on the border: 85 percent of people processed by Border Patrols are Mexican. This is an indicator of the willpower that these migrants have to cross to the United States, whatever it

takes, since the figure includes many people who have been processed several times. It is estimated that the number of Mexicans who emigrated during the 80's is equivalent to the number of people who emigrate during a month currently. Money remittances sent to their families go over 20 billion dollars and represent the second largest source of income after oil.

The policy that tends to criminalize migrants without a legal status and to stigmatize immigration of Latin-American origins in general, caused unprecedented reactions in the "Latin" community of the United States in 2006. In addition, there was a very negative reaction from Mexicans regarding the project to build a fence between both countries, which was considered an insult to national dignity and a symbolic manifestation of the United States' will to separate both countries through a hermetic barrier, despite the long history of relations between their peoples and the strategic importance of Mexican labor in some sectors of the United States economy.

Mexican authorities argue to the United States that it is impossible to stop immigration between countries with such unequal economies, through security-based laws which lead to more and more serious violations of the fundamental human rights of their citizens. They demand a reform of the United States immigration law and a shift in priorities of the policies of the great neighbor to go from the national security perspective to international cooperation.

The second contradiction is about the role of the "deterrence policies" for migration flows coming from the south, which Mexico has undertaken to enforce in order to meet the interests of the United States, and also the way it is carrying out this task.

Mexico's shift of role with its southern neighbors is recent. Not long ago, during the 70's and 80's, this country had an internationally recognized welcoming policy for thousands of refugees fleeing from civil wars in Guatemala, El Salvador, Nicaragua, and even further, for the victims of the military dictatorships in Latin America. But since the people who fled from political violence were replaced by misery and social violence exiles that go to the labor market of the United States, Mexico has become a guardian of the border. From Suichate River, border between Mexico and Guatemala, to Bravo River, the whole country has become a vast "stopper area", full of check points, police operations for mass arrests, detention centers, removal operations, for thousands of hundreds of

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migrants in transit to the north. All this in the name of the sovereignty and security of the United States, a country that has managed to assign its security-based strategies to the Mexican authorities since the free trade agreement was signed in 1994 (NAFTA)<sup>15</sup> and, in a more pressing way, since the present administration assumed office.

For the abovementioned economic reasons, the number of poor people coming mainly from Guatemala, El Salvador and Honduras, who have entered Mexico to go to the United States, has increased during the last ten years. The exact number is unknown, because they are unauthorized migrants, but the number of migrants processed by Mexican immigration services gives an idea of the importance of the phenomenon: 10,000 people were processed by the National Migration Institute (INM) in 1980, 138,000 in 2002, 215,000 in 2004 and 240,000 in 2005!

However, these are not the only contradictions. Mauricio Farah Gebara, in charge of the Fifth Inspection Unit (migrants assistance program) of the National Commission of Human Rights (CNDH), wrote: "Even though our country has not built fences to stop Central American migration, an invisible and painful wall has been erected: a wall of abuses and violations against the fundamental rights of migrants in irregular situation<sup>16</sup>". He takes into account proven cases of violations by agents of immigration services, police forces, private security agents that work in trains and gangs that are every day more organized and violent. The facts are known by the country's authorities, but the CNDH and NGOs for the defense of human rights denounce the official passivity and indifference which allows the persistence of impunity.

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2. National Migration Institute of Mexico.

3. Ibid.

4. CEPAL's report, *International migration, human rights and development*, Montevideo, March 2006. LC/G.2303 (SES.31/11)

5. National Migration Institute of Mexico, 2006.

6. See the publications of the Migration Policy Institute: [www.migrationinformation.org](http://www.migrationinformation.org), National Immigration Forum: [www.immigrationforum.org](http://www.immigrationforum.org), Border Network for Human Rights: [www.borderaction.org](http://www.borderaction.org), National Network for Immigrant and Refugee Rights

7. Operations with evocative names: Hold the line, Gatekeeper, Safeguard.

8. US Government Accountability Office (GAO), Border-crossing deaths have doubled since 1995, August 2006.

9. See [http://www.derechoshumanosaz.net/index.php?option=com\\_content&task=view&id=20&Itemid=34](http://www.derechoshumanosaz.net/index.php?option=com_content&task=view&id=20&Itemid=34)

10. In 2005, Border Patrols helped 2570 migrants in danger, compared to 1347 in 2004.

11. "A humanitarian crisis at the Border", Immigration Policy Brief, February 2007, [www.aifl.org/ipc](http://www.aifl.org/ipc)

12. Migration's Information Source.

13. It is not about the number of people but the number of arrests made in one year. Often, the same person tries to cross several times.

14. "Victim and offender, the contradiction of Mexico and its borders", P. Flor María Rigoni, *Migrantes*, migration pastoral and information magazine, Mexico, Oct-Dec 2006,

"Mexico, victim and offender", Mauricio Farah Gebara, Human Rights National Commission of Mexico, in the newspaper *Reforma*, 01/07/2007.

15. Through the security axe of the North America Security and Prosperity Alliance as well (trilateral cooperation process between the U. S. A., Canada and Mexico).

16. Article taken from the Mexican newspaper *La Reforma*, January 7th 2007.

## II- LEGAL FRAMEWORK

There is a description of the international immigration regulations in annex I. The many concerns of FIDH's mission regarding Mexican and American laws that govern the undocumented migrants situation in these countries are stated in part III of this report.

### 1. Mexican Legislation

The legal framework regarding migration is essentially provided by the Mexican Constitution, the General Population Law (LGP)<sup>17</sup>, its regulations (RLGP)<sup>18</sup>, and the agreement by which the regulations for the operation of migration stations are established and by regular notices issued by the National Migration Institute (INM). General treaties and other international and regional instruments for the protection of human rights ratified by Mexico and mentioned under number 1, also govern the matter. However, the latter have a supra-legislative but infra-constitutional value. The INM is the main institution in charge of the enforcement of migratory regulations.

### 2. U.S. Legal Framework for Immigration

The Immigration and Nationality Act (INA) of 1952 is the basis for the current immigration law<sup>19</sup>, but the immigration landscape changed dramatically in 1996 with the Antiterrorism and Effective Death Penalty Act (AEDPA) & the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) (1996), enacted to “deter terrorism.” One of the most controversial provisions of the IIRIRA was to expand the categories of criminal activity (“aggravated felony”) for which both documented and undocumented immigrants can be deported. Under this law, minor offenses, such as shoplifting, justify deportation of individuals after they served their sentence, even when they are residents married to American citizens or who have American children. This practice is in violation of all international human rights law standards on the right to family life (ICCPR Art. 23(1)), the rights of the child (Convention of the Rights of the Child), and the prohibition of double jeopardy (ICCPR Art. 14). The most distressing part of this legislation is the suppression of immigration judges' discretion to apply considerations of equity in making their decisions. Other provisions provide for the creation of expedited removal. The latter is a procedure by which an undocumented immigrant caught by the U.S. Customs and Border Protection will be immediately removed from the

country, without judicial review or access to legal representation<sup>20</sup>.

In the post 9/11 era, the Patriot Act of 2001 raises serious constitutional and international human rights issues. The Patriot Act gives new powers to the U.S. Attorney General to “certify” and indefinitely “detain” individual foreign nationals as terrorists, a power extended to the Executive Branch even in the case of a judicial finding to the contrary. Bars and standards for deportability were also declared retroactively applicable on the grounds of “terrorism.” This act discriminates non-citizens by using the term ‘person’ instead of citizen, denying them due process.

During President Bush's second term in office, immigration has been a highly debated issue in Congress. In the Republican-led 109th Congress, a number of bills calling for “Comprehensive Immigration Reform” were introduced and passed in both the House and the Senate. However, no bill ever obtained the consensus of both chambers. The so-called “Sensenbrenner's bill” (HR 4437)<sup>21</sup> passed in December 2005 by the House contained extremely worrying provisions such as the creation of a new federal crime of “unlawful presence,” a great expansion of what “alien smuggling” is, which would have imposed criminal penalties on social services organizations, refugee agencies, religious orders, and humanitarian volunteers for assisting undocumented migrants. The bill also planned on further eroding due process in deportation proceedings by stripping migrants of their rights to hearings or review. It provided for mandatory detention for all non-citizens caught at the border, and to retroactively turn minor crimes such as drunk-driving offenses into aggravated felonies to subject documented and undocumented immigrants to mandatory deportation. Fortunately enough, the House could not get the Senate on board on these extremely harsh provisions.

On March 21, 2007, Reps. Luis Gutierrez (D-Ill.) with whom FIDH's delegation met in Washington D.C., and Jeff Flake (R-Ariz.) of the Democrat-led House of Representatives presented a new bill calling for citizenship for illegal immigrants, a new low-skilled workers program, but also calling for greater border security. Despite political pressure being applied on both parties and by President Bush, on June 28, 2007 the U.S. Senate in a vote 46 to 53 defeated immigration bill S.1639. Some critics saw in the



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bill a threat of more temporary contract labor programs, more repression and raids, greater militarization of the border, erosion of basic due process rights, and a move away from permanent, family-based immigration toward a temporary employment system. It is unlikely the issue will return to the floor in the form of another bill until after the 2008 elections. Therefore one of the major focuses of the 2008 elections will be immigration<sup>22</sup>. The stakes are big for future labor needs and even bigger for the 12 million undocumented people in the United States who face severe obstacles in the legalization program of making it through the system to permanent residency.

In terms of border enforcement strategies alone, the US Congress has gradually allowed for greater militarization of the border. The Enhanced Border Security and Visa Entry Reform Act of 2002 increased funding allocated to border guards and security. In late 2006, the US Congress passed the Secure Fence Act of 2006, which could lead to the construction of about 700 additional miles (1,125 km) of the US-Mexico barrier. The Department of Homeland Security Appropriations Act, 2008 (H.R. 2638) was passed by both the House and the Senate last June and July 2007 and currently awaits the President's signature<sup>23</sup>. The Act provides for the "Border Patrol to hire and train 23,000 full-time agents" and requests the U.S. Customs and Border Protection to: "install along the border at least 300 miles of vehicle barriers, 700 linear miles of fencing, and 105 ground-based radar and camera towers." However, because these fencing projects are outrageously expensive, they are unlikely to ever get fully funded, FIDH's delegation was told in Washington D.C. Yet, the government is planning to build at least 370 miles of fencing by the end of 2008.

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17. The General Population Law can be found at: [www.diputados.gob.mx/LeyesBiblio/pdf/140.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/140.pdf)

18. The regulations of the LGP can be found at: <http://www.migracioninternacional.com/docum/rlgp.html>

19. CRS Report for Congress: Immigration Legislation and Issues in the 109th Congress. Updated December 7, 2006. Congressional Research Service. Prepared for Members and Committees of Congress

20. See explanation of this process later on, in the section about deportation and detention of migrants in the United States.

21. "The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005."

22. Nativio Lopez, "No Human Being is illegal, workers will inherit the Earth", Mexican American Political Association website June 30, 2007

23. Department of Homeland Security Appropriations Act, 2008, Library of Congress, <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR02638:|/bss/110search.html>

### III- FINDINGS OF THE MISSION

#### 1. Border Crossing Conditions

##### Great Porosity of the Southern Border with Mexico



A simple and anonymous life: Central Americans transmigrants in Mexico, Mexico, edited by the National Commission of Human Rights (CNDH) and the International Organization for Migrations (IOM), 2007.

#### a) Mexico's Southern Border: Chiapas' Example

Almost all<sup>24</sup> of undocumented people that cross the southern border of Mexico are Central Americans who, in search of better life opportunities for them and their families, place their expectations on the United States, a country that has been “sold” to them as the goal to reach in order to solve all their problems. For that reason, thousands of Central Americans venture to travel from their countries to the North. While the poorest travel by foot or hang from trucks and trains, others, after selling their house, car and sometimes after having borrowed money from relatives or banks, travel in transport means arranged by the so-called “coyotes” or

“polleros”. “Coyotes” smuggle people from Central America into the United States and nowadays many of them constitute networks made up by Central Americans and Mexicans, who also take part in criminal actions against the people to whom they render a service. The transport of migrants is a very profitable business: migrants pay between US\$ 7,000 to US\$ 14,000 per person to get to the other side of the border with the United States. However, they are often abandoned by “polleros” on the way there.

Migrants leaving from Nicaragua, El Salvador and Honduras, move relatively freely to Guatemala with their CA-4, a document that allows people from these four countries to enter and transit freely in the regional territory

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of the Central American Group of Four (CA-4). The members of FIDH's mission found several Nicaraguans and Hondurans in Tecún Umán who got there without problems, "traveling" under the protection of this document.

For these migrants, uncertainty starts in Tecún Umán, border city between Guatemala and Mexico characterized by a population that carries out work activities related to the border; such as tricycle drivers, currency exchangers, boatpeople who transport persons and goods from one side of Suchiate River<sup>25</sup> to the other in boats made of tires.



Migrants crossing illegally the border between Guatemala and Mexico.

The border is legally crossed through the bridge that links both sides of the river, where there are border check-points through which all foreigners that wish to enter Mexico must go and show, if applicable, their visas.

90 percent of the economic activity in Tecún Umán is related to the migration flow which livens up the city.

Despite the legality of most<sup>26</sup> Central Americans in Tecún Umán, on this side of the border migrants are often victims of extortions by criminals associated with official agents, locals, police officers and even "hotel" owners. In Tecún Umán, criminals, pretending to help, exchange fake currency and when migrants receive money ordered on the phone to their relatives, they are robbed. Guatemalan authorities take part in these activities, or they know about it and do nothing.

There are small improvised military posts on the Mexican side

of the river, which are supposed to protect the border and its surrounding areas, constituted by a huge market located throughout several streets next to the river. Actually, they pretend not to see the smuggling that takes place right in front of them. Boatpeople have the obvious consent of the authorities on both countries, favoring goods smuggling. During these trips from one side of the river to the other migrants infiltrate without being detected. Sometimes officers stop migrants or smugglers crossing on the boats to ask for money before letting them go.



Military officers keep watch on the border on the Mexican side.

FIDH's mission was able to verify the large porosity of the border and how easy it is for undocumented migrants to cross the border between Guatemala and Mexico. As we will see later on, the many interceptions of migrants<sup>27</sup> are actually carried out within Mexican territory and not at the border.

Before hurricane Stan<sup>28</sup> destroyed the railroad, the train to the north of Mexico used to depart from Tapachula, at approximately 25 miles of Tecún Umán, but now it departs from Arriaga. This makes the journey to the United States more difficult for migrants, because they have to go from the Mexican border with Guatemala to Arriaga through different routes. This journey comprises more than 187 miles and it is made through the woods, which are full of wild animals including snakes, and more than 30 high-crime areas. Probably, this is the reason why since several months ago more and more migrants cross the border between Guatemala and Mexico at the east of Tecún Umán taking other routes towards the border with the



Advertisement of the National Migration Institute of Mexico (INM)

Once they arrive in Arriaga, hundreds of migrants, men, women and children get hold of the exterior of cargo trains that go from Arriaga to Ixtepec and then take other trains to different places in the northern border. As we will see later on, during this long journey migrants suffer amputations as a result of falling off the trains or being thrown out of them.

While analyzing migratory transit, the work made in benefit of migrants by Migrant Houses and other NGOs in the area, and the role they play in the defense of migrants' human rights must be taken into account. Regardless of their origins and operation ways, all of them have one thing in common, migrants recourse to them for protection at a certain moment. They are also a reliable source of information about the different facets of immigration.

Another important player is the Beta Group, a public entity for humanitarian aid that is unique in the world. Its only mandate is to assist migrants, travel around the places where migrants lose their way to rescue them or offer medical or legal assistance. The members of the Beta

Group witness the abuses to migrants by the authorities, gangs (*maras*) or other ordinary criminals.

### ***Criminalization of Humanitarian Aid***

FIDH's mission received the worrying news that María Concepción Moreno was sentenced to six years in prison. María, like most of the locals in El Ahorcado (Querétaro State), a community where streets have not been asphalted, gave food and clothes for free to undocumented people getting off trains around 500 meters from there. On March 10th, 2005, María Concepción Moreno Artega was arrested, together with six Hondurans who were outside of her house, accused of being associated with "four alleged smugglers transporting 19 undocumented migrants". On October 31st, 2005, María Concepción was sentenced to six years in prison for the crime of people smuggling. Thanks to the defense of her case undertaken by the *Centro de Derechos Humanos Miguel Agustín Pro Juárez, OP, A.C.*, which proved that the evidences against María Concepción had procedural and substantive defects, making them invalid, Concepción was acquitted and

released after more than two years of arrest, on August 31st, 2007.

## **b) The Southern Border of the United States: Arizona's Example**

### ***The Deterrence Strategy: a Deliberate Policy to Force Migrants to Risk their Lives Crossing the Border***

Migrants usually gather in the Mexican village of Altar, a Mexican town in the deserted area of the northern part of the State of Sonora, which has been called "the migrant bottleneck of North America", where smugglers, coyotes, take them to the border in small vans. Then, smugglers are supposed to guide them through the desert to points further north, along roads or highways, where they will be picked up by other smugglers and brought to "safe" places, far from the border area and its B.P. agents. Because of how dangerous it is now to cross the border, it is no more a personal or a family arrangement like it used to be. It now requires relying on *coyotes* knowing the desert and its infinite trails. We were told that fifteen years ago, a coyote would ask for \$250 per person to bring undocumented migrants from the border to Phoenix. The price is now \$3,000. As a result, smuggling is becoming a prosperous business which is increasingly organized and controlled by criminal networks of people putting migrants at even greater risk of being robbed, exploited or simply abandoned in the middle of the desert.

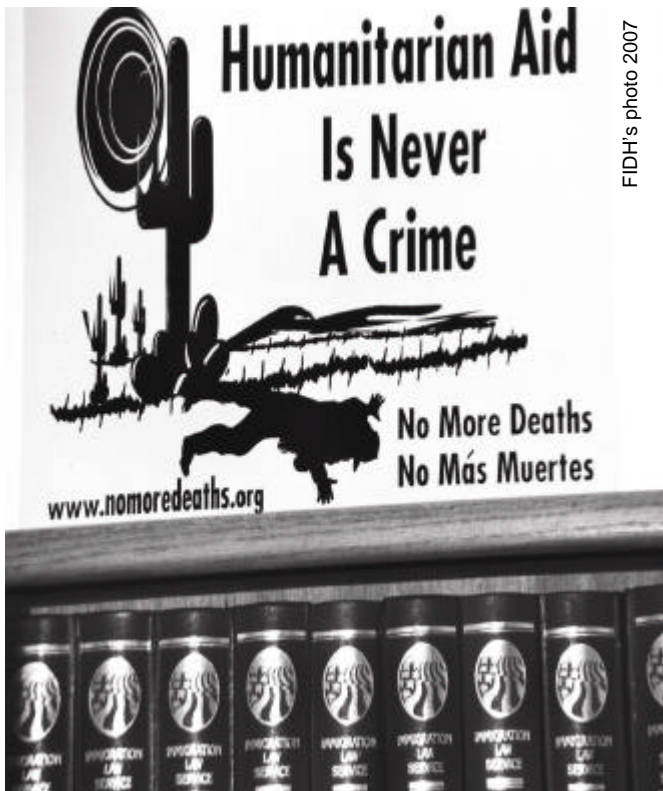
Despite this, migrants feel as if they are left with no other option than to pay the higher price in terms of money and life-threatening risks.

FIDH's mission was able to confirm the humanitarian crisis at the border, a product of more than twelve years of border enforcement strategy officially called "prevention through deterrence." As explained above<sup>29</sup>, the deterrence strategy, first initiated in 1994 in the El Paso Sector, was then extended to the San Diego Sector and to Texas and Arizona. By building walls and dramatically increasing the number of Border Patrol (B.P) agents in urban areas, the enforcement policies have forced hundreds of thousands of undocumented migrants to cross through the notoriously inhospitable deserts and mountains of Arizona. In California, the number of undocumented migrants arrested there dropped by 300 percent between 1994 and 2002, but the number of apprehensions made in the Tucson sector, Arizona, increased by 342 percent during the same period<sup>30</sup>.

All findings unambiguously confirm the tragic evidence that US border enforcement policy-makers have deliberately increased the risks of crossing the border, resulting in the death of thousands of undocumented men, women and children. As mentioned earlier, the numbers of documented border-crossing deaths in the US have doubled since 1995<sup>31</sup>. In the past 12 years, US border militarization has led to more than 4,000 border crossing-related deaths, which are a consequence of an ineffective deterrence policy and represent a serious breach of the right to life.

The Public Policy Institute of California found that the strategy of "prevention through deterrence," costing over \$2 billion per year, has not prevented undocumented migration but has resulted in more deaths<sup>32</sup>. In fact, in 2001, 145 deaths were documented in Arizona alone, a record of 260 in 2005 and almost 200 in 2006<sup>33</sup>. The Tucson B.P. Sector alone registered 166 deaths in the fiscal year 2006<sup>34</sup>. Rights groups in Tucson denounced the deaths of 27 migrants in the last trimester of 2006<sup>35</sup>. It is impossible to count how many lives the desert has claimed, as the figures above are only those of bodies found. Most groups, but also the B.P., believe that these numbers ought to be tripled, as the desert is not only gigantic but also quick to naturally eliminate the remains of a body.

The perilous conditions of crossing by foot are also resulting in all kinds of injuries. The Tucson B.P., for example, has rescued 605 undocumented migrants in 2006 who were victims of exposure to heat or cold, or due to other medical conditions<sup>36</sup>. Humanitarian organizations such as Humane Borders, the Samaritans or No More Deaths are also documenting countless sufferings endured by the men, women, and children they help out in the desert.



FIDH's photo 2007

"Humanitarian Aid Is Never a Crime"

This slogan was on banners carried by thousands of people, including national personalities, gathered in Tucson, AZ, to bring support to two volunteers with the group "No More Deaths" who had been charged in 2005 for "transporting illegal aliens and conspiracy to violate the federal Law on immigration." They were trying to save the life of a severely dehydrated undocumented immigrant by driving him from the desert to a hospital. The judgment was due on September 1st 2006 and the case had drawn national attention as it was a dramatic illustration of the human cost of US border policy. The Federal Judge's decision to dismiss all charges against Shanti Sellz and Daniel Strauss has been interpreted as a victory for human rights. This was an important but fragile victory at a time when a few months earlier, in December 2005, a bill introduced by the Republican House Judiciary Committee Chairman (HR 4437) passed in the U.S. House of Representatives with provisions to criminalize organizations and individuals – including churches – assisting undocumented migrants. The project of law didn't pass, but humanitarian workers' concerns won't be dispelled until a comprehensive reform will respect the rights and dignity of all migrants.

## 2. Serious Violations of Human Rights During Migrants' Interceptions in Total Impunity

### a) Situation in Mexico

#### *Human Dignity and Right to Life*

How many undocumented migrants die crossing from Mexico's southern border to its northern border?

It is difficult to have an exact idea, but the testimonies and interviews held by the persons in charge of FIDH's mission evidences the fact that migrants die before getting to the border with the United States. They die after falling off or being thrown out of trains towards the north and they are murdered by smugglers, gangs or other criminals.

Nobody talks about these deaths, only a few migrants say they saw human remains in the woods or witnessed the execution of a migrant by criminals. People talk more about dead migrants falling of the so-called "train of death".

The Honduran government has partial statistics. For instance, it was informed of the death of 168 and 91 migrants in transit in Mexico during 2006 and the first trimester of 2007<sup>37</sup>, respectively. The Guatemalan government registered 10 repatriations of deceased persons from Mexico, without specifying the cause of death<sup>38</sup>, during the first trimester of 2007.

Mexican authorities must, first of all, inform the consulate of the country of origin of the deceased so that it organizes the repatriation of the remains. Actually, in many cases, authorities do not make an effort to identify the country of origin of the deceased. Several people who were interviewed by the members of FIDH's mission denounced the practice of getting rid of the migrant's papers in order to bury it as an unidentified person; avoiding with this the administrative obligations and costs related to the handling of a foreign body. Sometimes, the consulates of Honduras, El Salvador and Guatemala do not have sufficient budget to repatriate the bodies and, therefore, abandon them in Mexico.

FIDH's mission visited the cemetery of Tapachula with indignation. The communal grave is a space full of garbage where migrants and other unidentified persons are buried in plastic bags or simply left on the ground without receiving any burial. A cemetery worker explained to the

mission that, due to the lack of space, they were also buried in the spaces between tombs.

The persons in charge of FIDH's mission want to remind the Mexican government that the Human Rights Committee of the United Nations considers that the failure to inform family members of the whereabouts of a deceased person is a cruel treatment and, therefore, it constitutes a violation of article 7 of the International Covenant on Civil and Political Rights. Such article states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

FIDH's mission requested several interviews with Tuxtla's authorities to gather more information on the amount of Central American migrants that die every year during their long journey in Chiapas and how they verify the possible identification of unidentified migrants before burying them in the communal grave. These interviews were cancelled or not granted.

#### ***Extortion, Out-of-Proportion Violence, and Impunity of the Representatives of Public Forces***

The Mexican migration law uses the term "safeguarding" instead of arrest, to mean both the act of interception of the migrant and its arrest in administrative detention centers created for such purposes, known as migration stations. Despite the terminology used, FIDH's mission could verify that the interception of migrants by Mexican authorities at the southern border is not safe at all. In many cases, it is an illegal act with the purpose of extorting money from migrants or an operation in which extreme violence is common. This happens under total impunity.

#### ***Systematic Extortion of Migrants and Arbitrary Arrests***

As mentioned before, the amount of "safeguardings" at the southern border has increased during recent years<sup>39</sup>. In 2006, 48 percent of interceptions and arrests in Mexico took place in Chiapas State. Most interceptions are not made at the border but in the interior of the Mexican territory during operations in routes and trains or at police posts located in states bordering with Guatemala: Chiapas, Tabasco and Veracruz.

FIDH's mission observed many different police and military posts managed by authorities that, except for the Preventive

Federal Police, have no competence to intercept migrants. Additionally, there are INM posts; such as the four located in the area of Ciudad Hidalgo and Tapachula (El Manguito, Huehuetán, Huixtla and Pijijiapán).

The public force groups that operate in the area of Chiapas are:

- The Mexican Army
- The Navy
- The Preventive Federal Police
- The Federal Research Agency
- The Municipal Police
- The Sector Police
- The Road Police
- The Border State Police is in charge of guarding the 22 municipalities bordering with Guatemala and has no competence over migrants. It works as a "perimeter support" for operations.

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**Arrests in Mexico in 2006, by Region**

Regional delegations	Total of interceptions in 2006	PART. %
AGUASCALIENTES	887	0,5
BAJA CALIFORNIA	1 032	0,6
BAJA CALIFORNIA SUR	40	0,0
CAMPECHE	832	0,5
<b>CHIAPAS</b>	<b>86 206</b>	<b>48,1</b>
CHIHUAHUA	1 136	0,6
COAHUILA	3 269	1,8
COLIMA	28	0,0
FEDERAL DISTRICT	5 653	3,2
DURANGO	919	0,5
MEXICO STATE	1 522	0,8
GUANAJUATO	1 787	1,0
GUERRERO	40	0,0
HIDALGO	3 155	1,8
JALISCO	366	0,2
MICHOACÁN	45	0,0
MORELOS	15	0,0
NAYARIT	252	0,1
NUEVO LEÓN	2 293	1,3
OAXACA	5 550	3,1
PUEBLA	2 227	1,2
QUERÉTARO	845	0,5
QUINTANA ROO	828	0,5
SAN LUIS POTOSÍ	3 643	2,0
SINALOA	3 474	1,9
SONORA	4 108	2,3
<b>TABASCO</b>	<b>22 936</b>	<b>12,8</b>
TAMAULIPAS	5 316	3,0
TLAXCALA	3 234	1,8
<b>VERACRUZ</b>	<b>16 872</b>	<b>9,4</b>
YUCATÁN	171	0,1
ZACATECAS	664	0,4
<b>TOTAL</b>	<b>179 345</b>	<b>100,0</b>

Source : INM

It was established without being officially created, as explained by the Migrations Forum:

“At the end of 2006, in a public act held by Mexico’s President, Felipe Calderón Hinojosa and the Governor of Chiapas, Governor of Juan Sabines State, the creation of

the State Border Police (PEF)<sup>40</sup> was announced. The PEF was established to participate “in operations aimed at fighting the lack of safety, people smuggling and trade, in association with units of the Preventive Federal Police and the Federal Research Agency (...)”. “At the beginning of 2007, in Chiapas State the “Flash Operation” was



implemented and the Federal Government sent said units to work together with the PEF. On February 10th, 2007, around 100 migrants were detained as a result of said operation in an act carried out with “extreme violence”. This operation was performed despite the fact that the law had not been passed yet<sup>41</sup>, meaning that the Border Police “started activities since December without legal basis”. It is worth mentioning that “according to its regulations, this institution is not empowered to stop undocumented migrants; however, we have been informed that it has detained migrants and moved them to the migration station of Tapachula, without having the legal power to verify and control migration”<sup>42</sup>.

Despite the fact that only INM and Preventive Federal Police officers have legal powers to intercept a person and demand information on his/her migration status, all of the abovementioned public force groups intercept migrants and commit many types of abuses against them.

The INM and the Preventive Federal Police need a written document (“official document”) in order to carry out operations on routes or temporary posts to check migratory status. Such document should state what staff is responsible for the task, its duration and the area where it will be carried out. The officer in charge has to present a daily report of activities<sup>43</sup>.

FIDH’s mission’s interviews held with migrants, as well as statistics kept by the various migrants’ houses and human rights organizations interviewed, confirm the many illegal apprehensions made by members of forces that have no legal power to do so. The main objective of such arrests is not returning undocumented migrants to their home countries but extorting money from them. Almost all Central American undocumented migrants interviewed in Mexico were victims of extortions once or several times, by local, state or federal authorities, as well as criminals. Such extortions frequently include threats, beatings, sexual harassment or rape of female migrants and, in some cases, extra-judicial executions.

These criminal actions also take place during operations carried out by authorities empowered to perform interceptions. The Fifth inspection Unit of the National Commission of Human Rights –CNDH, responsible for the migrants’ assistance program, indicated in its 2006 annual report that out of 337 complaints filed, the most mentioned authority was the National Migration Institute, with 248 complaints.

With the purpose of denouncing this practice, the National Commission of Human Rights issued the General recommendation Nr. 13<sup>44</sup> on November 17th 2006.

### ***Criminalization of Undocumented Migrants***

In some extortion cases, authorities use article 125 of the General Population Law - which imposes a penalty of 10 years in prison on undocumented people - to extort money from the migrants in exchange of their release. Actually, in the current legislation, articles 118 to 127 of the General Population Law (LGP) provide for penalties of up to 10 years in prison for those undocumented or with an illegal status. This is very concerning<sup>45</sup>. Paradoxically, this rule, which according to the authorities interviewed is never enforced by courts, has become an instrument of corruption<sup>46</sup>. FIDH’s mission advocates the abrogation of this rule<sup>47</sup>.

Other arbitrary arrests are carried out by private security groups known as “garroteros”. These groups are mainly in charge of guarding railroads and trains, who, much alike the Minutemen in the U.S., arrest undocumented migrants illegally and hand them over to the INM.

Such serious violations of the migrants’ human rights constitute offenses and crimes according to the Mexican criminal law. However, almost all of them remain unpunished.

### ***Out-of-Proportion Violence During Operations***

FIDH’s mission did not receive much information on the conditions of temporary operations on roads. Most information collected is about operation on trains, in the area of Arriaga and Oaxaca region, where migrants get hold of trains to go to the north. This information was gathered thanks to stories told to shelter members by the civil society or by migrants who witnessed these operations.

The mission was informed of frequent operations during which the police and private security forces use extreme violence, beat people or throw them out of the train, causing serious accidents which result in the amputation of limbs (arms or legs) of these migrants.

Testimonies coincide. For instance, in the Migrants’ House managed by Father Vásquez Medina in Arriaga, FIDH’s mission met some migrants who were victims of a violent

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operation carried out on February 10th, 2007 that was presented to the public opinion as an accident in the train that departs from Arriaga: "About sixty militaries with flashlights took part in it. The number of migrants under detention amounted to 116 (official data), but one of them says there were more, he said he was number 246, three Cubans were among them but authorities said there was only one ... at least 700 people got on the train and after the operation to the House for Migrants many were beaten..."



Teresa García, 25, was on the train

"We were a group of 24 persons, from which 5 were women and 1 was a "coyote". We walked during 9 days from Tapachula to Arriaga to take the train. The train was moving, we were on top of it and it braked abruptly. Many people fell off, others were thrown out. I fell between 2 freight cars, my backpack protected me. I'm not sure whether, like others, I was thrown out by a soldier or simply lost my balance. My nose was broken and my arms wounded. A soldier took my backpack where I had a pair of shoes for the desert and some money. Afterwards I spent one day in the hospital. A policeman named Fernando came to visit me and asked me to sign a document for voluntary return stating that I had had an accident that had nothing to do with the operation carried out on February 15th. They would take me to my house in Guatemala. Then, human rights' people arrived and told me I didn't have to sign that document and that I could stay in the hospital for longer as the doctors advised [...] I have to continue my journey to the United States because my mother is taking care of my four children and they need money to survive".

Another person recalls: "No, you won't find the maimed woman called Yolanda (who was on that train) because she had an operation and her foot was amputated. All of them get amputations, sometimes they only need transplants but there is medical negligence and the only final prescription is amputation... After the operation she was taken quickly, they probably sent her back to her house in Guatemala".

Father Vásquez of Arriaga's House for Migrants told FIDH's mission: "On November 19th, 2006, I witnessed an operation on a train performed by about 20 municipal policemen and three officers of the INM. A lot of violence. Policemen hit migrants. A woman, Antonia, fainted because of the pain. Other migrants yelled: 'she is dying' and the police refused to take her, they wanted to leave her there because she was too wounded and they were going to be in trouble. We had to convince them to take her to a hospital".

He made various unsuccessful efforts demanding investigation and justice on more than 10 specific cases that reflected unlimited brutality and cruelty and that still remain unpunished. Even more serious was Armando's case, a young man that was beaten during an operation and wanted to make a formal complaint before the attorney general's office. He went there a first time and he was told that it was not possible if he did not know the last name of the policeman that had beaten him, so he went back with a lawyer to file his complaint. He was staying in a migrants' house and one day he left to go to the supermarket and disappeared, leaving his belongings behind. Nobody heard about him never again.

Father Vásquez sums up the situation as follows: "It is permitted to attack migrants in Mexico. Authorities know about it and they allow it. After operations, government people pretend to investigate, they realize the facts and know about them but they do nothing".

Consular authorities in Tapachula also confirmed that "there is a criminalization of Central Americans in the border between Mexico and Guatemala, there is a stigma and real xenophobia against them. INM operations are generally carried out with a lot of violence and authorities react with indifference when criminals and even smugglers - who sometimes act in connivance with authorities - undress, rape or steal from migrants during the journey or when they are crossing the Suchiate River".

### Impunity

We visited the facilities of the Albergue del Buen Pastor, founded by Olga Sánchez to assist victims of the train of death. There were 20 persons then, 5 of them were maimed. Among these people we met Donar, from Choluteca, Honduras, sub-director of the shelter, whose legs were amputated. From his long and spontaneous testimony, we reproduce his impressions:



Donar Antonio Ramírez, 28 years-old, and Vilma Nuñez.

“There is discrimination against Central Americans here in Mexico; nobody wins a case in courts of justice here. There are all kinds of violations of human rights, rape of women, but everything remains unpunished. There is discrimination against us in the justice administration. Migrants are considered nothing. Smugglers work in association with train operators, most smugglers are Mexicans. Assistance in hospital is poor, they do not make an effort to save a limb; they would just order amputations. When a migrant dies in a hospital, he is sent to a communal grave. Identifications are taken away in the hospital so they can be buried as “unidentified”. Our migration purposes are misunderstood: I wasn’t coming after the ‘American dream’, that doesn’t exist, I came after a better life, that’s all”.

The situation of almost total impunity on these serious violations of migrants’ human rights is worrying. FIDH’s mission did not find any case of judicial sentence regarding extortions, cruel and degrading treatment, rapes of female migrants committed by members of federal, state, municipal authorities or criminals.

When FIDH’s mission mentioned the subject of impunity to state, federal or municipal authorities, they systematically answered that these facts are not frequently denounced because migrants refuse many times, due to fear and hurry to continue their journey, to denounce what has happened to them, especially when authorities are involved. They do not make a formal complaint because they don’t want to delay their journey taking into account the time it takes to process the complaint before the Public Ministry, since after an interception or an operation, if an undocumented person has been a victim of a crime in Mexico, it must be given leave to stay during the trial<sup>48</sup>. Besides, people do not want to denounce such facts because they do not trust the justice system and they fear detentions<sup>49</sup> and retaliations.

Even though these are probably some of the reasons that explain the high level of impunity on the violations of migrants’ human rights, FIDH’s mission also considers that:

- Many elements of the various police and army groups want to hide the abuses committed and do not want those responsible for such abuses to be sanctioned.

- In some cases, the same elements work in connivance with human traffickers and even with drug dealers, making profit out of this “good business”.

- The corruption phenomenon is omnipresent.

- Court staff does not give support, and in some cases come up with obstacles so that the few complaints made are not investigated.

- Both in Guatemala and México, members of the civil society have been pressured and threaten when trying to denounce this situation or when they support migrants in their complaints.

- The system of the National Commission of Human Rights (CNDH) is insufficient, since its procedures in the Fifth Inspection Unit are slow and its power is very limited.

Regarding this last issue, the Centro de Derechos Humanos Fray Matías de Córdova AC denounced<sup>50</sup> the lack of progress or abstention in the issuance of recommendations by the CNDH to the SEDENA and INM, in the cases of violation of human rights against Mario Ernesto and Ana Rubia from El Salvador; Marbin, Elio,

Josué and Juan from Honduras; Williams Gómez Hernández from Guatemala; Kimberlin Mariceli López Juárez, a 12-year-old Guatemalan girl; José Antonio de la Cruz, 16, from Mexico and Andrea Lashay Barocio, from the United States.

FIDH's mission also considers that this impunity situation is precisely the reason of the evolution of violations committed by police authorities, whose crimes get worse since several months ago. Dozens of migrants are kidnapped by groups made up by municipal policemen, human traffickers and even gangs. The Fifth Inspector General of the CNDH affirms he has received complaints on this kind of kidnappings in San Luis Potosí, Coahuila, Tamaulipas, Guanajuato, Veracruz, Oaxaca, Querétaro, Hidalgo and Nuevo León. For example, this happens in Ixtepec city, Oaxaca, since December<sup>51</sup>.

The motive for these kidnappings is to demand money transfers through Western Union to relatives in the U.S. in exchange of the migrants' release. In January 2007, the kidnapping of 12 undocumented persons in Ixtepec caused indignation among about a hundred migrants who

clashed with the municipal police. They were suppressed and stopped. Not even the Municipal president, the ombudsman nor the police commanding officer collaborated with the CNDH and the affected migrants to identify those responsible for such crimes<sup>52</sup>.

### **b) Arrests at the Southern Border of the U.S. by the U.S. Border Patrol: Abuse, Impunity, and Insecurity**

#### ***Border Militarization and Arrests***

In the 1990's, the U.S. Congress mandated that the Border Patrol (B.P.) shift agents away from the interior to deploy them forward to the border, which took place with El Paso Sector's "Operation Hold the Line" (1993), San Diego's "Operation Gatekeeper" (1994) and Tucson's "Operation Safeguard" (1999). Since 1994, the Border Patrol has made more than 15.6 million apprehensions nationwide. In Fiscal Year 2006, the B.P. made 1.1 million arrests, and in 2007 it made 876,704 arrests – all of Mexican nationality but for 68,000 – which represent a decrease of 19.5%<sup>53</sup>.



Arrests witnessed by FIDH's mission near Sasabe, Arizona.

FIDH's photo 2007

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Arrests witnessed by FIDH's mission in the Reservation of Tohono O'odham, Arizona.

As previously mentioned<sup>54</sup>, in line with the U.S. border militarization and enforcement strategy, the number of B.P. agents has considerably grown over the years, as the amount of spending on border enforcement has increased more than five-fold since 1994. As of January 2008, 14,923 B.P. agents – four times more than in 1990, and 21% more than in 2006 – are deployed and patrol nearly 6,000 miles of international land borders and over 2,000 miles of coastal waters. In the Tucson sector alone, B.P. officials informed us<sup>55</sup> that while there were only 70 agents deployed in the Tucson Sector in 1993, today there are more than 400. That sector is today the most important B.P. sector, both in terms of human and material resources. The B.P. is equipped with significant infrastructure, including temporary vehicle barriers, unmanned aerial vehicles, night vision cameras, trucks equipped with watchtowers (see picture below), and helicopters. Also, high technology tools such as infra-red cameras and ground sensors are dispersed in the desert areas. When sensors indicate a presence, the closest B.P. agent is immediately sent on-site. Although horses or cows trigger the sensors, the B.P. insisted that this equipment was useful to “catch” border-crossers. Traffic checkpoints are also in place – there are 6 of them for the El Paso

Sector on major highways leading away from the border, while Arizona works with “tactical checkpoints” (mobile and moving daily or weekly). As to the National Guards deployed to the border in June 2006, in Operation “Jump Start,” El Paso B.P. Sector Chief told us “they are our eyes and ears but not our hands.” According to the B.P., their role would be limited to calling up B.P. agents when witnessing migrants crossing.

Yet, in spite of this strategy, the number of migrants crossing the border has doubled between 1993 and 2004.

During year 2006, for the Tucson Sector only, 392,074 people were arrested while trying to enter the country without papers. Out of these: 285,645 males, 67,590 females and 38,938 juveniles<sup>56</sup>. Migrants arrested in the desert by the B.P. are brought in custody to the closest B.P. stations where officers write reports on the arrest and take biographical data. According to the B.P. officials we met, every one is advised of its rights in its own language. Arrested people are later on put on buses and driven to the main stations in towns nearby. They will then be either “voluntarily returned,” subjected to “expedited removal,” or taken to an immigration judge. (See Section 3)

***Border Patrol Abuse and Impunity: the Need to Create an Independent Investigatory Entity***

Abuses by B.P. agents during arrests have been reported by numerous human rights groups over the years<sup>57</sup>. Most cases of B.P. brutality involved broken arms and crushed fingers. B.P. agents utilize verbal harassment, degradation, humiliation, and intimidation along with unbridled showing of deadly force against border crossers. In its 2006 Documentation Campaign, Border Action, a rights group in Tucson, reported 35 B.P. incidents, ranging from physical abuse, unlawful temporary detention to psychological or verbal abuse<sup>58</sup>. The Florence Immigrant and Refugee Rights Project (the Florence Project), a *pro bono* legal advice organization in Arizona, informed us that in the past two years there were about 60 cases of abuse and violence against minors by B.P. agents. Furthermore, B.P. will often allege use of violence by border crossers, and this can be seen by the subsequent prosecution as an assault on a federal officer, as a way to justify use of force after the fact.

Of greater concern, deaths have been caused by B.P.'s actions. In 2003 for instance, B.P. agents allegedly threw rocks at migrants to force them back into the strong undercurrent of the Rio Grande in Eagle Pass, Texas, resulting in the drowning death of two women and a teenage girl<sup>59</sup>. Isabel Garcia, co-chair of Coalition Derechos Humanos, a Tucson-based human rights group, told us the story of a 12 year old girl ran over by a BP car: "In March 2006, a 12 year old girl, traveling with her father through the Yuma area in Arizona, on way to reunite with his wife and 18 month old daughter in California, were chased through the desert at nighttimes by a BP in an S.U.V. When they attempted to hide in the bush, the agent drove through the bush and killed her, injured her father. In a wheelchair, he was brought into court and charged with felony endangerment, for bringing her and having her cross the desert. A Justice of the Peace (lower court judge) actually stated on the record that he believed that what the father did was prima facie evidence of endangerment, and insulted him for what he did. A couple of weeks later, the charges were dropped and he was deported."

The main concern of FIDH's delegation, was with regards to excessive use of armed force. B.P. agents do carry firearms, including hollow point bullets which expand to 160 percent to their original size upon hitting the target, causing internal wounds and usually resulting in death,<sup>60</sup> which use is prohibited by the 1899 Hague Convention<sup>61</sup>.

A strict scale of escalation of force is supposedly in place which allows for the use of lethal force only in the defense of the life of oneself, of an agent or of an innocent third party. However, as we were explained by Mr. Paul Beeson, El Paso B.P. Sector Acting Chief, throwing rocks at agents *is considered dangerous enough* to justify the use of firearms. This is how, as recently as February 21, 2007, a B.P. agent going for a coffee break at a truck stop near Nogales, Arizona, shot a man who was about to throw a rock at him<sup>62</sup>.

A month earlier, on January 12, 2007, Francisco Javier Dominguez Rivera, 22, was shot dead by a B.P. agent Nicholas Corbett only 150 yards north of the U.S.-Mexico border between Bisbee and Douglas<sup>63</sup>. The migrant was killed in a confrontation with an unidentified B.P. agent, after the agent responded to a call about a group of seven people crossing the desert – a group of illegal entrants and not drug runners. The agent explained he thought his life was in danger, so he shot at Mr. Rivera, killing him. The agent was put on paid administrative leave pending the outcome of the case, investigated by the Federal Bureau of Investigations (FBI). Reporting on this case, the Arizona Star explained on March 27, 2007, that "agents are authorized to use their firearms at any time they feel threatened, as long as the person they are shooting at has the "means, opportunity and intent" to harm the agent or some other innocent person, said Soto [B.P. Tucson Sector spokesman, Gustavo Soto]. "You are taught to have to be more assertive in your arrests," Soto said about training at the academy for agents. "But when an agent decides to use his weapon is on each agent."<sup>64</sup> The newspaper further reported that released records showed that the agent's account didn't match witness testimonies or forensic evidence.

On April 23, 2007, BP agent Corbett was charged with murder in connection with the Jan. 12 shooting death of Dominguez-Rivera. Trial was set to begin in February 2008. It is yet a rare case in which a B.P. is charged following an illegal shooting.

The B.P. does not release numbers of such shootings<sup>65</sup>. The Arizona Star archives have shown that B.P. agents "have been in at least 23 agent-involved shootings since 1993, many prompted by rock-throwing. Yet, an accurate count remains elusive" concedes the newspaper<sup>66</sup>. In a June 2006 Report, the Border Network for Human Rights was recalling similarly worrisome events taking place in the past couple of years. Some are reproduced here:

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**February 22, 2003:** 19 year old Juan Patricio Peraza Quijada was shot and killed by a Border Patrol agent on the streets of El Paso, Texas two blocks away from the migrant safe house where he was staying. Two plain clothes Border Patrol agents had stopped the youth while taking out the trash, asked for immigration status, and searched him for weapons. After finding nothing, Juan Patricio ran. Within a few minutes he was surrounded by 8-10 agents with guns drawn. The last agent on the scene fired. ... The agent was deemed not guilty in a closed Grand Jury trial.

**June 4, 2003:** 22 year old Ricardo Olivares Martinez was shot five times in the chest by Border Patrol agent Cesar Cervantes while trying to climb back over the border fence, for reportedly throwing rocks at the agent.

**December 30, 2005:** 20 year old Guillermo Martinez Rodriguez was shot and killed by Border Patrol Agent Faustino Campos near the San Ysidro port of entry in San Diego. The man, having noted Border Patrol agents, was fleeing back to Mexico when he was shot in the back<sup>67</sup>.

Investigation of B.P. abuses and shootings are first in the hands of the D.H.S. Inspector General Office, which then calls upon the FBI to help with the investigation, and if there has been a state crime, such as a killing, to the local law enforcement agencies like the county Sheriff's department. A killing or any excessive use of force by a federal agent is also a civil rights violation under federal law. The U.S. Attorney Office is the federal authority in the United States prosecuting such crimes and it works closely with both Customs and Border Protection and Immigration and Customs Enforcement, relying on them to investigate and prepare for prosecution.

However, as in Arizona, a lack of meaningful prosecutions against the B.P. or other federal law enforcement agencies, regarding excessive use of force, has been observed. This calls into question the prosecutorial independence of the Arizona U.S. Attorney's Office relating to enforcement of civil rights laws against federal law enforcement.

This lack of systematic prosecution has caused much justified frustration among the immigrant and border community, exacerbated by the fact that the U.S. Attorney Office has full discretion to prosecute or not alleged

criminals and its decisions cannot be appealed.

Arizona Federal Public Defender Mrs. Castillo-Reina told FIDH's delegation that here is an on-going "failure to hold law enforcement agencies along the Arizona/Mexico border accountable, evidenced by the lack of criminal prosecutions."

All of our requests to meet with the Phoenix and Tucson U.S. Attorney Office as well as with headquarters officials of the Department of Justice in Washington, DC, to discuss their role in the prosecution of B.P. abuses, have all been expressly denied. Similarly, the Inspector General Office refused to meet with us.

Coalicion de Derechos Humanos, a major human rights group in Tucson, denounces the practice of using deadly force and claims that the B.P. "has consistently ignored the repeated demands for accountability, acting with a total lack of oversight and impunity."<sup>68</sup> It further states: "Repeated recommendations by the Arizona Advisory Committee to the U. S. Commission on Civil Rights, Derechos Humanos, community groups, and others to create an independent entity with powers to investigate allegations of abuse have been ignored, leaving communities to grapple with the question of who is accountable." Such a lack of independent oversight and accountability to the community provides a ripe environment for abuse. "The only conclusion, told us Mrs. Castillo-Reina, being that the lack of an independent prosecuting entity and community accountability directly contributes to an environment which begets violence and abuse of rights."

When the right to life, liberty and security of the person recognized in articles 6 and 9 of the ICCPR have been violated by persons acting in their official capacity, the failure of the State to provide victims with "an effective remedy" is yet another violation of the Covenant (art. 2). Previous cover ups and inconsistencies in the investigation of cases of abuse of force by the B.P. justify the establishment of an independent entity to proceed to such investigations and ensure that prosecutions do take place.

***How the Search for Undocumented Migrants Has Led to Racial Profiling and Community Insecurity***

When we asked El Paso B.P. Sector Acting Chief Mr. Beeson how B.P. agents decide who to arrest when they don't directly witness border crossing, he told us that

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“accents, manners of address, the way you react” are among the factors a B.P. agent look at to decide to arrest someone. Inevitably, at the border, racial profiling by the B.P., but also by local law enforcement such as the Sheriff’s Department, is a major issue.

Jennifer Allen, executive director of Border Action Network, showed us how her organization’s surveys in the Arizona-Mexico border communities have proven that “racial profiling by Border Patrol does not appear to be an isolated or occasional incident. In fact, a startling majority of people [up to 77 percent of border community residents] believe that racial profiling happens in their community.”<sup>69</sup> The 2006 survey reveals how brown Hispanic communities are targeted by the B.P. and repeatedly stopped despite the fact that they are U.S. citizens. A Hispanic woman from Nogales witnesses: “Personally, I have felt offended and harassed by the attitude they (Border Patrol) have toward me because of my dark appearance. It has been the same for my family and my son. My family members that are white, light-skinned and with light eyes are never questioned or detained.”<sup>70</sup>

Despite the prohibition for B.P. agents “to conduct any ‘interior enforcement’ or ‘city patrol’ operations in or near residential areas or places of employment,” raids and sweeps have been happening in churches, schools, and social services institutions such as shelters<sup>71</sup>. The B.P. was forced to reiterate the prohibition to do such, and in the mid-90’s, El Paso courts passed an injunction declaring that the B.P. be prohibited from entering area schools for the purpose of immigration raids<sup>72</sup>. Still, since 2003, rights groups and the Mexican Consulate in San Diego received dozens of complaints of home and work raids conducted by immigration officers under “Operation End Game.”<sup>73</sup>

Racial profiling and raids, coupled with B.P. trucks speeding through the towns, stadium lights on all night at the border, the presence of National Guards, etc, have created a palpable atmosphere of insecurity, of living in a war zone where targeted U.S. residents of Hispanic origin feel as if they have no voice and no right to oppose what is being imposed on them.

***How Vigilante Groups Further Undermine Security and Civil Liberties***

Migrants crossing the desert to start a new life or join their family in the United States are not always caught by the B.P., but sometimes by U.S. citizens. “Migrant hunters” is

how some civilian vigilante groups at the border are characterized. Sometimes heavily armed, they harass and round up undocumented crossers before calling up the B.P. Their goal: stop the “invasion.” Using private citizens to guard the border is no new concept. The Knights of the Ku Klux Klan launched their patrols in 1977 because “the United States of America is under invasion.” Their stated goal was almost identical to current vigilante groups: launch a “battle to halt the flow of illegal aliens streaming across the border from Mexico” and “arouse public opinion to such a degree that they [the Federal Government] would be forced to better equip the beleaguered U.S. Border Patrol.”<sup>74</sup>

In the mid-1990’s, vigilante groups at the U.S.-Mexico border started to become well organized, and came out of the shadows, while the events of Sept. 11, 2001 only exacerbated xenophobia and paranoia in the U.S. Among today’s core groups are the Texas-based “Ranch Rescue,” whose leader Roger Barnett told the newspaper USA Today “I’m prepared to take a life if I have to” (April 28, 2000); the Minuteman Project founded by Jim Gilchrist; the “American Border Patrol” led by Glenn Spencer, linked to white supremacist groups, and the “Minuteman Civilian Homeland Defense,” founded by Chris Simcox, who allegedly referred to undocumented migrants as “a throng of insects.”<sup>75</sup>

When we asked the Tucson and El Paso B.P. officials how they interacted with such groups, they explained that they had no formal relationship with them but do respond to their calls when they apprehend immigrants. They all said they never had any incidents with them. However, several incidents involving civilian apprehending immigrants have been reported by rights groups. In 2006, the American Civil Liberties Union (ACLU) reported records showing cases where migrants were being “shot at, bitten by dogs, hit with flashlights, kicked, taunted, and unlawfully imprisoned” by vigilante groups<sup>76</sup>. The Mexican consulate and human rights groups have called for investigations; however “the Consulate has met with both the Office of Inspector General and the Attorney General’s office, to no avail.”<sup>77</sup> In June 2006, the Border Action Network filed a petition to the Organization of American States Inter-American Commission on Human Rights bringing to their attention the failure of the United States to prosecute vigilante groups. They expressed for many years now how these groups “have created a climate of fear and anxiety that further justifies the aggressive and forceful tactics they claim are necessary to “protect our borders,” and how cases of abuse remain unpunished.



In the past two years, it seems as if these groups have less presence on the border. Instead, they become more politically active, and some even have now an office in Washington D.C., to lobby before Congress.

### 3. Detention and Deportation Conditions

#### a) Detention and Deportation Conditions in Mexico

##### i) Migration Stations / Administrative Detention Centers

FIDH's mission wants to emphasize that detentions in migration stations are, without any doubt, a form of detention<sup>78</sup>. Therefore, instruments to safeguard general human rights must be applied as well as guarantees related to the protection of the human rights of persons under detention; such as the Body of Principles for the Protection of Persons Under Any Form of Detention or Imprisonment, adopted by the General Assembly in resolution 43/173, dated December 9th, 1988.

FIDH's mission visited four migration stations: Tapachula, Tuxtla Gutiérrez (Chiapas State), Itzapalapa (Federal District) and Ciudad Juárez (Chihuahua State).

Today, there are "119 centers, from which 51 are permanent and 68 are established according to the needs of the INM"<sup>79</sup>.

Besides such visits, FIDH's mission received a lot of information through reports and testimonies issued by human rights organizations, the CNDH and the INM.

##### ***De facto Criminalization of Undocumented Migrants***

An important paradox on the situation of undocumented migrants under detention is that, despite the fact that they are not apprehended and deported for infringing the criminal law but the administrative law, they are usually treated as criminals and sometimes they are even granted fewer rights than those criminals in penitentiaries. This is especially evident during the detention of migrants in the so-called migration stations; but this is also a result of the fact that the detention is systematic when the Mexican authorities have doubts about the legal status of the migrant. Thus, the LGP Regulation (RLGP) provides in article 201 that "The authorities of the Republic (...) shall put migrants that cannot prove their legal status in the country at the disposition of the

Ministry". The migrant shall be detained in a migration station "until his/her migratory situation is clarified or until his/her deportation"<sup>80</sup>, even when a crime has not been committed.

Moreover, sometimes centers for preventive detentions are used as migration stations<sup>81</sup>; in fact, article 94 of the RLGP provides that "(...) preventive detention centers shall be considered authorized for the detention of foreigners subject to removal"<sup>82</sup>.

##### ***Concern about the Duration of Detentions***

Article 7 of the Agreement through which regulations are issued for the operation of migration stations of the INM<sup>83</sup> establishes that the duration of detentions shall not exceed ninety days<sup>84</sup> and in some cases allows indefinite detention. FIDH's mission wonders how this provision of administrative nature reconciles with article 21 of the Political Constitution of the United Mexican States<sup>85</sup> which limits administrative sanctions to a maximum of thirty six hours<sup>86</sup>.

FIDH's mission notes with concern the project to reform the Regulations for the Operation of Migration Stations of the National Migration Institute published by *Cofemer* on October 26th 2007, which increases the possible events that allow the deprivation of freedom to be extended indefinitely (article 7 of the regulations' project):

"Article 7. - The maximum period of stay in Migration Stations shall not exceed 90 days, except when the migrant in custody:

- I. Is subject to a criminal proceeding.
- II. Is ill or physically or mentally disabled, with the corresponding certification of the case.
- III. Provides false information regarding his/her general details.
- IV. There is no diplomatic representation from his/her country of origin in Mexico.
- V. It is not possible to obtain his/her identity and travel documents.
- VI. If the consulate requires more time to issue the identity and travel documents.
- VII. There is no available travel itinerary for deportation.
- VIII. The transit of aliens in third countries is forbidden.
- IX. An administrative or judicial appeal has been filed, preventing the resolution from being enforced.

The migration authority shall take the corresponding measures so the period of stay provided herein is not exceeded.

When the period of stay is extended for more than 90 days, the migration authority shall inform the migrant of the causes thereof”.

Another concern is the fact that “(in the reform project) there isn’t a special mention regarding maximum periods of deprivation of freedom for underage migrants; therefore, the general rule is applicable, meaning that the detention periods established for adults apply for minors”<sup>87</sup>.

### ***Detention Conditions***

Prison-like detention is the standard practice in, for example, the migration station of Tapachula. Even though facilities are modern and clean, the station has all the characteristics of a prison: migrants under detention are allowed to walk in corridors and yards during day time and locked up at night; families are separated and they cannot be together, not even during the day. Despite the fact that there are telephones that operate with cards sold in the migration station, communication with the outside world is restricted: they do not always have access. Actually, even when a timetable is established for phone calls in migration stations, each migrant has to request permission to the agents in charge of their custody to make a phone call. Another important limitation is that the person needs resources to be able to buy a card. Otherwise they only have access to one call. In fact, *Sin Fronteras* has observed that, generally, Central Americans are not granted the right to make a free phone call when they do not have money. In the Federal District, migrants have denounced the fact that sometimes, as punishment or harassment, they are not granted permission from the guards or the duration of their phone call is limited. It is worth mentioning that the situation varies from station to station.

### ***Mistreatment and Abuses by MS Agents***

In spite of some progress, such as the presence of women for the custody of women<sup>88</sup>, mistreatments, extortions and theft against migrants by migration stations’<sup>89</sup> agents are still reported. The situation varies from station to station, but “violations of psychological, verbal and sexual nature are registered (...). Policemen in charge of the custody have made advances to some women”<sup>90</sup>. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families manifested its concern on this regard in its final observations on Mexico in 2006<sup>91</sup>.

Additionally, abuses are reported regarding the way belongings are kept safe, which is excessive or not registered appropriately. In this regard, we would like to bring up the fact that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families forbids deprivation of migrants’ belongings (article 15), while the minimum regulations for the treatment of prisoners<sup>92</sup> establish guarantees on this regard and require to return their belongings when they are released (regulation 43).

### ***Poor Health Conditions of Detention***

FIDH’s mission is concerned about the information received on the poor conditions of some migration stations, which could be summarized as follows: overpopulation (a), poor health services (b) and lack of food safety (c).

### ***Overpopulation and Its Consequences***

NGOs<sup>93</sup>, the CNDH<sup>94</sup> and the United Nations<sup>95</sup> manifested their concern on this regard over the years. In 2004, the CNDH, on its report on the human rights situation in migration stations<sup>96</sup>, as well as the civil society and the special Rapporteur on migrants’ rights, criticized the unhealthy condition of the facilities of Tapachula’s station. FIDH’s mission acknowledges the important progress achieved by the construction and commencement of operations, since March 2006, of the new detention station of Tapachula called Siglo XXI.

The mission is also satisfied with the fact that migrants are no longer detained with people serving criminal sentences<sup>97</sup>. In spite of this progress, it is worrying that migrants are still being detained in Preventive Detention Centers.

Overpopulation in migration stations, due to mass detentions, leads to the overcrowding of facilities in spite of the System of Detention and Transport of Aliens in Migration Stations (SICATEM), which makes it possible to know the number of foreigners detained in a migration station with the very purpose of preventing overcrowding situations<sup>98</sup>.

Overcrowding contributes to the lack of healthy conditions in facilities: cases of Central Americans, with short periods of stay, sleeping in corridors were reported<sup>99</sup> and a lack of sanitary facilities was observed<sup>100</sup> having negative consequences on the migrants’ health.

### *Right to Health / Unhealthy Conditions<sup>101</sup>*

FIDH's mission notes with satisfaction the commencement of the Program to Dignify Migration Stations launched by the INM in 2003. The purpose of this program is "to improve the accommodation conditions of detainees"<sup>102</sup>. However, there are still serious deficiencies in cleaning and hygiene practices (for example, the lack of maintenance and insufficient sanitary and hydraulic facilities, which cause and favor diseases and epidemics). This reflects the insufficiency of such program.

Even when there is an infirmary, there isn't permanent medical staff<sup>103</sup>. For instance, in the migration stations visited by FIDH's mission, medical service is inexistent (Tuxtla Gutiérrez) or a physician does not stay in the center at all times. There is also a lack of prevention or advice to prevent HIV.

The lack of mattresses, due to overcrowding in MS, as mentioned above, has a negative effect on health as well, since migrants cannot rest. Besides, minors in Tapachula reported that mattresses are in bad conditions and mentioned "that lights are kept on at night, causing sleeping disorders"<sup>104</sup>. In 2007, the lack of mattresses in Tapachula was apparently a result of the fact that the resources requested to buy them were not allocated by the central offices. This means that this is also a matter of administrative inefficiency.

### *The Right to Food*

As to the right to food, the situation is satisfactory in general terms. However, food is sometimes insufficient and of bad quality in Tapachula. The absence of permanent access to drinkable water is also a concerning issue in several migration stations.

### *The Right to Complain*

Finally, the possibilities of making complaints or suggestions about detention conditions are limited, since access to the complaint and suggestion box in MS is often difficult (because there is no box, detainees have no paper or pen, etc.) and confidentiality is not always respected due to the process to access the box and/or to the procedure of examination of complaints when there is an actual examination of the complaints presented<sup>105</sup>. An improvement of this situation is not expected, since the "project on regulations does not establish the ways or mechanisms through which detainees can make formal complaints on their detention conditions"<sup>106</sup>.

### **ii) Conditions of Deportation of Migrants to Central American Countries**

Deportations are generally made from the detention center Siglo XXI in Tapachula. This center can accommodate 900 people. It is a concentration station, where Central Americans coming from other parts of Mexico are temporarily accommodated<sup>107</sup>. For instance, detainees in Ciudad Juárez are transferred to Iztapalapa in the F.D. and then to Tapachula.

According to international regulations, the migratory procedure must be carried out individually and not arbitrarily for each migrant, regardless of the mass nature of the migration flow.

Article 13 of the Covenant on Civil and Political Rights provides that removals shall be done "in compliance with a decision adopted pursuant to the law", with the purpose of preventing arbitrary removals. On the other hand, each foreigner is granted the right to a decision made for his/her particular case and, therefore, article 13 is violated when collective or mass removals are performed. This is confirmed by article 22 (4) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which contains provisions regarding the right to adduce arguments against the removal and the right to review and to have legal representation before the competent authority or before the persons appointed by such authority.

Both the regulations (a) and the Mexican deportation practice (b) do not provide for an individual process that includes full opportunities to appeal against the removal so that this right is enforced.

### ***Regulations that Contravene International Law***

Article 33 of the Mexican constitution states that "the Executive has exclusive authority to expel from the national territory, immediately and without a judicial hearing, any foreigner whose residence in Mexico it deems undesirable", establishing a serious exception to the right to effective legal action and to the respect for due process in the case of removal of aliens. This exception limits widely and arbitrarily the possibility of migrants to appeal against a removal order and it is contrary to the provisions of articles (Art. 8 and 10 UDHR, Art. 9 and 14 ICCPR, Art. 8 CADH, Art. 18 Convention on Migrant Workers), without discrimination (Art. 2 UDHR, Art. 2 and 14§3 ICCPR, Art. 1 CADH).

On this basis, Mexico made a reservation to article 22 §4 of the Convention on Migrant Workers. The Committee on migrant workers manifested its concern on this regard<sup>108</sup>. Despite the foregoing, Mexico stated clearly that, while there is a possibility to eliminate some reservations to the Convention on Migrant Workers, this will not be the case for the reservation issued regarding Article 33 of the Constitution<sup>109</sup>, because it is considered a “sovereign power of the State”. This is very worrying.

It is also important to mention that the Mexican government made a declaration under the CADH, by which it accepts the competence of the InterAmerican Human Rights Court “with the exception of cases derived from the application of article 33 of the Political Constitution of the United Mexican States”<sup>110</sup>, and made a reservation to articles 13 of the ICCPR<sup>111</sup> and 32 of the Convention on the Statute of Refugees that protect foreigners (the latter protects refugees) against arbitrary removals. In addition, article 126 of the LGP provides the Department of the Interior with an extensive margin to decide the duration of the removal<sup>112</sup>. All of this is a serious violation of the right to hearings and to an effective proceeding and contravenes international law.

Actually, the absence of effective proceeding in Mexican law regarding this type of detention is a serious violation, among others, of article 9 (4) of the Covenant on Civil and Political Rights, which states:

“4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful..”

FIDH's mission considers that detentions in migration stations, with no access to due process, are contrary to international law<sup>113</sup>. And, as it will be seen later on, this situation leaves a door open to possible arbitrary removals<sup>114</sup>.

***Migrants Are Seriously Denied Information Regarding their Rights, and their Communication and Access to Judicial Protection***

Detained migrants have a remarkable lack of information<sup>115</sup> or even misleading information about their rights, which leads to the infringement of their fundamental rights.

They are often told by migration personnel (migration centre subdirectors, custody personnel, social services or others) that taking any legal action (administrative action, juicio de amparo, criminal charges) will prolong their detention, in order to dissuade them from seeking justice even in cases of infringement of their fundamental rights.

Regarding their possibility to communicate with the outside world and with consular authorities<sup>116</sup>, it is often observed that the INM does not issue the corresponding consular notice. This is left as an “option” to the migrant so that he/she communicates with the consulate, unless the consulate is needed to certify the nationality and identity or to issue identity and travel documents. In other cases, migrants are not informed of their right to communicate with the consular authorities or, if they know their rights, there is no access to the number or to a telephone in migration stations<sup>117</sup>. Sometimes this lack of assistance is a result of “unavailability of resources in the consular representations of the country of origin”<sup>118</sup>. In the case of Central Americans under 18 years old, the consular notice is not made at the proper time: it's not made at the moment of inspection/detention, but when they have arrived in Tapachula and not long before deportation. In all of the foregoing cases, the conclusion is clear: in Mexico the mandate to serve notice to a consular representative is not sufficiently complied<sup>119</sup>.

Even more serious is the fact that many times the detainee population is not informed of its judicial situation<sup>120</sup>, they do not know exactly the reasons of the detention, the time the procedure will take, the type of procedure carried out in their case and the reasons for such procedure, the resolution issued, the sanction to reenter that the removal entails or its temporary nature.

The migrants' right to appeal and to present proof is also not adequately fulfilled. In practice, the Mexican authorities often limit this right to taking the statement of the immigrants, without informing them of its use or without allowing them to read it, and asking them to sign it without knowing its contents. In the cases where they are given a copy of their statement, errors have been detected in personal information, or in the form of omissions or unknown content. Corrections are seldom permitted. Other statements that they may wish to make or supporting documents they wish to present are not taken into account, unless it is a passport that will be used to speed up the deportation process.

The right to a lawyer in the administrative process is also largely ignored: access to legal representation is the exception, not the rule. “There are no public attorneys assigned to Migrants’ detention centers or working there regularly”<sup>121</sup> and generally migrants are not informed of their right to a lawyer. In other cases they are informed only once they are submitting their statement. In cases where a migrant has access to legal aid, the lawyer’s access to the person they are representing is limited by severe restrictions on their visits to the migration centre, which are: time limits on personal communication between lawyer and client (30 minutes maximum) and on phone calls (depending on the request); implementation of visiting hours (Tuesdays and Thursdays only); difficulty in bringing in documents and other necessary items (including pens and pencils).

Moreover, the lack of privacy in communications<sup>122</sup> and restrictions on the right to receive visits with no legal basis have been denounced. It is important to highlight the complaint expressed therein, in the sense that there is a series of mechanisms applied to hinder the work and impede access of human rights’ defenders to these centers of detention. The purpose of the government to legalize through a state regulation what is currently put into practice has been denounced. For that reason, it is noted with great concern that the project for reform of the Regulations on the operation of Migration stations restricts the access of civil society organizations to MS<sup>123</sup> and suppresses the provision that states that “training of administrative, technical, security and custody personnel shall be permanent and comprehensive” (current Article 59 of the NFEM).

The foregoing reflects the lack of protection of access to justice and of the right to defense which constitutes a serious obstacle for the enforcement of and respect for the human rights of migrants.

Additionally, the procedure prior to deportations, described to FIDH’s mission by the authorities of migration stations, does not comply with the requirements of an individual and non-arbitrary procedure. The actions of the immigration’s authorities aren’t based on good faith and presumption of innocence. In fact, the mission knew of cases in which migrants were detained in spite of having a regular immigration status in the country – they were given no access to legal aid or assistance that would have allowed them to prove the legality of their presence.

In one case, Mexican nationals were arrested and deported for supposedly being irregular Guatemalan migrants. There is no doubt that the immigration authorities acted in a racist and discriminatory way towards these persons, who were indigenous people from Chiapas, in possession of and having showed to them their official identity document (elector card). It was only after the local authorities’ intervention that the issue was solved.

All of these practices violate the article 209 of the Regulations of the General Population Law (RLGP). In theory, despite the presumed violation of the law punishable by deportation and detention, the INM is obliged to follow the administrative procedure set out in this article to determine whether the migrants should be deported for the violation with which they are charged. In practice, from the moment of arrest the actions of the authorities are directed towards securing deportation. The migratory process is speeded up and completed without taking into account the declarations of the migrant, in a shorter time than the law decrees for the completion of the process, and without notifying the ruling to the migrant. Sin Fronteras has revealed that they have not found a single migrant in the Migration Centres of Tapachula and Mexico City that is in possession of a written deportation order. The few written orders that are seen in legal cases are always rejected due to lacking or inadequate legal basis and reason.

It is also worth mentioning that the deportation proceeding does not include sufficient and effective protections to prevent deportation of possible refugee status seekers. For instance, in 2007 a group of Cubans who applied for asylum were deported even when they had expressed their request to the Mexican Commission for Aid to Refugees.

### ***Conditions of Removal***

Migrants are deported to their corresponding countries through the execution of repatriation agreements entered into by the Mexican Government with Guatemala, El Salvador and Honduras. The agreement with Nicaragua is to be concluded. Such agreements are essentially logistical: they establish timetables and places for deportation, as well as timetables and places for reception. However, they do not establish any provisions regarding the rights of migrants during these procedures.

Based on such bilateral agreements of “voluntary” repatriation, the INM makes mass deportations in buses

used for such purposes. They put migrants on a bus, separated by nationalities, and then transport them to the borders with their corresponding countries (Guatemala, El Salvador, Honduras) and then they are delivered to national authorities there. Sometimes the officers that perform these deportations do not complete their task and leave migrants in repatriation process in the middle of the route, exposed to dangers. In the House for Migrants in Tecún Umán, FIDH's delegation found two Hondurans who had been taken out of the bus while being repatriated to their country and had to walk from there. The situation of Nicaraguans is particularly difficult and uncertain: they are left at the border with Nicaragua due to the inexistence of an agreement.

FIDH's delegation is particularly concerned about the situation of unaccompanied minors, given that the majority do not have the means to return home alone and their families cannot always travel to the entry point. Minors from Honduras and El Salvador are sometimes transported together with adults.

FIDH delegation joins itself to the concern expressed by the United Nations Committee on the Rights of the Child on June 8, 2006: "However, the Committee remains concerned at the large number of unaccompanied children who are returned to their country of origin from Mexico, and at the absence of measures to protect unaccompanied migrant and refugee children."

Transport by bus must guarantee the safety of children and adolescents. The responsibility for guaranteeing their wellbeing until such time as they are returned to their parents lies with the State and with the institutions meant for their protection. This responsibility is shared between the expelling state and the receiving state or state of origin. The Governments of Mexico and other Central American nations must address this as an urgent issue, especially in the present context of increasing numbers of migrating unaccompanied minors.

Before leaving them, migration authorities must ensure that minors are delivered to the appropriate personnel charged with receiving them and, above all, that they will be directed to the relevant institutions. Communication with their families, including verification that they are in fact their families, must be taken more seriously as its absence threatens the safety of deported unaccompanied migrant children.

## **b) In the United States: Criminal Prosecution, Removal Proceedings, and Detention Conditions of Immigrants**

As in this report as a whole, we are limiting our analysis to the situation of migrants caught while crossing the border – we did not conduct specific research on interior enforcement.

### ***Criminal Prosecution of Undocumented Migrants Crossing the Border***

Illegal entry to the United States is classified as a misdemeanor – a criminal act, punishable for up to 180 days of incarceration, a fine of \$5,000. FIDH's delegation went to Evo M. Deconcini Federal Court in Tucson, AZ, where people are prosecuted every day for illegal entry. The FIDH members witnessed men and women shackled together in prison garb.

The number of defendants facing criminal prosecution has varied over the years in Arizona from none to up to 120 a day. Each defendant is provided with court-appointed counsel, most of whom are Spanish speaking. There are federally certified court interpreters who provide official court interpreting services for the proceedings. The attorneys only have a limited time to meet with each client – the maximum being half an hour to explain legal concepts, advise them regarding their options and obtain mitigating information for sentencing purposes. Subsequent to criminal prosecution, the undocumented immigrants will be transferred to immigration officials for deportation/removal proceedings.

In the recent past, the number of women being prosecuted for illegal entry has increased. Women, often arrested using documents not their own to attempt to enter the United States, rather than face the grueling and dangerous trek through the desert, are being prosecuted in increasing numbers. Similarly, other immigrants are being prosecuted not only for the offense of illegal entry but also for the felony offense of illegal reentry after deportation which can expose the illegal border crosser to a potential maximum sentence between two and twenty years.

### ***Distinguishing between Voluntary Return, Expedited Removal, and Regular Removal Proceeding***

Today in the United States, voluntary return, mainly for Mexican nationals, and expedited removal are the two

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main ways Department of Homeland Security (D.H.S.) deals with undocumented migrants arrested while crossing the border or near it.

Voluntary return is not a deportation. Migrants are not prosecuted and there are no penalties such as re-entry bans. It is a very important alternative to a removal because a person who returned voluntarily to his or her country can later apply for a visa. About 98% of people voluntarily returned are Mexican nationals.

Children are also sent back under voluntary return, but are not supposed to if they are not accompanied by an adult. However, attorney and pro bono counsel Christopher Nugent, with whom FIDH delegation met, explains that D.H.S.'s classification of "unaccompanied children" has been inconsistent: "D.H.S. sometimes labels certain children it arrests as either "accompanied" or "unaccompanied" for its own convenience and law enforcement purposes."<sup>124</sup> Furthermore, to determine children's ages, "D.H.S. utilizes dental and wrist bone forensics, which medical experts criticize as scientifically fallible because of margins of error of several years."<sup>125</sup> Hence, unaccompanied minors are sometimes subjected to voluntary removal. The Border Patrol (B.P.) told us it is also the policy never to apply voluntary return to unaccompanied women of any age.

If you are non-Mexican and caught crossing the border without documents, immigration inspectors can expeditiously send you home under what is called "expedited removal," a deportation procedure established by Congress in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Under this expulsion procedure, a noncitizen attempting to enter the U.S. without proper document is removed from the country without a hearing before an immigration judge.<sup>126</sup> An immigration officer will take a sworn statement from the noncitizen, and if he/she believes that that person has entered by fraud or without proper documents, he/she can order him or her immediately removed from the U.S., without allowing that person to see a judge, or a lawyer. In 2004, D.H.S. expanded expedited removal authority to the B.P. for migrants caught within 100 air miles of the border in the Tucson and Laredo B.P. Sectors, and within 14 days after their entry.<sup>127</sup>

Expedited removal is mostly applied to non-Mexicans. Unaccompanied children are not to be subjected to expedited removal. But D.H.S.'s means to assess age are

controversial, and in many cases the B.P. and immigration officers don't do a systematic checking to assess who is a juvenile, especially when it comes to older teenagers.

While expedited removal is justified by lawmakers and D.H.S. for reasons of rapidity, effectiveness, and reduction of costs, its failure to provide for basic due process protections is extremely disconcerting. An expedited removal order has the same impact as would one issued by an immigration judge. The difference is the order has been issued without the individual being entitled access to family support or legal assistance or legal help, and there is no judicial review of the decision. An expedited removal order bars the individual from returning to the U.S. for five years and twenty years following a second or subsequent removal (although there can be some exceptions)<sup>128</sup>. However, Yendi Castillo-Reina, a Federal Public Defender in Tucson, explained to us that people often sign the expedited removal form – a very technical form – without understanding that the procedure is a deportation, and the consequences it carries. They are forced to waive all chances they may have had to stay in the country or to be entitled to apply for a visa, had they had their case heard by an immigration judge, with the help of a lawyer. For Rights Working Group, an immigration rights policy group we met with in Washington, D.C., expedited removal "is an example of the government's reactionary laws against immigrants that go too far."<sup>129</sup>

Expedited removal has also put asylum seekers at risks of being sent back to their country where they may face persecution. This is the finding of the U.S. Commission on International Religious Freedom (USCIRF), a bipartisan federal agency, in its 2005 report mandated by Congress<sup>130</sup>. According to D.H.S. regulations, it is mandatory for an immigration inspector to refer an undocumented immigrant for a "credible fear" interview if that person indicates "an intention to apply for asylum, a fear of torture, or a fear of return to his or her country."<sup>131</sup> The immigration officer must systematically ask if the person he interviews fears returning to his or her home country. If the asylum officer referred to by the immigration inspector affirms the credible fear, the alien will be placed in removal proceedings before an immigration judge, and will have an opportunity to apply for relief from removal in the form of asylum.

However, the USCIRF found that immigration officers routinely short-cut required procedures aimed at protecting the rights of asylum seekers. USCIRF reports that "in 15

percent (12/79) of observed cases when an arriving alien expressed a fear of return to the inspector, the alien was not referred [to an asylum officer].”<sup>132</sup> USCIRF consequently issued five recommendations to the U.S. Customs and Border Protection in order to improve oversight of expedited removal proceedings, such as adding videotape monitoring systems to all B.P. stations and ports of entry, or not placing asylum seekers with valid passports in expedited removal. None of these recommendations has been followed, indicates USCIRF in its Recommendations Report Card of February 2007.

Those in expedited removal are subject to mandatory detention. Asylum seekers, if they have expressed a credible fear of going back to their country to an immigration officer, will be placed in detention while their cases are pending.

In a regular removal (deportation) proceeding, arrested immigrants are usually entitled to a hearing before a judge and may have a lawyer. But a deportation proceeding is considered a civil proceeding, in which there is no right to government-appointed counsel. Access to pro bono lawyers therefore becomes crucial, as it is often the only way for indigent immigrants to get legal advice on their rights.

#### ***Detention of Immigrants: Abuses and Failure to Enforce Detention Standards***

D.H.S. has a significant discretion not to detain immigrants while their immigration proceedings are pending, but since the 1980's, detention is a central enforcement strategy to deter “illegal” immigration. That approach has only been gradually reinforced over the years. In 1996, drastic changes in immigration law expanded mandatory detention and mandatory deportation for immigrants. In 2006, D.H.S. promised Congress to put an end to the criticized “catch and release” policy. The “catch and release” policy refers to a B.P. practice of releasing apprehended noncitizens (usually non-Mexicans) charged with being removable, rather than continuing to hold them in detention pending the resolution of their immigration cases, because many of the immigrants would simply not show up at their immigration hearings. The Bureau of Immigration and Customs Enforcement (ICE) put an end to the “catch and release” policy and now applies a policy of quasi-systematic detention of immigrants waiting for their hearings, which created an explosive growth in ICE detention centers.

Such mandatory detention without systematic due process is worrying. “The administration blanket policy of automatically imprisoning thousands of immigrant families while they await deportation hearings is costly, cruel, and does nothing to solve the immigration problem” denounces Rights Working Group<sup>133</sup>. As explained above, immigrants do not always have the possibility to challenge the legality of their detention and to contest their status determination, in violation of ICCPR article 9 which provides that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful” (article 9.4). This happens despite the U.S. Supreme Court’s long standing jurisprudence providing that any individual whose presence is unlawful is entitled to constitutional protections under the 5th and 14th amendments<sup>134</sup>. This means that noncitizens who have not been guilty of any crime or are not detained for criminal purposes should be protected from punitive detention conditions without due process of law. However, immigrants’ due process rights are minimized and sometimes nonexistent. Those who only committed a civil offence are not systematically distinguished from the criminal population, especially when they are detained in local jails<sup>135</sup>. Immigrants rights groups report that “detainees in ICE facilities consistently report that while in detention, they were made to feel like criminals even though a significant portion of the detainees have never committed a crime.”<sup>136</sup>

In Fiscal Year 2006, ICE detained over 230,000 immigrants<sup>137</sup>. These figures are only growing: while ICE held 19,718 aliens a day in 2005, it detains about 26,500 a day in 2007. D.H.S. projects the detention of 32,000 a day by this summer of 2007<sup>138</sup>. In Arizona, there are 2,300 detained people and ICE was planning in 2007 to obtain 7,500 additional bed spaces.

The immigrant population in ICE detention centers in the Southwest of the country mostly consists of:

- Undocumented immigrants arrested while crossing the desert and placed in removal proceedings, often because they passed the “credible fear” interview,
- Undocumented immigrants waiting for their traveling documents after having been ordered removed under expedited removal,
- Undocumented immigrants arrested while crossing the desert and prosecuted for illegal entry,
- Individuals who overstayed their visa and are subjected to removal,



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- Permanent residents with a criminal record subjected to mandatory deportation according to IIRIRA of 1996.

Eloy detention center in Arizona counted last year 73 different nationalities, with a majority of Mexican (consisting of about a third of the detainees) and Central Americans. The average detention length is 2 or 3 months, but some can be detained for years.

Despite our frequent requests to tour immigrant detention centers that we presented to acting ICE Assistant Secretary Mrs. Julie Myers, the ICE Director of Office of Detention and Removal Mr. John Torres, ICE Field Operation Directors, as well as before several detention centers' wardens and immigration officials, we were expressly denied access for visits. Even when we obtained the approval for a tour of the facility at El Paso detention center by top officials there, they had to turn us away on the day of the visit, at the facility itself, because they had received a communication from ICE headquarters denying their own request to allow us access. Such denial is a clear violation of INS detention standards providing that "facilities shall permit representatives of the news media and non-governmental organizations to have access to nonclassified and non-confidential information about their operation; given appropriate notice, to tour facilities; and, with permission from INS and the detainees, to interview individual detainees."<sup>139</sup> It is also illustrative of ICE's lack of transparency sharing information about treatment of immigrant detainees.

This standards' violation is a good illustration of their lack of implementation, which is seriously problematic on many levels because their primary aim is to prevent the abuse of detainees. Twelve detention standards were first adopted in 1998 by the former INS to prevent abuses, but they didn't apply to local jails who also house ICE immigrant detainees. In 2000, in collaboration with the Attorney General and the American Bar Association, thirty-six detention standards were approved to better protect the rights of detainees and released by the INS as the "Detention Operations Manual" (DOM)<sup>140</sup>. The DOM provides for standards on the detainees' living conditions, access to healthcare and to legal materials. It applies to privately-run and public detention centers, but applies only as guidelines for local jails housing immigrants<sup>141</sup>.

***Poor Detention Conditions Coupled with a Serious Lack of Oversight***

Despite the DOM, ICE's inability to prevent abuses and violations of detained immigrants' rights has been reported

by federal officials and NGOs. In December 2006, the D.H.S. Office of Inspector General (OIG) issued a Report on its audit of five ICE facilities conducted between June 2004 and January 2006, a report which found *many* deficiencies in the implementation of ICE's standards<sup>142</sup>.

As mentioned earlier, the absence of access to legal assistance for people under detention is very worrying.

For both Florence and Eloy detention centers in Arizona, there is only one free legal service provider – the Florence Immigrant and Refugee Rights Project – which provides legal assistance and representation to detainees in that area. In El Paso, there is only Las Americas. Both organizations (not funded by the government) are able to give several times a week "Know Your Rights" presentations to the detainees, as they have established a good relationship with the facilities' officials. However, a majority of detainees are held in remote locations where pro bono resources are scarce, or not made available, resulting in the inability for individuals to fully exercise their rights.

Moreover, ICE transfers immigrants from one detention center to another without prior notification and without informing family members and lawyers. Las Americas explained to us how it took them more than a year to learn that immigrants were being sent to Albuquerque county jail, NM, where no *pro-bono* legal advice was available for immigrants. Groups report that 84% of detained immigrants are not represented<sup>143</sup>. This lack of legal advice is all the more worrying in the cases of persons seeking asylum. A Georgetown University study revealed that "an asylum seeker is four to six times more likely to win asylum protection if represented."<sup>144</sup>

The overall disciplinary process in ICE facilities was also found by the OIG to be very problematic: in some facilities, detainees were placed in 24-hour lock down for wearing religious head garments. Theft of detainees' funds and personal property, inadequate outdoor recreation time, failure to provide a minimum visitation period of 30 minutes, failure to issue sufficient clothing, and mixing of Level 3 detainees with Level 1 or 2 were also reported. More worrisome, the OIG reported that in many instances "detention files were missing and documentation in some of the files were incomplete at four facilities," out of the five visited<sup>145</sup>.

All the pro-bono lawyers we met with in Arizona, New Mexico, and Texas, similarly reported to us the problems of phone access, of theft, of inadequate food, but also of

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extremely cold facilities where migrants are only given short sleeve shirts, or of situations where migrants had to sleep on the floor without a blanket. The OIG reported rat and vermin infected facilities, improper ventilation, dirty food service and dangerously undercooked food. Also, newspapers have recently described the opening of an ICE “tent city” near the Rio Grande Valley, built in the summer 2006, and housing today 2,000 immigrants in disturbing conditions: immigrants are detained 23 hours a day in a windowless tent, with insufficient food, clothing, medical care and access to telephones, and no partition or doors between the few showers and toilets the detainees are sharing<sup>146</sup>.

The OIG found severe insufficiency in complying with the telephone access standards: phones didn’t work or detainees were denied emergency calls. While the standards provide for the right to contact an attorney within 24 hours, the OIG reported the case of a detainee who waited 16 business days to get to call his lawyer. Legal materials were found to be either unavailable or malfunctioned during certain periods.

Shockingly, despite the OIG findings, ICE rejected the OIG recommendation to undertake additional oversight steps to prevent these violations, arguing that “ICE is confident that, through its annual inspections program, the appropriate level of oversight regarding compliance with the NDS [National Detention Standards] exists.”<sup>147</sup>

In terms of healthcare, the OIG reports that four out of the five facilities toured did not comply with the DOM. In particular, standards were commonly violated regarding hunger strikes and suicide watches.

The Florence Project also stressed the issue of inadequate healthcare, both physical and mental. They informed us of a detainee being given painkillers for his tongue cancer. Very often, immigrants suffering from cancer, AIDS or serious or chronic illnesses, are denied appropriate healthcare while in D.H.S. custody.

The destructive effect of detention was also stressed in a 2003 in-depth study conducted by Physicians for Human Rights, and which showed that detention had a devastating impact on the psychological health of political asylum seekers, which worsens the longer they are detained<sup>148</sup>.

On the general problem of health care, the OIG reported ICE’s refusal to accept the scope of the crisis, and stated

that “ICE did not agree with our findings since they were based on a small sample size and an “exception report” methodology, and did not reflect a systemic shortcoming in ICE’s detention practices.”<sup>149</sup>

Detainee abuse at the ICE facilities were also described in the OIG report, and ranged from rape and physical abuse to public strip searches and use of camera phones by officers to photograph detainees coming out of showers or bathrooms. While handbooks are supposed to be provided to detainees to explain to them the process for reporting allegation of abuse, they either didn’t explain what the process was or were only available in English. To that comment, ICE did inform the OIG that it will “modify the Detainee Handbook to include specific instructions regarding how to report allegations of staff misconduct, abuse, and civil rights violations.”<sup>150</sup>

In February 2007, the U.S.-based Women’s Commission for Refugee Women and Children and the Lutheran Immigration and Refugee Service published a report looking at the shocking detention conditions of families in the only two ICE detention centers for families in the United States<sup>151</sup>. The report particularly looked at the living conditions of Don Hutto Residential Center in Texas, opened in 2006 when Congress urged ICE to stop separating immigrant families and to hold them in non-penal, homelike environment<sup>152</sup>. The accounts of the report are extremely concerning. The main findings on Hutto were that:

- Hutto is a former criminal facility that still looks and feels like a prison.
- Some families with young children have been detained in these facilities for up to two years.
- At night, children as young as six were separated from their parents.
- Separation and threats of separation were used as disciplinary tools.
- People in detention displayed widespread and obvious psychological trauma. Every woman we spoke with in a private setting cried.
- At Hutto pregnant women received inadequate prenatal care.
- Families in Hutto received no more than twenty minutes to go through the cafeteria line and feed their children and themselves. Children were frequently sick from the food and losing weight.

In response to this alerting report, on January 11, 2008, ICE announced that it adopted new standards for

immigrants and refugees families. However it is still allowed for children to be disciplined based on adult prison protocol, including the use of restraints, steal batons and strip searches. According to the organizations that authored the report, the new standards still “fall far short of ensuring appropriate conditions for families.”<sup>153</sup>

The problem of poor conditions in detention is sometimes exacerbated in privately-run prisons, for which implementing and improving the detention standards may be seen as mere additional costs – while in any case they carry no particular liability for not respecting them. Advocates for detainees have criticized the way private companies running facilities cut corners in training guards and in providing basic services. From our discussions with lawyers and rights groups, though, it seems like whether the facility is private or public, problems of violations of the standards are worrisome in both. But one cannot ignore the fact that these companies’ lucrative success will come from getting more bed spaces and not from enforcing standards. In 2006, the Chief Financial Officer of Corrections Corporation of America said “As you know, the first 100 inmates into a facility, we lose money, and the last 100 inmates into a facility we make a lot of money.”<sup>154</sup> It is fundamental for D.H.S. to ensure that privatized prisons respect the standards of detention and strictly monitor that respect.

It is worth mentioning the treatment of migrants, undocumented or not, who have committed a crime and, therefore, are detained in prisons, and who will be automatically deported to their home countries regardless of the fact that they have a residence card, American children or have lived their entire lives in the United States. The case of 25-year-old Jose Romero Urrea, which Assistant Federal Public Defender D. Eréndira Castillo-Reina told us about, is a tragic illustration of the inadequacy of the criminal justice system to deal with pre-trial detainees who suffer from depression. Mr. Urrea was caught at the border, attempting to return to his home country to visit his mother. A border patrol agent had seen his vehicle less than a mile away and attempted to make him stop. Mr. Romero Urrea was trying to get away from the B.P. agents and in so doing he was charged with assault on a federal officer. Mr. Romero Urrea suffered from severe depression while in pre-trial detention at CCA-Central Arizona Detention Center in Florence. While in custody, Mr. Romero Urrea had attempted suicide multiple times. He had also been the target of physical

assaults by other inmates due to his mental illness. Therefore, as a result of his mental illness, he was placed in a medical segregation unit. There he was housed alone in cell, unclothed and under 24-hour supervision. Mr. Romero Urrea finally succeeded and took his own life in November of 2005. Ms. Castillo-Reina, who represented Mr. Romero Urrea, said “he somehow supposedly hung himself - I never saw the death certificate. His father wanted me to explain how he could have so many bruises on his body. I had no information.”

### ***The Pressing Need to Enforce D.H.S. Detention Standards***

While D.H.S. does have the authority to turn the detention standards into enforceable regulations - it still has not done so – there is no legal avenue or effective procedures to hold facilities accountable for failing to respect the standards<sup>155</sup>. Furthermore, while D.H.S. has internal accountability mechanisms such as the Office for Civil Rights and Civil Liberties, tasked with the investigation of complaints of abuses, the office is seriously understaffed and has no authority to bind D.H.S., or to hold D.H.S. accountable.

Paromita Shah, Associate Director at the National Immigration Project of the National Lawyers Guild told us that “While DHS has the appearance of having many internal accountability mechanisms, they are ineffective and indicative of DHS’ inability or refusal to consider civil rights and civil liberties violations.”

In January 2007, eighty-four immigration detainees, the National Immigration Project of the National Lawyers Guild, and six other immigrant rights organizations formally petitioned DHS to issue regulations governing detention standards for immigration detainees, under the Administrative Procedures Act (5 U.S.C. § 553), in order to make them legally enforceable. The petitioners argue that “without meaningful enforcement, the DOM alone is insufficient to assure uniform and human treatment of detainees. Opportunities for redress when facilities fail to adhere to detention standards depend largely on detainees asserting themselves, perhaps with the assistance of a family member or legal advocate. ICE compliance with the DOM is lacking and many detention staff have no knowledge of the standards in the DOM.”<sup>156</sup>

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24. See <http://www.inm.gob.mx/imagenes/comunicacion/presentaciones/INMparte2eneene07.swf> (In January 2007, 94.27 percent of foreigners subject to removal were Central Americans, 47.4 percent Guatemalans, 33.2 percent Hondurans, 11.4 Salvadorans and 2.27 percent Nicaraguans.

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25. This river is the natural border between Guatemala and Mexico.
26. See page 18.
27. See page 26.
28. This hurricane struck Mexico on October 3, 4 and 5, 2005, taking more than 2,000 lives in Mexico and Central America.
29. See page 12.
30. See « The Real Deal: Building the Wall, Will We Be Better Off » Border Action Network : [www.borderaction.org](http://www.borderaction.org)
31. US Government Accountability Office, august 2006.
32. Heba Nimr, Human Rights and Human Security at Risk, the National Network for Immigrants and Refugee Rights, Sept. 2003, at p. 22.
33. See The Real Deal, a Fact Sheet by Detention Watch Network, the National Immigration Project, and the Rights Working Group, available at [http://detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/R-D-3-Border%20\(2\)\\_0.pdf](http://detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/R-D-3-Border%20(2)_0.pdf).
34. Figures provided to FIDH's delegation by Lisa Reed, Community Relations, Tucson Sector Border Patrol.
35. Human Rights Coalition, Tucson, Arizona, January 24th, 2007.
36. Cf. source cited above.
37. See presentation by the Director General of Migration Affaire of Honduras, in the International Forum on remittances and development perspectives in Chiapa's state.
38. See official letter n° 15000180807 from the Ministry of Foreign Affaire of Guatemala to the Human Rights Commission of Guatemala (CDHG), August 13th, 2007.
39. 150,530 detentions were registered in 2001 and 240,269 in 2005. 95 percent of detained migrants are Guatemalans, Hondurans and Salvadorans, and a small number of them are Nicaraguans.
40. Forum on Migration (above).
41. The Law was voted by the Congress of Chiapas State on February 13th 2006. (<http://www.congresochiapas.gob.mx/goto/sitio/debates/--/action=despliega/id=185/index.htm>)
42. Forum on Migration (above).
43. Article 156 of the General Population Law (LGP).
44. See <http://www.cndh.org.mx/CDINFORME2006iMAGEN/II-3rec13.htm>.
45. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), expressed its concern regarding this matter (CMW, *Final Observations on Mexico*, fifth period of sessions, Geneva, October 30th to November 3rd, 2006, December 8th 2006, CMW/C/MEX/CO/1 and report presented by the Special Rapporteur Gabriela Rodríguez Pizarro, pursuant to resolution 2002/62 of the Human Rights Commission, visit to Mexico, E/CN.4/2003/85/Add.2, October 30th 2002 (§16).
46. Unfortunately, the project of migratory law that was meant to abrogate this criminal sanction on undocumented people has been rejected by the Congress.
47. In view of this criticism, a reform of the LGP was proposed and it is still pending. On April 26th, 2007, the Chamber of Deputies proposed and unanimously adopted a new Project that would eliminate all prison penalties currently provided in the LGP. On September 4th 2007, the Project was sent to the United Commissions of Population and Development and of Legislative Studies, First, of the Congress Senate, for its analysis. However, the legislative process is still unfinished in the Senate.  
<http://www.senado.gob.mx/gace.php?sesion=2007/10/23/1&documento=13>
48. In 2006, "the INM sent an official communication to its regional offices to include a mechanism that makes possible, in some cases and under the discretion of the enforcing authority, for people who have been victims of violations of their human rights to stay in the country" (communication 08/2006).
49. Article 67 of the LGP provides that all Mexican authorities have to require foreigners that turn to them to prove their legal status to stay in Mexico. Otherwise, authorities shall "put migrants that cannot prove their legal status in the country at the disposal of the Ministry".
50. See communication issued by the Centro de Derechos Humanos Fray Matías de Córdova AC. Null Commitment with the Defense of Migrants' Human Rights on the part of the CNDH, Mexico, Chiapas, July 22nd 2007, <http://www.cdhraymatias.org.mx/boletines/denunciacndh.html>.
51. See, for instance, *La Jornada*, April 4th 2007: "Dozen of Migrants Kidnapped at the South of Mexico, Warns a Priest".
52. Declarations of the Fifth Inspector General of the CNDH in *La Jornada*, February 15th 2007: "Increasing complaints over kidnapping of undocumented people in the country".
53. See [www.cbp.gov](http://www.cbp.gov).
54. See page 13
55. FIDH's delegation met with Mark R. Rios, Patrol Agent in Charge, and Lisa Reed, Community Relations, of the Border Patrol Tucson Sector on Friday, March 2, 2007.
56. Figures provided by Lisa Reed, Tucson Border Patrol Sector. For the El Paso Sector, 120,000 people were arrested in FY 2006.
57. For a recent review, see Border Network for Human Rights, *Behind Every Abuse Is a Community*, June 2006, available at [http://www.borderaction.org/PDFs/BNHR\\_Report\\_to\\_HRC.pdf](http://www.borderaction.org/PDFs/BNHR_Report_to_HRC.pdf).
58. Border Action, *Status of Human Rights and Civil Rights on the Arizona-Mexico Border – Preliminary Report*, December 2006.
59. Mike Ahlers and David de Sola, *Border Patrol Accused in Immigrants' Death*, CNN, September 29th, 2004 available at <http://www.cnn.com/2004/US/09/28/border.incident/>.
60. Border Network for Human Rights, *Behind Every Abuse Is a Community*, June 2006, available at [http://www.borderaction.org/PDFs/BNHR\\_Report\\_to\\_HRC.pdf](http://www.borderaction.org/PDFs/BNHR_Report_to_HRC.pdf); Catholic Legal Immigration Network, *CLINIC Opposes Use of Hollow Point Bullets by U.S. Border Patrol*, January 17, 2003 available at <http://www.cliniclegal.org/IntheNews/pressreleases/hollow0103.html>,
61. "The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body" The Hague Convention, *Declaration on the Use of Bullets Which Expand or Flatten Easily in the Human Body*, July 29, 1899.
62. *Border Patrol agents shoot combative man in So. Arizona*, Associated Press, Feb. 22, 2007, available at

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<http://www.fox11az.com/news/topstories/stories/KMSB-20070221-apbp-borderagent.21562f74.html>.

63. Brady McCombs, Agent Feared for Life Before Fatal Shooting, Arizona Daily Star, Jan. 14, 2007, available at <http://www.azstarnet.com/sn/border/164546>; Border Agent Shoots Dead a Mexican Migrant, Reuters, Jan. 14, 2007, available at <http://www.msnbc.msn.com/id/16618506/>.

64. Brady McCombs, Records Contradict Agent's Story on Entrant's Slaying, Arizona Daily Star, March 27, 2007, available at <http://www.azstarnet.com/metro/175511>.

65. Brady McCombs, Agent Feared for Life Before Fatal Shooting, Arizona Daily Star, Jan. 14, 2007, available at <http://www.azstarnet.com/sn/border/164546>.

66. *Ibid.*

67. Border Network for Human Rights, Behind Every Abuse Is a Community, June 2006, available at [http://www.borderaction.org/PDFs/BNHR\\_Report\\_to\\_HRC.pdf](http://www.borderaction.org/PDFs/BNHR_Report_to_HRC.pdf), p. 9 and 10.

68. *Community Demands Impartial Investigation of Latest Shooting and Border Patrol Policies for Use of Lethal Force*, Coalicion Derechos Humanos, Press Release, Jan. 17, 2007, available at <http://www.derechoshumanosaz.net/images/pdfs/bp%20shooting%201-16-07.pdf>.

69. Border Action Network, Justice on the Line: The Unequal Impacts of Border Enforcement In Arizona Border Communities, available on <http://www.borderaction.org/resources.php>.

70. *Ibid.*

71. American Friends Service Community, San Diego: A Case Study on the Impact of Enforcement on Border Communities, January 2005.

72. See Border Network for Human Rights, Behind Every Abuse Is a Community, June 2006, available at [http://www.borderaction.org/PDFs/BNHR\\_Report\\_to\\_HRC.pdf](http://www.borderaction.org/PDFs/BNHR_Report_to_HRC.pdf), p. 11.

73. *Ibid.*

74. Quoted in American Civil Liberties Union, Creating the Minutemen: A Small Extremist Group's Campaign Fueled by Misinformation (April 2006), at footnotes 4, 42 and 43, available at <http://www.vigilantewatch.org/docs/CreatingtheMinutemen.pdf>.

75. James Reel, *Men with Guns*, Sojourners Magazine, July-August, 2003, available at <http://www.sajo.net/index.cfm?action=magazine.article&issue=soj0307&article=030720>.

76. ACLU, *Ibid. supra FN 13*. "Private Citizens cannot detain individuals merely on suspicion that they may have crossed the border without permission from immigration officers," said ACLU of Arizona Executive Director Eleanor Eisenberg. "Nor does any law permit private citizens to detain, harass, and humiliate another individual. Allowing such activity to go unpunished sends a message to the entire country that individuals are free to take the law into their own hands. In a nation of laws, this is intolerable." ACLU of Arizona Denounces Unlawful Imprisonment of Immigrant by Minuteman Volunteer (4/7/2005), at <http://www.aclu.org/immigrants/gen/11734prs20050407.html>

77. Border Action Network, Hate or Heroism, Vigilantes on the Arizona-Mexico Border, December 2002, p. 23, available at [http://www.borderaction.org/PDFs/vigilante\\_report.pdf](http://www.borderaction.org/PDFs/vigilante_report.pdf).

78. See the Optional Protocol of the Convention against Torture or other Cruel, Inhumane or Degrading Treatment or Penalty which defines detention centers as any place "where people are or could be deprived of their freedom". In article 4 deprivation of freedom is defined as "any form of detention, imprisonment or custody of a person in a public or private institution from which he/she cannot go out freely, under the order of judicial or administrative authorities" and resolution 1997/50 of the Human Rights Commission that confirms that one of the competences of the working group on arbitrary detentions is the administrative deprivation of freedom in absence of trial.

79. CNDH, above.

80. Forum on Migration, *Report for the Inter.-American Commission of Human Rights*, 2007.

81. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) expressed its concern regarding this matter (CMW, *Final Observations on Mexico*, fifth period of sessions, Geneva, October 30th to November 3rd, 2006, December 8th 2006, CMW/C/MEX/CO/1).

82. The Mexican government assures that migrants are not usually detained in prisons: "migration stations do not belong to the Federal Penitentiary System. (208 RLGP) » (CMW, *Answers presented in writing by the Government of the Republic of Mexico*....above)

83. Published by the DOF on November 26th, 2001.

84. Sin Fronteras found "a few cases in which the detentions last longer than the duration established by law" in Sin Fronteras, Comments on document CAT/C/55Add.12.

85. In this regard, see Amnesty International (Mexican Section), Centro de Derechos Humanos Fray Francisco de Vitoria, O. P. A.C., Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. (PRODEH), Mexican Commission for the Defense and Protection of Human Rights (CMDPDH), National Center for Social Communication (Cencos), Group against Torture and Impunity, Human Rights Program of the Inter-American University, PRODESC, National Network of Civil Organizations on Human Rights "Todos los Derechos para Todas y Todos" and Sin Fronteras, I. A. P., *Rights of the detained migrant population before the proposal to change the operation regulations of migration stations*, May 2007: "The person or persons detained in migration stations in Mexico have not committed a crime, since migration regulations are of administrative nature. Therefore, sanctions arising from an administrative infringement shall comply with the provisions of article 21 of the constitution."

86. Article 21 of the Constitution: "The imposition of penalties is exclusively attributable to the judicial branch. (...)The sanctions on violations of governmental and police regulations are within the powers of the administrative authorities, which punishment shall consist of a fine or imprisonment for a period not exceeding thirty-six hours. Should the offender fail to pay the fine, it shall be substituted by a corresponding period of detention, which in no case may exceed thirty-six hours."

87. Foro Migraciones, above.

88. Forum on Migrations, above.

89. CNDH, Forum on Migrations, CMW (above) and report by the special Rapporteur of the United Nations (§33) (Economic and Social Council, report presented by the special Rapporteur Gabriela Rodríguez Pizarro, pursuant to resolution 2002/62 of the Human Rights

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Commission, visit to Mexico, E/CN.4/2003/85/Add.2, October 30th 2002.

90. Forum on Migrations, above.

91. CMW (above.), §29: "The Committee is concerned about the information that confirms mistreatments, extortions and theft committed by public officers and private security personnel against migrant workers and the members of their families, including children and women, especially those who do not have migration documents."

92. Adopted by the First Congress of the United Nations on Crime Prevention and Treatment of Criminals, held in Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663C (XXIV) dated July 31st 1957 and 2076 (LXII) dated May 13th 1977.

93. Forum on Migration (above).

94. CNDH (above).

95. CMW (above).

96. See [www.cndh.org.mx/lacndh/informes/estmigrat.htm](http://www.cndh.org.mx/lacndh/informes/estmigrat.htm).

97. Department of the Interior, *INM intensifies actions to improve migration stations*. Bulletin N° 054/02-04-07, February 4th 2007 <http://www.gobernacion.gob.mx/templetas/boletin.php?id=5342>.

98. In this regard, see observations of the Committee on migrant workers (above)

99. Forum on Migration (above).

100. CNDH and Forum on Migration (above).

101. *Ibid.*

102. Department of the Interior, Bulletin N° 002/04. *Last year the INM dignified 22 migration stations*, Mexico, F.D., January 1st, 2004. <http://www.gobernacion.gob.mx/templetas/boletin.php?id=2766>. For example, this year the INM started the supply of toiletries (Department of the Interior, Bulletin N° 054/02-04-07, above).

103. Improvement according to the Department of the Interior (Bulletin Nr. 54).

104. Forum on Migration.

105. Forum on Migration.

106. Comments on the regulations' project.

107. There are also migrants of other nationalities in this migration station. The criteria to detain them in this station or others are unknown. This is not provided in the Regulations for the operation of migration stations and represents an uncertainty.

108. CMW (above.): "The Committee notes with concern the State party's reservation to article 22, paragraph 4, of the Convention, given the fact that article 33 of the Constitution stipulates that the Executive has exclusive authority to expel from the national territory, immediately and without a judicial hearing, any foreigner whose residence in Mexico it deems undesirable". The special Rapporteur of the United Nations also manifested her concern on this regard in her report (Economic and Social Council, report presented by the special Rapporteur Gabriela Rodríguez Pizarro, pursuant to resolution 2002/62 of the Human Rights Commission, visit to Mexico, E/CN.4/2003/85/Add.2, October 30th 2002).

109. "However, for the case of the constitutional article 33 such amendment has not been considered, due to the sovereign power of every nation to control the entrance and conditions to stay of foreigners in its territory". CMW, *Answers presented in writing by the Government of the Republic of Mexico...* (Above).

110. The Mexican government could refer to this reservation to prevent the Court from reviewing its case under article 22§6 of the CADH, which states that "An alien lawfully in the territory of a State Party to this Convention may only be expelled from it pursuant to a decision reached in accordance with law."

111. Art. 13 ICCPR: "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority ».

112. Art. 126: "When there is an attempt against national sovereignty or security, deportation shall be definitive. In all other cases the Department of the Interior shall indicate the period during which the alien shall not be allowed to enter the country. During such period, he could only be admitted with the express consent of the Secretary of the Interior or the corresponding Under-secretary".

113. See category III of the work group on arbitrary detentions of the United Nations.

114. The special Rapporteur of the United Nations manifested her concern regarding this arbitrariness (report by the special Rapporteur (above)).

115. For example, in Tapachula, it was observed that, despite the existence of documents indicating the regulations of the migration stations and the rights of the migrants under detention, they were not delivered to the persons detained in the center (Forum on Migration).

116. Forum on Migration, CNDH and CMW (above).

117. Telephone numbers of consulates are accessible and visible in Tapachula and the F.D.

118. Special Rapporteur of the UN (above), §34.

119. CNDH (above).

120. This was observed in the MS of the FD and Tapachula (Forum on Migration, above).

121. *Ibid.*

122. *Ibid.* (regarding the MS of the FD)

123. See Forum on Migration, *Report for the Inter-American Commission of Human Rights*, 2007 and articles 5 and 38 of the project on Regulations for the operation of migration stations, dated October 26th, 2007.

124. Christopher Nugent, *Whose Children Are These? Towards Ensuring the Best Interest and Empowerment of Unaccompanied Alien Children*, The Boston University Public Interest Law Journal, Vol. 15, Number 2, ( 2006).

125. *Ibid.*

126. IIRIRA Expedited removal regulations were upheld by the Court of Appeals for the District of Columbia, on prudential grounds regarding the lack of a third party standing for the plaintiff (*American Immigration Lawyers Association v. Reno*, 199 F.3d 1352, 1356-7 (D.C. Cir. 2000).

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127. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48,877 (August 11, 2004).
128. See "*What To Do If You Are in Expedited Removal Or Reinstatement of Removal*," Florence Immigrant and Refugee Rights Project, Know Your Rights Materials, available at <http://www.firrp.org/documents/KyrMaterials/English/reinstatementenglish.pdf>.
129. Rights Working Group, *Restore Due Process to the Immigration System National Campaign Priorities for 2007*, March 2007, available at [http://65.36.162.162/files/Priority\\_Issues\\_2007\\_030907.pdf](http://65.36.162.162/files/Priority_Issues_2007_030907.pdf).
130. U.S. Commission on International Religious Freedom, *ASYLUM SEEKERS IN EXPEDITED REMOVAL, A Study Authorized by Section 605 of the International Religious Freedom Act of 1998*, 2005, available at [http://www.uscirf.gov/countries/global/asylum\\_refugees/2005/february/execsum.pdf](http://www.uscirf.gov/countries/global/asylum_refugees/2005/february/execsum.pdf).
131. *Ibid.* p.6.
132. *Ibid.* p. 6.
133. Rights Working Group, *Restore Due Process to the Immigration System National Campaign Priorities for 2007*, March 2007, available at [http://65.36.162.162/files/Priority\\_Issues\\_2007\\_030907.pdf](http://65.36.162.162/files/Priority_Issues_2007_030907.pdf).
134. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The fourteenth amendment to the constitution is not confined to the protection of citizens."); *Wong Wing v. U.S.*, 163 U.S. at 235; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (holding even one whose presence is unlawful is entitled to constitutional protections under the 5th and 14th amendments).
135. See The National Immigration Project of the National Lawyers Guild et al, *Immigration Detainees and the Project Petition DHS to Issue Enforceable, Comprehensive Immigration Detention Standards*, January 25, 2007, available at [http://www.nationalimmigrationproject.org/detention\\_petition\\_final.pdf](http://www.nationalimmigrationproject.org/detention_petition_final.pdf).
136. *Ibid.* p. 18.
137. "Detention and Removal of Illegal Aliens," Office of Inspector General, Department of Homeland Security, April 2006.
138. Spencer S. Hsu and Sylvia Moreno, *US: Border Policy's Success Strains Resources: Tent City in Texas Among Immigrant Holding Sites Drawing Criticism*, The Washington Post, February 2nd, 2007, available at <http://www.corpwatch.org/article.php?id=14334>.
139. See <http://www.ice.gov/doclib/partners/dro/opsmanual/visit.pdf>.
140. INS News Release, *INS to Adopt New Detention Standards*, Nov. 13, 2000.
141. Yet, "80% of ICE's beds are rented at 300 local and state jails nationwide, concentrated in the South and Southwest." In Spencer S. Hsu and Sylvia Moreno, *US: Border Policy's Success Strains Resources: Tent City in Texas Among Immigrant Holding Sites Drawing Criticism*, The Washington Post, February 2nd, 2007, available at <http://www.corpwatch.org/article.php?id=14334>.
142. Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, December 2006, available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf).
143. *The Real Deal*, a Fact Sheet by Detention Watch Network, the National Immigration Project, and the Rights Working Group, available at [http://detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/R-D-1-Detention%20FINAL%20\(2\).pdf](http://detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/R-D-1-Detention%20FINAL%20(2).pdf).
144. *Ibid.*
145. *Ibid.* p. 17.
146. Spencer S. Hsu and Sylvia Moreno, *US: Border Policy's Success Strains Resources: Tent City in Texas Among Immigrant Holding Sites Drawing Criticism*, The Washington Post, February 2nd, 2007, available at <http://www.corpwatch.org/article.php?id=14334>.
147. *Ibid.* p. 31.
148. Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: the Health Consequences of Detention for Asylum Seekers*, June 2003.
149. *Ibid.* p. 10.
150. *Ibid.* p. 10.
151. The Women's Commission for Refugee Women and Children and the Lutheran Immigration and Refugee Service, *Locking Up Family Values – the Detention of Immigrant Families*, February 2007, available at <http://www.womenscommission.org/pdf/famdeten.pdf>.
152. House Committee on Appropriations, Department of Homeland Security appropriations bill, 2007: report together with additional views (to accompany H.R. 5441), 109th Cong., 2d Session, 2006, H. Rep. 109-476.
153. See [http://www.womenscommission.org/pdf/pr\\_famdeten1.pdf](http://www.womenscommission.org/pdf/pr_famdeten1.pdf).
154. Deepa Fernandes, *The Alien Life: Privatized Prisons for Immigrants*, CorpWatch, February 5, 2007, available at <http://www.corpwatch.org/article.php?id=14333>.
155. See The National Immigration Project of the National Lawyers Guild et al, *Immigration Detainees and the Project Petition DHS to Issue Enforceable, Comprehensive Immigration Detention Standards*, January 25, 2007, available at [http://www.nationalimmigrationproject.org/detention\\_petition\\_final.pdf](http://www.nationalimmigrationproject.org/detention_petition_final.pdf).
156. *Ibid.* p. 7.

## FACT-FINDING MISSION'S CONCLUSIONS

The topic of migrations in this region of the world is a current critical issue that requires more attention from the governments involved and from the international community, not only for the importance of its extension but also for its emblematic nature at an international level. Legislations in force, both in the United States and in Mexico, have failed to solve the causes of current and increasing mass migrations and have led to a considerable rise in violations of fundamental rights, including the right to life. The exponential growth of investments on staff and materials aimed at reducing the migration flow, by making it more dangerous, has mainly resulted in an equally exponential increase of human and economic costs at the expense of migrants seeking for jobs and also in more dangerous border areas.

FIDH carried out this research with the purpose of viewing and documenting the serious violations of human rights that usually affect migrants in the region, as well as highlighting the pressing need to turn the implementation of human rights into the first priority of the migration flow schemes in these two countries.

There are several causes for massive migration. On the one hand, there are reasons that make people leave their home countries (poverty, social violence, weakness of their home countries' economies, and strong dependence on remittances) and, on the other, factors that "attract" migrations towards the United States (the American labor market). The combination of the above factors causes irreversible and almost irrepressible dynamics of migration flows.

Before this massive migration, the domestic migration policies of the United States and Mexico are still inconsistent and constitute an affront to human rights.

The United States has implemented a "deterrence policy" that has involved a strong militarization of the border and the construction of a wall. Such policy, very costly in economic and human terms (increase in the number of migrants dying while crossing the border in the most inhospitable deserts of the South), has proved to be inefficient, since, despite this strategy, the number of immigrants crossing the border has more than doubled since 1993. Besides that, the presence of about 11 to 12 million officially "unauthorized" immigrant workers in the

United States territory is an obvious illustration of the incoherence and hypocrisy of policies that intend to forbid "illegal" immigration without offering alternatives to a legal immigration, consistent with the needs of economy, and that allow companies to easily benefit from the exploitation of undocumented men and women. Pressures by the United States on Mexico have caused tougher immigration policies in this country.

FIDH delegation registered numerous flagrant violations of migrants' human rights while crossing the border, during their interception, detention, and deportation.

### 1) Arrests of Migrants

**In Mexico**, there are many illegal apprehensions made by members of forces that have no legal power to do so. The main objective of such arrests is not returning undocumented migrants to their home countries but extorting money from them. Such extortions frequently include threats, beatings, sexual harassment or rape of female migrants and kidnappings.

The situation of almost total impunity on these serious violations of migrants' human rights is worrying. FIDH delegation did not find any example of a judicial sentence regarding extortions, cruel and degrading treatment, rape committed by members of federal, state, municipal authorities or criminals. FIDH delegation considers that many elements of authority (police, army, court staff) want to hide the abuses committed and do not want those responsible for such abuses to be sanctioned. This is in part explained by the omnipresent corruption and by the fact that the same individuals work in connivance with human traffickers and even with drug dealers, making profit out of this "good business". Both in Guatemala and Mexico, members of the civil society have been pressured and threatened when trying to denounce this situation or to support migrants in their complaints. Finally, the system of the National Commission of Human Rights is insufficient, since its procedures in the Fifth Inspection Unit are slow, and its power is very limited.

**In the United States**, Border Patrol (B.P.) agents utilize verbal harassment, degradation, humiliation, and intimidation along with unbridled showing of deadly force against border crossers. The main concern of the mission



is with regards to excessive use of armed force. For instance, throwing rocks at agents is considered dangerous enough to justify the use of firearms. Moreover, the B.P. does not disclose figures of migrants killed by their agents at the border, and no independent investigatory entity has ever been established.

The search for undocumented migrants by B.P. agents has led to racial profiling and community insecurity. Furthermore, immigrants are not only caught by the B.P., but sometimes by U.S. citizens known as “migrant hunters”. Sometimes heavily armed, they harass and round up undocumented crossers before calling up the B.P.

## **2) Detention and Deportation Conditions**

Prison-like detention is the standard practice both in Mexico and in the United States.

**In Mexico**, detention is systematic when the Mexican authorities have doubts about the legal status of the migrant. Detentions are not based on a judicial decision but on an administrative decision and detention can be indefinite, in violation of the Mexican Constitution. In this regard, the mission notes with concern the project to reform the Regulations for the Operation of Migration Stations dated October 26th 2007, which increases the possible events that allow the deprivation of freedom to be extended indefinitely.

Despite some progress, mistreatments, extortions, and theft against migrants by immigration stations’ agents are still reported in all stations. Besides, there are unhealthy conditions and, sometimes, there is a lack of food and water. Moreover, the possibilities of making complaints or suggestions about detention conditions are limited.

Regarding deportation, both the Mexican regulations and deportation practice do not provide for an individual process that includes full opportunities to appeal against the removal so that this right is enforced.

As to the legal framework, article 33 of the Mexican Constitution establishes a serious exception to the right to effective legal action and to the respect for due process in the case of removal of aliens and, on this basis, Mexico made reservations to regional and international instruments related to the protection of migrants.

In practice, there is a serious deficiency regarding information,

communication and access to judicial protection: migrants are misinformed or even uninformed about their rights and about the reasons and forms of detention; there are no public attorneys assigned to migrants’ detention centers and it is often observed that the National Migration Institute (INM) does not issue the corresponding consular notice. Visits are restricted and the project to reform the Regulations on the Operation of Migration Stations does not include any signs of improvement. Deportation does not comply with the requirements of an individual and non-arbitrary procedure. There are not sufficient and effective protections to prevent deportation of possible refugee status seekers and bilateral agreements of “voluntary” repatriation are merely logistical and allow the INM to perform massive deportations.

**In the United States** the situation is not any better.

The Bureau of Immigration and Customs Enforcement (ICE) now applies a policy of quasi-systematic detention of undocumented migrants and their families, which has created an explosive growth in ICE detention centers. In 2007, the ICE detained about 26,500 persons a day. The average detention length is 2 or 3 months, but some can be detained for years. These quasi-mandatory or mandatory detentions are very worrying since they take place without systematic access to judicial review, and in case such review happens, it is almost systematically without access to a lawyer (84% of detained immigrants are not represented).

Migrants under detention in ICE centers are victims of abuses – from rapes and physical abuse to humiliations in public – the disciplinary process is problematic, communication possibilities are not appropriate and recreation and visiting periods are too restricted. Sometimes there are serious unhealthy conditions and proper health care is denied. Migrants do not have an appropriate access to information on how to denounce such abuses.

The immigrant population in ICE detention centers in the Southwest of the country mostly consists of:

- Undocumented immigrants arrested while crossing the desert and placed in removal proceedings, often because they passed the “credible fear” interview,
- Undocumented immigrants waiting for their traveling documents after having been ordered removed under expedited removal,
- Individuals who overstayed their visa and are subjected to removal,

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- Undocumented immigrants arrested while crossing the desert and prosecuted for illegal entry,
- Permanent residents with a criminal record subjected to mandatory deportation according to the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) of 1996.

There exists various forms of “return” that can be applicable to migrants arrested while crossing the border between the U.S. and Mexico. Today, voluntary return and expedited removal are the two main proceedings. Expedited removals are ordered by an immigration officer and not by an immigration judge, without the individual being entitled access to family support or legal assistance and there is no judicial review of the decision. Removal orders may bar the individual from returning to the U.S. for up to five years. A “credible fear” interview is mandatory to determine if the person could be considered a refugee or an asylum seeker; however, immigration officers do not implement this procedure effectively, as evidenced in various reports, to the detriment of migrants. Those in expedited removal are subject to mandatory detention and those who have expressed a credible fear of going back to their country to an immigration officer, will be placed in detention while their cases are pending.

Voluntary return, on the other hand, is not a deportation. Migrants are not prosecuted and there are no penalties such as re-entry bans. It is a very important alternative to a removal because a person who returned voluntarily to his or her country can later apply for a visa. However, it is mostly applied to Mexican nationals only, and recent figures are showing greater prosecution of the misdemeanor of illegal entry.

FIDH believes that a deep reform of migration legislations in Mexico and the United States is a must. The challenge will be to put into practice what the authorities’ speeches on human rights proclaim in many ways regarding undocumented migrants crossing the borders. In order to achieve this, the reforms should decriminalize migrants that are in an irregular administrative situation, fight impunity on acts of corruption and violence at the borders, including by officials, stop the systematic detention of migrants, and create an effective right to appeal against deportation orders. Government officials should also take the issue of migrations out of the area of fear and security to place it in the area of development and cooperation.



Items found in the desert of Arizona by Humane Borders volunteers

## RECOMMENDATIONS TO THE GOVERNMENTS OF MEXICO AND THE UNITED STATES

### 1. Change of the Paradigm in Migration Policies

The irreversible and almost irrepressible dynamics of migration flows from the Central American isthmus towards the United States, its exponential growth over the past years and the failure of current policies evidence the pressing need for the governments of Mexico and the United States to change the migration paradigm in the region.

The United States and Mexico need to go from security-based policies to migration policies that include a human development perspective to favor the respect for the civil, political, economic, social and cultural rights of migrants, whether they are in their home countries, on the migration routes or in host countries. In order to reach this goal, it is necessary to reduce considerable expenses in border militarization and detention of migrants in favor of investments on integration or development programs.

### 2. Urgent Reform of Migration Laws

#### The U.S. and Mexico Should:

- Reconcile migration laws with documents ratified internationally, especially those related to human rights;
- Decriminalize the non-possession of travel and leave to stay documents;
- Guarantee the possibility of an effective proceeding against a removal order for all migrants who are subject thereto (the legal existence of such proceeding and access to free legal advice, at least for detained migrants).

#### The Government of Mexico Should:

- Withdraw the reservation to article 13 of the ICCPR, to paragraph 4, article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to article 32 of the Convention relating to the Status of Refugees with the purpose of guaranteeing the right to submit reasons against removal and to revision by the competent authorities;

- Ratify the agreements of the ILO N° 97 of 1949, regarding migrant workers, and N° 143 of 1975, on migration in abusive conditions and promotion of equal opportunities and treatment of migrant workers.

#### The Government and Congress of the United States Should:

- Eliminate double sentence, expedited removal and mandatory detention cases;
- Abrogate the laws on the construction of a fence and on border militarization;
- Legislate with the purpose of allowing family reunion effectively;
- Ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Give legal status to the thirty-six minimum standards of detention for undocumented migrants (Detention Operations Manual - DOM).

### 3. End Violations of Migrants' Fundamental Rights, Including the Right to Life, During Border Crossings

In the United States, the "deterrence strategy", which forces migrants to endanger their own lives when crossing the border in the most dangerous places, has taken the lives of many migrants but also led to all kinds of abuses and violations. Such strategy is reinforced with border militarization, the construction of a fence, and all kinds of technology to detect and stop migrants.

#### The United States Government Should:

- Stop the implementation of a policy that is inefficient, costly and that, above all, violates migrants' human rights flagrantly;
- Demilitarize its border with Mexico and comply with the Posse Comitatus Act of 1878, which forbids the use of military forces in the national territory;
- Create an independent entity to investigate and punish

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the use of out of proportion violence and the execution of migrants by B.P. agents;

- Release the exact number of migrants victims of extrajudicial killing by B. P. agents;
- Forbid the detention of migrants by private vigilante groups, similar to the Minutemen, who search for undocumented migrants on the border crossing. In no case, detentions made by Minutemen or any other person other than a BP agent shall be considered legal.

Mexico has accepted the role of “policeman” for the U.S., the whole country has become a vast “stopper area”, full of checkpoints, police operations for mass arrests, detention centers and deportations for hundreds of thousands of migrants in transit to the north. The situation at the border is characterized by a high number of violations perpetrated by agents of immigration services, police forces and private security agents - who sometimes work in collusion with gangs that are more organized and violent every day - in total impunity.

**The Mexican Government Should:**

- Stop the presence and illegal actions of police and military forces. Some agents, with or without competence on migration matters, exceed their powers and use excessive force against persons that do not have a visa or commit other kinds of abuses; such as rapes, extortions, etc;
- Investigate and punish border gangs who act against migrants, particularly human trafficker;
- Fight corruption of officers at all levels;
- Migration authorities should take appropriate steps to ensure that migration control and safeguarding of migrants are made exclusively by authorities empowered to perform such tasks and that every violation in this regard is promptly reported;
- Report the deaths of Central-American migrants who lose their lives on the way to the USA.
- Guarantee those persons buried as unidentified persons a proper burial.

**In Both Countries the Governments Should:**

- Investigate, try and punish those responsible for

violations against migrants in order to put an end to impunity;

- Train officers that work near the border on migrants' human rights and raise their awareness of the good practices in terms of nondiscrimination and respect for such rights;
- Recognize that humanitarian aid is needed to save human lives and in no case such aid should be criminalized.

**4. Grant Guarantees to Undocumented Migrants under Arrest**

An important paradox on the situation of undocumented migrants under detention is that, despite the fact that they are not apprehended and deported for infringing the criminal law but the administrative law, they are usually treated as criminals and they are granted fewer rights than those criminals that are in penitentiaries after their trial and judicial sentence.

**Both Governments Should:**

- Guarantee the right to effective proceeding with due legal assistance for migrants subjected to a removal order; and communicate the removal order in a language that they can understand indicating the reasons for such decision;
- Limit the duration of detentions to the strict period of time needed to organize their return. Regulations that provide for the detention of undocumented migrants for an unlimited duration (U.S.) or 90 days (Mexico) should be abrogated;
- Look for alternative solutions to the administrative detention of undocumented migrants. In particular, prohibit the deprivation of freedom of unaccompanied children or families with children;
- Not allow prison-like conditions in administrative detention centers;
- Pay particular attention to the vulnerable situation of migrant unaccompanied minors. In particular, the Governments should:

- Strengthen its program for the repatriation, reception and reintegration of unaccompanied minors;

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- Provide specific training on children's rights to State officials working in border areas who come into contact with unaccompanied minors;
- Strengthen its cooperation with civil society and international organizations, in order to address the growing problem of unaccompanied minors.
- All detained migrants must be informed of and have effective access to the mechanisms to bring complaints about abuses during detention;
- Detained migrants should have access to legal and consular assistance, and access to a telephone and medical assistance;
- Consular or diplomatic authorities should be informed without delay of the arrest or detention of a migrant worker or a member of his/her family, at the migrant's request.

**In Mexico:**

- In the context of discussions on the project of Regulations for the operation of migration stations, civil society proposals should be taken into account. The possible events that allow the deprivation of freedom to be extended indefinitely should not be increased;
- Civil society should not be forbidden access to areas of detention and its work to assist migrants should not be hindered through administrative procedures;
- In general, the Government must ensure that the project conform to international standards of asylum and human rights.

**In the U.S.:**

- The "Detention Operations Manual" (minimum standards of detention) should be established as binding rules;
- Detention centers should be visited and controlled regularly by an independent entity and NGOs should be authorized to visit them;
- Detentions should not be carried out in penitentiary detention centers.

**In Central America:**

Central-American Governments must make sure that the

human rights of their citizens are respected, and they must provide the necessary funds to guarantee their access to the consular safeguards laid out by international law.

**Regarding Deportations:**

The Mexican and the US Government must make sure deportation procedures should respect access to judicial proceeding, due process and consular rights.

**In Mexico and Central America:**

- Migrants should not be returned during night time or early hours of the morning;
- Migrants should be returned to their home countries and they should not be left in the middle of the way.
- A real and practicable model for the care of unaccompanied migrant children must be created. Mexican and Central American authorities must ensure that repatriation agreements not only take into account relevant logistical procedures, but also that they include specific conditions and guarantees for unaccompanied minors.
- Central American nations must make efforts to guarantee reintegration for nationals deported from Mexico and the United States.

**5. Finally,**

The US and Mexico, as well as countries of Central America, should carry on impact assessments to evaluate how the NAFTA or the CAFTA put pressure on the migration flow.

## ANNEX I - INTERNATIONAL REGULATIONS ON MIGRATION

The international legal order does not provide for the right to migrate or settle abroad, but to leave the home country and return (article 13 of the UDHR<sup>157</sup>). The community of States has progressively developed instruments and recourses regarding the rights of migrants. Refugees and asylum seekers' rights are the most recognized and protected thanks to a series of international and regional conventions that have been adopted since 1950. More recently, a United Nations' Convention has enshrined the rights of migrant workers. The issue of people smuggling, core of several treaties adopted during the first half of the 20th century, is back on the table.

The "migrant" is, above all, a person who has rights that are safeguarded by the international and domestic human rights law.

Jurisprudence has taken specific migrants' rights from general human rights; for instance, the right not to be subjected to inhumane and degrading treatment (interpreted as a prohibition to remove foreigners and send them to a country where their fundamental rights are in danger), the right to respect for private and family life (from which the right to certain family reunion cases derives) and the right to due process.

### 1. United Nations' Instruments

#### Instruments with Universal Scope

The Convention relating to the Status of Refugees<sup>158</sup>, adopted by the General assembly of the United Nations in 1951 and so far ratified by 143 countries, is the main instrument to safeguard the rights of refugees and asylum seekers. In article 1 of the Convention the term "refugee" is defined as a person that:

"Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

This convention grants rights to refugees; such as the right to have identity documents, free transit in the territory of their country of residence, non-removal, equal treatment to that of nationals regarding labor law or access to elementary education, etc. This Convention is the cornerstone of the work carried out by the United Nations High Commissioner for Refugees (see below) and it was carried out a few months before it was adopted.

Other international instruments complement this Convention, particularly the following:

- Stateless persons' rights: Convention relating to the Status of Stateless Persons<sup>159</sup>;
- Territorial asylum: United Nations Declaration on Territorial Asylum, 1967<sup>160</sup>.

In 1990, the UN General Assembly adopted the Convention on the Rights of All Migrant Workers and Members of Their Families<sup>161</sup>. This is the seventh fundamental instrument for the protection of human rights of the UN, together with the Convention on Civil and Political Rights, the Convention on the Rights of Children, etc, which have served as the basis for a sole instrument on the rights of migrants during all stages of migration (home countries, transit, and destination). It focuses on the prevention of illegal immigration and acknowledges the fundamental rights of undocumented migrants. It is applicable to all migrant workers and members of their families, regardless of the participation of their home country to the Convention, which does not have any reciprocity condition. To this date, 35 countries have ratified this convention; however, no western country hosting migrants has signed it.

The text guarantees, both for legal and undocumented migrants, the right of non-discrimination concerning the rights established therein. On the other hand, it establishes the right to equal treatment between nationals and legal migrants (excluding irregular migrants). This is to say, equal treatment is directly related to the status of "migrant", and other rights are applicable without discrimination (mainly the traditional civil and political rights, guaranteed by the ICCPR). Regarding economic and social rights, equal treatment is related to jobs, salaries, social security, access to health services and education.

It also establishes guarantees for criminal procedures (art. 22), prohibits mass removals and acknowledges the right to individual review of each case (art. 22). The text does not provide for the right to regularization of undocumented migrants (art. 35). Only members of the families of legal migrants are protected and family reunion is encouraged (art. 44).

The right to reside in a country is related to the right to work (art. 49 I): the Convention establishes a dual system to distinguish residence permits from work permits. On the other hand, the text only provides for the protection of workers with legal status whose contracts finish before the expiration of their work permits (art. 50 ET 51).

Like other fundamental instruments of the UN, the Convention on migrant workers has a conventional entity in charge of ensuring the compliance with its provisions: the Committee on Migrant Workers (see below). This convention was ratified by Mexico on March 8th, 1999. The United States have not ratified it.

Two international instruments adopted during the past two years are also a result of the increasingly significant challenges regarding migrants' rights:

- Human Trafficking: Protocol additional to the Convention Against Transnational Organized Crime, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>162</sup>. This protocol was adopted in 2001 and entered into force in 2004<sup>163</sup>;

- Smuggling of migrants: Protocol against the Smuggling of Migrants by Land, Air and Sea, annex III to the Convention against Transnational Organized Crime. This protocol was adopted in 2001 and entered into force in 2004 .

Finally, it is important to mention that the remaining six fundamental treaties on human rights grant rights to migrant workers: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of Children; Convention on the Elimination of All Forms of Discrimination Against Women; International Convention on the Elimination of All Forms of Racial Discrimination and Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment.

The Human Rights Committee clearly stated in General Observation Nr. 15 of 1986 on the situation of aliens from

the perspective of the Covenant: "In general terms, the rights established in the Covenant are applicable to everyone, without consideration of reciprocity, regardless of the nationality and even in the case of stateless persons." Likewise: "Authorization to enter the territory can be subject to conditions related to displacement, residence or work place. (...) However, once authorization has been given to enter the territory of a State party, foreigners are granted the rights established in the Covenant". The Committee for the Elimination of Racial Discrimination also emphasizes the applicability of the Convention to noncitizens and requests the State parties to reinforce their national legislation regarding general recommendation Nr. 30 on discrimination against non-citizens of 2004.

### **Conventional Organizations and Special Procedures**

The Committee on Migrant Workers held its first session in 2004 and it is the most recently created treaty body<sup>164</sup>. It is in charge of ensuring respect and application of the Convention on the Rights of All Migrant Workers and Members of Their Families. At its annual sessions it studies periodical reports presented by State parties and it issues conclusions and recommendations that are made public. Additionally, the Committee organizes discussion days to debate on certain matters regarding the protection of migrants' rights. Following these discussion sessions, it elaborates texts to clarify the provisions of the Convention with the purpose of facilitating its enforcement by States. Likewise, the Committee will be able to receive individual communications, when at least 10 States recognize this procedure provided in article 77 of the Convention. Mexico has not made any declarations following articles 76 and 77, through which it would acknowledge the competence of the Committee to receive communications from State parties and individuals<sup>165</sup>.

As to the other treaty bodies for the protection of human rights that are applicable to migrants – such as the Committee on the Elimination of Racial Discrimination, or the Committee on Economic, Social and Cultural Rights – proceedings can be filed on violations of migrants' rights through alternative reports, individual communications, requests by investigation missions, etc.

On the other hand, the Human Rights Council provides for procedures on migrants' rights, especially through the role of United Nations Special Rapporteurs:

- The Special Rapporteur on Migrants, Jorge Bustamante (Mexico);

- The Special representative on the Rights of Internally Displaced Persons, Walter Kälin (Switzerland);
- Special Rapporteur on Trafficking in People, Especially in Women and Children, Sigma Huda (Bangladesh).

The abovementioned rapporteurs are in charge of gathering information (including victims of violations and NGOs), sending investigation missions, ensure the respect for the international regulations in force and issue recommendations. It is worth mentioning the role of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Petit (Uruguay), and of the Special Rapporteur on Violence against Women, Yakin Ertürk (Turkey).

### **Other Protection Mechanisms**

The United Nations High Commissioner for Refugees (UNHCR) was created in 1950 by the General Assembly of the United Nations, with the purpose of coordinating international action in favor of refugees and asylum seekers, to help them enter a country which can welcome them and ensure the respect for the Convention of 1951, regarding refugee status. HCR participates in the implementation and organization of refugee camps and helps other refugees to return to their home countries voluntarily. NGOs and individual victims cannot file direct appeals before the HCR.

The International Organization for Migration (IOM) was established in 1951 with the purpose of helping millions of people uprooted by World War II to resettle. Throughout time, it became the main international organization responsible for the management of migratory flows. One of its duties is the sensitization of governments and civil society towards the big challenges of migrations and the prevention of risks related thereto (especially health and safety of migrants). Additionally, it promotes respect for human dignity. However, its duties do not include any guarantee regarding the respect for the rights of migrants; consequently, the IOM has been often criticized due to its active participation in the application of governmental policies on the management of migratory flows, especially those related to removal matters.

Furthermore, it is worth mentioning other instruments on this regard: the Recommendations of Principles and Guidelines on Human Rights and People Smuggling (Report by the High Commissioner of the United Nations

for Human Rights presented to the Economic and Social Council), 2002; the Resolution of the United Nations Commission for Human Rights related to Migrants' Human Rights, 2005; and the United Nations General Assembly Resolution on the Protection of Migrants, 2004.

## **2. International Labor Organization**

The International Labor Organization (ILO) also adopted, since the end of World War II, a number of specific conventions on the situation of migrant workers, with the 1949's Convention (reviewed version) N° 97 on Migrations and Labor as its cornerstone. The ILO promotes healthcare access to migrant workers and the members of their families and equal treatment regarding income, social security and taxes. It also encourages the creation of an easier process for money remittances to the migrants' home countries and the prohibition of removal of workers with a permanent residence permit. In 1975, the Convention N° 143 on Migrant Workers of 1952 came into force. Its first article provides that "every Member to this convention is committed to respect the fundamental human rights of every migrant worker". It condemns abusive labor conditions for migrants, especially labor force trafficking, widens the provisions regarding equal treatment and possibilities to noncitizen workers and envisages family reunion for legal migrant workers, etc. Other Conventions are focused specifically on the rights of refugees and social security asylum seekers<sup>166</sup>. It is necessary to remember that almost every ILO convention can be applied to the migrants' situation, especially those related to fundamental labor standards (freedom to associate and start a collective business, prohibition of forced labor, abolition of minors' labor and of discrimination). Trade unions can turn to the Administration Council of the Bureau of International Labor Affairs when, in their opinion, a State has violated a convention to which it is a part. Likewise, trade unions can file proceedings before the Trade Union Freedom Committee if a State has infringed on the principles of trade union freedom, whether it has ratified the corresponding ILO conventions or not<sup>167</sup>.

None of these conventions enshrines the migrant's right to stay in the country where he/she works or the right to obtain the nationality. Nevertheless, they provide for a limited residence right to protect the worker from an unfair removal after his/her work contract expires.

The Convention N° 143 on migrant workers was ratified by 42 States, including immigration European countries (such



as France, Spain, Belgium and Germany). According to its 11th article, this convention is essentially devoted to the protection of migrants, referring to those admitted in a legal way as a “migrant worker”.

It does not take into account any guarantee against removals, except article 8 which dwells on workers that are victims of accidents or fall ill after their arrival (article 18 of the Resolution N° 86 takes into consideration some provisions of the same nature but extended to all immigrants, requiring the States to limit their removal and, in any case, not to base removal decisions in economic or labor criteria).

Article 8 establishes that migrant workers shall not lose their legal status when dismissed, since the fact of being dismissed alone does not justify the invalidation of their residence or work permit. Regarding irregular workers, they are granted minimum protection with article 1 of the Convention of States, which provides that their fundamental rights should be respected (this does not include equal treatment to that of national workers).

### **3. Regional Organization in the Americas**

The Organization of American States (OAS) adopted the Convention on Territorial Asylum in 1954, which was later ratified by twelve States of the region. It reaffirms the principle of freedom of movement and the rights to asylum provided in the 1969’s American Convention on Human Rights (article 22). In the Cartagena Declaration on Refugees, in 1984, the importance of the status of refugees and asylum seekers was ratified, and the States

were required to adopt regulations and implement national policies that would allow the application of International Conventions related to refugees. It also highlighted that the definition of the term “refugee” should be reviewed by adding elements which are not considered in the UN Convention of 1951, aiming to include “those people that ran away from their countries because their lives, safety, or freedom were in danger by generalized violence, external aggressions, inner conflicts, mass violations to human rights and other circumstances that constitute a serious violation of the public safety” (§3).

The Inter-American Commission is responsible for the revision of complaints from individuals and NGOs about violations of the American Declaration of the Rights and Duties of Man (1949) and the American Convention on Human Rights. This Commission can make recommendations, propose a friendly settlement for disagreements, or appeal before the Inter-American Court on Human Rights. Since 1997, the Commission appointed a Special Rapporteur on Migrant Workers and their Families<sup>168</sup>: a member of the Commission in charge of researching and issuing reports, raising awareness among States and paying special attention to the complaints and communications related to violations of the rights of migrant workers and their relatives. Since 2007, the Special Rapporteur is Florentin Melendez, who is also the chairman of the IACHR.

In 2005 the Inter-American Court on Human Rights issued a Consultation Opinion as a result of an application made by Mexico on May 10th, 2002.

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157. Art.13 §1. Everyone has the right to freedom of movement and residence within the borders of each State. §2. Everyone has the right to leave any country, including his own, and to return to his country.

158. See <http://www2.ohchr.org/english/law/refugees.htm>.

159. See <http://www2.ohchr.org/english/law/stateless.htm>

160. See [http://www.unhchr.ch/html/menu3/b/o\\_asylum.htm](http://www.unhchr.ch/html/menu3/b/o_asylum.htm).

161. See [http://www.unhchr.ch/html/menu3/b/m\\_mwctoc.htm](http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm).

162. See <http://www2.ohchr.org/english/law/protocoltraffic.htm>.

163. See <http://www2.ohchr.org/english/law/organizedcrime.htm>.

164. See <http://www2.ohchr.org/english/bodies/cmw/index.htm> .

165. The CMW “made a note” of that in tits report (above).

166. See the Covenant on Equality of Treatment (social security), N° 118, 1962, and the Covenant on Preservation of Social Security Rights, N° 157, 1982.

167. Convention N° 87 on Trade Union Freedom and Protection of Trade Union Rights, and Convention N° 98 on the Right to Organize and Collective Bargaining.

168. For further information about the mandate and activities of the Special Rapporteur and about jurisprudence matters, visit: [www.cidh.org/Migrantes/](http://www.cidh.org/Migrantes/) (in Spanish).





# fidh



## FIDH represents 155 Human Rights organisations

**ALBANIA** - ALBANIAN HUMAN RIGHTS GROUP  
**ALGERIE** - LIGUE ALGERIENNE DE DEFENSE DES DROITS DE L'HOMME  
**ALGERIE** - LIGUE ALGERIENNE DES DROITS DE L'HOMME  
**ALLEMAGNE** - INTERNATIONALE LIGA FÜR MENSCHENRECHTE  
**ARGENTINA** - CENTRO DE ESTUDIOS LEGALES Y SOCIALES  
**ARGENTINA** - COMITE DE ACCION JURIDICA  
**ARGENTINA** - LIGA ARGENTINA POR LOS DERECHOS DEL HOMBRE  
**ARMENIA** - CIVIL SOCIETY INSTITUTE  
**AUTRICHE** - OSTERREICHISCHE LIGA FÜR MENSCHENRECHTE  
**AZERBAIJAN** - HUMAN RIGHTS CENTER OF AZERBAIJAN  
**BAHRAIN** - BAHRAIN CENTER FOR HUMAN RIGHTS  
**BAHRAIN** - BAHRAIN HUMAN RIGHTS SOCIETY  
**BANGLADESH** - ODHAKAR  
**BELARUS** - HUMAN RIGHTS CENTER VIASNA  
**BELGIQUE** - LIGUE DES DROITS DE L'HOMME  
**BELGIQUE** - LIGA VOOR MENSCHENRECHTEN  
**BENIN** - LIGUE POUR LA DEFENSE DES DROITS DE L'HOMME  
**BHUTAN** - PEOPLE'S FORUM FOR HUMAN RIGHTS IN BHUTAN  
**BOLIVIA** - ASAMBLEA PERMANENTE DE LOS DERECHOS HUMANOS DE BOLIVIA  
**BOTSWANA** - THE BOTSWANA CENTRE FOR HUMAN RIGHTS - DITSHWANELO  
**BRASIL** - CENTRO DE JUSTICA GLOBAL  
**BRASIL** - MOVIMENTO NACIONAL DE DIREITOS HUMANOS  
**BURKINA** - MOVEMENT BURKINABE DES DROITS DE L'HOMME & DES PEUPLES  
**BURUNDI** - LIGUE BURUNDAISE DES DROITS DE L'HOMME  
**CAMBODGE** - LIGUE CAMBODGIENNE DE DEFENSE DES DROITS DE L'HOMME  
**CAMBODIA** - CAMBODIAN HUMAN RIGHTS AND DEVELOPMENT ASSOCIATION  
**CAMEROUN** - LIGUE CAMEROUNAISE DES DROITS DE L'HOMME  
**CAMEROUN** - MAISON DES DROITS DE L'HOMME  
**CANADA** - LIGUE DES DROITS ET DES LIBERTES DU QUEBEC  
**CHILE** - CORPORACION DE PROMOCION Y DEFENSA DE LOS DERECHOS DEL PUEBLO  
**CHINA** - HUMAN RIGHTS IN CHINA  
**COLOMBIA** - ORGANIZACION FEMININA POPULAR  
**COLOMBIA** - COMITE PERMANENTE POR LA DEFENSA DE LOS DERECHOS HUMANOS

**COLOMBIA** - CORPORACION COLECTIVO DE ABOGADOS JOSE ALVEAR RESTREPO  
**COLOMBIA** - INSTITUTO LATINO AMERICANO DE SERVICIOS LEGALES ALTERNATIVOS  
**CONGO** - OBSERVATOIRE CONGOLAIS DES DROITS DE L'HOMME  
**COSTA RICA** - ASOCIACION SERVICIOS DE PROMOCION LABORAL  
**COTE D'IVOIRE** - MOUVEMENT IVOIRIEN DES DROITS DE L'HOMME  
**COTE D'IVOIRE** - LIGUE IVOIRIENNE DES DROITS DE L'HOMME  
**CROATIE** - CIVIC COMMITTEE FOR HUMAN RIGHTS  
**CUBA** - COMISION CUBANA DE DERECHOS HUMANOS Y RECONCILIACION NACIONAL  
**DJIBOUTI** - LIGUE DJIBOUTIENNE DES DROITS HUMANIS  
**ECUADOR** - CENTRO DE DERECHOS ECONOMICOS Y SOCIALES  
**ECUADOR** - COMISION ECUMENICA DE DERECHOS HUMANOS  
**ECUADOR** - FUNDACION REGIONAL DE ASESORIA EN DERECHOS HUMANOS  
**EGYPT** - EGYPTIAN ORGANIZATION FOR HUMAN RIGHTS  
**EGYPT** - HUMAN RIGHTS ASSOCIATION FOR THE ASSISTANCE OF PRISONNERS  
**EL SALVADOR** - COMISION DE DERECHOS HUMANOS DE EL SALVADOR  
**ESPAÑA** - ASOCIACION PRO DERECHOS HUMANOS  
**ESPAÑA** - FEDERACION DE ASOCIACIONES DE DEFENSA Y DE PROMOCION DE LOS DERECHOS HUMANOS  
**ETHIOPIAN** - ETHIOPIAN HUMAN RIGHTS COUNCIL  
**EUROPE** - ASSOCIATION EUROPEENNE POUR LA DEFENSE DES DROITS DE L'HOMME  
**FINLANDE** - FINNISH LEAGUE FOR HUMAN RIGHTS  
**FRANCE** - LIGUE DES DROITS DE L'HOMME ET DU CITOYEN  
**GEORGIE** - HUMAN RIGHTS CENTER  
**GRECE** - LIGUE HELLENIQUE DES DROITS DE L'HOMME  
**GUATEMALA** - CENTRO PARA LA ACCION LEGAL EN DERECHOS HUMANOS  
**GUATEMALA** - COMISION DE DERECHOS HUMANOS DE GUATEMALA  
**GUINEE** - ORGANISATION GUINEENNE POUR LA DEFENSE DES DROITS DE L'HOMME  
**GUINEE-BISSAU** - LIGA GUINEENSE DOS DIREITOS DO HOMEM  
**HAITI** - COMITE DES AVOCATS POUR LE RESPECT DES LIBERTES INDIVIDUELLES  
**HAITI** - CENTRE OECUMENIQUE DES

DROITS DE L'HOMME  
**HAITI** - RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS  
**INDIA** - COMMONWEALTH HUMAN RIGHTS INITIATIVE  
**IRAN** - DEFENDERS OF HUMAN RIGHTS CENTER  
**IRAN** - LIGUE IRANIENNE DE DEFENSE DES DROITS DE L'HOMME  
**IRAQ** - IRAQI NETWORK FOR HUMAN RIGHTS CULTURE AND DEVELOPMENT  
**IRLANDE** - COMMITTEE ON THE ADMINISTRATION OF JUSTICE  
**IRLANDE** - IRISH COUNCIL FOR CIVIL LIBERTIES  
**ISRAEL** - ADALAH  
**ISRAEL** - ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL  
**ISRAEL** - BTSELEM  
**ISRAEL** - PUBLIC COMMITTEE AGAINST TORTURE IN ISRAEL  
**ITALIA** - LIGA ITALIANA DEI DIRITTI DELL'UOMO  
**ITALIA** - UNIONE FORENSE PER LA TUTELA DEI DIRITTI DELL'UOMO  
**JORDAN** - AMMAN CENTER FOR HUMAN RIGHTS STUDIES  
**JORDAN** - JORDAN SOCIETY FOR HUMAN RIGHTS  
**KENYA** - KENYA HUMAN RIGHTS COMMISSION  
**KIRGHIZISTAN** - KYRGYZ COMMITTEE FOR HUMAN RIGHTS  
**KOSOVO** - CONSEIL POUR LA DEFENSE DES DROITS DE L'HOMME ET DES LIBERTES  
**LAOS** - MOUVEMENT LAOTIEN POUR LES DROITS DE L'HOMME  
**LEBANON** - PALESTINIAN HUMAN RIGHTS ORGANIZATION  
**LEBANON** - FOUNDATION FOR HUMAN AND HUMANITARIAN RIGHTS IN LEBANON  
**LETTONIE** - LATVIAN HUMAN RIGHTS COMMITTEE  
**LIBAN** - ASSOCIATION LIBANAISE DES DROITS DE L'HOMME  
**LIBERIA** - LIBERIA WATCH FOR HUMAN RIGHTS  
**LIBYA** - LIBYAN LEAGUE FOR HUMAN RIGHTS  
**LITHUANIA** - LITHUANIAN HUMAN RIGHTS LEAGUE  
**MALAYSIA** - SUARAM  
**MALI** - ASSOCIATION MALIENNE DES DROITS DE L'HOMME  
**MALTA** - MALTA ASSOCIATION OF HUMAN RIGHTS  
**MAROC** - ASSOCIATION MAROCAINE DES DROITS HUMAINS  
**MAROC** - ORGANISATION MAROCAINE DES DROITS HUMAINS  
**MAURITANIE** - ASSOCIATION MAURITANIEENNE DES DROITS DE L'HOMME  
**MEXICO** - COMISION MEXICANA DE

DEFENSA Y PROMOCION DE LOS DERECHOS HUMANOS  
**MEXICO** - LIGA MEXICANA POR LA DEFENSA DE LOS DERECHOS HUMANOS  
**MOLDOVA** - LEAGUE FOR THE DEFENCE OF HUMAN RIGHTS IN MOLDOVA  
**MOZAMBIQUE** - LIGA MOCANBICANA DOS DIREITOS HUMANOS  
**NETHERLAND** - LIGA VOOR DE RECHTEN VAN DE MENS  
**NICARAGUA** - CENTRO NICARAGUENSE DE DERECHOS HUMANOS  
**NIGER** - ASSOCIATION NIGERIENNE DES DROITS DE L'HOMME  
**NIGERIA** - CIVIL LIBERTIES ORGANISATION  
**NOUVELLE CALEDONIE** - LIGUE DES DROITS DE L'HOMME DE NOUVELLE CALEDONIE  
**OCCUPIED PALESTINIAN TERRITORIES** - RAMALLAH CENTRE FOR HUMAN RIGHTS STUDIES  
**OCCUPIED PALESTINIAN TERRITORIES** - AL HAQ  
**OCCUPIED PALESTINIAN TERRITORIES** - PALESTINIAN CENTRE FOR HUMAN RIGHTS  
**PAKISTAN** - HUMAN RIGHTS COMMISSION OF PAKISTAN  
**PANAMA** - CENTRO DE CAPACITACION SOCIAL  
**PERU** - ASOCIACION PRO DERECHOS HUMANOS  
**PERU** - CENTRO DE ASESORIA LABORAL  
**PHILIPPINE** - PHILIPPINE ALLIANCE OF HUMAN RIGHTS ADVOCATES  
**POLYNESIE** - LIGUE POLYNESIENNE DES DROITS HUMAINS  
**PORTUGAL** - CIVITAS  
**RDC** - ASSOCIATION AFRICAINE DES DROITS DE L'HOMME  
**RDC** - GROUPE LOTUS  
**RDC** - LIGUE DES ELECTEURS  
**RÉPUBLIQUE CENTRAFRICAINE** - LIGUE CENTRAFRICAINE DES DROITS DE L'HOMME  
**RÉPUBLIQUE CENTRAFRICAINE** - ORGANISATION POUR LA COMPASSION ET LE DEVELOPPEMENT DES FAMILLES EN DETRESSE  
**RÉPUBLIQUE DOMINICAINE** - COMISION NACIONAL DE LOS DERECHOS HUMANOS  
**RÉPUBLIQUE TCHÈQUE** - HUMAN RIGHTS LEAGUE  
**ROUMANIE** - LIGUE POUR LA DEFENSE DES DROITS DE L'HOMME  
**RUSSIA** - CITIZEN'S WATCH  
**RUSSIA** - MOSCOW RESEARCH CENTER FOR HUMAN RIGHTS  
**RWANDA** - ASSOCIATION POUR LA DEFENSE DES DROITS DES

PERSONNES ET LIBERTES PUBLIQUES  
**RWANDA** - COLLECTIF DES LIGUES POUR LA DEFENSE DES DROITS DE L'HOMME  
**RWANDA** - LIGUE RWANDAISE POUR LA PROMOTION ET LA DEFENSE DES DROITS DE L'HOMME  
**SENEGAL** - RENCONTRE AFRICAINE POUR LA DEFENSE DES DROITS DE L'HOMME  
**SENEGAL** - ORGANISATION NATIONALE DES DROITS DE L'HOMME  
**SERBIE** - CENTER FOR PEACE AND DEMOCRACY DEVELOPMENT  
**SUDAN** - SUDAN HUMAN RIGHTS ORGANISATION  
**SUDAN** - SUDAN ORGANISATION AGAINST TORTURE  
**SUISSE** - LIGUE SUISSE DES DROITS DE L'HOMME  
**SYRIA** - DAMASCUS CENTER FOR HUMAN RIGHTS STUDIES  
**SYRIE** - COMITE POUR LA DEFENSE DES DROITS DE L'HOMME EN SYRIE  
**TAIWAN** - TAIWAN ALLIANCE FOR HUMAN RIGHTS  
**TANZANIA** - THE LEGAL & HUMAN RIGHTS CENTRE  
**TCHAD** - ASSOCIATION TCHADIENNE POUR LA PROMOTION ET LA DEFENSE DES DROITS DE L'HOMME (ATPDH)  
**TCHAD** - LIGUE TCHADIENNE DES DROITS DE L'HOMME  
**THAILAND** - UNION FOR CIVIL LIBERTY  
**TOGO** - LIGUE TOGOLAISE DES DROITS DE L'HOMME  
**TUNISIE** - ASSOCIATION TUNISIENNE DES FEMMES DEMOCRATES  
**TUNISIE** - CONSEIL NATIONAL POUR LES LIBERTES EN TUNISIE  
**TUNISIE** - LIGUE TUNISIENNE DES DROITS DE L'HOMME  
**TURKEY** - HUMAN RIGHTS FOUNDATION OF TURKEY  
**TURKEY** - INSAN HAKLARI DERNEGI / ANKARA  
**TURKEY** - INSAN HAKLARI DERNEGI / DIARBAKIR  
**UGANDA** - FOUNDATION FOR HUMAN RIGHTS INITIATIVE  
**UNITED KINGDOM** - LIBERTY  
**USA** - CENTER FOR CONSTITUTIONAL RIGHTS  
**UZBEKISTAN** - HUMAN RIGHT SOCIETY OF UZBEKISTAN  
**UZBEKISTAN** - LEGAL AID SOCIETY  
**VIETNAM** - COMMITTEE ON HUMAN RIGHTS & QUE ME : ACTION FOR DEMOCRACY IN VIETNAM  
**YEMEN** - HUMAN RIGHTS INFORMATION AND TRAINING CENTER  
**YEMEN** - SISTERS' ARABIC FORUM FOR HUMAN RIGHTS  
**ZIMBABWE** - HUMAN RIGHTS ASSOCIATION

The International Federation for Human Rights (FIDH) is an international non-governmental organisation dedicated to the world-wide defence of human rights as defined by the Universal Declaration of Human Rights of 1948. Founded in 1922, the FIDH has 155 national affiliates in all regions. To date, the FIDH has undertaken more than a thousand international fact-finding, judicial, mediation or training missions in over one hundred countries.

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