

Summer 2012

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Recommended Citation

Evelyn H. Cruz, *Through Mexican Eyes: Mexican Perspectives on Transmigration*, 46 Val. U. L. Rev. 1019 (2012).

Available at: <https://scholar.valpo.edu/vulr/vol46/iss4/2>

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THROUGH MEXICAN EYES: MEXICAN PERSPECTIVES ON TRANSMIGRATION

Evelyn H. Cruz*

I. INTRODUCTION

This Article focuses on the phenomenon of international transmigration in Mexico. Transmigration is the movement of individuals from their place of origin through another without intention to settle and on their way to a final destination. Mexico's transmigrant population consists of individuals headed or returning to the southern Mexican region from the United States or Canada.¹ But this population also includes Central and South American transmigrants attempting to reach the United States using land routes through Mexico. For the most part, this Article does not discuss the experiences of domestic transmigrants. Rather, the bulk of this Article addresses international transmigrants found in the southern Mexican border.

This Article begins in Part II by establishing the historical and culturally interconnected nature of the southern border region and the means by which transmigrants cross through Mexico on their way north. Then, in Part III, this Article explains the governmental structures and laws affecting the migration.² This is especially important since Mexico's immigration laws are in a transition process. In Part IV, much attention is given to the vast reports of human rights violations against transmigrants reported by non-government organizations ("NGOs") and

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¹ Mexican authorities use the label "irregular migrants" to describe foreign persons without immigration status in Mexico. The term "transmigrant" in this Article is used in reference to irregular migrants who travel through Mexico to a third country. The term "migrant" is used to describe domestic and foreign transmigrants collectively.

² A stylistic decision was made to translate the names of the articles, reports, and institutions into English. The Spanish titles have been included along with any related acronyms. Institutions and agencies are then addressed by their official acronym. Furthermore, Mexican statutes have been translated into English without capturing the original Spanish in the article. Exactness of translation of statutes is critical when arguing legal merits, but as this is not the purpose of the Article, the Author has not observed translation exactitude.

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the media. Finally, in Part VI, this Article makes some modest observations on the current status of transmigration in Mexico, particularly as it relates to Central Americans, and sets forth some ideas for further inquiry.

To encapsulate the point of this Article, Mexico's track record on transmigration has something good, something bad, and something ugly: (1) it is good that the central government has placed an emphasis on creating a more adept system; (2) it is bad that no real structured change has occurred and abuses continue; and (3) it is ugly that rogue government officers and organized crime groups continue to prey on transmigrants with seeming impunity. This leads one to ponder whether the reforms will be sufficient to address the current shortfalls.

II. THE HISTORICAL AND CULTURALLY INTERCONNECTED NATURE OF THE SOUTHERN BORDER REGION

A. *The Mexico-Guatemala Border Region Geography*

The land between Mexico and Guatemala shares a strong historical connection. The area was first populated by the Maya, and their descendants still reside in the area. During colonial times, Spaniards established a "vicerealty" that straddled Mexico and Central America. In 1823 the Central American countries separated from Mexico, and in 1882 the modern border between Mexico and Guatemala was established by treaty. The Mexican states of Chiapas, Tabasco, and Campeche share a border with Guatemala, and the Mexican state of Quintana Roo shares a border with Belize. The border is roughly 970 kilometers with over 200 possible routes to enter into Mexico from Guatemala. Most routes run through the Mexican state of Chiapas, which shares a 658 kilometer border with Guatemala.

Although Mexico and Guatemala evolved as independent countries, there is an undeniable community along the border that shares cultural features, kinship, and ethnic backgrounds.³ As sociologists who study the region have noted, "International borders have long been something far from their daily dynamics, and are, therefore, a meaningless obstacle

³ JORGE LUIS CRUZ BURGUETE, IDENTIDADES EN FRONTERAS, FRONTERAS DE IDENTIDADES, ELOGIO DE LA INTENSIDAD DE LOS TIEMPOS EN LOS PUEBLOS DE LA FRONTERA SUR [IDENTITIES AT THE BORDER, BORDERS OF IDENTITY, PRAISE TO PERIOD OF INTENSITY ALONG THE SOUTHERN BORDER TOWNS] (1998).

for developing their interrelationships."⁴ By some estimates, 45,000–75,000 people engage in the cross-border agricultural migration.⁵

According to the National Institution of Migration (*Instituto Nacional de Inmigración* ("INM")), 1.9 million persons crossed the Mexico-Guatemala border between 2007 and 2010. Eighty-three percent were categorized as border crossers, visitors, and regional workers. Seventeen percent were irregular transmigrants, including nine percent who had the United States as their final destination.⁶ Forty-seven percent of the transmigrants are Guatemalan, thirty-five percent are Honduran, and seventeen percent are Salvadoran nationals.⁷

The municipality of Tapachula in Chiapas has a population of 244,855 and lies along the most traveled border crossing area between Guatemala and Mexico.⁸ Tapachula is also one of the primary contributors to the regional economy, housing a large portion of the region's plantations, manufacturing, and cattle ranches. Peasants from both countries are employed by the coffee, sugar cane, and banana plantations in the area.

The typical transmigrant takes a month to travel the 2600 plus kilometers between the southern and northern Mexican borders.⁹ However, one out of every three spends no more than a week in the Mexican territory, either because they are caught or because they decide to abandon the trip north. Eighty-one percent travel by vehicle, bus, or truck, and the rest travel by train. Mexico's government estimates that they intersect about 55% of all transmigrants, while the United States intersects another 25–30% at the Mexico-United States border.¹⁰ Only about 17% of transmigrants use smugglers to travel through Mexico. Most immigration arrests in Mexico take place in public transportation corridors because transmigrants do not often set roots in the communities through which they travel.¹¹ Tapachula has become the

⁴ Manuel Angel Castillo, *The Mexico-Guatemala Border: New Controls on Transborder Migration in View of Recent Integration Schemes?*, 15 *FRONTERA NORTE* 29 (2003) (Mex.).

⁵ JUAN CASTRO SOTO, *LA ZONA FRONTERIZA DE CHIAPAS Y EL FLUJO DE MIGRANTES* [THE BORDER REGION OF CHIAPAS AND THE MIGRANT FLOW] 8 (2000).

⁶ ERNESTO RODRIGUEZ CHAVEZ, SALVADOR BARUMEN SANDOVAL, LUIS FELIPE RAMOS MARTINEZ, *MIGRACIÓN CENTROAMERICANA DE TRANSITO IRREGULAR POR MÉXICO. ESTIMACIONES Y CARACTERÍSTICAS GENERALES* [CENTRAL AMERICAN OF IRREGULAR TRANSMIGRATION THROUGH MEXICO. ESTIMATES AND GENERAL CHARACTERISTICS] SECRETARIA DE GOBERNACIÓN, INSTITUTO NACIONAL DE MIGRACIÓN *Highlights APUNTES SOBRE MIGRACIÓN* [Immigration Highlights] 1 (2001) (2011).

⁷ *Id.* at 3.

⁸ SOTO, *supra* note 5, at 8.

⁹ CHAVEZ ET AL., *supra* note 6, at 4.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 6.

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primary detention facility for transmigrants facing removal from Mexico. Between 2002 and 2005, detentions grew by 74% to a total of 240,269 persons.¹² In 2009, Mexico deported or repatriated 58,681 individuals.

B. *Historical Underpinnings of Modern Central American Transmigration*

Notwithstanding this history and economic codependence, there has been a shift in the treatment of migrants entering Mexico through the southern border during the last thirty years. Much of the change has been brought about by a change in the character of the population from temporary migrant workers to refugees, and most recently, into transmigrants making their way to the United States-Mexico border.

The civil wars in Central America pushed many to seek refuge in Mexico.¹³ According to the United Nations High Commissioner for Refugees (“UNHCR”), as many as 200,000 Guatemalans fled to Mexico at the height of the Guatemalan civil war. Mexico was ill-prepared to handle the flow of refugees. The Central American civil wars forced Mexico to address immigration but also influenced Mexico’s design of its immigration policy. Civil rights organizations and international human rights organizations stepped in to assist the Mexican government with the Central American crisis. These groups then played an important role in shaping Mexican immigration policy.¹⁴ Mexico was a strong proponent of the Cartagena Declaration of 1984, which defines the term “refugee” with greater latitude than the Declaration of Human Rights.¹⁵ Their influence can also be found in the Mexican Constitution, which guarantees a number of civil rights to anyone regardless of immigration status.

During the 1990s, international mediators helped displaced refugees and the Mexican government reach an agreement on an organized repatriation of the civil war refugees.¹⁶ Eventually, only about 22,000 Guatemalans remained in Mexico, many in mixed families where some

¹² JORGE BUSTAMANTE, LA CRISIS DE DERECHOS HUMANOS EN LA FRONTERA SUR DE MÉXICO [THE HUMAN RIGHTS CRISIS IN THE SOUTHERN BORDER OF MEXICO] 10 (2008).

¹³ Manuel Angel Castillo, *Mexico: Caught Between the United States and Central America*, MIGRATION INFORMATION SOURCE (Apr. 1, 2006), <http://www.migrationinformation.org/Feature/display.cfm?id=389> (explaining that the flow of transmigrants has created economic, social, and political effects).

¹⁴ *Id.*

¹⁵ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1 (Nov. 22, 1984), available at <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>.

¹⁶ Diane Goldberg, *From Refugee to Citizen: A Guatemalan in Mexico UNHCR News Stories*, UNHCR: THE UN REFUGEE AGENCY (Nov. 29, 2001), <http://www.unhcr.org/3c064aab4.html>.

members had been born in Mexico and others lacked any immigration status. To address this subpopulation, Mexico established a migratory stabilization program to grant status to Guatemalan refugees, which eventually allowed many to gain Mexican citizenship. The Mexican Commission for the Aid of Refugees (*Comisión Mexicana Organizadora de Ayuda a Refugiados* ("COMAR")) administered the program and coordinated federal and local governmental assistance to Guatemalan expatriates living in villages that previously were refugee camps. Scholars studying the influx of Central American civil war refugees have concluded that their presence led to a reorganization of the border's economies and productivity, while creating a sense of dual membership in two communities—one in Mexico and another in the refugee's place of origin.¹⁷

In the most recent past, Mexico has become a bridge for Central and South Americans seeking to reach the United States. Roughly 1000 transmigrants without status cross the Mexico-Guatemala border each day.¹⁸ According to a study by the Regional Group of Migrant Human Rights Protection Organizations, seventy-two percent of migrants are under the age of thirty and are migrating for economic reasons.¹⁹

In the present, Tapachula is generally the starting point for many transmigrants who attempt to board the trains headed north.²⁰ Other transmigrants take a less popular route through Tenosique, Tabasco. After entering through Tenosique, the transmigrants must travel fifty-six kilometers to connect with the trains headed north. Those fifty-six kilometers are some of the most treacherous kilometers in the Mexican Republic as they are patrolled by bands of criminals who prey on migrants.²¹

¹⁷ Manuel Angel Castillo, *Exodus and Return Within a Changing Migration System*, in *JOURNEYS OF FEAR: REFUGEE RETURN AND NATIONAL TRANSFORMATION IN GUATEMALA* 130-51 (Liisa L. North and Alan B. Simmons eds., 1999).

¹⁸ MAURICIO FARAH GEBARA, *MIGRACIÓN, DERECHOS HUMANOS Y NUEVOS PARADIGMAS: LA SOLUCIÓN ESTÁ EN LA COOPERACIÓN PARA EL DESARROLLO* [MIGRATION, HUMAN RIGHTS AND THE NEW PARADIGM: THE SOLUTION IS IN DEVELOPMENT COLLABORATION] 73, 78 (2005).

¹⁹ BUSTAMANTE, *supra* note 12, at 4.

²⁰ GEBARA, *supra* note 18, at 76.

²¹ *Id.* at 77.

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III. MEXICO'S TRANSMIGRATION REGULATORY AND ENFORCEMENT
FRAMEWORKS

A. *Mexico's International Agreements and Domestic Laws Impacting Transmigrants*

1. Mexican Constitutional Law

Following the challenges Mexico faced with Central American refugees, Mexico signed a number of important international treaties relating to migration and human rights that have been codified domestically in one form or another. In 1981, Mexico signed the International Pact on Civil and Political Rights and the Americas Human Rights Convention. In 1987, it signed the Convention Against Torture ("CAT") and The Convention of the Rights of the Child ("CRC"). The following year, it signed the Convention to Prevent and Eradicate Violence Against Women. Most recently in 2002, it signed the International Convention for the Protection of the Rights of the Migrant Worker and Families ("Migrant Worker Convention").

The current Mexican Constitution is an extensive and detailed document of eight chapters with over 135 articles, enacted on February 5, 1917, in Queretaro, Mexico.²² Amendments require a two-thirds vote in Congress and ratification by a simple majority of the states' legislatures.²³ Recently, amendments have become somewhat frequent.²⁴ The Mexican Constitution obliges federal, state, and local authorities to carry out social policies that protect all persons regardless of immigration status.²⁵ Article 4, paragraph 8 asserts that "the best interest of the child" should be the primary consideration in governmental decisions relating to the welfare, education, and protection of minors.²⁶ Children younger than fourteen are not legally permitted to work, and minors between fourteen and sixteen cannot work longer than six hours.²⁷ Article 11 guarantees freedom of movement to all persons unless otherwise limited by criminal or immigration statutes. Article 30 grants Mexican nationality to anyone born in Mexico regardless of the

²² Constitución Política de los Estados Unidos Mexicanos [C.P.] [Political Constitution of the United Mexican States], as amended, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>.

²³ *Id.* tit. VIII, art. 135.

²⁴ According to the Official Federation Register [*Diario Oficial de la Federación*], there were amendments made in 1993, 1996, 1997, as well as in the periods between 1999-2002 and 2004-2009.

²⁵ C.P. tit. I, ch. I, art. 1 (Mex.).

²⁶ *Id.* tit. I, ch. I, art. 4, pfo. 8.

²⁷ *Id.* tit. VI, art. 123, AIII.

parents' citizenship, to individuals born abroad to Mexican nationals, and to persons who naturalize.²⁸ Foreigners are defined as individuals who do not qualify for Mexican nationality. They enjoy the same human rights as Mexican nationals but may be expelled from the territory subsequent to an administrative or judicial proceeding.²⁹ The Mexican Constitution delineates in great detail the duties and rights of each branch of government and state powers.³⁰ The constitution also limits the powers of states.³¹ Until 2008 illegal entry into Mexico was punishable by up to ten years in prison. However, that is no longer the case, and instead the person is only subject to a fine.³²

2. Mexican Immigration Law

Until last year, Mexico's immigration statute had not been properly updated since the early 1970s. Prior to the updates, migration issues had been handled in an *ad hoc* manner through the equivalent of policy memoranda issued by the Ministry of the Interior and amendments to the General Population Law (*Ley General de Población*).³³ Under the *ad hoc* system, it was unclear what relief, if any, was available to migrants, and there was no clear statutory sanction for the INM's procedures and regulations. In 2011, Mexico's Congress issued a new comprehensive immigration statute, which largely codified programs and practices that had been in existence for a number of years. Regulations and specific policy decrees are being drafted to implement the new statute.

The new immigration law includes some important provisions relating to migrants. Article 2 reiterated the country's commitment to human rights and protection of migrants residing or transiting through the Mexican territory.³⁴ Article 9 prohibits civil servants from refusing to issue marriage, divorce, birth or death decrees based on immigration status. Article 11 asserts that the "best interest of the child" will be a guiding principle in relation to the treatment of immigrant children.

²⁸ *Id.* tit. I, ch. I, art. 30.

²⁹ *Id.* tit. I, ch. III, art. 33.

³⁰ *Id.* tit. II-IV.

³¹ *Id.* tit. IV, arts. 117-118.

³² AMNESTY INTERNATIONAL, *INVISIBLE VICTIMS: MIGRANTS ON THE MOVE IN MEXICO*, 24-25 (2010).

³³ *Ley de Inmigración [LI] [Immigration Law]*, *Diario Oficial de la Federación [DO]*, May 25, 2011, available at http://dof.gob.mx/nota_detalle.php?codigo=5190774&fecha=25/05/2011.

³⁴ *Id.* arts. 66-76. These articles specifically address transmigrants and include such rights as the right to be informed of charges within thirty-six hours and the right to receive a know-your-rights presentation. *Id.*

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Article 13 provides procedural safeguards such as “know-your-rights” presentations, and Article 14 guarantees access to an interpreter.

Under its immigration law, Mexico provides some temporary legal status to foreign nationals, including a “border crossing card” that permits foreign persons to enter Mexico for multiple three-day visits.³⁵ Mexico also has some programs not available in the United States, such as the “border area worker visa,” which grants a one-year work permit to an individual who has employment in the border region.³⁶ One controversial provision allows foreigners free movement through Mexico for three days without possession of a visa.

Mexico has a temporary humanitarian visa available to crime victims or witnesses.³⁷ Under the terms of the temporary humanitarian visa, a person is allowed to remain in Mexico until the conclusion of proceedings, has the right to enter and exit the country, and has the right to receive work authorization. At the end of proceedings, the person may choose to depart permanently or request another immigration status, including permanent residency if available. The humanitarian visa is also available to asylum seekers, as well as to unaccompanied minors. Under the terms of Article 74, authorities must consider the best interest of the child as the standard guiding principle in issuing humanitarian visas to minors and must provide minors with judicial or humanitarian alternatives to repatriation.

The number of individuals who apply for either refugee status or political asylum is very low. According to the INM, only 4251 individuals applied for such status between 2002 and 2010. Of those, only 845 were granted status, and only 109 were from Central America.³⁸ This low number is rather startling if one considers that Mexico’s refugee criteria are more generous than the United States. Refugee status in the United States is confined to individuals who can demonstrate a well-founded fear of persecution on account of race, religion, political opinion, nationality, or being a member of a particular social group.³⁹ In

³⁵ *Id.* ch. II, art. 52, pt. III. This law permits individuals residing in countries that share a border with Mexico entry the ability to enter and exit the border without limit and to remain in Mexico for longer than three days. *Id.* The border crosser cannot receive remuneration while in Mexico. *Id.*

³⁶ *Id.* ch. II, art. 52, pt. IV.

³⁷ *Id.* ch. II, art. 52, pt. V.

³⁸ Secretaría de Gobernación, Subsecretaría de Población, Migración y asuntos Religioso, Coordinación General de La Comisión Mexicana de Ayuda a Refugiados [Sub-Secretary for Population, Migration and Religious Issues, Central Coordination of the Mexican Commission for Refugee Assistance], ESTADÍSTICAS GLOBALES 2002-2010, POBLACIÓN REFUGIADA EN MÉXICO [GLOBAL STATISTICS, REFUGEE POPULATION IN MEXICO 2002-2010] (2010).

³⁹ 8 U.S.C. § 1158 (2006).

contrast, Mexico provides refugee status to individuals who have been threatened by general violence, invasion, internal conflict, mass violation of human rights, or other circumstances that have greatly disturbed public order in their country of origin, forcing them to flee to another country.⁴⁰

3. Mexican Child Welfare Law and Migrant Children

Mexican law categorizes minors into two groups. Minors under the age of twelve are considered children and minors between the ages of twelve and seventeen are categorized as juveniles.⁴¹ For most purposes the categorization is meaningless, as all minors have the right to education, equal treatment, and medical attention. However, there are some stark differences. Mexican children are placed in orphanages operated by municipal and state authorities with close supervision by caretakers. These children are reunified with parents, placed on adoption, or are otherwise provided for until the age of twelve. Under the law, juveniles over the age of twelve have a right to freedom of movement.⁴² Therefore, the government does not require them to remain in state custody. As a result, older Mexican minors are placed in shelters normally operated by a non-profit community agency that helps minors. The majority of the shelters only provide temporary housing while the minors track down relatives. There are few shelters that provide a permanent place of residence to emancipated juveniles or to those unable to reunify with family. The largest population of migrant children is between the ages of twelve and seventeen.⁴³ Therefore, most Mexican migrant children are not provided assistance through governmental orphanages.

Governmental authorities that come into contact with non-Mexican minors must transfer custody of the minor to INM within two days of contact.⁴⁴ If the minor is under twelve they are housed and cared for by representatives of the Mexican National System for the Integral Development of Youth and the Family (*Sistema Nacional Para el Desarrollo*

⁴⁰ LI ch. I, art. 3, pt. XXII.

⁴¹ Ley Para La Protección de los Derechos de Niñas, Niños, and Adolescentes [LPD] [Law for the Protection of the Rights of Girls, Boys, and Juveniles], as amended August 19, 2010, ch. I, art. 2, Diario Oficial de la Federación [DO], May 29, 2000 (Mex.).

⁴² *Id.* ch. 4, art. 45, pt. L.

⁴³ Sin Fronteras calculates that roughly twenty-five percent of unaccompanied minors are girls and that 2/3 of all migrant children are between sixteen and eighteen with only eleven or so under the age of twelve. FABIANNE VENET & MARIANA RAMIREZ, IAP, FINAL REPORT: W.K. KELLOGG FOUNDATION GRANT REFERENCE #PO119253, SIN FRONTERAS 23 (2007).

⁴⁴ LI ch. VII, art. 112.

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Integral de Infancia y la Familia (“DIF”). In situations involving transmigrant juveniles, minors between the ages of twelve and seventeen, INM has legal custody of the minor with oversight by DIF and Consulates. Consequently, transmigrant juveniles are housed at secured juvenile INM facilities.

In 2006, *Sin Fronteras*, an advocacy group more fully described below, conducted a study sponsored by the Kellogg Foundation to evaluate and improve detention of transmigrant juveniles in Mexico and their repatriation to Guatemala. At that time, *Sin Fronteras* found that unaccompanied minors were kept with adult transmigrants, and many would spend several hours if not days at immigration substations.⁴⁵ *Sin Fronteras* also found that most juveniles had never spoken with their consulate, a crucial step in tracking down relatives that may be able to assist the minor.⁴⁶ Finally, *Sin Fronteras* found that the repatriation agreements between Mexico and Central America lacked necessary child friendly procedures, such as timing, departure, and arrival of deportation buses to coincide with daylight and proper segregation of minors from adults in secondary legs of the journey.⁴⁷ Moreover, *Sin Fronteras* found that many minors were taken from Tapachula to the border entry point and told to re-enter Guatemala, even if the minor was not in fact Guatemalan.⁴⁸

In January 2008, DIF drafted an Integrated Protection Plan to Protect Unaccompanied Migrant Youth (*Plan Integral de Protección Para la Infancia Migrante No Acompañada* (“IPP”). Under the IPP, non-Mexican transmigrant children are provided with know-your-rights presentations where they learn about the juvenile repatriation program, procedural rights, the civil rights complaint process, and immigration relief. If the child does not request asylum, the consulate will be notified of his presence. The National Commission for Human Rights (*La Comisión Nacional de los Derechos Humanos* (“CNDH”)) can be contacted if the child was a victim of a crime or abuse by the authorities. A follow-up study conducted by *Sin Fronteras* found improvement in the treatment of minors at immigration detention centers following the enactment of these procedures.⁴⁹

As noted earlier, Mexico provides few remedies to children unwilling to be repatriated. The child can apply for refugee status, or he can obtain a permanent visa if he was a victim or a witness to an

⁴⁵ VENET & RAMIREZ, *supra* note 43, at 4.

⁴⁶ *Id.* at 5.

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 32.

aggravated crime committed in Mexico,⁵⁰ or if he has been a trafficking victim.⁵¹ Immigration proceedings in Mexico, like in the United States, are administrative and thus carry with them no right to appointed counsel. Thus, minors are not guaranteed attorneys and, according to the latest reports from *Sin Fronteras*, many children go without legal representation.⁵²

While there are presently many complaints about the lack of access to consular services in the adult detention facility, children have received greater access to consular officers and legal services.⁵³ The disparity ensues from insufficient allocation of resources and planning to adult transmigrant detention. The juvenile program is better managed due to a successful collaboration between INM, the International Organization for Migration, and funding by UNICEF. As a result, there are more adequate procedures and additional child protection officers at the children detention shelters to monitor the care of detained minors than at adult facilities.⁵⁴

4. Inter-Country Agreements on Transmigration

INM plays an important role in addressing repatriation of transmigrants, and it is also charged with establishing agreements with neighboring countries on immigration control issues.⁵⁵ The Regional Conference on Migration (“RCM”) has served as the fountain of some of these agreements between Mexico and neighboring countries. The RCM is a multilateral regional forum on international migration among Mexico, Belize, Canada, Costa Rica, El Salvador, the United States, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic.⁵⁶ The purpose of the RCM is to promote and respect migrants’ human rights, to promote safe and secure migrations, and to encourage

⁵⁰ LI art. 132, pt. III.

⁵¹ *Id.* art. 132, pt. V.

⁵² VENET & RAMIREZ, *supra* note 43, at 14.

⁵³ AMNESTY INTERNATIONAL, *supra* note 32, at 28.

⁵⁴ *Id.*

⁵⁵ Reglamento Interior de la Secretaría de Gobernación Sección V Artículo 62-IV [Interior Ministry Regulations Sec. V Art. 62-IV]; Reglamento Interior de la Secretaría de Gobernación Sección V Artículo 65-II, III [Interior Ministry Regulations § V art. 65-II, III].

⁵⁶ CONFERENCIA REGIONAL SOBRE MIGRACIÓN [REGIONAL CONFERENCE ON MIGRATION] (2010), available at http://www.inm.gob.mx/static/Centro_de_Estudios/Eventos/CRM_Chiapas.pdf [hereinafter REGIONAL CONFERENCE ON MIGRATION]. The RCM is also known as the “Puebla Process.” LINEAMIENTOS REGIONALES PARA LA ATENCIÓN DE NIÑOS, NIÑAS, Y ADOLESCENTES NO ACOMPAÑADOS EN CASOS DE REPATRIACIÓN [REGIONAL GUIDELINES ON THE CARE OF CHILDREN AND UNACCOMPANIED ADOLESCENTS IN REPATRIATION CASES] 2 n.2 (2007), available at http://www.gobernacion.gob.mx/work/models/SEGOB/Resource/689/1/images/LIN_RE_5.PDF.

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dialogue and cooperation among countries in active participation of civil society.⁵⁷ The RCM also endeavors to balance the protection of migrants' human rights with the right of countries to ensure the safety of its own citizens.⁵⁸

The operational structure of the RCM consists of vice-ministers, the Regional Consultation Group on Migration ("RCGM"), the Technical Secretariat, and a President Pro-Tempore.⁵⁹ The Meeting of the Vice-Ministers, the executive decision-making component of the RCM, takes place during the first half of the year and is divided into two parts: the plenary meeting and the closed-door meeting, which only the Vice-Ministers attend.⁶⁰ All member countries, observing countries, and observing organizations participate during the plenary meetings, which involve the report of the President Pro-Tempore, the opening statements of each country's representative, and a presentation by the Regional Network of Civil Organizations.⁶¹ During these closed-door meetings, the vice-ministers of the member countries discuss administrative and financial matters, as well as make decisions regarding future actions of the RCM in compliance with its Plan of Action.⁶² Following the plenary and closed-door meetings, the vice-ministers issue their "Declaration and Decisions" for the RCM.⁶³

⁵⁷ REGIONAL CONFERENCE ON MIGRATION, *supra* note 6 at 2.

⁵⁸ LA CONFERENCIA REGIONAL SOBRE MIGRACIÓN O PROCESO PUEBLA COMO PROCESO CONSULTIVO REGIONAL [THE REGIONAL CONFERENCE ON MIGRATION OR THE PUEBLA PROCESS AS A REGIONAL ADVISORY PROCESS] 3 (2005) [hereinafter THE REGIONAL CONFERENCE], available at http://www.un.org/esa/population/meetings/11tMigLAC/P03_LMonzon.pdf.

⁵⁹ *Id.*

⁶⁰ *General Information: The Regional Conference on Migration or Puebla Process*, REGIONAL CONFERENCE ON MIGRATION, <http://www.rcmvs.org/Descripcion.htm> (last visited May 23, 2012).

⁶¹ *Id.* The Regional Network of Civil Organizations on Migration is the group that represents the interests and concerns of the civil society organizations from the region that currently work on immigration issues. Its purpose is to strengthen dialogue between the RCM and civil society.

⁶² *Id.* The RCM's "Plan of Action" was created to define its line of work. The RCM divides its Plan of Action under the following themes: Migration Policies and Management, Human Rights, and Migration and Development. At each conference, the RCM outlines action items under each theme.

⁶³ THE REGIONAL CONFERENCE, *supra* note 58, at 3. The Declarations and Decisions documents detail the Vice-Ministers' decisions regarding goals, duties, proposals, project approvals, and aspirations of the RCM. The Declarations and Decisions are not legal documents; however, as part of their membership in the RCM, member countries agree to strive toward complying with decisions made by the Vice-Ministers. Member countries also agree to comply with guidelines published and approved by the RCM, such as the "Guidelines for the Signing Of Multi and/or Bilateral Agreements Between Member Countries of the Regional Conference on Migration (RCM) Regarding the Repatriation of Regional Migrants by Land (2004)."

The RCGM consists of a group of experts who are charged with preparing recommendations for the vice-ministers and implementing and monitoring their mandates. The Technical Secretariat consists of a Coordinator, an Information Technology Specialist, and an Assistant. One of the fundamental tasks of the Technical Secretariat is to assist the President Pro-Tempore in the organization and to monitor activities and initiatives of the Conference.⁶⁴ The role of the President Pro-Tempore, which changes on an annual basis, is assumed by the country hosting the conference.⁶⁵

Each year members of the RCM meet and discuss issues relating to migration problems that are pertinent to the member countries. The focus and themes of these annual conferences are varied and have included modernizing migration services, promoting regional solidarity for border security, enhancing migrants' human rights, and, most recently, allocating co-responsibility among states for migration and labor.⁶⁶

After the terrorist attacks on the United States in 2001, the RCM's thematic focus shifted toward security measures.⁶⁷ Consequently RCM has concentrated on trafficking of persons and illicit drugs, and less on citizenship rights and family unity.⁶⁸ Only one year, 2008, was dedicated to migrants and human rights.⁶⁹ Indeed, there has been some frustration by certain countries with the human rights abuses of migrants within Mexico that have persisted without the proper response and focus at the RCM meetings.⁷⁰

⁶⁴ *Id.* at 5.

⁶⁵ *Id.* at 4.

⁶⁶ *Events: Plenary Meetings of the RCM, REGIONAL CONFERENCE ON MIGRATION*, http://www.rcmvs.org/ReunionesCRM_GRCM.htm (last visited Mar. 18, 2012) [hereinafter *Plenary Meetings of the RCM*].

⁶⁷ *Guatemala: Abre VII Conferencia Regional Sobre Migración [Guatemala: VII Regional Conference on Migration Opens]*, DEUTSCHE PRESSE-AGENTUR, May 30, 2002, (*Con la participación de 11 países, abrió hoy en Guatemala la VII Conferencia Regional sobre Migración, cuya agenda se cree estará dominada por las estrategias para la lucha contra el terrorismo . . .*). The following are the RCM themes selected from 2002–2004: *Toward Regional Solidarity for Security and Migration* (2002), *Consolidation of Regional Security through Modern Migration Management* (2003), *The Plan of Action and Convergence of the RCM with other Processes and International Organisms related to Migration* (2004). *Plenary Meetings of the RCM, supra note 66*.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Chiapas-trata [Chiapas-Treatment]*, AGENCIA EL UNIVERSAL (May 21, 2010) (Mex.) (Even after the federal government has tried to improve conditions the violence, abuse, robberies involving corrupt police officers still continues. ["A pesar de los esfuerzos hechos por el gobierno federal mexicano seguimos presenciando la violencia, maltrato, abusos, robos, como el case de los asaltos a ferrocarriles donde han estado involucrados policías federales que enturbian esta situación," dijo en entrevista el diplomático salvadoreño."]).

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In an effort to enhance migrants' human rights and under the auspices of the RCM, Mexico, El Salvador, Guatemala, Honduras, and Nicaragua entered into the Memorandum of Understanding for the Dignified, Orderly, Swift, and Safe Repatriation of Central American Migrants by Land ("Memorandum of Understanding") in 2006.⁷¹ As part of the Memorandum of Understanding, the countries agree to cooperate with each other in facilitating movement within their borders by providing security for the repatriated migrants and buses in which the migrants may travel.⁷² Specifically, Mexico is charged with various responsibilities relating to the transportation and care of repatriating migrants. These duties include verifying migrants' identity and nationality before repatriation,⁷³ keeping records of all migrants, submitting lists of repatriating migrants to home countries,⁷⁴ coordinating transportation during daytime hours,⁷⁵ providing flights for those found in northern Mexico,⁷⁶ and meeting migrants' basic needs during the repatriation process.⁷⁷ Mexican authorities must also accommodate pregnant women, the disabled, the injured, the sick, and the elderly under the Memorandum of Understanding.⁷⁸

The Memorandum of Understanding further creates a limited set of migrants' rights to ensure their safe and dignified return. Among these are the right to have your own seat on a bus, a right to travel with your family, a right to be accommodated if sick or injured, and a right to be recognized as a repatriating national in your home country.⁷⁹ However,

⁷¹ Memorandum de Entendimiento entre Los Gobiernos de los Estados Unidos Mexicanos, de La Republica de El Salvador, de La Republica de Guatemala, de la Republica de Honduras y de la Republica de Nicaragua, para la Repatriación Digna, Ordenada, Ágil y Segura de Nacionales Centroamericanos Migrantes vía Terrestre [Memorandum of Understanding Among the Governments of Mexico, El Salvador, Guatemala, Honduras, and Nicaragua, for the Dignified, Orderly, Swift, and Safe Repatriation of Central American Migrants by Land] (2006), available at <http://www.gobernacion.gob.mx/work/models/SEGOB/Resource/689/1/images/MEMOR15.PDF>.

⁷² *Id.* at 3.

⁷³ *Id.* at 4.

⁷⁴ *Id.*

⁷⁵ *Id.* at 2.

⁷⁶ *Id.* at 3-4.

⁷⁷ *Id.* at 3. "The sending country, the transitory country, and the receiving country agree to take measures to ensure that, to the extent possible, the basic needs of migrants are met in aspects such as food, medical and psychological assistance, personal hygiene, communication with family or with a consular representative" ["El Estado que envía, el Estado de tránsito y el Estado receptor se comprometen a realizar las gestiones necesarias para procurar que en la medida de sus posibilidades, sean atendidas las necesidades de los migrantes en aspectos tales como alimentación, atención médica y psicológica, higiene personal, comunicación con sus familiares o con sus representación consular."]

⁷⁸ *Id.* at 3.

⁷⁹ *Id.* at 4.

the Memorandum of Understanding exempts any person accused of committing a crime—not associated with the illegal entry into Mexico—from benefitting from the rights afforded by the Memorandum.⁸⁰

Consequent to the Memorandum of Understanding, Mexico entered into bilateral agreements with each of the signatory countries to outline the specific measures to be taken in cases of repatriation, as well as to outline the logistics of return.⁸¹ Among the general logistics agreed to in these bilateral agreements, Mexico agrees to afford Guatemalan, Honduran, Salvadorian, and Nicaraguan nationals the same legal protection afforded to Mexican citizens under Mexican law and to allow migrants to request repatriation without limiting their eligibility for re-entry.⁸² With the exception of Nicaraguans, Mexico also permits

⁸⁰ *Id.* at 7.

⁸¹ *See id.* art. X. “The present Memorandum of Understanding contains four Annexes that will be an integral part of the same, and that will detail the operative aspects such as locations of return, schedules, and other specifics that all involved parties may agree upon” [“*El presente Memorándum de Entendimiento contiene cuatro Anexos que formarán parte integral del mismo, y en los que se detallarán aspectos operativos tales como lugares de entrega, horario y otras particularidades que acuerden las Partes involucradas.*”] *See, e.g.,* ANEXO ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS MEXICANOS Y LA REPUBLICA DE NICARAGUA PARA LA REPATRIACIÓN ORDENADA, ÁGIL Y SEGURA DE LOS MIGRANTES NICARAGÜENSES ASEGURADOS EN TERRITORIO MEXICANO, EN EL MARCO DEL MEMORÁNDUM DE ENTENDIMIENTO ENTRE LOS GOBIERNOS DE LOS ESTADOS UNIDOS MEXICANOS, DE LA REPUBLICA DE EL SALVADOR, DE LA REPUBLICA DE GUATEMALA, DE LA REPUBLICA DE HONDURAS Y DE LA REPUBLICA DE NICARAGUA, PARA LA REPATRIACIÓN DIGNA, ORDENADA, ÁGIL Y SEGURA DE NACIONALES MIGRANTES CENTROAMERICANOS VÍA TERRESTRE (2007). Prior to the Memorandum of Understanding, Mexico had only entered into a bilateral repatriation agreement with El Salvador in 2005, which the countries modified after signing the Memorandum of Understanding.

⁸² *See* Celebrando entre los Gobiernos de Guatemala y Los Estados Unidos Mexicanos, al “Memorandum de Entendimiento entre Los Gobiernos de los Estados Unidos Mexicanos, de La Republica de El Salvador, de La Republica de Guatemala, de la Republica de Honduras y de la Republica de Nicaragua, para la Repatriación Digna, Ordenada, Ágil y Segura de Nacionales Centroamericanos Migrantes vía Terrestre” [Holding Between the Guatemalan and Mexican Governments, Pursuant to the “Memorandum of Understanding Among the Governments of Mexico, El Salvador, Guatemala, Honduras, and Nicaragua, for the Dignified, Orderly, Swift, and Safe Repatriation of Central American Migrants by Land”]; *see also* Celebrando entre los Gobiernos de Los Estados Unidos Mexicanos y La República de Honduras, al “Memorándum de Entendimiento entre Los Gobiernos de los Estados Unidos Mexicanos, de La Republica de El Salvador, de La Republica de Guatemala, de la Republica de Honduras y de la Republica de Nicaragua, para la Repatriación Digna, Ordenada, Ágil y Segura de Nacionales Centroamericanos Migrantes vía Terrestre” [Holding Between the Mexican and Honduran Governments, Pursuant to the “Memorandum of Understanding among the Governments of Mexico, El Salvador, Guatemala, Honduras, and Nicaragua, for the Dignified, Orderly, Swift, and Safe Repatriation of Central American Migrants by Land”]; Anexo Entre el Gobierno de los Estados Unidos Mexicanos y La Republica de Nicaragua para la Repatriación Ordenada, Ágil y Segura de los Migrantes Nicaragüenses Asegurados en Territorio Mexicano, en el Marco del Memorandum de Entendimiento entre los Gobiernos de los Estados Unidos

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migrants to request refugee status.⁸³ Mexico further agrees to coordinate repatriation efforts during specific time frames and at specific border locations.⁸⁴ Most recently, El Salvador and Mexico renewed their repatriation agreement at the Fourth Annual Reunion of the Mexico-El Salvador Migration and Consular Affairs Group.⁸⁵

In 2009 the RCM met in Guatemala and enacted a uniform process for children and young adolescents in the process of repatriation, titled *Regional Guidelines on the Care of Children and Unaccompanied Adolescents in Repatriation Cases* (“Guidelines”).⁸⁶ Among the various obligations, the Guidelines charge each country with the care and safety of each child, including providing balanced meals, temporary shelter, medical assistance, and legal protection in the form of privacy and information.⁸⁷ Further, each country must immediately inform the child’s home country of his or her presence in the host country, must work with the child’s home country for repatriation and must designate a guardian to protect and provide for the child while being physically repatriated.⁸⁸ At all times, however, the Guidelines charge each country with considering the risk of a child’s repatriation due to his or her home country conditions.⁸⁹ However, Mexico has not yet entered into new specific bilateral

Mexicanos, de La Republica de El Salvador, de la Republica de Guatemala, de La Republica de Honduras y de La Republica de Nicaragua, para la Repatriación Digna, Ordenada, Ágil Y Segura de Nacionales Migrantes Centroamericanos vía Terrestre [Annex Between the Mexican and Nicaraguan Governments for the Orderly, Swift, and Safe Repatriation of Nicaraguan Migrants Found in Mexican Territory, Within the Framework of the Memorandum of Understanding Among the Governments of Mexico, El Salvador, Guatemala, Honduras, and Nicaragua for the Dignified, Orderly, Swift, and Safe Return of Central American Migrants by Land]; Acuerdo entre La Secretaría de Gobernación de los Estados Unidos Mexicanos y el Ministerio de Gobernación de la República de El Salvador para la Repatriación Ordenada, Ágil y Segura de Migrantes Salvadoreños vía Terrestre desde México [Accord Between the Mexican Department of Government and Salvadorian Ministry of Government for the Orderly, Swift, and Safe Repatriation of Salvadorian Migrants by Land from Mexico].

⁸³ See sources cited *supra* note 82.

⁸⁴ See sources cited *supra* note 82.

⁸⁵ *Los gobiernos de México y El Salvador ratifican su compromiso para una repatriación segura y ordenada por vía terrestre* [The Mexican and Salvadorian Governments Ratify Their Agreement for the Safe and Orderly Repatriation by Land] SECRETARIA DE GOBERNACIÓN (Sept. 9, 2009) http://www.gobernacion.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGO.B.swb%23swbpress_Content%3A1590&cat=http%3A%2F%2Fwww.SEGO.B.swb%23swbpress_Category%3A1.

⁸⁶ LINEAMIENTOS REGIONALES PARA LA ATENCIÓN DE NIÑOS, NIÑAS, Y ADOLESCENTES NO ACOMPAÑADOS EN CASOS DE REPATRIACIÓN [REGIONAL GUIDELINES ON THE CARE OF CHILDREN AND UNACCOMPANIED ADOLESCENTS IN REPATRIATION CASES] (2007).

⁸⁷ *Id.* at 3.

⁸⁸ *Id.* at 4.

⁸⁹ *Id.* at 5.

agreements with any country regarding the repatriation of children and young adults that incorporate these Guidelines.

B. Mexican Immigration Enforcement Agencies and Framework

1. The National Institution of Migration

In 1993 the Mexican government created the INM. The INM is charged with verifying immigration status and deportation control.⁹⁰ The INM also conducts research on migration,⁹¹ and is in charge of promulgating regulations and legal circulars relating to immigration.⁹² The INM has nine coordinators in charge of subjects such as administration,⁹³ judiciary,⁹⁴ and immigration control and verification.⁹⁵

In addition, INM is required to coordinate with state and federal agencies on issues relating to migration.⁹⁶ The latest INM-state compact between each of the Mexican states and the Department of Government or Interior Ministry (*Secretaria de Gobernación*) was signed on September 10, 2010. The intra-state agreement lays out a uniform process for regional delegation to the federal government of the power to control and regulate immigration through the regulatory agency, the INM.⁹⁷ Under the agreement, an INM delegate is assigned to each of the Mexican states.⁹⁸ Each delegate is then given authority, among a number

⁹⁰ Ley General de Población [LGP] [General Population Law], art. 1333, Diario Oficial De la Federación [DO]; Reglamento Interior de la Secretaria de Gobernación [RISG] [Interior Ministry Regulations], § V, art. 55.

⁹¹ RISG § V, art. 57 II.

⁹² *Id.* § V, art. 57 I.

⁹³ *Id.* § V, art. 69.

⁹⁴ *Id.* § V, art. 67.

⁹⁵ *Id.* § V, art. 64.

⁹⁶ *Id.* § V, art. 57 XXV, art. 65.

⁹⁷ Acuerdo por el que se delegan facultades para autorizar trámites migratorios y ejercer diversas atribuciones previstas en La Ley General de Población y su Reglamento, a los servidores públicos adscritos a la Delegaciones Regionales del Instituto Nacional de Migración en los estados de Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatan y Zacatecas [Compact to Delegate the Powers to Control Immigration Processing and to Carry Out Various Activities Previously Authorized Through the General Population Law and Its Regulations, to the Public servants assigned to the Regional Delegates of the National Immigration Institute and the States of Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán y Zacatecas].

⁹⁸ *Id.*

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of other powers, to provide assistance to foreigners on issues relating to immigration,⁹⁹ and documentation and proof of status,¹⁰⁰ to impose sanctions in accordance to domestic law,¹⁰¹ and to initiate deportation proceedings.¹⁰²

2. State Enforcement

Other federal agencies involved in immigration control include the Department of Exterior Relations and the Department of Public Security, which includes the Federal Preventive Police. While only the INM has the legal right to ask for proof of immigration status and to detain individuals who are suspected of being without status,¹⁰³ federal, local and state police regularly stop suspected migrants and engage in immigration enforcement. Some Mexican border states have gone so far as creating agencies that also touch on immigration, including the Chiapas State Border Police (*Policía Fronteriza* ("PF")). According to the PF's website, their mission is to protect and defend the well-being and property of Chiapas border residents through law enforcement campaigns and presence along the most dangerous border regions.¹⁰⁴ The agency's website indicates that it engages in crime prevention and investigation, but does not mention immigration enforcement or any collaboration with INM.

IV. EFFORTS BY GOVERNMENTAL AND NON-GOVERNMENTAL AGENCIES TO PROVIDE PROTECTION AND HUMANITARIAN ASSISTANCE TO MIGRANTS

A. Mexican Governmental Agencies Engaged in Migrant Protection Activities

1. Beta Group

In 1990, the Mexican federal government created a humanitarian assistance unit named Beta Group (*El Grupo Beta*) to provide assistance to migrants along the United States–Mexico border.¹⁰⁵ The first Beta Group

⁹⁹ *Id.* art. 2, § A.

¹⁰⁰ *Id.* art. 2, § B.

¹⁰¹ *Id.*

¹⁰² *Id.* art. 2, § C.

¹⁰³ LI art. 7.

¹⁰⁴ *Policía Fronteriza*, SSPC.CHIAPAS.GOB, <http://www.sspc.chiapas.gob.mx/web/inicio/fronteriza.php> (last visited Apr. 6, 2012).

¹⁰⁵ ORGANIZACIÓN INTERNACIONAL PARA LAS MIGRACIONES-MISIÓN MÉXICO, GRUPOS BETA: EL BRAZO HUMANITARIO DEL INSTITUTO NACIONAL DE MIGRACIÓN [INTERNATIONAL ORGANIZATION FOR MIGRATION-MEXICAN MISSION, THE BETA GROUPS: THE HUMANITARIAN ARM OF THE NATIONAL IMMIGRATION INSTITUTE] 2 (2011) [hereinafter INTERNATIONAL ORGANIZATION FOR MIGRATION-MEXICAN MISSION].

was established in the Tijuana-San Diego region, but eventually grew to encompass the entire country, including interior states crossed by migrants. In 2000, the General Population Law (*Ley General of Población*) was amended to officially create a Beta Group division within the INM and institutionalize the activities of the Beta Group.¹⁰⁶ The Beta Group gained additional constitutional legitimacy when the prior General Population Statute was incorporated into Article 71 of the new immigration law. Beta Group's mission is to provide help to immigrants, regardless of their legal status, who are at risk of abuse, dehydration, starvation, or exposure.¹⁰⁷ There are currently seventeen units in nine different Mexican states.¹⁰⁸

The Beta Group units patrol the migrant routes and the border regions, and generally include medics, rescue workers, and agents knowledgeable with human rights and domestic protection laws.¹⁰⁹ In addition to providing emergency supplies and medical attention, the units provide transportation to migrant shelters and information on how to assert rights and to file legal claims against governmental abuses.

Part of Beta Group's goal is to dissuade migrants from engaging in transmigration. To this end, Beta Group tries to warn migrants about the perils of transmigration and provides some assistance in self-repatriation, generally by offering funds for bus tickets or means to obtain necessary documents to return home.¹¹⁰ The Beta Group is not authorized to carry out immigration checks or to be armed. During 2010, the Beta Group assisted 228,809 migrants.¹¹¹

2. National System for the Integral Development of Youth and the Family

In Mexico, control over child welfare programs is not concentrated in the federal government; rather the federal government provides guidance and support to municipal and state governments through the DIF. DIF sets standards, provides guidelines for operations of shelters, and provides coordination among the thirty-one Mexican states and the

¹⁰⁶ *Id.*

¹⁰⁷ LI art. 71 (stating that the basic duty of the groups protecting migrants is to defend their human rights ["los grupos de Protección al Migrante tienen como objetivo 'la protección y defensa de sus derechos con independencia de su nacionalidad o situación migratoria.'"]).

¹⁰⁸ INTERNATIONAL ORGANIZATION FOR MIGRATION-MEXICAN MISSION, *supra* note 105, at 4.

¹⁰⁹ *Id.* at 5.

¹¹⁰ *Id.* at 6.

¹¹¹ *Id.* at 8.

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District of Mexico City.¹¹² This is not very different from the American system. What is different is that the program is traditionally headed by Mexico's First Lady who brings to the job her own unique perspective. The outgoing First Lady and lawyer, Margarita Zavala, has been a very active participant in the development of programs to address unaccompanied migrant children by hosting conferences both in Mexico and abroad and raising funds for shelters and preventive programs.¹¹³ It is too early to tell if the new First Lady, Angelica Rivera will continue the surge in attention to migrant juveniles that her predecessor began.

In 1996, UNICEF and DIF initiated a campaign to address the migration of unaccompanied minors.¹¹⁴ The campaign includes community education campaigns, migrant youth assistance through a network of shelters, and migrant youth research projects.¹¹⁵ The participating shelters and orphanages are to provide housing, medical care, counseling, access to legal help, and otherwise help minors to reunify with family or return to their place of origin.¹¹⁶ DIF also sponsors family counseling programs in the hopes of improving family reunification.¹¹⁷ Mexican Minors under twelve who cannot be reunified with family can be housed in DIF orphanages until they reach the age of twelve. DIF materials are silent on what happens to minors who are over the age of twelve and are not willing to reunify. There are no permanent governmental facilities for Mexican minors between twelve and seventeen who refuse or are unable to return home. It appears that these minors must rely on informal networks and non-profit organizations for help in transitioning from childhood into adulthood.

Statistically speaking, DIF housed 17,500 children in 2009 and 16,500 in 2010. Three thousand two hundred of the children were foreign-born and were mostly housed either in the Mexico City shelter or in one of the five DIF facilities along the southern border. Two of the southern shelters are in Tapachula, while Oaxaca, Tabasco, and Veracruz have one shelter each.¹¹⁸

¹¹² PROGRAMA INTERINSTITUCIONAL DE ATENCIÓN A MENORES FRONTERIZOS, MARCO GENERAL DE OPERACIÓN [DIF] 3 (2008) [hereinafter DIF].

¹¹³ INM Press Release, *Al Seguro Popular, Los Niños Migrantes* [On Public Safety, Migrant Children] (Oct. 20, 2011), available at <http://www.inm.gob.mx/index.php/blog/show/Al-Seguro-Popular,-los-ni%C3%B1os-migrantes.html>.

¹¹⁴ DIF, *supra* note 114, at 4.

¹¹⁵ *Id.* at 6.

¹¹⁶ *Id.* at 15.

¹¹⁷ DIF materials are silent as to what happens to minors who are over the age of 12 and are not willing to reunify. *Id.* at 23.

¹¹⁸ *Id.* at 13.

3. The National Commission for Human Rights

In 1990, Mexico's government created the CNDH. The CNDH is an autonomous agency charged with investigating human rights abuses in Mexico by federal agencies and government employees.¹¹⁹ The CNDH also monitors, assists, investigates, and issues reports on migrant shelters, called *albergues*. CNDH is the designated governmental agency for individuals to report human rights violations,¹²⁰ to monitor compliance with international human rights treaties,¹²¹ and to publicize such rights to the general public.¹²² CNDH cannot involve itself in private disputes, labor or electoral disputes, or jurisdictional concerns.

CNDH was originally created by a presidential decree, but a 1999 constitutional reform gave it autonomy and a more substantial budget.¹²³ While still a governmental organization, CNDH draws on papal decrees to justify the importance of human rights, specifically the right to mobility.¹²⁴ CNDH often references international treaties to establish what rights should be defended and the normative standard for each right.¹²⁵ Representatives of the CNDH visit migration stations, migrant shelters, and places where migrants concentrate or transit. The CNDH provides migrants with information about the dangers of traveling to the United States and also assists migrants with filing complaints with the proper authorities. Additionally, the CNDH compiles statistics on transmigrant abuses, publishes these reports, and shares them with international organizations such as the UNHR as well as national governmental bodies.¹²⁶ In 2011, the CNDH made 622 visits to thirty

¹¹⁹ Constitución Política de los Estados Unidos Mexicanos [C.P.] [Political Constitution of the United Mexican States], *as amended*, art. 102, § B, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>.

¹²⁰ *Id.* § B.

¹²¹ *Id.* § B X.

¹²² *Id.* § B XI, XII.

¹²³ *Antecedentes*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS [Background, NATIONAL COMMISSION ON HUMAN RIGHTS], ¶ 4 <http://www.cndh.org.mx/node/17> (last visited May 23, 2012).

¹²⁴ *Id.* at ¶ 1. See generally *Que Son los Derechos Humanos*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS [What are Human Rights?, NATIONAL COMMISSION ON HUMAN RIGHTS] <http://www.cndh.org.mx/node/30> (last visited May 23, 2012) [hereinafter *What are Human Rights?*].

¹²⁵ *What Are Human Rights?*, *supra* note 124.

¹²⁶ CENTRO NACIONAL DE LOS DERECHOS HUMANOS ("CNDH") [SPECIAL REPORT ON THE HUMAN RIGHTS NATIONAL COMMISSION OVER KIDNAPPINGS AGAINST MIGRANTS] 1 (2009).

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migrant albergues, investigated 333 complaints, and pursued 128 actions with various authorities concerning migrant abuses.¹²⁷

B. *Non-Governmental Agencies Assisting and Advocating for Migrant Protection*

1. *Sin Fronteras*

Sin Fronteras is a civil NGO involved in protecting the human rights and providing assistance to refugees, asylum seekers, and other transmigrants.¹²⁸ It is a secular organization comprised of academics and social activists.¹²⁹ It receives some funding from the government but also relies on private donations.¹³⁰ A large bulk of *Sin Fronteras'* work lies in thwarting the abuse of transmigrants and ensuring governmental compliance with national and international human rights principles. Corrupt officials stealing from the migrants or selling them into a trafficking ring is of special concern.¹³¹ Due to budget cuts, *Sin Fronteras* was forced to restructure and minimize its programs. It employs only twelve people in four areas: (1) social work; (2) psychological accompaniment; (3) legal issues and documentation; and (4) identity and defense.¹³² Its work involves site checks, visual inspection to ensure that policies are followed and that no abuse is taking place, and individual interviews to ensure the same. Finally, *Sin Fronteras* is involved with distributing resources, such as psychological and legal help, to those migrants in need.¹³³

¹²⁷ COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, INFORME DE ACTIVIDADES [NATIONAL COMMISSION OF HUMAN RIGHTS, ACTIVITY INFORMATION] 214 (2012); see also Miguel Cabildo, *Seguridad Jurídica y Trato Digno, Derechos de los Migrantes Más Vulnerados: CNDH [Legal Justice and Dignified Treatment, Rights of Vulnerable Migrants]*, ¶¶ 2, 5 (Jan. 20, 2012), available at <http://www.proceso.com.mx/?p=295532>.

¹²⁸ Sin Fronteras, *¿Quiénes Somos?* [Without Borders, Who Are We?], <http://www.sinfronteras.org.mx/index.php/es/acerca-de/quienes-somos#acerca-de-nosotros> (last visited Mar. 11, 2012) [hereinafter *¿Quiénes Somos?*].

¹²⁹ *Id.*

¹³⁰ Sin Fronteras, *Informe Institucional 2010 12* (2010) <http://www.sinfronteras.org.mx/index.php/es/publicaciones/informes-anales/1142-informe-institucional-2010> [*Informe Institucional 2010*].

¹³¹ *Id.* at 20–23.

¹³² *Id.* at ¶¶ 1, 3.

¹³³ Sin Fronteras, *Informe Institucional 2000-2007* (2009). See generally Fronteras, *supra* note 128.

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2. The International Network for Human Mobility

The Pastoral Dimension of Human Mobility (*Dimensión Pastoral de Movilidad Humana* (“DPMH”))¹³⁴ evolved out of a desire to advance “freedom of movement” as a basic human right.¹³⁵ The DPMH considers the ability of human beings to travel freely between nations in search of a better life a right inherent to human dignity and increasingly important as the world becomes technologically smaller and work demands create a greater need for travel.¹³⁶ DPMH has a network of loosely associated Community Based Organizations (“CBOs”) throughout Latin America collaborating to ensure that migrants are treated with dignity and respect.¹³⁷ In Mexico, it works with the CNDH and with Sin Fronteras but also sponsors albergues housing migrants.¹³⁸

3. The Migrant Shelter Network (*Albergues*)

Albergues are shelters for migrants and are designed to have a local and an international impact.¹³⁹ This is made possible by an

¹³⁴ Rafael Alvarado, *Breve Presentación del Encuentro de Obispos Responsables de la Pastoral de Migrante*, TALLER NACIONAL DE CAPACITACIÓN PARA LA PASTORAL DE MIGRANTES 13, 13 (2009).

¹³⁵ RAFAEL ROMO MUÑOZ, MANUAL DE LOS DERECHOS HUMANOS DE LAS PERSONAS MIGRANTES [MIGRANTS HUMAN RIGHTS MANUAL] 2 (2010), available at <http://www.movilidadhumana.org/1.pdf> 2 (2010).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 19.

¹³⁹ INFORME DE ACTIVIDADES, *supra* note 127, at 218–19. There are many migrant shelters throughout Mexico including: Albergue Casa del Forastero, in Santa Martha, Nuevo León; Albergue del Desierto, para Niños y Mujeres; Albergue Frontera Digna, in Piedras Negras, Coahuila; Albergue Hermanos en el Camino, in Ixtepec, Oaxaca; Albergue Hogar de la Misericordia, in Chiapas; Albergue Huichapan, in Hidalgo; Albergue Humanidad Sin Fronteras, in Piedras Negras, Coahuila; Albergue Jesús el Buen Pastor, in Tapachula, Chiapas; Albergue María Auxiliadora, in Coatzacoalcos, Veracruz; Albergue para Migrantes in Acayucan, Veracruz; Albergue para Migrantes in Huichapan, Hidalgo; Albergue para Migrantes La 72, in Tenosique, Tabasco; Casa de la Caridad Sin Fronteras, in Veracruz; Casa del Migrante in Apizaco, Tlaxcala; Casa del Migrante, in Tapachula, Chiapas; Casa del Migrante Matamoros, in Matamoros, Tamaulipas; Casa del Migrante Nazareth, in Nogales, Sonora; Casa del Migrante Reynosa, in Reynosa, Tamaulipas; Casa del Migrante San Carlos Borromeo, in Salamanca, Guanajuato; Casa del Migrante San Juan Diego Cuauhtlatzintzin, in México State; Casa del Migrante San Rafael, in Frontera Comalapa, Chiapas; Casa del Migrante Scalabrini, in Tecún Umán, Guatemala; Centro de Atención al Migrante Deportado, in Nogales, Sonora; Centro de Derechos Humanos del Migrante, A. C., in Ciudad Juárez, Chihuahua; Coalición Pro Derechos del Migrante; Comedor de Migrantes La Patrona, in Veracruz; Comedor para Migrantes in Tequisquiapan, Querétaro; Fundación VITA, Albergue para Adolescentes Migrantes, in Cancún, Quintana Roo; Insitituto Tamaulipeco, in Victoria, Tamaulipas; Módulo de Atención a los Deportados, in Agua Prieta, Sonora; Parroquia del Cristo Crucificado, in

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amalgamated network of individuals, NGOs, the Catholic Church, and the Mexican government.¹⁴⁰ It is not possible, nor should it be attempted, to understand the *albergues* as created solely by one group. *Albergues* can be formed by a variety of initiatives. In Mexico, a number of shelters have been created by state and federal governments. For example, Casa del Migrante Reynosa received one million pesos from the Mexican Federal Program to construct the buildings for the albergue.¹⁴¹ The government continues to donate around 200,000 pesos monthly.¹⁴² An example of an *albergue* created by a state government is the *Instituto Tamaulipeco*, created as part of an overall development plan for the state of Tamaulipas.¹⁴³ While it is not solely a migrant albergue, it does list assisting transmigrants in its mission.¹⁴⁴

The Catholic Church through its religious orders, as well as private citizen patrons has created a number of *albergues*. Priests along migrant routes seeing a need for transmigrant assistance petitioned for church funds to start and maintain shelters.¹⁴⁵ Private citizens, conversely, who also come into contact with transmigrants and sensed a humanitarian need, have also established albergues. Jesús el Buen Pastor started in a woman's private home in Tapachula.¹⁴⁶ The shelter was first funded

Tenosique, Tabasco; Proyecto El Rincón, in Malinalco, México State. See Comisión Nacional de los Derechos Humanos.

¹⁴⁰ *La Historia del Albergue y Su Historia*, ¶¶ 1-3 (Feb. 25, 2012), <http://www.alberguebuenpastor.org.mx>; see also Adriana Esthela Flores, *Será Reubicado el Albergue del Migrante del Tultitlán* [Tultitlan Institute of Migrants Will Be Relocated], MILENIO ONLINE, ¶ 6 (Aug. 17, 2011), available at <http://impreso.milenio.com/node/9010513>; *Documental Albergue del Migrante Reynosa* (July 20, 2011), http://www.youtube.com/watch?v=UwJ_9-uuA7A&feature=share.

¹⁴¹ *Documental Albergue del Migrante Reynosa*, *supra* note 140.

¹⁴² Liliana Torres, *Casa del Migrante Reynosa Recibe 200 mil Pesos al Mes: Morelos Canesco*, NOTICIAS RIO GRANDE (Dec. 2, 2011), available at <http://www.noticiasriogrande.com/?laNotaID=50068&laCategoria=6>.

¹⁴³ *Crea Gobernador el Instituto Tamaulipeco para los Migrantes*, TAMAULIPAS, ¶ 6 (May 23, 2011), <http://tamaulipas.gob.mx/2011/05/crea-gobernador-el-instituto-tamaulipeco-para-los-migrantes/>.

¹⁴⁴ *Id.* ¶¶ 3, 7-8. (alleging that the Instituto Tamaulipeco claim that it helps transmigrants is false, and that it does nothing to assist migrants, materially or otherwise. See also *Invisible Trabajo de Instituto Tamaulipeco del Migrante* [Work Not Being Done at Tamaulipeco, Institute of Migrants], HOY LAREDO NOTICIAS (Feb. 29, 2012), available at <http://www.hoylaredo.net/NOTICIAS1/NOTAS1/039005%20Invisible%20trabajo%20del%20Instituto%20Tamaulipeco%20del%20Migrante.htm> (explaining that the function of the Instituto Tamaulipeco remains to be seen).

¹⁴⁵ Flores, *supra* note 140, ¶ 6.

¹⁴⁶ See *La Historia del Albergue y Su Historia*, *supra* note 140, 1-3.

solely by money provided from her husband.¹⁴⁷ As it grew, they sought donations and created a used clothing store to finance the *albergue*.¹⁴⁸

Two examples, Albergue San Juan Diego and Albergue del Migrante Reynosa, demonstrate how difficult it is to separate the governmental and religious funding of transmigrant assistance. Casa San Juan Diego was founded by a priest and maintained through church funds, but the transmigrants who reside in the *albergue* receive federal benefits.¹⁴⁹ Casa Del Migrantes Reynosa was started and is still maintained with federal monies, yet is staffed by priests and is explicitly religious.¹⁵⁰ It identified as an organization under the Diocese of Matamoros.¹⁵¹

Despite the varied histories of how each *albergue* was created and is funded, *albergues* all seek very similar goals. At the base is the desire to provide basic necessities such as food, water, clothing, blankets, and shelter.¹⁵² *Albergues* have also developed training and pamphlets for distribution to help the travelers.¹⁵³ With an increase in transmigrants and transmigrant abuse, more *albergues* have sought to provide medical, legal, and psychological assistance.¹⁵⁴ Many *albergues* list such assistance on their websites, but often the scope of assistance does not involve additional assistance beyond directing victims to the proper government agency, be it BETA, INM, DIF, or CNDH.¹⁵⁵

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.* at 18.

¹⁴⁹ Flores, *supra* note 140, ¶ 6.

¹⁵⁰ *Documental Albergue del Migrante Reynosa*, *supra* note 140; *see also* Torres, *supra* note 142.

¹⁵¹ *Casas del Migrante Diocesis de Matamoros [Houses of Migrants Diocesis of Matamoros]* (2010), available at <http://www.migrantesdiocesismatamoros.org/casa-del-migrante-matamoros.html>.

¹⁵² *Hermanos en el Camino Albergue [Brothers on the Road Shelter]*, HERMANOS EN EL CAMINO, ¶ 1, <http://www.hermanosenelcamino.org/albergue.html> (last accessed March 12, 2012) [hereinafter *Albergue*]; *see also* Andrea Griborio, *Acontecimientos Arquitectónicos*, ¶ 2 (Nov. 4, 2011), <http://www.acontecimientosarquitectonicos.com/?p=305>; *The Shelter*, ¶ 2 (Mar. 7, 2012), <http://www.alberguebuenpastor.org.mx/index.php/en/the-shelter>.

¹⁵³ *Voz Migrante [Voice of Migrants]*, HERMANOS EN EL CAMINO, <http://www.hermanosenelcamino.org/voz-migrante.html> (last accessed Mar. 14, 2012); *see also* *Guía del Migrante*, RED CASAS DEL MIGRANTE CALABRINI, <http://www.migrante.com.mx/DerechosHumanos.htm> (last accessed Mar. 14, 2012).

¹⁵⁴ *Albergue*, *supra* note 152, ¶ 2; *see also* *The Shelter*, *supra* note 154, ¶ 2; *Aniversario Casa del Migrante en Tijuana [House of Tijuana Migrants]*, RED CASAS DEL MIGRANTE CALABRINI, ¶¶ 2, 9, <http://www.migrante.com.mx/Tijuana.htm> (last visited March 13, 2012); *see also* *Migrant's Shelter*, HERMANOS EN EL CAMINO, ¶ 3, <http://www.hermanosenelcamino.org/english.html> (last visited Mar. 14, 2012).

¹⁵⁵ Lorena García-Ramírez, *Albergues Revelan las Carestías de Migrante [Shelters Reveal the Destitute of the Migrants]*, LA JORNADA, ¶ 1 (Feb. 22, 2012), available at <http://www.jornada.unam.mx/migracion/?seccion=directorio-mexico>; *see also* Margarito Escudero, *Albergue de María Auxiliadora al Cuidado del Migrantes*, COATZA A DIARIO, ¶ 6 (Dec. 16, 2011), available at <http://coatzadiario.bligoo.com.mx/albergue-de-maria->

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C. Coordination of Transmigrant Assistance

CNDH, *Sin Fronteras*, and DPMH often interlink in the creation, maintenance, investigation, and advocacy of the *albergues*. *Sin Fronteras* has the most clear and defined relationship structure. It is a completely separate NGO that does not tie itself to the government or the Catholic Church.¹⁵⁶ Its work, while including distribution of resources, seems more concentrated on political reform, awareness of transmigrant issues, as well as preventing, reporting, and investigating abuse of migrants in the *albergues*.¹⁵⁷ The CNDH and the DPMH have an unclear relationship. Documents from the CNDH cast themselves as a purely governmental agency while documents from the DPMH treat the CNDH as the intra-Mexican agency of its larger international framework.¹⁵⁸ DPMH even includes the CNDH's work in its annual report.¹⁵⁹ The CNDH also works with *Sin Fronteras*, sharing training, research, and other information.¹⁶⁰ Regardless, the goals and mission of these organizations are very similar: to protect migrants physically, emotionally, and spiritually as they exercise their freedom of movement.

V. TRANSMIGRANT EXPERIENCES

The transmigrant's journey is so dangerous that transmigrants have labeled the migration route north "*La Ruta de la Muerte*," (the death path) and the trains they travel on "*La Bestia*" (the Beast). Some of the perils come from the means of transportation they use. A shelter that serves injured transmigrants reported that they have treated up to twenty-five

auxiliadora-al-cuidado-de-migrantes; *Casas del Migrante Diocesis de Matamoros* [*Marias Shelter, Helpers Caring for the Migrants*] (2010), available at <http://www.migrantesdiocesismatamoros.org/documentos.html>.

¹⁵⁶ *¿Quiénes Somos?*, *supra* note 128, at ¶ 5; *Informe Institucional 2010*, *supra* note 130, at 3.

¹⁵⁷ *La Crisis de Derechos Humanos en la Frontera Sur de México* [*The Crisis of Human Rights on the South Border of Mexico, Formation of Groups to Help to Protect the Human Rights of the Migrants*], SIN FRONTERAS (Aug. 2008), available at <http://www.dplf.org/uploads/1221486169.pdf>. See generally *Lineamientos Regionales para la Protección de los Derechos Humanos de los y las Migrantes*, SIN FRONTERAS (2005) (explaining that Sin Fronteras also hosts seminars to discuss these issues).

¹⁵⁸ *Constitución Política de los Estados Unidos Mexicanos* [C.P.] [*Political Constitution of the United Mexican States*], *as amended*, art. 102, § B, *Diario Oficial de la Federación* [DO], 5 de Febrero de 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>. Compare *Antecedentes*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, *supra* note 125, ¶ 1 (providing a history of the National Commission of Human Rights in Mexico and outlining its accomplishments), with MUÑOZ, *supra* note 137, at 48–49 (explaining the many ways in which the government is involved in violating the rights of transmigrants).

¹⁵⁹ MUÑOZ, *supra* note 135, at 48.

¹⁶⁰ COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS [CNDH NEWSLETTER], ¶ 17 (Feb. 2006); see also *id.* at 16.

people for broken and dismembered limbs each time the train crosses Tapachula.¹⁶¹ In a study conducted by the CNDH during 2005, 1500 transmigrants were injured in train accidents, including roughly one hundred amputations.¹⁶²

The number of abuses by corrupt government officials has been declining in the past decade, but problems nonetheless persist.¹⁶³ In 2008, a group of human rights organizations presented to the Human Rights Inter-American Commission and the Special Rapporteur United Nations General an extensive report on migrant and transmigrant human rights violations in Mexico. In their report, they noted that in 2007 alone the National Human Rights Commission's Migrant Attention Program received over 448 complaints against Mexican government institutions. Over 311 of the complaints were against the National Immigration Institute and another eighty-six complaints were made against municipal authorities.¹⁶⁴ There are numerous transmigrant complaints of poor detention conditions,¹⁶⁵ and mistreatment during immigration arrests and detention.¹⁶⁶

In addition to human rights violations committed by governmental authorities, migrant shelters report that between forty-seven percent and sixty-eight percent of migrants have been victimized by criminal groups.¹⁶⁷ The shelters report that robbery and verbal and physical abuse, including beatings and stonings, are common occurrences.¹⁶⁸ According to Amnesty International, hundreds of transmigrants disappear or are killed on their journey north through Mexico. The Mexican government has not kept accurate data of such reports nor does it currently have a strategic plan to address the problem.¹⁶⁹

Kidnapping of migrants for ransom has become commonplace. In a six-month period between 2008 and 2009, over 9758 migrants, including fifty-seven children were kidnapped primarily along train routes in Chiapas, Oaxaca, Tabasco, Veracruz, and Tamaulipas.¹⁷⁰ In 2010, the CNDH conducted a yearlong study on migrant kidnapping. The delegation conducted 2705 workplace visits, 1559 visits to immigration facilities, 214 visits to governmental offices that encounter migrants, and

¹⁶¹ BUSTAMANTE, *supra* note 12, at 12.

¹⁶² *Id.* at 13.

¹⁶³ AMNESTY INTERNATIONAL, *supra* note 32, at 21.

¹⁶⁴ BUSTAMANTE, *supra* note 12, at 7.

¹⁶⁵ *Id.* at 19.

¹⁶⁶ AMNESTY INTERNATIONAL, *supra* note 32, at 21.

¹⁶⁷ BUSTAMANTE, *supra* note 12, at 8.

¹⁶⁸ AMNESTY INTERNATIONAL, *supra* note 32, at 6.

¹⁶⁹ *Id.* at 18.

¹⁷⁰ *Id.* at 8.

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538 visits to migrant shelters. They also conducted 394 visits to places where migrants congregate, namely public plazas, train, and bus stations. The CNDH estimates that the delegation came into contact with over 68,000 persons during the span of the investigation.¹⁷¹ Between April and September 2010, the delegation identified 213 kidnapping incidents resulting in 11,333 victims.¹⁷² Sixty-seven percent of the incidents occurred in the southeastern region of the country and twenty-nine percent in the north.¹⁷³ The report prepared by the CNDH delegation includes testimonials by migrant victims. In the testimonials, many of the victims raised concerns about collaboration between authorities, including INM agents and kidnapping rings.

The kidnapping rings are highly organized, keep a register of the kidnapped victims, and have sophisticated procedures and intimidating practices.¹⁷⁴ Criminal rings operate in collaboration with train drivers, security guards, and corrupt government agents and officials.¹⁷⁵ Migrants interviewed by Amnesty International reported that migrants would be tortured or killed if they did not provide information about relatives who could pay ransom or if the money failed to arrive on time.¹⁷⁶

There is growing concern over the safety of *albergues*. Most *albergues* do not require identification, and some fear that common criminals are using the *albergues* as hiding places, endangering otherwise innocent migrants.¹⁷⁷ There are also reports that organized criminal groups scout *albergues* seeking to recruit transmigrants for drug trafficking and other crimes.¹⁷⁸ Some Mexican citizens fear that *albergues* encourage transmigrants to permanently settle, changing the character of the area.¹⁷⁹ These concerns have led to the closure of at least one *albergue*

¹⁷¹ COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, INFORME ESPECIAL SOBRE SECUESTRO DE MIGRANTES EN MÉXICO [NATIONAL COMMISSION ON HUMAN RIGHTS, SPECIAL REPORT ON MIGRANT KIDNAPINGS IN MEXICO] 26 (2011).

¹⁷² *Id.*

¹⁷³ *Id.* at 27.

¹⁷⁴ *Id.* at 28.

¹⁷⁵ AMNESTY INTERNATIONAL, *supra* note 32, at 16.

¹⁷⁶ *Id.* at 11.

¹⁷⁷ Flores, *supra* note 140, at 9.

¹⁷⁸ Claudia Benassini Félix, *Piden en Tultitlán Reubicar la Casa del Migrante San Juan Diego* [Requesting to Relocate the San Juan Diego Shelter in Tultitlan], MEDIOS MEXICO ¶¶ 3-4 (Dec. 13, 2011), available at <http://mediosenmexico.blogspot.com/2011/12/piden-en-tultitlan-reubicar-la-casa-del.html>.

¹⁷⁹ Torres, *supra* note 142, at 3.

due to repeated threats.¹⁸⁰ Other *albergues* report transmigrants being confronted by armed groups near the shelter.¹⁸¹

While the record of transmigrant abuse is alarming, the data may not tell the whole story. Many victims complained that authorities did not believe them or refused to take down victim complaints.¹⁸² This distrust is not isolated to the transmigrants. In the general population, only about twenty-two percent of all crimes are reported because victims lack confidence in the authorities to carry out a full investigation and prosecution.¹⁸³

Moreover, there are many disincentives to filing a complaint. First, many transmigrants do not know that humanitarian visas are available to individuals who report crimes. Also, when victims come forth, some are deported prior to obtaining a humanitarian visa necessary for their pursuit of a legal claim. Hence, many prefer to remain in the shadows instead of seeking justice. On some occasions, individuals who have reported crimes feared reprisal from their persecutors. Prosecution of transmigrant abuses are a low priority for state and federal authorities.¹⁸⁴ But on a positive note, it appears that some of these concerns are beginning to garnish attention from authorities. In fact, CNDH saw a slight uptick in the number of complaints filed in 2010 compared to the 2009 data.¹⁸⁵

Adolescent and female transmigrants are the ideal victims, and consequently, the most likely recipient of abuse and exploitation in Mexico. Women and girls constitute a growing percentage of transmigrants.¹⁸⁶ While male children have been subjected to prostitution and sexual abuse, it is even more common for girls and women to face such abuse along the migrant route. According to Amnesty International, “as many as six in [ten] women and girl migrants

¹⁸⁰ *San Luis Potosí, Cierran Albergue para los Migrantes en SLP [In SLP (San Luis Potosí (town)) a Shelter for Migrants is Being Closed]*, EL UNIVERSAL ¶¶ 1, 4 (July 14, 2011), available at <http://www.eluniversal.com.mx/notas/779591.html>.

¹⁸¹ *Amenazan a Migrantes Cerca de Albergue de Saltillo, Coahuila [Someone Threatened a Migrant Close to the Shelter of Saltillo, Coahuila]*, PERIODISMOTRANSVERSAL, ¶¶ 1-5 <http://www.periodismotransversal.com/index.php/los-hijos-ausentes/los-hijos-ausentes-mexico/449-amenazan-a-migrantes-cerca-de-albergue-de-salttillo-coahuila> (last visited Mar. 15, 2012).

¹⁸² COMISION NACIONAL DE LOS DERECHOS HUMANOS, *supra* note 171, at 28.

¹⁸³ *Id.* at 61.

¹⁸⁴ AMNESTY INTERNATIONAL, *supra* note 32, at 9.

¹⁸⁵ COMISION NACIONAL DE LOS DERECHOS HUMANOS, *supra* note 171, at 56.

¹⁸⁶ GABRIELA M. GUTIERREZ, *EL SUEÑO MIGRATORIO DEL NIÑO CENTROAMERICANO [THE CENTRAL AMERICAN CHILD'S IMMIGRATION DREAM]* (Oct. 3, 2011), available at <http://www.eluniversal.com.mx/nacion/189517.html> (explaining that some researchers estimate that eighteen out of every one hundred unaccompanied minors traveling are girls with two under the age of twelve).

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experience sexual violence during their journey.”¹⁸⁷ The certainty of sexual abuse is so well known that it is common for transmigrant women to request birth control from humanitarian groups either prior or during their journey north.¹⁸⁸ Prompt medical and psychological assistance is necessary for the best health of the person,¹⁸⁹ but sex abuse victims have little access to psychological or other support services at detention centers operated by INM and DIF.¹⁹⁰

Children’s heightened victimization arises because they often do not plan their journey north,¹⁹¹ are less likely to have access to migration networks and resources, are physically less able to defend themselves, and lack the cognitive and psychological development required to understand their rights.¹⁹² As a result, they are easy targets for child labor, pornography, drug trafficking, and prostitution.¹⁹³ There are a number of stories of children being sold for servitude in private homes or other criminal activity, such as trafficking or prostitution at brothels easily found in Tapachula and other towns transited by migrants.¹⁹⁴

State and federal police also pursue juveniles under the pretext that they may be engaged in gang activity.¹⁹⁵ In the last decade, Mexico has increased the penalties for crimes committed by individuals engaged in gang activities or suspected of being a gang member. Tattoos are considered a symbol of gang membership, and therefore police justify

¹⁸⁷ AMNESTY INTERNATIONAL, *supra* note 32, at 5.

¹⁸⁸ *Id.* at 15.

¹⁸⁹ Araceli López, *Casa San Juan Diego, Descanso el Norte* [House of San Juan Diego, Resting North], EL ECONOMISTA, ¶ 4 (Aug. 16, 2012), available at <http://eleconomista.com.mx/sociedad/2011/08/16/casa-san-juan-diego-descanso-norte>; see also Gladis Torres Ruiz, *Víctimas de Violación, 6 de cada 10 Mujeres Migrantes* [Victims of Rape, 6 of 10 Women. For Yourself Woman], POR TI MUJER, ¶¶ 1, 6 (May 1, 2011), available at <http://www.asociacionportimujer.org/2011/05/victimas-de-violacion-6-de-cada-10.html>.

¹⁹⁰ AMNESTY INTERNATIONAL, *supra* note 32, at 17.

¹⁹¹ GUTIERREZ, *supra* note 188 and accompanying text.

¹⁹² Lilian Chavez & Cecilia Menjivar, *Children Without Borders: A Mapping of the Literature of Unaccompanied Migrant Children to the United States*, 5 MIGRACIONES INTERNACIONALES 71, 80 (2010), available at <http://www2.colef.mx/migracionesinternacionales/revistas/mi18/n18-071-111.pdf>.

¹⁹³ Jorge A. Bustamante, *Extreme Vulnerability of Migrants: The Cases of the United States and Mexico*, 6 MIGRACIONES INTERNACIONALES 98, 112 (2011), available at http://www2.colef.mx/migracionesinternacionales/revistas/MI20/MI_20-97-118.pdf.

¹⁹⁴ Soledad Alvarez-Velasco, *A La Sombra del Miguel Hidalgo: Análisis Etnográfico del parque Central de Tapachula Liminar*, 8 ESTUDIOS SOCIALES Y HUMANÍSTICOS 129–52, 138–40 (Dec. 2010) (Mex.); see also *Caminan en defensa y dignidad de los Migrantes* [They Walk for Migrant Protection and Dignity], DIARIO LA VERDAD, available at <http://www.laverdaddiario.com/homepage/index.php/nacion/6437-caminan-en-defensa-y-dignidad-de-los-migrantes.html?print> (last visited Mar. 20, 2012).

¹⁹⁵ BUSTAMANTE, *supra* note 12, at 21.

strip searches of juveniles as necessary to establish whether the minor has a gang-related tattoo somewhere on his body.¹⁹⁶

Dr. Rodolfo Casillas, a prominent Mexican sociologist who has studied Central American migration through Mexico for the past twenty-five years, he concludes that the abuse of transmigrants is becoming more prominent, audacious, and sophisticated. And, most alarming to Professor Casillas, is a lack of social empathy toward transmigrants who are largely invisible and not part of the social fabric. As an example, he notes that kidnappings of Mexican nationals are regarded as a huge social problem by the general population, while the statistically larger problem of transmigrant kidnappings receives little to no public attention. This lack of community interest in the perils of transmigrants leads him to conclude that transmigrants will continue to be vulnerable targets so long as local communities turn a blind eye to the situation.¹⁹⁷ Despite the social dissociative trends noted by Dr. Casillas, empathy has not become extinct. Individual Mexican nationals often shield transmigrants from corrupt government agents and criminal networks.¹⁹⁸

VI. CONCLUSION

While the narrative of this Article admittedly only scratches the surface of transmigration conditions through Mexico, it modestly provides a platform for some analysis and discussion. Transmigration in Mexico deserves international attention. Although the economic downturn has reduced overall migration numbers, the violence of the journey continues to increase. International and national human rights organizations have placed a spotlight on the transmigrant human rights crisis in Mexico. Mexico's government succumbed to some of the pressure and recently sought to revise some of its laws and policies and to step up prosecution.¹⁹⁹ But questions remain in the minds of observers as to whether or not the Mexican government's efforts will be successful even if they are genuine.²⁰⁰

¹⁹⁶ AMNESTY INTERNATIONAL, *supra* note 32, at 21.

¹⁹⁷ Rodolfo Casillas, *The Dark Side of Globalized Migration: The Rise and Peak of Criminal Networks – The Case of Central Americans in Mexico*, 8 GLOBALIZATIONS 295 (2011). (explaining the evolution of the criminal networks that prey on Mexico's transmigrants and the social conditions that allowed it to happen).

¹⁹⁸ AMNESTY INTERNATIONAL, *supra* note 32, at 13.

¹⁹⁹ *Con Nueva Ley, Ningún Ilegal Será Considerado Delincuente* [With the New Law, No One Illegal Will Be Considered a Criminal], INFORMADOR.COM.MX (Feb. 11, 2011), <http://www.informador.com.mx/impresion/273557> (explaining that under new law, no irregular migrant will be considered a criminal).

²⁰⁰ Fabiola Martinez, *El INM Presume "Logros"; Abusos Contra Migrantes Continúan, Señalan Expertos* [The INM Assumes "Advances"; Abuses Against Migrants Continue, Point Out

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The precarious conditions transmigrants confront in Mexico carry indelible consequences, but there is little effective policing to end the harm and little support to help survivors. The trauma experienced by migration victims often goes untreated because shelters and government facilities in Mexico lack the resources necessary to address even the most common forms of abuse. More resources need to be dedicated to protecting transmigrants from the dangers of migration. However, such expenditure is not without controversy.

Mexico faces criticism from Central American countries for failing to provide protection to transmigrants while also facing criticism from the United States for easing travel through Mexico to the United States.²⁰¹ Domestically, Mexican nationals are generally tolerant and empathetic, even if as Dr. Casillas has pointed out not necessarily preoccupied, by transmigrant protection. In an attempt to neutralize criticism, the Mexican government's chosen strategy has been to concentrate its efforts in warning transmigrants about the dangers of the journey and helping those who fall victim to the perils, while actually expending little effort on eradicating the dangers.

This strategy allowed Mexico to straddle both interests in the past, but the increased violence against transmigrants in Mexico combined with Mexico's criticism of the United State's treatment of Mexican migrants has created an atmosphere where this strategy may fail. Some found Mexico's criticism of Arizona's SB1070²⁰² as hypocritical in light of its own failed record of protecting transmigrants in Mexico from human rights violations.²⁰³ The perception that Mexico has allowed itself to be used as a buffer by the United States leads other Latin American countries to question Mexico's regional priorities.²⁰⁴ Mexico is at a crossroads and appears to cautiously be choosing to refocus its strategy to boost transmigrant protections. The modification of its immigration statute described earlier in this Article appears to be an indication of this

Experts], LA JORNADA, 15 (Jan. 29, 2012) (Mex.), available at <http://www.jornada.unam.mx/2012/01/29/politica/015n1pol>.

²⁰¹ Danilo Valladeres, *Migration-Latin America: Another Wall Blocks Route to U.S.*, INTER PRESS SERVICE (Sept. 15, 2010), available at <http://ipsnews.net/news.asp?idnews=52838>; see also *Presentan Ley de Migración en Tapachula, Asiste el Secretario de Gobernación* [New Immigration Law Unveiled in Tapachula, the Minister of the Interior Present] EL INFORMADOR (May 20, 2011), available at <http://elinformadordechapas.com/presentan-ley-de-migracion-en-tapachula-asiste-el-secretario-de-gobernacion/>.

²⁰² S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010). Arizona's immigration statute discourages undocumented immigrants from settling in the state by requiring law enforcement to check the immigration status of anyone suspected of being in the country illegally. *Id.*

²⁰³ Martinez, *supra* note 200, at 15.

²⁰⁴ Valladeres, *supra* note 201.

adjustment in strategy. Further evidence is demonstrated by a new federal government program under which INM agents visit *albergues* and issue special travel permission to transmigrants allowing them to use public transit, thereby avoiding travel by freight train.²⁰⁵

Unfortunately, this unhurried change lags behind the swiftly escalating and entrenched transmigrant violence, and is taxing the scarce resources available to protect transmigrants. More legal and medical care needs to be provided to transmigrant violence victims. Human rights reports generally point to the unavailability of counseling and mental health care to victims of transmigration violence as an overarching concern.²⁰⁶ Resources must be assembled to identify and treat victims of transmigrant violence in Mexico, as well as those found in sending countries such as Guatemala and receiving countries such as the United States. A discussion of the consequences for victims who fail to receive psychological treatment for traumatic injuries is beyond the scope of this Article. However, it is worth noting that the relative youth of the transmigrant population means that transmigrant victims will live with the psychological trauma of their experiences for a very long time.

To this end, U.S. advocates are served well by the modest uptick in documentation of human rights abuses of transmigrants undertaken by the Mexican government and human rights organizations. Most human rights groups and legal advocates who work with migrant populations in the United States and Central America are anecdotally aware of the dangers of transmigration. However, having access to data and studies of the extent of the problem can prove invaluable in identifying and serving victims. It is only by grasping the patterns and the frequency of abuse that advocates can effectively screen for evidence of victimization in an otherwise reserved migration survivor. But grasping the extent of the problem is of little value if the underlying crisis is not addressed.

It remains unclear whether the Mexican government will succeed in improving the protection of transmigrants. There are a few hopeful signs. The government fired the head of INM after the Tamaulipas massacre, where seventy-two transmigrants died at the hands smuggling cartels. Two hundred federal agents suspected of collaborating with criminal groups have been fired, and many more prosecutions of corrupt officers are taking place.²⁰⁷ The election of Mexican President Enrique

²⁰⁵ *En Albergue San Juan Diego, Entregan 135 Permisos a Migrantes Centroamericanos* [In San Juan Diego Shelter They Gave 135 Visas to Central American Migrants], DEPARTAMENTO 19, ¶ 1 (Aug. 5, 2011), available at <http://www.departamento19.hn/index.php/elcamino/refugios/754-en-albergue-san-juan-diego-entregan-135-permisos-a-migrantes-centroamericanos.html>.

²⁰⁶ AMNESTY INTERNATIONAL, *supra* note 32, at 39.

²⁰⁷ *Con Nueva Ley, Ningún Ilegal Sera Considerado Delincuente*, *supra* note 199.

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Peña Nieto last June brought a return of the Institutional Revolutionary Party (*Partido Revolucionario Institucional* ("PRI")) to power. However, leading up to the elections Mexico's political parties, including the PRI, the Institutional Revolutionary Democratic Party, (*Partido Revolucionario Democrata* ("PRD")), and the National Action Party (*Partido Accion Nacional* ("PAN")) all voiced support for improving the treatment of transmigrants.²⁰⁸ Only time will tell what comes from their rhetoric.

²⁰⁸ *Id.*