



Mexico City, June 7, 2021

**Honorable Mrs. Kamala Harris**

Vice President of the United States of America

As Mexican civil society organizations and individuals that defend the rights of migrants and refugees, we welcome you to Mexico. We would like to take this opportunity to introduce ourselves and express some of the challenges that we face in our work, as well as to offer recommendations related to the migration strategies that your government has announced in recent months.<sup>1</sup>

The migrants, organizations, networks and academics that have prepared this letter come from all over Mexico, from the southern to the northern borders. For more than 30 years we have provided humanitarian assistance, psychological support and legal representation to hundreds of thousands of people who, for various reasons, have been forced to leave their countries of origin. Throughout this time, we have been able to observe first-hand the effects that policies implemented by the United States and Mexico have had on millions of migrants and refugees in our region.

As you know, Mexico is a migrant country of origin, transit, destination and return, which implicates complex and dynamic challenges in our strategies to support people in each situation. In this sense, it is important to highlight that the legislative reforms and immigration policies implemented in the U.S. have an impact on transnational families, our families, that live in the different countries of the region, often separated as a result of these policy and legal restrictions.

Below we explain ways in which your administration's proposals could have an impact on our work and our lives related to the following topics:

### 1. Transnational Families

- a. Family reunification and the termination of family separation with the DACA and immigration reforms proposed by the Biden-Harris administration.
- b. Integration of returnees.

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1. Entre otros, Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the U.S.-Mexico Border. Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration. Executive Order on the Establishment of Interagency Task Force on the Reunification of Families.

## **2. Migration in transit, externalization of migrant deterrence, and lack of regular migration pathways**

- a. Externalization of the borders through MPP, Title 42, and containment policies on the southern border of Mexico.
- b. Compliance with repatriation agreements along the border.
- c. Impact on our humanitarian work

## **3. Strengthening the asylum system in Mexico**

- a. Refugee integration in Mexico
- b. Ways to strengthen COMAR and asylum processing

## **4. Protections for migrant children and their families in Mexico**

- a. Provide support to legal reforms in Mexico

## **5. Work visas for migrant workers in the United States**

## **6. Internally displaced persons**

## **7. Access to justice for the migrant population**

- a. Crimes against migrants and levels of impunity
- b. Serious human rights violations against migrants

## **8. Conclusions**

# **1. Transnational Families**

Since 2002, the United States has deported more than 5 million people, including more than 3 million during the administration of President Barack Obama. Historically, Mexican people have been the most affected by deportation, representing approximately 75% of all people deported from the U.S. The families they leave behind suffer economic, food and housing instability, as well as psychological trauma.

As a result of deportation policies, there are approximately one million people born in the U.S. who moved to Mexico after the deportation of a family member. It is common to meet families with various nationalities -- couples of Mexican and Central American nationalities, with children born in the U.S. -- who have to obtain immigration documentation, register their children's dual nationality if possible, and learn to live in a highly bureaucratized and discriminatory society. Approximately 500,000 U.S. born children have returned with relatives due to deportation and are confronting these challenges. These families often have difficulties learning the language, finding employment and they face barriers to school enrollment and access to health care. The same is true of hundreds of thousands of deported youth who lived their entire childhoods in the U.S., but were unable to register for DACA, and now find themselves living in a country foreign to them.

The deportation of Mexican mothers and fathers has also led to permanent loss of parental rights in some cases due to the inability of deported parents to participate in dependency procedures concerning their children who remained in the U.S. These situations constitute a violation of the right to family unity, causing traumatic situations that affect families on both sides of the border, leading to social instability in the communities of both countries and a feeling of urgency to emigrate again, even if that means risking one's life.

The Interagency Task Force on the Reunification of Families, created by the Biden administration to reestablish the integrity of families separated by the previous administration, sets a precedent and is a clear example of how the government could guarantee the rights of transnational families affected by deportation and other migration policies. We encourage the Biden-Harris administration to provide regular pathways for these families, and affected individuals, to return to the U.S. and be reunited with their families by removing barriers to re-entry.

### **a. Impact of DACA and Immigration Reforms Proposed by the Biden-Harris Administration**

The Deferred Action for Childhood Arrivals (DACA) Program is another example of a policy that has had a strong impact on our transnational families. Approximately 80% of people with DACA are Mexican nationals, and of these more than 25% have children born in the United States. The cancellation of the DACA program in September 2017 prevented first-time applicants from obtaining work permits and enjoying temporary legal protection against threats of deportation. Other DACA applicants have lost their status due to the inability to renew for financial reasons due to the cost increases or after having gone through the criminal system. The deportation of people who have or had DACA status has caused many to live in uncertainty, especially those who were in college and who face obstacles in resuming their education in Mexico due to a highly bureaucratized process to revalidate studies at the international level, as well as the costs of continuing higher education.

In the absence of action by Congress to regularize the immigration status of the five million undocumented Mexicans living in the U.S., and the insecurity of which they are victims, many families are forced to return to Mexico. The Biden-Harris administration should review efforts made in 2014 to expand DACA criteria and also consider a revised form of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) that would pass the legal tests that originally prevented its implementation.

### **b. Integration of returnees**

Taking into account the impact of deportations on families living in the U.S., the Biden-Harris administration should support the improvement of return and reintegration services for the returned/ deported population. This includes working with the federal and state governments and civil society organizations to guarantee and increase services at the local level (municipal and community) for returnees. Services for the deported population should include: access to identity documents, financing of the passports of US born children, expanding consular services to US citizens impacted by the deportation of a family member (access to vital documents, immigration services, coordination with US civil registries to modify birth certificates in cases of discrepancies with previously used names, orientation and support programs of Mexican public services for children and mothers and fathers, etc.), job training and placement opportunities, including support to the whole family. Services for returned children should be focused on their rights and include case management, educational and psychosocial support.

## **2. Migration in transit, externalization of migrant deterrence, and lack of regular migration pathways.**

### **a. Externalization of the borders through MPP, Title 42, and containment policies on the southern border of Mexico.**

Each year thousands of migrants and asylum seekers travel through the region in search of international protection, economic opportunities and family reunification. Most of these people leave countries in northern Central America (Guatemala, Honduras and El Salvador) and pass through Mexico. However, if they are unable or do not wish to apply for asylum in Mexico, most people must resort to irregular migration, exposing them to dangers on the journey such as extortion, kidnapping, sexual assault and other violent crimes. Along the way, more than 60% of transit migrants are victims of crime. Many people are forced to hire smugglers to facilitate the crossing, paying up to \$6,000 to reach the northern border and \$15,000 to reach the U.S.

One of the only ways to obtain immigration status is through a Temporary Humanitarian document – (authorized by law, but rarely granted) to children, asylum seekers or victims of a crime. A study by the International Organization for Migration (IOM), in which more than 2,800 interviews were conducted, showed that in the countries of northern Central America, 97% of migrants in transit had attempted to obtain documents to travel to and through Mexico.

However, Mexican officials will not activate regular pathways due to the fear that numbers of people moving through Mexico could increase and that U.S. government pressure would follow, as has occurred in the past.

Currently, asylum seekers arriving in an irregular manner to the Mexico-U.S. have no option to seek asylum due to the continuation of Title 42. As a result, there are thousands of people who have been stuck at the southern Mexican border waiting for their asylum applications to be resolved, and approximately 30,000 people waiting to apply for asylum in the U.S., either on metering lists or simply waiting for Title 42 to be rescinded.

### **b. Compliance with repatriation agreements along the border.**

While Mexican civil society organizations were pleased with the Biden-Harris immigration policy announcements during recent months, including the termination of MPP, the revision of detention and deportation criteria, the commitment to family re-unification, strengthening of the U.S. asylum system and regional protections, and the promotion of Congressional action to regularize 11 million undocumented people, we have been alarmed by the recent deterrence-focused negotiations and agreements between the U.S. and Mexico. These actions have reproduced and strengthened the externalization of borders, systematic detention and deportation, and have led to the denial of access to territory for people with international protection needs (border push-backs), especially for families, women and unaccompanied children and adolescents.

These agreements violate principles of international law such as non-refoulement and have led to the arbitrary detention of thousands of asylum seekers in southern Mexico. In addition, the Mexican government has increased detentions through the deployment of its National Guard and security forces in violation of the Mexican Constitution.

Denying access to territory violates the rights of migrants and asylum seekers and has resulted in these military forces implementing enforcement actions beyond the scope of their official functions. This enforcement expansion has resulted in the following complications:

- 1..The deployment of immigration agents, National Guard and other military forces throughout Mexico has created a militarized vertical border from south to north, limiting the right to free transit for migrants as well as Mexicans.
2. The promotion and implementation of racial profiling principally designed to target “anyone who looks like a poor person from Central America”.
- The legitimization of a discourse that criminalizes migrants, asylum seekers and refugees, as well organizations that carry out activities to defend or assist migrants and asylum seekers.
3. It accentuates discrimination and xenophobia in communities that have historically received refugees, leading to social confrontation including the use of violence.
4. It has increased the vulnerability women, children and adolescents to various types of violence, including gender-based and institutional violence.

### **c. Impact on our humanitarian work.**

Along the southern border, throughout Mexico's central states and in the different localities of the northern border, organizations and approximately 200 migrant shelters serve approximately 20,000 people per day. These shelters provide housing, food, medical and mental health services, and are often dependant on private community support to donate buildings, basic services, food and clothing. Each time there is a change in immigration policy, such as MPP, Title 42, the closure of the southern border to "essential travel", deployment of immigration agents or the National Guard, both migrant populations as well as our organizations are affected. We have to seek extra food donations, beds and volunteers to keep people safe. We have to take care of physical and emotional wounds, listen to testimonies of kidnappings, rape and missing family members and prepare human rights and criminal complaints to submit to the authorities.

People who flee violence to seek protection end up paying much more than what a family from the U.S. pays for a vacation in Mexico. In addition to money, they pay with their physical integrity, mental health and even their lives. It is unconscionable, a violation of rights, and an inefficient use of resources considering that organized crime ends up with the money.

Most of these violations could be avoided if people had access to some type of migration documentation in Mexico, allowing them to work and make decisions about their next steps. Mexican immigration law establishes mechanisms to request work and family visas from the Mexican consulates in Central America, but the Mexican government is not going to implement these provisions because it believes that it could lead to an increase in the number of people crossing into the U.S. Unfortunately, Mexican immigration policy is subordinated to US policy needs and petitions.

Therefore, we urge the U.S. to put an end to Title 42, as well as to establish a program that allows all people who were under MPP the opportunity to continue their cases from the U.S.

#### **MPP termination**

A general uncertainty persists about what will happen to the people who were subjected to the MPP and those who have not joined the Conecta program, managed by UNHCR. This population is still in danger in the border area of Mexico, as illustrated by the recent murder of a 19-year-old young man of Cuban origin, Cristian San Martín Estrada, with an active case of MPP who was about to enter the United States. The United Nations High Commissioner for Refugees (UNHCR) issued a statement condemning the murder and the continuation of policies that exclude asylum seekers. Given the dangers people face under MPP, we urge that:

- The United States Department of Homeland Security (DHS) transfer families and individuals under MPP safely and at no cost to the U.S., process their cases together to avoid family separations, parole them into the community, and provide them with an opportunity to apply for asylum and other humanitarian protections.
- DHS immediately proceed to Stage 2 to include all individuals subject to MPP, including those who received removal orders in absentia, had their cases closed, who were unfairly denied protection (whether or not their cases on appeal), those with "inactive" cases because of government procedural errors, and those who fled to the U.S. during their proceedings.
- DHS must create a formal process for attorneys and unrepresented individuals with inactive MPP cases to request reopening or an issuance of a new notice to appear (NTA).

- DHS and the Department of Justice (DOJ) should vacate all MPP removal orders in absentia. DHS must issue new NTAs for all people with removal orders in absentia who want to pursue their cases, because many people received these removal orders for facing violence and kidnappings, missing proper notice, being sick or being blocked in port entry through Customs and Border Protection.
- DHS file petitions to reopen immigration court proceedings for everyone whose case has been denied and whose case has been terminated. More than 10,000 MPP cases were terminated due to procedural violations by DHS.
- DHS should improve the processing procedure and accelerate the release of families and adults under MPP, collaborate and finance shelters and other services at the border, and improve the communication of information regarding the termination of MPP.

## **Title 42**

Title 42 has been used to expel migrants and asylum seekers from the U.S. to Mexico in spite of declarations by public health experts that the use of this policy does not provide health benefits. Under pressure by the U.S. government, the Mexican government has agreed to receive certain nationals from Honduras, El Salvador, and Guatemala without guaranteeing their non-refoulement rights. Title 42 expulsions of asylum seekers, migrants and their families result in the unjust denial of access to asylum and other humanitarian protections, as well as family separation when migrant children cross the border alone and be able to apply for asylum. Therefore, we urge the Biden-Harris administration to:

- Uphold asylum law and international treaty obligations and end the use of Title 42.
- Stop expulsions to a country in which close to 228,000 people have died from COVID-19 and where the implementation of mass vaccination has only reached 11% of the population since the rollout began in February 2021.

## **Compliance with repatriation agreements along the border**

The situation of repatriation, deportation and expulsion on the border between Mexico and the United States has been affected by the Migration Protection Protocols (MPP) and the implementation of Title 42, through which Mexican nationals as well as people from Honduras, El Salvador, and Guatemala are returned/expelled to Mexico. Under these policies, Customs and Border Patrol agents have systematically failed to comply with existing repatriation agreements, by expelling people through non-designated locations at unauthorized times. The US government must fully comply with existing repatriation agreements with Mexico as failure to do so makes migrants, asylum seekers and humanitarian workers even more vulnerable to organized crime.

## **3. Strengthening the asylum system in Mexico.**

The number of people seeking asylum in Mexico has increased dramatically in recent years. Asylum applications doubled from 2015 to 2016 (3,424 to 8,796) and increased by 700% between 2016 and 2019. The Mexican Commission for Refugee Aid (COMAR) received a total of 41,329 applications in 2020 in spite of the COVID-19 pandemic and is on track to receive over 80,000 in 2021. Countries with the highest number of recognized refugees include Honduras, Venezuela, Cuba, El Salvador and Guatemala, although applications from Haitians and people from other continents has also increased.



Mexican refugee law recognizes the 1951 Convention grounds of people persecuted for reasons of race, religion, nationality, political opinions or belonging to a certain social group. However, Mexican has a broader definition as well through the adoption of the Cartagena Declaration on Refugees which includes "people who have fled their country because their life, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive human rights violations or other circumstances that have altered the public order." The refugee law also recognizes persecution based on gender.

Although COMAR has improved its reception and processing capacity, asylum seekers continue to face significant obstacles to access protection. This includes the 30-day limit to apply from the time of arrival, the requirement that people must remain in the geographic jurisdiction where they applied for asylum during the entire procedure (with some exceptions due to serious security problems) and serious delays to receive a humanitarian document which provides work authorization and facilitates access to health and education. In addition, due to lack of capacity, people wait anywhere from 2 months to 2 years to have their cases resolved although the legal limit is 45 days from application to resolution.

In addition to challenges with the application and adjudication process, there are severe deficiencies in accessing information regarding the right to request protection in Mexico. Currently, COMAR does not have presence at ports of entry (its offices in southern Mexico are in Tapachula, Tenosique and Palenque, dozens of kilometers from the border). Those who submit an application at the border are frequently taken to detention centers where it is difficult to present an application. To avoid detention, many people try to travel to border cities to seek help from a shelter or legal aid organization. As a result of enforcement by migration agents and the National Guard along the border areas, many of these people are often victims of crimes such as extortion, robbery, kidnapping, sexual assault.

The lack of information – provided by migration agents as well as some COMAR personnel regarding the right to request asylum - was confirmed in a monitoring mission carried out in 2016 by the INM Citizen Council. The report found that most migrants never received information about their right to request asylum or the information was unclear. In addition, INM agents discourage people from applying by telling them that they will be detained for between six months to a year while the application is pending.

As a result of the prolonged detention of asylum seekers, in 2016 the INM launched a program to offer alternatives to detention, releasing asylum seekers to local shelters. However, as of October 27, 2020 the INM began excluding asylum seekers from the detention release program if they are undocumented and traveling alone, do not meet strict vulnerability criteria, have a prior negative decision on record when they attempt to enter Mexico, or have a criminal record.

For detained asylum seekers the lack of services, poor nutrition and health care, overcrowding, long waiting times and misinformation often leads them to desist from the process and accept voluntary return or deportation in order to be released from detention.

#### **a. Refugee integration in Mexico.**

Some places in Mexico, particularly northern border cities where many asylum seekers have been returned or expelled from the U.S., are among the most dangerous areas in the world and are not considered safe for asylum seekers or returnees. This is particularly true in the case of Tamaulipas which is one of the most violent areas in the world and is largely run by organized crime – drug and arms trafficking, fueled by the U.S. Along Mexico's southern border, the proximity with Central America makes it more difficult for asylum seekers to escape their agents of persecution, often re-creating the dangers from which they are fleeing in their home countries.

While asylum seekers may be at risk along the border regions, many people have been able to integrate in states in the center of the country that have relatively lower crime rates and more economic opportunities. Support to local institutions, shelters, civil society and refugee-led organizations that promote sustainable and dignified integration would help expand options for refugees to live safely and to continue on with their lives in Mexico.

## **b. Ways to strengthen COMAR and asylum processing**

Despite important measures undertaken by the López Obrador administration to strengthen COMAR, Mexico's Congress has not allocated sufficient resources, leading to a backlog of cases, and causing many people to withdraw their applications because they simply cannot survive in Mexico without adequate economic and social support. The COMAR budget for 2021 is 44 million pesos (approximately 2.2 million USD), less than in 2020.

In order to address the challenges described above, substantial resources need to be invested in the COMAR, especially if access to the asylum process is going to be expanded beyond the 8 cities where it currently has offices. To address this need, the UNHCR has greatly expanded its presence in Mexico in recent years, providing technical and infrastructure support to COMAR, with an estimated \$42 million USD in support in 2020. In addition, UNHCR has supported the construction of shelters for asylum seekers and refugees, assisted civil society organizations that offer legal and psychological services, and provided cash-based assistance to asylum seekers awaiting the resolution of their cases.

Given the exponential increase in applicants for refugee status in Mexico and the need to expand access and integration services, we hope that the Biden-Harris administration will:

- Allocate financial support to UNHCR, the Mexican government, and civil society to increase access to the asylum process, strengthen capacity of migrant shelters, including spaces adapted for families and children, increase temporary cash-based assistance to asylum seekers and new refugees, support legal defense programs run by civil society, facilitate alternatives to detention and expand relocation and integration initiatives.
- Provide financial and technical support to COMAR to increase staff, expand geographic coverage at entry points on the southern border and at airports throughout the country, train COMAR officials in best practices for interviewing asylum seekers, including children, families, and LGBTIQ + people, and promote language access initiatives for those who do not speak Spanish, such as Haitian and indigenous populations.
- Encourage the Mexican government to strengthen its asylum system through legislative reform and the removal of barriers to access to asylum. INM officials must cease to discourage asylum seekers from applying and must re-instate the alternatives to detention program. The US government should encourage Mexican authorities to provide training to INM agents to improve the detection of asylum seekers and provide them with access to COMAR procedures. In addition, the Mexican government should cease to use National Guard elements in immigration enforcement activities as the militarization of humanitarian work violates the Mexican constitution and the objective of international protection.
- Develop procedures with the Mexican government to provide access to protection in the U.S. to refugees who continue to be persecuted in Mexico.



## **4. Protections for migrant children and their families in Mexico.**

### **a. Provide support to legal reforms in Mexico.**

In 2014, Mexico passed a new Law on the Rights of Children and Adolescents (LGDNNA) that included language prohibiting the detention of unaccompanied migrant children. In compliance with international law, the Regulations to the LGDNNA state that no migrant child, unaccompanied or accompanied, should be detained in immigration detention centers because it is never in the best interest of the child. However, the National Migration Institute (INM) of Mexico continued to detain unaccompanied and accompanied children because the Law on Migration (LM) established that migrant children could be detained. As migrant detention in Mexico is the norm, the INM refused to release children until the LM was reformed.

Human rights organizations advocated for reforms to close legal loopholes that allowed migrant children to be detained. Reforms were finally passed by the Mexican Congress on November 11, 2020.<sup>4</sup> The reforms to the LM and the Law on Refugees, Complementary Protection and Political Asylum (LR) – solidified the prohibition against detaining unaccompanied and accompanied children and went into effect on January 11, 2021. Federal and state level Offices for Child Protection (Procuradurías de Protección a la Niñez -- PPNNA), the Systems for the Integral Protection of the Rights of Girls, Boys and Adolescents (SIPPINA), and the Department of Family Services (DIF) have until July 2021 to implement guidelines to protect migrant children and families who should be transferred to DIF instead of being detained.

Mexico faces several obstacles in the implementation of the reforms, such as the lack of sufficient financial resources to strengthen the PPNNA and the Social Assistance Centers, and the need to increase the technical capacity of the personnel of the Child and Adolescent Protection Systems.

We hope that the U.S. and Mexican governments will recognize each other as partners who must work together to increase regional protections for migrants, including unaccompanied children. Collaboration should prioritize the following areas:

- Shift immigration strategy from an enforcement and deterrence approach to one that prioritizes the protection of children's rights and best interests throughout their journey, their stay in Mexico, or their arrival to the U.S.
- Pursue binational solutions that ensure the safety and wellbeing of migrant children on both sides of the border. Create systems to allow for an open exchange of information on migrant children's needs, including quarterly meetings between U.S. and Mexican government agencies along the border to share information and best practices.
- Put in place permanent and effective spaces of dialogue involving both government and civil society actors to discuss binational mechanisms, actions, and policies to strengthen and effectively respond to children's best interests as a primary consideration and to address security risks, smuggling, human trafficking, and family separation.
- Develop and implement mechanisms for resettlement to the United States of children recognized as refugees by Mexico to reunify with family, as well as broader family reunification pathways in the U.S. and Mexico to guarantee the best interests of migrant children. Develop and expand bilateral coordination between Mexican and U.S. officials to ensure safe transfer to the United States of unaccompanied children following a best interests determination finding that seeking protection in the United States is in their best interests.

- Build permanent connections between U.S. and Mexican child protection institutions, increasing their communication and technical assistance exchange.
- Align repatriation policies and procedures with the best interests of the child, ensuring that returns only happen after a best interest determination and will not result in refolement or violation of a child's rights.
- Guarantee all migrant children access to ports of entry and border crossings where they can seek protection.

## **5. Work visas for migrant workers in the United States.**

The seasonal agricultural (H-2A) and non-agricultural (H-2B) worker programs implemented through the Department of Labor may offer options to individuals in need of economic opportunity, but must first be reformed to correct structural defects, poor regulation and protection gaps that have led to widespread exploitation of foreign workers, including widespread discrimination based on sex and age.

Under US law, both programs link visa holders to a specific employer, preventing working people from seeking another employer if they are denied promised wages, experience poor working conditions, or suffer other types of abuse. If protections are not improved, these initiatives channel migrants into poorly regulated and abuse-ridden programs, and return them to the same conditions as in their countries of origin. Despite extensive documentation of abuses and structural failures in these temporary employment programs, H-2 programs have steadily increased over the past few years. Structural problems must be addressed to guarantee the protection and guarantee of rights before the number of H-2 visas issued per year can be expanded, as well as access to seasonal work visas for people from Central America. The reforms must be carried out to:

- Make visas portable so that people are not tied to specific employers, as currently required by US law, preventing them from reporting abuses or withholdings for fear of retaliation.
- Create pathways to permanent legal status for those who are employed for long periods of time in the United States.
- Ensure that working people with H-2B visas can access legal rights.
- Provide concrete status protections and work authorization to any guest worker who faces workplace abuse or retaliation for exercising and demanding fundamental labor rights.
- Implement rules for temporary employment programs that guarantee the human rights of migrants throughout the recruitment chain.

### **Agricultural Workers**

Historically, agricultural workers have received extremely low wages and minimal protections in their workplaces despite facing extreme and dangerous conditions, and are frequently victims of a wide range of labor abuses, including forced labor, unpaid wages, workplace violence and harassment, lack of minimum provisions for health and safety at work, gender discrimination,

In the past, different federal administrations have used border and immigration control agencies to attack migrant communities while expanding the H-2A program to meet the low supply of agricultural work. In the last 15 years the H-2A program has grown fivefold in size. Unfortunately, protections for migrant workers who occupy these positions have not grown at the same rate.

On the other hand, the agricultural industry relies heavily on the labor of undocumented workers in the U.S. People without immigration status are in a particularly vulnerable situation that often prevents them from leaving abusive conditions.

It is necessary for the agricultural sector as a whole to modernize its working conditions so that workers in the sector have basic conditions that guarantee their safety at work, as well as the full enjoyment of their labor rights. Among others, a proposal for modernization of agricultural work must contemplate:

- Transparency in the recruitment processes, and clauses that hold employers certified by the Department of Labor (DOL) responsible for abuses committed throughout the recruitment process.
- Access to decent and fair housing and transportation.
- Clear anti-discrimination provisions, and effective complaint mechanisms.
- A path to permanent immigration status and citizenship for workers and their families who have participated for years in the agricultural industry.
- The possibility for agricultural workers to apply for their own visas, so that they are not tied to a single employer and can change jobs if conditions are not optimal for them and their families.
- Right of free association and unionization.

## **6. Internally displaced persons.**

We recommend that the U.S. government encourage the Mexican government to accept its responsibility to protect internally displaced persons through high level dialogue at the executive level, and resources to develop, adopt and apply a framework for the protection of the internally displaced population in line with the United Nations Guiding Principles on Internal Displacement. This includes carrying out studies of internal displacement to understand the scope and nature of the problem. Given the probable approval of a General Law on Forced Internal Displacement in Mexico, which would entrust the COMAR to administer the internal displacement program, the U.S. government should collaborate with Mexican civil society organizations to support the implementation of the proposed legislation. The U.S. government should also support the Ombudsman's offices and accountability mechanisms led by civil society to monitor the governments' compliance with its commitments to protect internally displaced persons.

- The U.S. government should strategically invest in pilot programs and expanded relocation and protection programs for internally displaced persons, as well as other protection innovations led by civil society in Mexico. This includes financing protocols for the care of internally displaced persons, a referral mechanism, and standard operating procedures to accompany the programs. Such initiatives should have a differentiated approach groups such as female-headed households, separated and unaccompanied children, indigenous and Garífuna, and LGBTIQ + people.
- Deportations from the U.S. to unstable and dangerous countries force people who have lived in the U.S. for decades to find themselves in a state of permanent limbo. To end this cycle of constant displacement, the U.S. must curb deportations that drive people into life-threatening situations and offer a legalization process.

## **7. Access to justice for the migrant population.**

### **a. Crimes against migrants and level of impunity.**

According to the Ministry of the Interior, in 2016, 858 foreign nationals in an irregular migratory situation stated that they had been victims of a crime in Mexican territory, in 2017 there were 710, in 2018 1,423 cases, in 2019 about 564 people and in 2020, 177. In the first four months of 2021, 166 crimes have been registered, that is, almost the same figure corresponding to all of 2020. However, there is an under-registration in these figures, since they are not reflected, for example, the 16 victims Guatemalans whose bodies were found burned in Camargo, Tamaulipas, in January 2021, despite the existence of investigation folders.

The most frequent crimes are: robbery (47%), human trafficking (23.7%), kidnapping (10.7%), human trafficking (4.2%), coercion or extortion (3.7%) and abuse of functions and bribery (1.25%). Many of these crimes are usually committed by organized crime structures supported or tolerated by authorities, in a context of systemic impunity, which has historically remained intact.

Faced with the commission of crimes, Mexico faces a crisis of impunity. The impunity rate in 2019 averaged 92.4%. Regarding the migrant issue, according to the Office of the Special Prosecutor for Human Rights, during 2019, the Investigation Unit of Crimes for Migrants - in charge of the prosecution of federal crimes committed against migrants - initiated 72 investigations and followed up with 186 previously initiated. Of these, only 3 were prosecuted, that is, 1.16%. Only one conviction was reported. In that same year, a hundred preliminary inquiries started in previous years were continued, of which there was not a single indictment.

### **b. Serious human rights violations against migrants.**

Over the last 10 years, the massacres of migrants have continued, of which 5 occurred in the state of Tamaulipas and remain unpunished. In the context of generalized violence in the country, migrants are mostly vulnerable on transit routes, victims of kidnappings, extortion, disappearances and executions.

The fight against impunity in cases of serious violations against migrants requires effective investigation and punishment, otherwise governments communicate a message of acquiescence. Mexico and Central American countries need to establish regional coordination mechanisms that include the cooperation of the U.S. to comprehensively combat systemic corruption and impunity in the region.

The massacres and disappearances of migrants demonstrate complex macro-criminal phenomena linked to smuggling and human trafficking, which reveal:

- The existence of organized crime
- A transnational network that has not been dismantled, on the contrary operates at a regional level in the countries of Central America, Mexico and the U.S. Criminal networks operate in all of these countries and are not diligently investigated.
- Public Prosecutor's Offices lack investigation methodologies consistent with the complexity of criminal phenomena, including macro-criminal approaches. They also lack specialized personnel and sufficient resources.
- Criminal networks act with the complicity of the authorities of the countries of the region. The Camargo case was a clear example of state participation through the police and the alleged intervention of INM personnel, however, there are no serious investigations to determine responsibilities of the authorities.

The lack of access to truth and justice for migrant victims prevails in Mexico, due to the institutional weakness of the Prosecutor's Offices and the lack of political will to resolve these serious cases.

The U.S. has strengthened the justice system in the region, investing 400 million dollars in the accusatory criminal system, however in Mexico there is a serious setback in the Attorney General's Office (FGR). The recently approved Law of the FGR adopts old schemes of the inquisitorial criminal system, eliminates the rights of the victims and dilutes the responsibility of the FGR to guarantee access to justice for migrants since it modified its coordination role of the Mexican Mechanism for External Support (MAE).

The MAE must be strengthened and expanded so that Mexico, through its embassies and consulates, establishes effective coordination mechanisms with Central America and the U.S., in order to guarantee access to justice for migrant victims and combat impunity. Mexico should issue pending the updated guidelines to regulate the operation of the MAE, which involves both the Prosecutor's Office and the Foreign Ministry.

The lack of effective investigations by the Office of the Attorney General of the Republic shows the need for extraordinary investigation mechanisms, supported by international organizations. Likewise, the committees of relatives of disappeared and executed migrants, accompanied by the Foundation for Justice and the Democratic Rule of Law, demand that the Mexican government form a Special Investigation Commission with independent experts who contribute to the advancement of investigations in cases of serious violations against migrants.

The new operation -Operation Sentinel-, announced by the Secretary of Homeland Security of the U.S., aimed at combating transnational criminal organizations related to the smuggling of migrants must also contemplate crimes that seriously affect the region (kidnapping, disappearance, execution).

President Biden's new immigration policy to contribute to eradicating the causes of migration, such as insecurity, violence, and poverty in Central America is laudable. However, this plan must also include the strengthening of governance and the rule of law, and the fight against corruption and impunity as endemic evils in Mexico. We recommend that the U.S. and Mexico collaborate to:

- Promote transnational coordination mechanisms in the region (Mexico, Central America and the U.S), with the participation of independent experts, to investigate criminal networks and crimes such as human smuggling and trafficking, as well as serious violations against migrants, such as disappearances and executions.
- Strengthen the prosecutor's offices and justice systems in Mexico and Central America so that people in the context of human mobility can have real and effective access to justice in all cases in which they consider that their human rights have been affected.
- End the militarization of the U.S. and Mexican borders and urge the governments of the region to eliminate this practice that violates human rights.

## **8. Conclusions.**

Similar to the rest of the world, Mexico is working to vaccinate its population against COVID-19. While the Mexican government has made progress in recent months, we are concerned about the lack of vaccines for medical and humanitarian personnel who work with migrants and asylum-seekers in Mexico. We recommend that the U.S. implement vaccination programs in shelters, in light of the fact that the continuation of Title 42 has placed migrants and shelter personnel in a precarious situation of uncertainty and challenging sanitation conditions. Likewise, the current containment policy on the southern border has left thousands of people in shelters in overcrowded situations where they do not have the necessary sanitation supplies to protect themselves from COVID-19.

We appreciate your visit to Mexico and your interest to listen to civil society. We would like to know what the communication channels should be with the administration to follow up on our recommendations and the implementation of the executive orders and new policies announced in various official documents and communications.

Finally, we recognize that the root causes of migration are related to a series of historical and current policies of governments throughout the region including past military interventions, resource extraction, exclusion policies, violence as a result of the criminalization and securitization of migration and the militarization of public security, as well as racism and discrimination against indigenous people, Afro-descendants, LGBTIQ + and people living in poverty. We applaud the inclusive policies for systemic change announced by President Biden and look forward to their implementation.

**Sincerely,**

**NGO**

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Observatorio Regional de las Migraciones  
ODA, Otros Dreams en Acción  
Sin Fronteras, IAP  
The Rhizome Center for Migrants  
Uno de Siete Migrando A.C.

**Networks**

Colectivo de Observación y Monitoreo de Derechos Humanos en el Sureste Mexicano  
Coalición Pro Defensa del Migrante  
Grupo de Trabajo Sobre Política Migratoria-GTPM: Aldeas Infantiles SOS México, I.A.P.; Alianza Américas; American Friends Services Committee; Asylum Access México (AAMX) A.C.; Casa del Migrante Saltillo (Frontera con Justicia A.C.); Centro de Derechos Humanos Fray Matías de Córdova, A.C.; Coalición Pro Defensa del Migrante de Baja California; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos; Fundación Appleseed México, A.C.; DHIA. Derechos Humanos Integrales en Acción, A.C.; FUNDAR Centro de Análisis e Investigación, A.C.; IMUMI Instituto para las Mujeres en la Migración; Iniciativa Ciudadana para la Promoción de la Cultura del Diálogo, A.C.; INSYDE Instituto para la Seguridad y la Democracia; M3 Movimiento Migrante Mesoamericano; REDIM Red por los Derechos de la Infancia en México; Save The Children México, Sin Fronteras, IAP; Servicio Jesuita a Migrantes México; Servicio Jesuita a Refugiados; SMR Scalabrinianas: Misión para Migrantes y Refugiados; Leticia Calderón, Analista en temas migratorios; Brenda Valdés; Elba Coria; Manuel Ángel Castillo, Investigador; IDC International Detention Coalition (Observadoras). Claudia Martínez Medrano, Jocelín Mariscal Agreda y Melissa A. Vértiz Hernández, Secretaría Técnica.



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