

The Impact of Irregular Migration on the Family Women and Child Migrants in Transit through Mexico: A Regional Challenge

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XV Regional Conference on Migration (RCM)

Regional Seminar on Migration and the Family

Colegio de la Frontera Norte

April 21 – 23, 2010 - Tijuana, Baja California, Mexico

- Migration has an impact on families that can be complicated by irregular migration.
- It is important to understand the various definitions and compositions of families and the perspectives of the different members.
- The situations of women and child migrants in irregular transit and in detention in Mexico or the US are different, but both situations have important social consequences (emotional, economic, legal).
- Some remedies exist to decrease threats to and promote family unity in Mexico and the US, but these remedies require proper screening and legal representation.
- It is important to understand the regional nature of migration between Central America, Mexico, the US and Canada with an emphasis on the right to family unity taking into account the social impact of current practices.

- There is no universal definition of family.
- Definitions of family vary within and between societies. Family ties are based on blood, marriage, duties of care, economic and emotional dependency, etc.
- The definition of family is in constant evolution – divorce rates, multiple marriages, acceptance of unions between people of the same sex, reproduction through surrogates, etc.
- Governments have the responsibility to re-formulate policies that protect the right to family unity taking into account the evolution of the concept of family.

TREATY	ARTICLE	LANGUAGE
Universal Declaration of Human Rights	16(3)	The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
International Covenant on Civil and Political Rights	23(1)	The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
International Covenant on Economic, Social and Cultural Rights	10(1)	The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	44(1)	States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.
American Convention on Human Rights	17(1)	The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
Convention on the Rights of the Child	Preamble	<i>Convinced</i> that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community...

TREATY	ARTICLE	LANGUAGE
Universal Declaration of Human Rights	12	No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
International Covenant on Civil and Political Rights	17(1) and (2)	No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
American Convention on Human Rights	11(2) and (3)	No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks.
Convention on the Rights of the Child	16(1) and (2)	No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks.

- **The Preamble to the CRC describes the family as “the natural environment for the growth and well-being of all its members and particularly children.”**
- **Under Article 7 of the CRC, a child has “as far as possible, the right to know and be cared for by his or her parents.”**
- **Article 9 of the CRC requires “that a child shall not be separated from his or her parents against their will, except when...such separation is necessary for the best interests of the child.” Child and parents share a mutual right to be with each other, and the best interests principle is the guiding principle for any policy affecting children.**
- **When there is a separation, the opinions of all interested parties should be considered.**

1. Migration Contingent on Conditions

States set all sorts of requirements for family-based migration. Requirements include those dealing with age, family relationship, economic means, minimal length of residency, health concerns, etc. Minor children can only rarely immigrate their parents .

2. Migration Based on Status

International law recognizes an individual's right to leave and return to his or her country of origin but not to enter another country. States treat people differently based on their migration status as citizens, permanent residents, temporary migrant workers, refugees, etc

3. Reunification versus Unity

States distinguish between a person seeking entry and a person facing deportation. This distinction can be expressed as the right to reunification versus the right to unity.

4. Public Policy First

International treaties, with the exception of the CRC, allow States to give greater weight to public policy considerations at the cost of the right to family unity so long as interference is not arbitrary or unlawful. Examples of public policy considerations include public health, criminal convictions, economic concerns, and national security. Permissible limitations typically “are ‘provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized’ in the applicable treaty.”

- Children may not see their mother, father or siblings during childhood. (Lack of migration reform in the US, border security measures, economic factors, and the situation of violence in Mexico do not allow for circular migration).
- Some children travel unaccompanied (with or without permission or knowledge of their parents) facing great risks in transit.
- Conditions during detention and repatriation should be improved on an ongoing basis, but these procedures will always be counter-intuitive or counter-productive to the interests of migrants.
- Women and children are returned to transit migrant status after repatriation from the US or Mexico.
- Women who make the decision to leave their children in the country of origin to work for a few years in order to better their educational opportunities travel at great risk.
- Migrants that travel irregularly and do make it to the US often suffer severe physical and emotional harm, but this is often left unanalyzed as they have to quickly adapt to the new life.

Migrants in Transit through Mexico

- Part of the transit population wishes to remain in Mexico (or they report that they were trying to reach Mexico).
- Comprehensive assistance for migrant victims of crime is needed.
- Improve the treatment of detainees and ensure access to legal representation.
- Improve strategies to accompany child migrants during repatriation and reception. (art. 11V of 0011/2010 – OPIS should accompany children to the country of origin).
- Facilitate documentation for people that need to work (Ensure that procedures are flexible and continue to expand programs for work that are not linked to a specific employer).

- Expand categories for family- based migration (allow citizen minors to apply for visas for their parents).
- Create mechanisms to avoid situations in which family members have different migration status.
- Ensure that procedures and requirements do not prejudice women (economic requirements)

- Policies that support families to comply with their emotional and economic responsibilities are needed.
- Work visas must be flexible (not tied to a specific employer and allow for circular migration) so that families have more options to delegate responsibilities within the family.
- A regional migration framework that recognizes and supports economic and social integration is needed.