

**Input for the review of the Periodic report by Mexico**  
to the UN Committee on Migrant Workers  
Geneva, 16 March 2011

On the occasion of the review of the periodic report of Mexico by the UN Committee on the Protection of the Rights of All Migrant Workers and their Families, the International Catholic Migration Commission (ICMC) hereby submits the following input and concerns.

Since 1951, ICMC has been serving and protecting uprooted people regardless of faith, race, ethnicity, nationality, or immigration status. Today, ICMC has staff and programs in over 40 countries and maintains a network of members and partners worldwide, including in Mexico as well as in countries in which large numbers of Mexican nationals are migrants.

It is in cooperation with this network that ICMC calls the Committee's attention to certain gaps in implementation of the international Migrant Workers Convention in Mexico, and offers a series of practical recommendations to address those gaps. Together with our network, we express the hope that this input and the Committee's review will encourage action by Mexico as it fulfils its obligations under the Convention to protect migrant workers.

The first part of this input will address in particular the situation of Central American migrants in Mexico and the added vulnerability of migrants who fall victim to serious crime. The major issues of concern, migrant *kidnapping* and the security of *migrants in transit*, fall well under the obligation of states parties to the Convention to guarantee the "right to liberty and security of person", as well as the Convention's scope as it applies to migrants "during the entire migration process...which comprises preparation for migration, departure, transit."

The second part of this input calls attention to the situation of Mexican nationals abroad.

The third and final part frames for the Committee a list of questions for Mexico to assess and to encourage its effective implementation of the Convention.

First however, we commend Mexico's many efforts to improve compliance with the Convention. In this regard, it is only fair—and important—to acknowledge the scale and nature of migration movement across Mexico's southern border, and the additional challenges such movement can pose to any country. Much of this migration is irregular and involves undocumented migrants fleeing physical and/or economic insecurity arising from situations of political upheaval or enduring conflict throughout the region. Indeed, while this input focuses on Mexico's protection of the rights of those migrating, what is also needed is more deliberate attention by states and other actors beyond Mexico to address the root causes that drive so many to migrate.

We commend in particular the recent passage of the "Law on Refugees and Complementary Protection," which widens the refugee definition and affirms the principle of non-refoulement, President Calderon's efforts to clean up the National Institution for Migration; and recent action by the Mexican Senate to protect migrant rights defenders from threat and intimidation. These

are solid steps towards better compliance with the Convention and we hope to see their effective implementation in practice.

## **Part I. Protecting Central American migrants in Mexico**

### **The rise of kidnapping: criminal in nature, requiring a protection-sensitive response**

The rise in kidnapping is a phenomenon in Mexico concerning more than just the migrants, in particular in regions most affected by organized crime. At the same time, the increasing trend in the kidnapping of *migrants* presents a complex challenge for enforcement and immigration authorities, i.e, kidnapping *de jure*: a crime in its own right, distinct from human trafficking and smuggling.

What makes it so complex is illustrated in the increasingly common case of the kidnapping of Central American migrants for ransom: responders must deal with the multiple identities of the victim, who is at once a victim, a migrant, and often undocumented. These identities make the migrants particularly vulnerable to intimidation by perpetrators to not report crimes out of fear of punitive immigration action. Their hesitance to report crimes not only prevents victims from receiving the protection and redress to which they have a right, but makes the task of enforcement more difficult as victims do not provide them with important information.

It is therefore essential that the response to the kidnapping of migrants involves strong-handed enforcement action, not against the victims but towards the perpetrators, recognizing migrant *victims* as human beings who have been violated by a serious crime, *regardless of their administrative immigration status*. For such enforcement action to be effective, strategies and measures need to address organized criminal networks of national and international natures.

### **Reports from the field**

Nor are the perpetrators, even within the country, all Mexican nationals. Enforcement officials and processes must be prepared—and take great care—in these situations to distinguish between the vast majority of migrants (“classic” migrants, if you will) who are the object and victims of the criminal networks, and a much smaller number who may present themselves as migrants but are, in fact, agents of these networks, actively engaging in the victimization of others.

Concerns have been expressed about a lack of timely or effective response to a recent abduction of thirty Central American migrants. In some accounts of kidnappings, victims and witnesses describe police officers complicit in the crimes, cooperating and colluding with criminals. There have been reports of police stopping government-run trains to aid the abduction of migrants, and even their direct involvement in kidnapping and torture to extort ransom from families.

### **Application of the Convention**

Such situations invoke Mexico’s obligations under Article 16 of the Convention, which states that “Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.” Whether the occurrence and recurrence of such non/maleficance is due to the lack of will or capacity, it is clear that enforcement authorities are not, at present, adequately providing the *effective* protection to migrants that the Convention requires.

It is noteworthy that the range of abuses present in these kidnapping implicates not only basic human dignity, but also several core international instruments to which Mexico is a signatory beyond the Migrant Workers Convention. For instance, as the kidnappings regularly involve torture, rape, and violence against youth and women migrants, Mexico is further legally bound to act by the International Convention against Torture, the Convention on the Rights of the Child, and the Convention to Eliminate Discrimination against Women.

As further elaborated below, and with specific recommendations, a sufficient response to the kidnapping of migrants in transit requires:

- a. training of enforcement officials to effectively identify and protect migrant victims of kidnapping, human trafficking and violence regardless of their nationality and immigration status
- b. protecting “migrants in transit” and those who respond to their human needs and rights
- c. improved public awareness of migrants’ rights, and
- d. multi-lateral and bilateral cooperation with other relevant states.

*Recommendation 1:* Together with other states in the region, Mexico should further develop its engagement of non-government actors in all of these efforts, from identification and protection of migrant victims to improving multilateral and bilateral cooperation.

**a. Identification and protection of migrant victims of kidnapping, human trafficking and violence**

*Reports from the field*

We bring to the Committee concerns from those who work directly with migrants about the need to protect and assist migrant victims and witnesses of crime. Their first-hand experiences confirm the need for the creation of efficient mechanisms for victim identification and care. *We emphasize that the protection of migrant victims requires awareness that reporting a crime will not make migrants subject to punitive immigration enforcement or the loss of their right to liberty, as it is guaranteed in Article 16 of the Convention.*

*Recommendation 2:* It is essential that Mexico regularizes a policy of “safe reporting,” where victims feel safe enough to report a crime regardless of their nationality and immigration status.

*Victim identification*

Whether the crime is kidnapping or trafficking—indeed whatever the crime, what we emphasize is the identification of the victims as such—as victims first and foremost, with a set of needs and legal rights that have priority over any question of their nationality or immigration status. In particular:

*Recommendation 3:* It must be ensured that a victim’s *administrative status* as an undocumented migrant does not overshadow his or her *identity as a human being* who, violated by crime, has recourse to a specific set of rights, including access to urgent health and psychosocial care and access to justice. Furthermore, with respect to the protection of migrant victims and witnesses of crime, we reject any suggestion that only those who bring information to enforcement officials will be protected. The proposition that protection should be limited only to the few people who are able to inform enforcement

officials, or are deemed useful by enforcement officials for that purpose, has no sense of moral or legal fairness.

*Additional criminal justice value of broad victim protection*

Broad protection for *all* victims and witnesses should not be underestimated in its potential to improve the enforcement of justice and increase overall security. In our experience, where all victims and witnesses are guaranteed basic rights and protection, they are more likely to cooperate with law enforcement to help find and prosecute criminals. Such cooperation and information is essential to attacking a root cause of violent movement of undocumented migrants through Mexico with criminal gangs, who as in the case of the Tamaulipas massacre, attempt to recruit and coerce Central American migrants to work for them.

*Recommendation 4:* Mexico must act to increase protection and access to justice for all migrant victims of crime, with a particular sensitivity to more vulnerable migrants, such as those who are undocumented, women, and children. Doing so requires that the state conveys to enforcement officials at all levels that migrant victims of kidnapping, trafficking and violence are to be protected and their rights upheld regardless of their nationality or immigration status.

*b. Protecting “migrants in transit”, their defenders and others who respond to their human needs and rights*

It is imperative to recognize that the transitory status of migrants “on the move” does not remove the moral and legal obligation of the state to protect them as human beings on its territory. Central American migrants en route to the United States through Mexico are not to be dismissed as migrants with no rights because of their temporariness in the country.

*Recommendation 5:* Migrants must be afforded basic protection from crime (a) first as human beings entitled to protection without discrimination under national law and the provisions of core international human rights treaties, and also (b) as migrant workers (either working in their countries of transit, in search of work in their country of destination, or both), and the members of their families, expressly entitled to protection under the Migrant Workers Convention.

Moreover, the protection of migrants in transit would not be possible without the work of civil society members who defend and provide migrants with basic first-response services. Indeed, these community servants and defenders contribute to Mexico’s compliance with its obligations under the Migrant Workers Convention. Yet their safety has been increasingly at risk—church organization *Dimension Pastoral para la Movilidad Humana* (DPMH) points to reports of security incidents against migrant rights defenders increasing from 16 between 2004 and 2009 to 28 in 2010 alone.

*Recommendation 6:* Upholding the rights of migrants necessitates that those who defend and aid them—community leaders who run shelters, provide food and first aid, and advocate for migrant victims of crime—are given effective protection from threats from criminal groups and anyone who works with them, including corrupt officials. *For this protection to be effective however, the state must provide clear and consistent instruction to enforcement officials on the ground expressing a genuine commitment to protecting these actors.*

### **c. Improving public awareness**

Public awareness programs are needed for both policy makers/enforcers and the public to improve respect for migrants' rights from all sectors of society. Building on recent initiatives, To increase public awareness of the state's institutional commitment to protect migrants, Mexico must take a more forceful public stance on the rights of migrants.

*Recommendation 7:* Skills-building trainings for enforcement officials, such as the National Institute for Migration's collaboration with UNHCR to train child protection officers, are valuable tools that bolster political will and capacity. For both the Mexican public and migrants, campaigns to disseminate information on the rights of migrants are keys to increasing awareness of the law and dispelling fears of punitive action when reporting crimes.

### **d. Improving multi-lateral and bilateral cooperation**

Article 64 of the Convention expresses the importance of multilateral cooperation to protect migrants' rights across borders: "State Parties concerned shall as appropriate consult and cooperate with a view to promoting sound, equitable, and humane conditions in connection with international migration of workers and members of their families." Over and beyond the multi-state character of international migration, the rise in kidnappings, human trafficking and other violence in cross-Mexico migration is often a product of activities planned and/or undertaken not just in Mexico but in other states as well.

*Recommendation 8:* We urge Mexico to work with Central and South American states of origin and with the US and other countries of destination to develop solutions to improve the safety of migrant workers in transit. The Migrant Workers Convention calls especially on states to prevent the trafficking of migrants. As a state in which only part of this typically multi-state crime occurs, it is important for Mexico to collaborate further with the US and Central and South American states to combat trafficking. Regional movements of both migrant workers and criminals require regional action to control criminal activity and improve the safety of migrants seeking work..

## **Part II. Mexican nationals abroad**

The position of Mexican migrants is particularly challenging in the United States, where a recent law in the state of Arizona permits officials to ask for immigration documentation at any point, with the aim of identifying and deporting undocumented migrants. We applaud the state of Mexico's swift response of creating additional consular offices in Arizona, and President Calderon's statement in the United States condemning the law. We echo the call of the United States Conference of Catholic Bishops for US immigration reform that includes a legalization program that provides migrant workers and their families: an opportunity to earn legal permanent residency and eventual citizenship; a new worker visa program that protects the labor rights of both U.S. and foreign workers and gives participants the option to earn permanent residency; reform of the U.S. family-based immigration system to reduce waiting times for family reunification; and restoration of due process protections for immigrants, including asylum-seekers. Mexico's continued engagement with the United States and its own efforts to lead by example will help improve the condition of countless migrants.

### **Reports from the field**

We received reports of some Mexican nationals deported from the United States being assaulted following their night time returns by police in border towns in the states of Baja California and Tamaulipas. This situation calls for an immediate response to protect deported nationals domestically as well as continued cooperation with the United States to ensure just deportation circumstances.

In this regard and in line with Article 65(1)(c) of the Migrant Workers Convention, which requires Mexico as a state party to provide information to “...workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters”, we would be interested to know of any steps Mexico is taking to promote regularization of Mexican nationals either working or in the process of migrating to work in United States, and the members of their families.

### **Part III. Questions for the state of Mexico**

We thank the Committee for its attention and propose the following questions for the state of Mexico:

1. *Kidnapping:*
  - a. How many investigations of migrant kidnapping have been conducted and how many have resulted in convictions?
  - b. Is there disaggregated data on the number of *undocumented* migrants and migrants in transit who have reported kidnapping?
2. *Victim identification and protection:*
  - a. What legal rights, assistance, or psychosocial resources are made available to migrant victims of kidnapping and other crimes? How many victims have actually been provided with these rights and resources?
  - b. Are migrant victims and witnesses given the right to recourse regardless of immigration status?
3. *Capacity-building and public awareness:*
  - a. What capacity-building trainings have been completed or planned to help enforcement officials identify migrant victims of kidnapping, human trafficking and other crimes to ensure that their rights are upheld?
4. *Protection for defenders and others who aid migrants:*
  - a. Please describe measures taken by the state to protect NGOs, migrants’ rights defenders, and community servants from threat and intimidation.
5. *Multilateral and bilateral cooperation:*
  - a. On the issue of addressing the safety of migrant workers and combating regional crime affecting migrants, such as human trafficking and kidnapping, what multi-lateral or bilateral agreements with Central and South American states have transpired and what future collaboration is planned?
6. *Mexican nationals abroad:*

- a. What further action is planned to improve the protection of documented and undocumented Mexican nationals in the United States and elsewhere, including efforts to promote regularization?