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КОНКРЕТНЫЕ ГРУППЫ И ЛИЦА:

ТРУДЯЩИЕСЯ-МИГРАНТЫ

**Доклад Специального докладчика г-жи Габриелы Родригес Писарро,
представленный в соответствии с резолюцией 2002/61
Комиссии по правам человека**

Добавление

Поездка в Мексику*

* Резюме настоящего доклада будет распространено на всех официальных языках. Доклад содержится в приложении к вышеуказанному резюме и будет распространен на языке оригинала и на английском языке.

Резюме

По приглашению правительства Мексики Специальный докладчик 25 февраля - 6 марта 2002 года совершила официальную поездку в эту страну. После этого, по совместному приглашению Мексики и Соединенных Штатов, она посетила границу между этими двумя государствами (см. документ E/CN.4/2002/85/Add.3). Доклады об обеих поездках рекомендуется рассматривать во взаимосвязи.

Специальный докладчик отметила искреннее стремление мексиканских властей и организаций преодолеть существующее противоречие между тем, чего Мексика добивается в плане защиты для своих мигрантов за рубежом, и тем обращением, которому иностранные мигранты подвергаются на мексиканской территории. Решение данной задачи диктует необходимость расширения полномочий Национального миграционного управления (НМУ) как главного федерального ведомства, компетентного заниматься проблемами миграции, с тем чтобы последнее самостоятельно решало вопросы миграционного характера и не зависело от различных правоохранительных структур, сотрудники которых не имеют соответствующей подготовки.

В докладе Специального докладчика показывается уязвимое положение мигрантов, рассматриваются ситуации, в которых мигранты оказываются жертвами злоупотреблений, и анализируются факторы риска, которому они подвергаются. К числу конкретных злоупотреблений относятся вымогательство, грубое обращение и сексуальное насилие со стороны членов криминальных группировок и лиц, занимающихся торговлей людьми. Специальным докладчиком также были получены жалобы на предполагаемую причастность к совершению указанных злоупотреблений отдельных сотрудников миграционных служб и/или правоохранительных органов. Специальный докладчик отметила, что, несмотря на массу проблем, с которыми сталкиваются мигранты, пересекающие транзитом мексиканскую территорию, их страны происхождения не обеспечивают в Мексике надлежащего консульского присутствия.

К числу наиболее серьезных проблем, выявленных Специальным докладчиком в ходе ее поездки в Мексику, относятся высокая коррумпированность аппарата и его тесная связь с транснациональной организованной преступностью, особенно структурами, занимающимися контрабандой людей и торговлей ими. Специальный докладчик встревожена сообщениями о предположительной причастности к такой практике, процветанию которой способствует обстановка безнаказанности некоторых государственных должностных лиц. Специальный докладчик высоко оценила решимость властей Мексики добиваться решения вышеупомянутых проблем. В качестве шага вперед в деле борьбы с безнаказанностью она рекомендует оперативно расследовать случаи нарушения прав человека мигрантов и карать за них.

Специальный докладчик приветствует то внимание, которое мексиканское общество уделяет изучению и анализу миграционных процессов на своей территории. Мексика является одной из стран, наиболее глубоко изучивших данную проблему, и она располагает значительными ресурсами для разработки и претворения в жизнь политики и мер в интересах этой группы населения. По мнению Специального докладчика, на настоящий момент необходимо перейти от этапа аналитической проработки к практической реализации национальной политики, направленной на учет потребностей мигрантов и их защиту. Эта политика должна осуществляться в сотрудничестве с гражданским обществом и реализовываться в рамках конкретных программ.

Специальный докладчик призывает правительство Мексики начать процесс приведения национального законодательства и государственной политики в соответствие с требованиями Международной конвенции о защите прав всех трудящихся-мигрантов и членов их семей и рассмотреть возможность присоединения к Конвенции Организации Объединенных Наций против транснациональной организованной преступности и Протоколам к ней.

В частности, Специальный докладчик рекомендует принять следующие конкретные меры: укрепление НМУ и групп "Бета", созданных в целях защиты мигрантов на границе, в кадровом и финансовом отношении; обеспечение подготовки сотрудников федеральной полиции по предупреждению правонарушений, привлекаемых в помощь НМУ, по вопросу миграционного регулирования и прав человека; ограничение возможностей вмешательства других армейских или полицейских подразделений в деятельность, связанную с миграционным контролем; и проведение кампании по борьбе с вымогательством и злоупотреблениями в отношении мигрантов, не имеющих документов, которая должна предусматривать действенные наказания для должностных лиц, причастных к случаям вымогательства, а также к совершению актов физического и сексуального насилия в отношении мигрантов.

Специальный докладчик также придает огромное значение пресечению коррупции во всех ее проявлениях как ключевому элементу борьбы с торговлей людьми и контрабандой людей, включающей увольнение уличенных в коррупции государственных служащих и последующее привлечение их к уголовной ответственности.

Пользуясь возможностью, Специальный докладчик выражает правительству Мексики признательность за ценную помощь и сотрудничество, оказанные ей в период ее пребывания в стране, а также благодарит представителей гражданского общества, мигрантов и Организацию Объединенных Наций за их неоценимое содействие.

Annex

**REPORT SUBMITTED BY MS. GABRIELA RODRIGUEZ PIZARRO,
SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS,
ON HER VISIT TO MEXICO FROM 25 FEBRUARY TO 6 MARCH 2002**

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Introduction

1. At the invitation of the Government of Mexico, the Special Rapporteur on the human rights of migrants undertook an official mission to that country from 25 February to 6 March 2002. Subsequently, following the joint invitation by both countries, she visited the frontier between Mexico and the United States. The results of her second visit are described in document E/CN.4/2002/85/Add.3. It is suggested that the two reports be read jointly.

2. In this report the Special Rapporteur describes what she saw in Mexico from a constructive standpoint which seeks to identify good practices, and also areas where migrants are confronted with situations of vulnerability and where State action would appear to be of crucial importance. She also examines the role of other protagonists in the migration process, including non-governmental organizations (NGOs) and the private sector. Throughout the report, account is taken of gender equity and the particular situation of migrant boys and girls. Since Mexico is simultaneously a country of origin, a receiving country and a transit country, the migration process in Mexico is somewhat complex; this report attempts to reflect this fact without claiming in any way to be exhaustive. Its scope is limited to the facts which the Special Rapporteur was able to observe and the information she was given during her visit. She hopes that the content of this report will be interpreted as a further item in the necessary dialogue between the State, civil society and migrants with the aim of ensuring the full realization of the human rights of migrants.

3. The Special Rapporteur's visit comprised meetings in Mexico City, Tapachula, Veracruz and Michoacán. She had interviews with the Minister of the Interior (Secretario de Gobernación), the Under-Secretary for Population, Migration and Religious Affairs within the Ministry of the Interior, the Commissioner of the National Institute for Migration (INM) and Ministry officials. In addition, she met the Under-Secretary for Human Rights and numerous officials of the Ministry for Foreign Affairs. She also talked to the President of the National Human Rights Commission, deputies who are members of the commissions on foreign affairs, frontier affairs and human rights, and senators and/or their representatives in the commission on foreign affairs and in the subcommissions on frontier affairs and human rights. In the Procurator-General's Office, the Special Rapporteur interviewed the Deputy-Procurator for International Affairs and the Director-General for Human Rights. She met representatives of various United Nations agencies present in Mexico and the United States Ambassador to Mexico. She participated in two important meetings with NGOs in Mexico City. She also visited the migrant holding centre in the Federal District, various INM migration facilities and the Social Rehabilitation Centre in Tapachula, where she interviewed officials and migrants. She was invited to the Homes for Migrants Network, refuges and NGOs. Other persons interviewed included the consuls of central American countries, the Ecuadorian consul, migrants and members of their families, local and State officials in the places she visited, members of academia, members of the Beta Groups (see para. 7) and members of the press.

4. The Special Rapporteur would like to take the opportunity to thank the Government of Mexico for the valuable assistance and cooperation it extended to her during her visit to the country. The Government provided the Special Rapporteur with all the necessary facilities to

carry out her visit in a transparent and open atmosphere. She would also like to thank the Minister of the Interior and the INM officials who assisted her and gave her information on the migration situation in Mexico. The United Nations Development Programme and the United Nations Information Centre provided essential logistic support for the visit. She is especially grateful to the civil organizations, the Sin Fronteras (Without Borders) organization and the Homes for Migrants, and to academia for their valuable support throughout her visit and to the migrant men and women whom she met for their direct testimony.

I. GENERAL IMPRESSIONS

5. The Special Rapporteur noted the obvious concern of the Mexican authorities and organizations to end the dichotomy which exists between what Mexico asks for its migrants abroad in terms of protection, and the type of protection and treatment it offers to foreign migrants in Mexico.

6. At the federal level, the Special Rapporteur felt encouraged by the approach which the Ministry of the Interior and the INM are developing with regard to migration management, including the protection of the human rights of migrants, and encourages them to continue on this path. She considers that it is necessary to strengthen the INM as the principal federal body with competence for migration matters, so as to enable it to deal with migration questions on its own, without being dependent on a multitude of police forces which intervene at the municipal, State and federal levels and have no specialized training in migration questions.

7. The Beta Groups, which form part of the INM, are primarily engaged in the tasks of providing protection and guidance for migrants and must be given the necessary resources to carry out their work in a professional and effective manner. The Special Rapporteur welcomes the establishment of these groups which, in addition to having the task of offering concrete responses to migrants with problems, represent an innovative form of protection in frontier migration management in Mexico. The Special Rapporteur heard allegations that, on some occasions, members of other police forces, with no specific training, had been transferred to the Beta Groups. In her opinion, the strengthening of this body, so as to ensure that it has its own human resources with specialized training, would guarantee the quality of its performance.

8. In her report, the Special Rapporteur describes the situation of vulnerability with which migrants are confronted, the situations in which they are subjected to abuses and the risks to which they are exposed. She noted that, given the extent of the problems confronted by illegal migrants transiting through Mexico, there is inadequate consular representation of their countries of origin (in particular, central American countries and Ecuador) to deal with them. The Mexican Government informed the Special Rapporteur that it has initiated a dialogue with various Central American Governments and the Ecuadorian Government to study the possibility of establishing Central American and Ecuadorian consulates. The Special Rapporteur takes note of the interest expressed by the Mexican Government in continuing negotiations with the above-mentioned countries with a view to the opening of consulates on its territory. She considers it extremely important that these consulates should be staffed by personnel with expertise in migration questions, particularly with regard to consular protection.

9. One of the most serious problems which the Special Rapporteur noted during her visit to Mexico was that of corruption linked to transnational organized crime, and in particular gangs engaging in the trafficking and smuggling of persons. These practices are encouraged by the levels of impunity which exist in connection with abuses against migrants committed by criminal gangs. The Special Rapporteur noted with concern reports of the participation and consequent impunity of certain public officials allegedly involved in such practices.

10. Resolving the problems deriving from corrupt practices has been identified as one of the principal challenges facing Mexico in the formulation of its migration policy. The Special Rapporteur is aware of the efforts made by Mexico to dismiss members of the migration services and certain police forces involved in illicit trafficking and smuggling of persons and in other abuses against migrants. She considers that it is essential to develop internal control mechanisms. It is also important to give priority to action to protect migrants' human rights through the State commissions and procurators' offices and the National Human Rights Commission, and also the Ministry of Comptrollership and Administrative Development (SECODAM), with agreed formulas incorporating recommendations by civil organizations. In addition, within the INM, the strengthening of the Beta Groups could be instrumental in preventing these crimes.

11. Mexico is one of the countries which has conducted most research on migration phenomena, acquiring substantial resources for the purpose of designing and executing policies and measures to assist migrants. The Special Rapporteur considers it necessary to proceed from this diagnostic phase to the execution of concrete measures designed jointly by the authorities, NGOs and academia. In her opinion, this must also be reflected in the negotiating forums and regional dialogue in which the State and Mexican organizations are participating.

12. The Special Rapporteur views with great concern the attitude of the media to questions relating to migration. It is her impression that, in their treatment of this subject, many media attach more importance to sensational news items than to the actual situation of migrants. This situation, which is not confined to Mexico, causes the Special Rapporteur particular concern owing to its effects on the process of integration and acceptance by the receiving societies. In this context, the Special Rapporteur is of the opinion that the media could play a more active and ethical role in increasing local awareness of the vulnerability confronting migrants and the need to protect them against possible abuses.

II. LEGAL AND INSTITUTIONAL FRAMEWORK FOR MIGRATION IN MEXICO

13. At the international level, Mexico has demonstrated its commitment to the promotion of the human rights of migrants and has encouraged the development of regional and international law in this respect. Mexico played a leading role in the establishment of the mandate of the Special Rapporteur on the human rights of migrants by the Commission on Human Rights. It also played an important role in the adoption of the paragraphs on migrants' rights in the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

14. Mexico has ratified most of the international and regional human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Special Rapporteur congratulates Mexico on the international commitments it has undertaken and recommends that it should ratify those treaties to which it is not yet a party.

15. The above-mentioned international commitments undertaken by Mexico are reflected at the national level in the ratification of the international instruments by Congress. In addition to the Constitution of the United Mexican States, the most relevant legislation concerning migration in Mexico is the General Population Act and its regulations, the Citizenship Act, the Regulations governing the Ministry of the Interior and the decree establishing the INM. These laws and regulations govern migration procedures, establishing migrants' duties and the limits on their rights, but do not explicitly and exhaustively list the obligations of the Mexican State with regard to the protection of the human rights of migrants. Rather, these rights are regulated by secondary laws.

16. The Special Rapporteur is concerned about the parts of the General Population Act dealing with criminal penalties (up to 10 years' imprisonment) for undocumented migrants. This law criminalizes on undocumented migrants and can even be applied to the victims of trafficking and smuggling. Several officials told the Special Rapporteur that, in practice, this law is not applied strictly and that illegal migrants are usually deported or expelled without being punished under criminal law. This apparent gap between the law and practice leaves room for some discretion, which might in some cases have given rise to abuse and arbitrary action.¹ The Special Rapporteur feels it should be pointed out that, as far as criminalization is concerned, the Protocol against the Smuggling of Migrants by Land, Sea and Air, which supplements the United Nations Convention against Transnational Organized Crime, states that migrants who are victims of illegal trafficking in persons or related activities are not subject to criminal proceedings. The Special Rapporteur invites Mexico to use the Protocol as a frame of reference in these matters.

III. MIGRANTS IN TRANSIT THROUGH MEXICO: GROUNDS FOR CONCERN

17. Mexico has a recognized tradition of accepting migrants and asylum-seekers, as reflected not only in its foreign policy but also in a number of domestic initiatives to help migrants. These measures include programmes to legalize migrants, as is done, for example, in the case of former Guatemalan refugees who have not returned to their country, and opportunities for individuals or organizations to sponsor a migrant's stay in Mexico. Some of the largest migratory flows in the world - many of them illegal - take place in Mexico. The Special Rapporteur observed that migrants are nevertheless vulnerable during the whole of their journey through Mexico.

Extortion and attacks on the physical integrity and dignity of migrants

18. The Special Rapporteur observed a general climate of harassment and exploitation of the vulnerability of migrants. She believes that efforts to protect migrants' dignity should be stepped up as a matter of urgency by all concerned. She heard testimony from men, women and children who had been attacked by criminal gangs specializing in attacking foreign migrants in transit.² On a number of occasions, migrants who were being attacked were allegedly forced to go to

isolated spots where they were made to undress and were insulted, mocked and threatened with violence or death if they complained or resisted. The Special Rapporteur heard stories of women who were sexually abused and raped by the criminals in front of their husbands.

19. There have also been reports of abuse by a number of public officials. Most of the migrants interviewed said they were blackmailed when they were caught, sometimes by public officials. One Nicaraguan detained in the Social Rehabilitation Centre in Tapachula explained to the Special Rapporteur that he had been falsely accused of theft for trying to stop his wife from being raped by police officers. In addition, the officers stripped the couple and their baby and took the money they had hidden in the baby's shoe. Some of the migrants said there appeared to be some kind of complicity between the people-smugglers, who are also known as "coyotes" or "polleros", and the criminals who attacked them and/or the police officers who extorted money from them. The Special Rapporteur was very concerned to observe the prevailing climate of impunity, in which violations of the rights of men and women migrants occur very quickly and go unreported.

20. With regard to reported abuses by public officials, the Special Rapporteur noted how very difficult it was for migrants to identify the institution for which the alleged aggressor worked, let alone his rank or name. Their lack of knowledge of the country and of its different police forces probably adds to this difficulty. However, the Special Rapporteur observed that when migrants did identify the police force involved, most of them mentioned the municipal police forces, the Judicial Police or the Federal Preventive Police.

Abuses in the context of trafficking in persons by criminal groups or networks

21. Migrants also told the Special Rapporteur about cases of fraud and even kidnapping committed by traffickers at both the northern and southern borders. When they kidnapped a migrant, the criminals would make contact with his or her relatives and the migrant would only be released and allowed to continue the journey to the north if money was paid. Migrants who need help from smugglers to get across the border pay up to US\$ 1,500 each and run the risk of being abandoned and/or abused by the traffickers during the crossing. Women and unaccompanied children are particularly vulnerable to this kind of abuse.

22. During talks with NGOs and migrants, the Special Rapporteur was told that there are in Mexico a number of powerful networks of people-smugglers handling large sums of money. She observed the growing concern of the federal authorities themselves in the face of the expansion of trafficking networks that operate all along the route from the migrants' countries of origin to their country of destination, passing through the various countries of transit in a complex network of traffickers, drivers, people providing accommodation, guides, forgers of identity documents and some public officials. The sensitive task of dismantling criminal organizations of this size poses a huge challenge to Mexico, especially given the large amounts of money involved in the activity.

23. The Special Rapporteur was told about the Mexican authorities' efforts to combat the serious problem of corruption. In particular, she was told that campaigns are being organized by SEDOCAM to combat corruption and create a culture of transparency and lawfulness in Mexico. The Special Rapporteur would like to stress the importance of stepping up efforts to weed out

and punish public officials and others involved in unlawful activities. It is suggested that better training for the police forces responsible for migration procedures and better supervision of the way they carry out their duties would help to combat the collusion between smugglers and officials. In order to provide better protection for migrants, this training should include not only information about the laws governing the treatment of migrants but also awareness-raising, to make the officials more sensitive to the psychological effects of ill-treatment.

24. The Special Rapporteur was told about the alleged murder of Mr. Ángel Martínez Rodríguez, the coordinator of the Beta Group in Tenosique in 1999. Mr. Martínez had reported cases of corruption and involvement of State officials in these networks. The Special Rapporteur would welcome up-to-date information on the investigations carried out to solve this case and the action taken to bring those responsible to justice.

Accidents and abuse on trains

25. Another major source of concern to the Special Rapporteur is the precarious situation of migrants who use freight trains to cross Mexican territory. Numerous reports have been received of accidents on these trains and on the railway tracks that have resulted in death or the loss of arms or legs. The Special Rapporteur heard the testimony of a Honduran man in the migrant holding centre in Mexico City who had lost the toes of both feet. She also heard testimony from migrants who said they had seen others die when they fell from the train they were travelling on. The occurrence of incidents of this type highlights the need to prevent migrants from illegally using this form of transport and to have special programmes set up, including by consulates, to take care of people who are seriously injured in accidents.

26. The Special Rapporteur also received many reports about attacks and abuse by private security officers working for the railway companies. Migrants also reported that they had witnessed women being raped by these officers or by other migrants inside wagons. Once again, the Special Rapporteur observed that the threat of being reported as illegal immigrants and of being deported caused migrants not to report what had happened to them or what they had witnessed to the authorities.

Racism and discrimination

27. Some of the INM officials interviewed told the Special Rapporteur that when they were stopping people, a person's race, clothes or accent could be enough to make them suspicious and ask that person to show his or her papers. The Special Rapporteur learned about the case of seven indigenous persons from Chiapas who had been stopped in Hermosillo (Sonora) by INM officials for deportation from Mexico to Guatemala because they were thought to be Guatemalan. The case received widespread publicity and led to a public complaint by the victims. The Special Rapporteur draws attention to the need to adopt concrete measures as agreed upon at the World Conference in Durban to prevent discriminatory acts based on prejudice.³

IV. THE INTERCEPTION, DETENTION AND DEPORTATION OF MIGRANTS

28. The Special Rapporteur noted that there are two deportation systems, and that the use of one or the other depends on the origin of the migrants in question. Central Americans are taken to the closest INM facilities, where migrants are held while their cases are being examined and arrangements made for their deportation. This process can last up to two days, depending on the availability of transport. Migrants whose deportation is more complicated owing to the difficulty involved in accompanying them to their countries of origin, or whose migrant status is subject to review, are transferred to the holding centre in Mexico City (the main holding centre for migrants, which was specifically established for this purpose) or to the new holding centre in Champotón, where they remain until their cases are decided. Migrants in this category may be held for months.

29. The Special Rapporteur had the opportunity to visit the migrant holding centres in Tapachula and Veracruz, and others situated on Mexico's northern border with the United States. She noted that detention conditions varied depending on the place and the number of migrants detained. She also noted that all the facilities visited had been improvised for the purpose. Many facilities do not have beds, and migrants are accommodated on the floor, in corridors and in INM offices. The Special Rapporteur took note of the overcrowding of the Tapachula holding centre, which is not equipped to house the number of migrants intercepted in the area. When INM facilities are unable to accommodate more people, migrants may be interned in municipal prisons, which are not suited for the detention of migrants. The security bodies responsible for administering these prisons allegedly lack the necessary training to deal with migrants in this situation, and often treat migrants as criminals. Although in most cases migrants remain in such holding centres for only a few hours, the Special Rapporteur considers that the facilities are unsuitable for detention with due respect for migrants' dignity.

30. In August 2001, the INM announced that the migrant holding centre in the Federal District was to be refurbished and expanded. During her visit to the centre, the Special Rapporteur observed problems of sanitation and overcrowding, and noted that the centre was in urgent need of renovation. Furthermore, according to statements gathered during the visit, the food provided is insufficient and not adequate for a centre that receives people with very different cultural backgrounds. For example, many meals containing pork are served to persons whose religion forbids them to eat that kind of meat. The Special Rapporteur noted with deep concern the discriminatory and humiliating treatment accorded to occupants of different cultures, religions and ethnic groups. In her presence, one Pakistani occupant was contemptuously called "Osama", since Muslim occupants are erroneously considered to be terrorists.

31. She also observed that medical care was poor and that some occupants were cared for by other persons held in the centre. The Special Rapporteur was informed of the case of Emilio Capussi Naomi, a citizen of Côte d'Ivoire, who was being held in such conditions in spite of the fact that he was suffering from diabetes mellitus, both of his legs had been amputated and he had an open wound on the remaining part of his right leg. A doctor had said that he required a special diet. It was claimed that employees at the centre regularly removed the food for that diet from his meals. Owing to his condition, he required special assistance, for example, in order

to clean himself; such assistance was not provided by officials at the centre. Another occupant reportedly took care of him for two months, assisted only by an NGO.

32. The Special Rapporteur was informed that another migrant holding centre had been established at the naval base in Champotón (Campeche). According to the information received, among the migrants transferred to the base were some who had claims pending before the National Human Rights Commission or other bodies. Owing to the remoteness of the base, it would be difficult for most organizations wishing to provide legal assistance to reach these migrants.

33. The Special Rapporteur was also informed of alleged abuses committed by police officers against migrants in migration facilities or holding centres. Of the cases reported, the Special Rapporteur is particularly concerned at the situation of Luis Castillo Sepúlveda, who was allegedly beaten by an INM official and two policemen, whose faces were covered, while he was being held in the Federal District holding centre; as a result of the beating, he lost three teeth and was left with a scar resulting from his injuries. He is said to have spent 18 days in isolation without receiving any assistance, after which he was taken to an emergency hospital. The Special Rapporteur would like to receive updated information on the investigation of the complaints lodged by the alleged victim.

34. The Special Rapporteur observed that the majority of persons held in these centres had no access to consular assistance owing to many countries' lack of consular representation in Mexico City and other important points in Mexico. The lack of consular assistance is contrary to international law and can result in other abuses, including prolonged detention. The Special Rapporteur was informed by consular authorities of the economic difficulties that their consulates face and the resulting difficulty in fully carrying out their functions.

35. With regard to the deportation of migrants, the Special Rapporteur is concerned at Mexico's reservation to article 22, paragraph 4, of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families pursuant to article 33 of the Constitution of the United Mexican States and article 125 of the General Population Act. Under that reservation, the principle according to which migrant workers have the right to appeal against orders for their expulsion, unless compelling reasons of national security require otherwise, is denied. Also pursuant to article 33 of its Constitution, Mexico entered a reservation to article 13 of the International Covenant on Civil and Political Rights. Similarly, Mexico has made a reservation to article 32 of the Convention relating to the Status of Refugees, an article that protects refugees against arbitrary expulsion. The Special Rapporteur fears that the provisions of article 33 of the Constitution, together with article 125 of the General Population Act and the above-mentioned reservations, leave a margin of discretion that may give rise to arbitrary acts jeopardizing migrants' full exercise of their human rights.⁴

V. MIGRATION TRENDS ON THE SOUTHERN BORDER

36. Mexico's southern border is widely used by migrants travelling to the United States or Canada. While flows of migrants through this region are not new, they have grown considerably since the 1990s and are increasingly viewed by the authorities as posing a threat to national security. Consequently, various plans have been drawn up and implemented with a view to curbing unlawful migration across Mexico's southern border. The increased monitoring of this border coincides, in time and strategically, with the tightening of controls along the United States border with Mexico by the United States authorities.

37. In July 2001, the INM began its so-called *Plan Sur* ("South Plan") with the aim of "strengthening the presence of the Mexican State in the fight against organized crime"⁵ from Tehuantepec Isthmus to the southern border. According to information received by the Special Rapporteur, the medium and long-term objectives of the Plan are to "safeguard national sovereignty and create conditions conducive to development for persons living on the southern border by combating organized crime".⁶ With regard to migration policies, the objectives of the first phase are to combat the trafficking and smuggling of migrants in the southern region, to combat illegal trafficking in and exploitation of children, and to promote and consolidate a culture of respect for the law and human rights in the southern region. The second phase of the Plan provides for "a programme of action to create, in the medium and long terms, conditions conducive to the sustainable and comprehensive development of the country's southern region".⁷

38. Through statements gathered during her visit, the Special Rapporteur noted that the South Plan had resulted in the establishment of "inspection belts" (police posts) in various parts of the isthmus, which are intended to create a containment barrier covering the main routes taken by migrants on their way north. In addition to the INM, the Mexican army, the Federal Highway Police, the Public Security Police, the Judicial Police and the Office of the Procurator-General are participating in the Plan and coordinating their activities, in particular through the establishment of joint operational bases in strategic locations. In her talks with southern municipal officials, the Special Rapporteur noted that the Plan was seen as a federal operation in which the municipal officials did not feel involved.

39. The Special Rapporteur welcomes any positive results achieved by the South Plan in efforts to combat crime and develop the border regions. Nevertheless, she is concerned that increased controls and the presence of armed forces may have negative consequences both for international migrants and indeed for Mexicans travelling to the north of the country. The various bodies that take part in the interception of migrants allegedly have no training in migration matters and, according to information given to the Special Rapporteur, are even unfamiliar with certain identity documents, such as the temporary permit issued by the Office of the United Nations High Commissioner for Refugees (to asylum-seekers), and the FM3 and FM2 visas. The abuses committed by public officials in interception operations are difficult to report, since migrants are rarely able to identify the body to which the officer involved in the abuse belongs.

40. Another consequence of the South Plan noted by the Special Rapporteur is the diversion of migrant flows to more inhospitable zones that entail greater risk, jeopardizing migrants' right to life and physical integrity. In turn, the shift from the usual crossing zones to more dangerous areas has reportedly increased the demand for the services of *polleros* (people-smugglers) who, in many cases, extort money from, abandon or murder migrants whom they have supposedly agreed to guide. According to information received by the Special Rapporteur, at the end of May 2001 the Mexican police discovered in Veracruz the bodies of five Guatemalan migrants locked in a truck and abandoned by traffickers. The five migrants are presumed to have died of asphyxiation.

VI. MEXICO AS A COUNTRY OF DESTINATION

41. The Special Rapporteur noted that Mexico is becoming an important country of destination within the region. She received information on the Migration Regularization Programme which the INM organized in 2000 and 2001. According to that information, the programme enabled undocumented migrants to obtain non-immigrant visitor status and authorization to work, provided the work and the employer were specified. She was informed that, in proportion to the number of migrants able to benefit from initiatives of this type, few persons had regularized their situation and that only those with certain levels of education, with sufficient money or with access to free legal representation had decided to obtain documents. The annual renewal of migration documents would appear to constitute another problem for migrants, and the organizations assisting migrants expressed the need to train the persons concerned to ensure that they remain informed and alert to the need for renewal.

42. In the south of Mexico the Special Rapporteur obtained information on the situation of women, children and men, mostly Guatemalans, who come to Mexico on a seasonal basis to work in the agricultural sector. The Special Rapporteur noted with pleasure the measures initiated by Mexico to provide individual documents for seasonal migrants, recognizing the specific contribution of women who also travel to work on a daily basis. This recognition is essential in ensuring the protection of their rights as women workers. In addition, the Special Rapporteur received information indicating that the working conditions of migrant day labourers are still very precarious, full respect for them is still a long way off and, regardless of their legal status, they are vulnerable to a host of abuses such as unjustified dismissal, withholding of wages and documents, excessively long working hours, ill-treatment and discrimination. They constitute abundant and cheap labour living on a poor diet and in deficient accommodation and health conditions. According to the testimony of day workers heard by the Special Rapporteur, the abuses most commonly reported are dismissal in the event of illness and the sexual harassment and rape of women day workers. The Special Rapporteur stresses the need to consolidate protection and regulation by the State and local authorities in this sphere.

43. Another particularly vulnerable migrant group is that of women in domestic service, who are mostly young, undocumented and of indigenous origin; they begin work at the age of 14 or earlier with the aim of helping their families financially. It was noted that almost all of them work excessively long hours for low wages and without health insurance. Many of them are ill-treated physically, mentally and verbally, poorly fed, subjected to sexual abuse and harassment, threatened with being reported to the migration authorities for having no papers or unjustifiably dismissed.

44. A third group of particularly vulnerable migrants is made up of women working voluntarily, or being forced to work, in the sex trade. These women, most of whom are of Guatemalan, Salvadoran or Honduran origin, are subjected to serious levels of abuse, sexual exploitation in nightclubs, extortion and violence. These are young women, many of them illiterate, who stay temporarily in the south of Mexico in order to save sufficient money to continue their journey to the United States. The abuses most commonly suffered by these women are ill-treatment and extortion by certain officials, sexual abuse by police officers in exchange for not being deported, conditions of servitude, violence by employers and clients, unwanted pregnancies and discrimination.

45. Lastly, many children cross the frontier to do different kinds of informal work or for the purpose of family reunification. The Special Rapporteur observed a large number of unaccompanied children and interviewed a Honduran boy of 13 who had started on his way to the United States to find his mother after the death of his grandmother, who had been his only relative still living with him in Honduras. Unfortunately, many children fall into the hands of networks engaging in the sale and consumption of drugs or sexual exploitation. The Special Rapporteur adds her voice to the concern expressed by the Committee on the Rights of the Child about “the increasing number of cases of trafficking and sale of children from neighbouring countries who are brought into [Mexico] to work in prostitution”.⁸

46. The Special Rapporteur would also like to highlight the vulnerability of migrant women victims of family violence, whose migration status is dependent on their husbands. She has learned of cases where men reportedly threatened to take the children away from their wives and have them deported if they reported ill-treatment. During her visit, she had the opportunity to hear testimony which illustrates this situation particularly well. Ms. Dina Evelin Erazo Cortes said she arrived in Mexico in 1980, when she was 14 years old, and since then has lived in the country without official papers. In 1988 she met her present partner, who is Mexican and with whom she has had three children. For 13 years Dina Erazo has been subjected to family violence but has not dared to report it for fear that her illegal situation might be discovered and that she might be deported and separated from her children. It was not until early 2001 that Dina Erazo tried to report the matter after her partner had injured her and threatened to kill her. The first time she went to the police station in Venustiano Carranza, an official in the public prosecutor’s office told her that her partner, as a Mexican citizen, was within his rights. After reporting other incidents, one involving injuries and the other sexual abuse of her daughter, and with the assistance of the National Human Rights Commission, on 7 March 2001 she was summoned to make a statement at the Procurator-General’s Office. There, after waiting for hours with her children, she was told that she was in custody. Later, she was taken with her children to the migrant holding centre in Mexico City where they remained in detention for seven days. Eventually, despite the acts for which he had been reported, the INM released Dina Erazo and her children into the custody of her partner. An authorization enabling Dina Erazo to have her own migration documents as a self-employed person was apparently issued in July 2001.

47. Another source of dismay for the Special Rapporteur was the information she received concerning the lack of public policies for the prevention of AIDS among the migrant population and the information about the situation of migrants suffering from AIDS in Mexico. The precarious working conditions of migrant women sex workers (who are often forced to have

unprotected sexual relations) and their ignorance increase their vulnerability, but AIDS also affects the rest of the migrant population. It is necessary to combat the stigmatization of the illness and the lack of confidentiality concerning individual cases, which often lead to the unwarranted dismissal of migrants.

VII. PLACES OF ORIGIN OF MIGRANTS

48. In Mexico, the Special Rapporteur also visited various places of origin of Mexican emigrants. Her interviews with relatives of Mexican emigrants now in the United States and her visit to a community of origin of Mexican emigrants confirmed the vulnerability of children, who are left without their parents in the place of origin, and the effects of migration in terms of family break-up. In addition, the Special Rapporteur noted that there has been a change in trends in Mexican migration since the tightening of controls along the United States-Mexico border. According to information provided, Mexican migration used to be cyclical; in other words, a high proportion of Mexicans would emigrate for short periods and return to Mexico when work ended in a particular sector. Since the tightening of frontier controls in the early 1990s (see E/CN.4/2003/85/Add.3) and the consequent increase in the financial cost of unlawful crossings and the risks which this entails, Mexican emigrants have tended to settle permanently in the United States. This has affected the communities of origin in that migration is tending to become final and to involve whole families, thereby placing the children at risk; they are also obliged to emigrate, to a large extent illegally, in order to join their parents, which creates a permanent break with the community of origin.

49. Most of the people interviewed by the Special Rapporteur stated that the reasons for emigrating to the United States are mainly unemployment and the lack of well-paid jobs. The Special Rapporteur took note of a number of initial efforts by the Mexican Government to establish assistance programmes for communities of origin. She nevertheless considers that, in view of the extent of the phenomenon which affects all parts of Mexico, priority must be given to a coordinated programme at the federal, state and municipal levels for the promotion of local development as a means of preventing migration.

VIII. CONCLUSIONS AND RECOMMENDATIONS

50. The Special Rapporteur noted that Mexico has made substantial efforts to identify in a serious and self-critical manner the problems faced by migrants. She considers that it is now crucial to proceed from this diagnostic phase to the implementation of a national policy of assistance and protection for migrants. This policy must be put into effect from the human rights standpoint and jointly with civil society, and must be reflected in concrete programmes. Consequently, it is also of the highest importance to incorporate the protection of the human rights of migrants in the formulation of the national human rights plan and to strengthen action to protect their rights within the programmes of the National Human Rights Commission. In this connection, it is recommended that a five-year action plan should be established to include the undertakings made by the Mexican Government at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

51. The Special Rapporteur would like to propose to the Mexican Government a number of concrete measures for the execution of this policy: strengthening the human and financial resources of the INM so as to enable it to perform its migration management functions independently; and, through the provision of specific human resources, an adequate budgetary allotment and training in migration management and human rights, strengthening the Beta Groups, and also broadening and consolidating their presence in high-risk locations. The Special Rapporteur also encourages the Mexican Government to train Federal Preventive Police personnel involved in support for the INM in the area of migration management and human rights, and to limit the intervention of other armed or police forces in migration control activities. It would also appear important to initiate a campaign against extortion and the abuse of undocumented migrants, with effective penalties for the officials involved. The Special Rapporteur also recommends that the project for the expansion of the migrant holding centre in the Federal District should be completed, taking into account the relevant international standards. Lastly, the Special Rapporteur considers that the federal authorities should provide assistance, in conjunction with civil society, to sick and injured migrants and offer the necessary facilities to enable them to receive physical and psychological treatment in a humanitarian manner. She considers that there should be a special budget for this purpose.

52. At the same time, the Special Rapporteur invites the Mexican Government to initiate a process of harmonizing national legislation and public policies with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, she invites the Mexican Government to withdraw its reservations to international treaties which affect migrants' rights, in order that those treaties may be fully implemented in Mexico. Bearing in mind the role which Mexico has always played at the international level in the protection of the human rights of migrants, the Special Rapporteur invites the Government to continue to play an active part in the processes of regional dialogue aimed at the implementation of concrete programmes in the region.

53. The Special Rapporteur further requests the Mexican Government to consider ratification of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. It is important that these instruments should constitute a frame of reference for the protection of the victims of the trafficking and smuggling of persons, ensuring that these victims are not penalized.

54. Since the vulnerability of migrants is primarily due to their illegal character, the Special Rapporteur considers it important to continue to provide migration regularization programmes, ensuring that they are accompanied by extensive information campaigns, with the support of civil society. In addition, it is necessary to reform Mexican legislation in order to achieve equality for men and women in the recognition of their individual migration status.

55. The Special Rapporteur recommends that the human rights procurators' offices and state human rights commissions should strengthen their action for the protection of the human rights of migrants in their programmes. It is of the highest importance that migrants should have access to complaint mechanisms. In addition, the Special Rapporteur proposes the establishment of accessible complaint mechanisms and joint programmes with civil society to assist undocumented migrant women victims of abuse by public officials, employers or relatives.

56. The Special Rapporteur also invites the various states within Mexico to take all necessary measures to consolidate mechanisms for the internal control of officials participating in migration management and take continuous action to combat corruption.

57. The Special Rapporteur welcomes the recent establishment by the Office of the United Nations High Commissioner for Human Rights (UNHCHR) of an office in Mexico and invites this new office to take the human rights of migrants into account in its forthcoming activities, making use of the observations contained in this report. The UNHCHR office in Mexico could organize with the migration authorities and civil society human rights training programmes for INM officials and police forces involved in migration policies. This training should go beyond relevant legislation and should take into account psycho-social effects on both migrants and the officials themselves. It is also suggested that the office should offer its technical cooperation in the implementation of the Durban Declaration and Programme of Action.

58. The Special Rapporteur invites the International Organization for Migration to provide support for the Mexican Government and civil society in the implementation of migration management in which the human rights and dignity of migrants are respected.

59. The Special Rapporteur congratulates civil society on its work for the protection of the human rights of migrants and invites it to continue working to this end by assisting migrants who request its help, responding to appeals by the migration authorities in emergencies, regularly visiting holding and detention centres, and increasing public awareness of the need to safeguard migrants' human rights. The Special Rapporteur also invites civil society to report, at the national, regional and international levels, abuses committed against migrants or against organizations and persons working to protect them. Lastly, the Special Rapporteur encourages civil society organizations to take action on the Durban Declaration and Programme of Action.

Notes

¹ Some of the migrants interviewed told the Special Rapporteur that police officers extorting money from them had threatened to detain them for having no papers, saying they were entitled to do that under the law.

² Some of them, such as the “Mara Salvatrucha”, are organizations consisting of up to 300 people, said to be spread out in groups in the border region ready to attack and rob migrants.

³ See the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I, paras. 30 (b), 30 (e) and 136 among others).

⁴ See Loren Laroye Riebe Star, Jorge Alberto Baron Guttlein and Rodolfo Izal Elorz v. Mexico, case 11,610, report No. 49/99, Inter-American Commission on Human Rights.

⁵ *Plan Sur*, a document given to the Special Rapporteur by the INM during her visit.

⁶ Ibid.

⁷ Ibid.

⁸ Concluding observations of the Committee of the Rights of the Child: Mexico (CRC/C/15/Add.112, para. 32) dated 10 November 1999.
