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Abdelhamid El Jamri
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UN Committee on Migrant Workers
Human Rights Treaties Division
Office of the High Commissioner for Human
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Dear Mr El Jamri,

COUNTRY: MEXICO

Amnesty International would like to submit the following report, in advance of the consideration of the second periodic report of Mexico during the 14th session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter: the Committee).

- *Invisible victims: Migrants on the move in Mexico* (Index: AMR 41/014/2010), April 2010.

The organization would appreciate it if you would arrange for the circulation of this letter and the enclosed report to the other members of the Committee.

The report and update information contained in this letter raise concerns primarily under Articles 7, 9, 10, 15, 16, 33, 73, 83 and 84 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter: the Convention).

Amnesty International recognises that the government of Mexico is a leading advocate of the rights of migrant workers on the international stage, including hosting the Global Forum on Migration in 2010, and has taken important measures to reduce some violations of migrants' rights in Mexico. However, the widespread abuses suffered by irregular migrants in transit in Mexico continue unabated and measures taken have so far been inadequate.

ABUSES BY NON-STATE ACTORS AGAINST MIGRANTS (ARTICLES 9 AND 16)

Chapter 2 of the report demonstrates the failures of the Mexican authorities to address widespread abuses by non-state actors against irregular migrants. Amnesty International's research details the dangers of the migrants' journey, which often involves kidnapping, threats and assault by criminal gangs. Extortion and sexual violence are common, and many migrants go missing or are killed. These issues raise concerns primarily under Article 9 (the right to life) and Article 16 (right to liberty and security of person). In this respect, Amnesty International believes that Mexico has so far failed to exercise its due diligence obligations to respect, protect and fulfil the human rights of migrants.

Since the publication of the report abuses of this nature have continued. In August 2010, 72 migrants (mainly of Central American origin) were shot and killed by a criminal gang in Tamaulipas state. At least 16 bodies remain to be identified. Eight suspects have been detained and investigations continue, but concerns remain that all those responsible have not been brought to justice. On 16 December 2010, shortly after a joint operation by the Federal Police and migration officials in Oaxaca state resulting in the detention of 92 migrants travelling on a freight train, a criminal gang targeted the remaining migrants and abducted more than 40 people. The fate of the abducted migrants has not been clarified or their whereabouts established.

In response to the mass killing of migrants in August 2010 the government announced a five-point plan for improving measures to prevent and punish those responsible for abductions of migrants. These measures include improved coordination of the different agencies involved. Despite these commitments, Amnesty International continues to detect a clear absence of leadership to ensure effective coordination between the migration services, Federal Police, Attorney General's Office as well as state and municipal authorities to improve the protection of migrants' rights. The government also made commitments to report on progress in the implementation of the plan, but as yet this information has not been made public.

HUMAN RIGHTS VIOLATIONS BY STATE OFFICIALS (ARTICLES 9, 10, 15 AND 16)

Chapter 3 of the report documents instances where federal and state officials are either directly involved in human rights violations against irregular migrants, or implicated in the abuses committed by criminal gangs. Extortion of irregular migrants by authorities under the pretext of carrying out unlawful migration checks remains widespread and frequently leads to further human rights violations, such as threats, ill treatment and sexual violence. Amnesty International also documented cases where the authorities used excessive force, including lethal force in cases where there was no threat to the security forces or passers-by, sometimes ending in death. The organization also found frequent failure to ensure that operations to detain migrants are conducted in a manner which does not place at risk the lives and physical integrity of migrants - for example, not at night, when the train is moving or in dangerous and isolated regions. Concerns under this section revolve primarily around Article 9 (the right to life), Article 10 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment), Article 15 (prohibition of arbitrary deprivation of property) and Article 16 (right to liberty and security of person).

REPATRIATION (ARTICLE 33)

In Chapter 4 of the report, the Sections on *Voluntary repatriation* (p27) and *Right to information and legal advice* (p28) discuss the consequences of the application of the "voluntary repatriation" system on the human rights of irregular migrants. Amnesty International's research shows that, despite official procedures requiring migration agents to do so, Mexican authorities routinely fail to provide migrants in detention with full and clear information, in a language they understand, about their rights, the migration process, consular access, legal advice, asylum and the right to file a complaint. None of the migrants interviewed by Amnesty International who were either in detention or had been detained in the past could confirm that they had received even basic information about their rights, other than their right to request voluntary repatriation. This section raises concerns primarily under Article 33 (the right to be informed of applicable rights). Additionally, the section raises concerns also under Article 22, to which Mexico filed a reservation (see below).

REMEDY, REDRESS AND PROTECTION (ARTICLES 7 AND 83)

Chapter 4 of the report discusses violations to the right to an effective remedy of irregular migrant workers in Mexico. Amnesty International found that most of the abuses against irregular migrants are under-reported. Although, according to Mexican legal provisions, irregular migrants who file a legal complaint can secure a visa awaiting the outcome of the criminal proceedings, immediate repatriation and lack of adequate information often effectively prevent many migrants from participating in criminal investigations or obtaining temporary visas. The manner in which the “voluntary repatriation” system is administered thus contributes to the lack of effective access to remedies for irregular migrants. This section raises concerns primarily under Article 7 (obligation to respect and ensure the rights provided for in the Convention) and Article 83 (right to an effective remedy).

In response to information provided by the Mexican government in its report to the Committee, it is important to note that while official data indicates a significant number of migrants who have successfully obtained humanitarian visas, Amnesty International was informed by migration officials that only a small proportion of these actually relate to migrants who have been victims of crime. In fact, many migrant victims of crimes interviewed by migration officials informed Amnesty International that they were never made aware of the possibility of obtaining a humanitarian visa.

Amnesty International welcomes the recent reform of article 67 of the General Population Law. This reform ends legal discrimination against irregular migrants which prevented equal access to justice due to the threat of deportation when seeking legal remedy. However, it is important that this reform is accompanied by training of public officials and awareness raising amongst migrant communities to inform them that irregular migration status cannot be used to obstruct access to legal complaints or obtain humanitarian visas during the period of criminal investigation.

Despite the courage shown by migrants when filing criminal complaints against their abusers, criminal investigations by federal and state prosecutors and police are extremely lengthy and ineffective with very poor outcomes. The absence of clear protection mechanisms and medical support for migrant victims and witnesses is a further deterrent to pursuing justice, particularly for victims of sexual violence. As a result of the State’s ongoing failure to effectively investigate and prosecute those responsible for human rights violations and abuses committed against irregular migrants, the perpetrators continue to enjoy impunity. Even in cases of people trafficking, which have been a government priority, there are few recorded cases and, as far as Amnesty International is aware, only one successful prosecution.

In relation to public officials and non state actors held to account for abuses, Mexico’s report to the Committee mainly focuses on the number of complaints against migration officials made to the National Human Rights Commission (CNDH). However, the CNDH enquiries are not a substitute for disciplinary or criminal investigations and do not necessarily have legal consequences for perpetrators. Mexico’s report contains no reference to the number of prosecutions or convictions of migration officials, police, military, prosecutors and other public officials implicated in human rights violations against migrants. There is even less data available on investigation, prosecution and conviction of abuses committed by non-state actors in federal as well as state jurisdictions.¹ The absence of reliable data gathered or published to indicate state and non-state actors held to account for human rights violations and abuses against migrants denies the authorities and civil society the means of evaluating the impact of government policy and is illustrative of deficiencies in accountability mechanisms and the lack of remedy available to victims. The government has also failed to fulfil a commitment to establish a database on migrants reported missing by their families and friends, which should be cross-referenced with unidentified bodies discovered in Mexico. As a result of this failure, relatives in Central America are left without any means of knowing the fate of their family members who disappear in transit in Mexico.

¹ The Special Prosecutor for crimes against migrants established in Chiapas state is an exception and is an important model that should be followed by the federal authorities and other states.

Additionally, Amnesty International would like to highlight the role of migrants rights defenders who provide crucial humanitarian assistance to migrants in a network of shelters throughout Mexico. These human rights defenders provide migrants with information, record abuses suffered and encourage migrants to file and pursue complaints with the authorities. In many respects, these shelters provide the only safe environment for migrants. However, migrants rights defenders have repeatedly been threatened and the premises attacked for the work they do, often by criminal gangs. Amnesty International has issued a series of urgent actions on behalf of migrants rights defenders at risk in recent years. The government's failure to implement its commitment to establish a human rights defender protection mechanism to ensure prompt protection of those at risk and effective investigation of threats and attacks continues to leave human rights defenders vulnerable to attack.²

ARTICLES 73 AND 84 (GENERAL MEASURES OF IMPLEMENTATION)

Mexico filed an interpretative declaration to the Convention, stating that "Upon ratifying the [Convention], the Government of the United Mexican States reaffirms its political will to ensure international protection of the rights of all migrant workers, in accordance with this international instrument. All the provisions of this Convention will be applied in conformity with its national legislation." Mexico also filed a reservation to Article 22, paragraph 4, of the Convention, in favour of Article 33 of the Mexican Constitution and Article 125 of the General Population Act.³ Amnesty International welcomes Mexico's review of migration legislation and initiatives to reform both pieces of legislation, but the slow progress of reforms means that Article 33 of the Constitution continues to allow the executive to expel foreign nationals "immediately and without a judicial hearing", if it deems their permanence in Mexico "inconvenient".⁴

The proposed Constitutional reforms to give effect in domestic law to international human rights treaties ratified by Mexico, including substantial changes to article 33 remain pending (and the interpretive declaration and reservation to the convention have not been removed).⁵ Amnesty International hopes that the bill, which has been approved by the Chamber of Deputies, will shortly be approved by the Senate and the required number of states of the federation to enable the reform to

² Amnesty International, *Mexico: Migrants' rights defender at risk: José Alberto Donis Rodríguez*, UA: 240/10, Index: AMR 41/084/2010, 16 November 2010; *Mexico: Further information: Staff and migrants at a shelter threatened*, Further information on UA: 277/09, Index: AMR 41/089/2010, 8 December 2010; *Mexico: Fears for staff and migrants at shelter*, Urgent Action: 16/11, Index: AMR 41/003/2011, 1 February 2011.

³ "The Government of the United Mexican States makes an express reservation with regard to article 22, paragraph 4, of this Convention, insofar as it refers to the application of article 33 of the Political Constitution of the United Mexican States and article 125 of the General Population Act."

⁴ Article 33 of the Constitution provides: "Son extranjeros los que no posean las calidades determinadas en el artículo 30. Tienen derecho a las garantías que otorga el Capítulo I, Título Primero, de la presente Constitución; pero el Ejecutivo de la Unión tendrá la facultad exclusiva de hacer abandonar el territorio nacional, inmediatamente y sin necesidad de juicio previo, a todo extranjero cuya permanencia juzgue inconveniente. Los extranjeros no podrán de ninguna manera inmiscuirse en los asuntos políticos del país" ("Foreigners are those who do not possess the qualifications set forth in article 30. They are entitled to the guarantees provided for in Chapter I, Title I, of this Constitution; however, the Executive of the Union shall have exclusive authority to ensure that any foreigner whose presence it considers inconvenient abandons the national territory immediately and without a judicial hearing needed. Foreigners may not in any way interfere with the political affairs of the country").

⁵ Draft Article 33, as formulated in the Constitutional reforms, provides: "Artículo 33. Son personas extranjeras las que no posean las calidades determinadas en el artículo 30 constitucional y gozarán de los derechos humanos y garantías que reconoce esta Constitución. El Ejecutivo de la Unión, previa audiencia, podrá expulsar del territorio nacional a personas extranjeras con fundamento en la ley, la cual regulará el procedimiento administrativo, así como el lugar y tiempo que dure la detención."

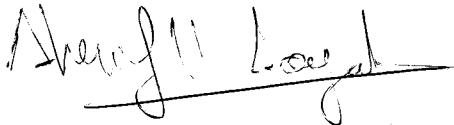
enter into force promptly.⁶ Nevertheless, the process is likely to take many months or even years. In the meantime, the government should abide by the reform and ensure the right of non-Mexicans to a hearing prior to expulsion and all Constitutional guarantees, which include guarantees provided for under international human rights law.

Amnesty International also welcomes proposals to replace the General Population Law with a specific Migration Law. The draft of this bill was recently made public and was approved by the Senate at the end of February. It will now be discussed by the Chamber of Deputies. The bill incorporates some important improvements in the recognition of rights of migrants and obligation of the State to respect, protect and fulfil these rights. However, Amnesty International's research has repeatedly shown that migration officials and other public officials responsible for applying migration law routinely fail to comply with existing legal obligations or to work in effective coordination with other agencies to combat abuses against migrants. The bill continues to allow wide discretionary powers to Federal Police carrying out migration checks without sufficient controls by migration authorities. The draft legislation does not sufficiently address these issues or the urgent need to strengthen supervision and accountability mechanisms and reliable data gathering in order to ensure that civil society and the authorities have adequate information to evaluate the impact of migration legislation, policy and practice. It is vital that proposals made by migrants' rights experts and human rights organizations to modify the proposed bill are incorporated to ensure it fully complies with international human rights law and standards.

Finally, Chapter 6 of Amnesty International's report provides detailed recommendations for the respect, protection and promotion of the rights enshrined in the Convention. These recommendations include effectively enabling migrants to file complaints of human rights violations and ensuring their investigation.

I hope this information is of interest to you. Please do not hesitate to contact me if you have any queries on the above or the attached.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sherif Elsayed-Ali', written over a horizontal line.

Sherif Elsayed-Ali
Head of Refugee and Migrants' Rights

⁶The organization nonetheless remains concerned that proposed reforms to Article 11 of the Constitution do not meet international standards on the rights of refugees and asylum seekers.