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**GROUPES ET INDIVIDUS PARTICULIERS:
TRAVAILLEURS MIGRANTS**

Droits fondamentaux des migrants

**Rapport soumis par la Rapporteuse spéciale, M^{me} Gabriela Rodríguez Pizarro,
en application de la résolution 2002/62 de la Commission des droits de l'homme**

Additif

Visite dans la zone frontière entre le Mexique et les États-Unis*

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale et en anglais seulement.

Résumé

À l'invitation du Gouvernement mexicain et du Gouvernement des États-Unis, la Rapporteuse spéciale sur les droits de l'homme des migrants s'est rendue le long de la frontière commune entre les deux États du 7 au 18 mars 2002, afin d'étudier la situation des droits fondamentaux des migrants qui traversent cette frontière. La Rapporteuse spéciale a rencontré des autorités de l'immigration des deux pays, des gardes frontière et des autorités locales et consulaires. Elle a rencontré aussi diverses personnes de la société civile et des migrants. Sa mission s'est achevée à Washington D. C., où elle a eu un entretien avec les autorités fédérales du Service des naturalisations et de l'immigration (Immigration and Naturalization Service – INS), des membres du Congrès et du Sénat et des représentants d'organisations non gouvernementales.

Pendant sa visite, la Rapporteuse spéciale a pu constater l'ampleur des flux migratoires qui traversent quotidiennement cette frontière. Les migrants sont nombreux à chercher à entrer sans papiers sur le territoire des États-Unis, après avoir contracté les services illégaux de passeurs. Dans d'innombrables cas, les migrants sont véritablement rançonnés, abandonnés, trompés quand ils ne sont pas brutalisés par les passeurs. Ceux qui réussissent à entrer aux États-Unis arrivent dans un état psychique et physique très précaire et ne possèdent rien que ce qu'ils portent sur eux.

La Rapporteuse spéciale a pu également constater les contrastes économiques entre les deux pays et leur incidence sur le phénomène des migrations. Du côté mexicain, elle a observé la présence de milliers de migrants pauvres qui espèrent pouvoir entrer aux États-Unis. Les autorités locales avec lesquelles elle s'est entretenue lui ont fait part de leur inquiétude face à la dégradation des conditions de vie dans leurs communes du fait de la présence de tous ces migrants.

En parlant avec les migrants, la Rapporteuse spéciale a constaté que la perspective d'une plus grande offre de travail et l'espoir d'un avenir plus digne l'emportent sur les risques du franchissement illégal de cette frontière. Les principaux risques que la Rapporteuse spéciale a relevés et que les migrants ont illustrés en racontant leur expérience personnelle sont les suivants: l'absence totale de protection du migrant quand il traverse illégalement la frontière face au problème du trafic et du transfert clandestin de personnes, l'utilisation excessive de la force contre les migrants, le franchissement de la frontière par des endroits dangereux, la vulnérabilité des enfants à la frontière, les attitudes racistes, xénophobes et discriminatoires et les conditions dans lesquelles les migrants sans papiers sont arrêtés et détenus, surtout quand ils se trouvent placés sous la garde d'agences de sécurité privées.

La Rapporteuse spéciale a pu également constater que les Gouvernements des deux États déployaient des efforts pour améliorer la situation des migrants sur leur frontière commune, en particulier en concluant des accords bilatéraux. Elle a noté également que l'État mexicain avait mis en place une politique consulaire importante.

À la lumière des renseignements qu'elle a recueillis pendant les réunions et d'une autre manière pendant sa visite, et après avoir étudié la situation des migrants des deux côtés de la frontière ainsi que les mesures prises par les Gouvernements pour l'améliorer, la Rapporteuse spéciale recommande notamment ce qui suit:

- Accroître la diffusion d'une information à l'intention des migrants illégaux potentiels sur les risques qu'il y a à franchir la frontière à certains endroits et en s'en remettant à des passeurs;
- Associer les actions d'urgence et de secours en faveur des migrants à des mesures de prévention comme, par exemple, l'installation de points d'eau dans les déserts;
- Renforcer la législation et les mesures visant à lutter contre le trafic et le transfert clandestin des migrants;
- Développer les centres de soins aux migrants gérés par la société civile des deux côtés de la frontière et renforcer le système national pour le développement intégral de la famille (DIF) afin d'assurer une meilleure prise en charge des mineurs expulsés ou refoulés;
- Dispenser une formation concernant les dispositions régissant les migrations et les dispositions relatives aux droits de l'homme en incluant une information sur la santé mentale dans la formation des fonctionnaires de l'immigration;
- Veiller à ce que les personnels de toutes les sociétés privées de sécurité qui ont des migrants sous leur garde reçoivent une formation spécialisée;
- Mettre en place un système de visites régulières des centres de détention où sont retenus des migrants par les organisations non gouvernementales afin que celles-ci continuent à leur apporter une assistance juridique et un soutien psychologique;
- Renforcer les accords bilatéraux relatifs aux migrations et lancer de nouveaux programmes de régularisation de la situation des migrants;
- Lancer des campagnes de lutte contre le racisme, la xénophobie et la discrimination à l'encontre des migrants; en particulier mettre au point des cours à l'intention des fonctionnaires des services d'immigration et des gardes frontière sur cette question.

La Rapporteuse spéciale tient à exprimer sa gratitude aux Gouvernements du Mexique et des États-Unis qui lui ont permis de réaliser cette visite à la frontière et lui ont donné tous les moyens nécessaires. Elle remercie également les organisations non gouvernementales de leur aide précieuse et des renseignements qu'elles lui ont apportés. Enfin, la Rapporteuse spéciale remercie tout spécialement de leurs témoignages les migrants avec lesquels elle s'est entretenue. Elle invite les Gouvernements de chacun des deux États à prendre en considération le présent rapport et les recommandations qu'il contient et à y donner suite, dans un esprit de dialogue et de collaboration, afin d'améliorer la situation des migrants sur la frontière entre le Mexique et les États-Unis.

Annex

**Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on
the human rights of migrants, concerning her mission to the border between
Mexico and the United States of America, 7-18 March 2002**

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Introduction

1. From 7 to 18 March 2002, the Special Rapporteur visited the border between Mexico and the United States of America at the invitation from the two countries. The Special Rapporteur visited the sister cities of Nuevo Laredo and Laredo, Douglas and Agua Prieta, San Diego and Tijuana, Mexicali and Calexico. She also visited Nogales, Tucson, Altar and the Sasabe desert. In those places, the Special Rapporteur met with migration authorities of the two countries, local authorities, consular authorities, border patrols, non-governmental organizations (NGOs) and migrants. The Special Rapporteur also met with the Commissioner for Northern Border Affairs and the Coordinator of the Presidential Office for Mexicans Abroad. In San Diego, the Special Rapporteur held a very productive meeting with members of academia and NGOs. The Special Rapporteur's visit ended in Washington, D.C., where she met with other NGOs, Congressmen and the Senators and federal authorities of the Immigration and Naturalization Service (INS) and State Department officials involved in migration management policies at the border.

2. The Special Rapporteur would like to thank the Governments of Mexico and the United States of America for having allowed her to examine with transparency the human rights situation of migrants on their common border. During her visit, the Special Rapporteur had the liberty to meet with all the persons to whom she had requested to have access. The Special Rapporteur also wishes to thank the NGOs that provided very valuable assistance and information. The Special Rapporteur also wishes to extend special thanks to the migrants with whom she met for their valuable statements.

3. This report is not an exhaustive study of the human rights situation of migrants on the border between Mexico and the United States of America; its primary aim is to draw attention to the situation of vulnerability in which migrants at that border find themselves.

I. GENERAL OVERVIEW OF TRENDS ON THE BORDER BETWEEN MEXICO AND THE UNITED STATES OF AMERICA

4. The border between the United States and Mexico is an important means of entry for many migrants who have left their places of origin and their families in the hope of a more dignified future in the United States. A large number of migrants who arrive in the United States by crossing its southern border do so without documents, after having travelled long kilometres through inhospitable zones. Many of them have hired smugglers, more commonly known as *pasantes*, *pateros*, *coyotes* or *polleros*, and have invested all their savings in the journey. They cross the border illegally, in a delicate physical and psychological state, with worrying signs of exhaustion, dehydration and malnutrition, and with no more belongings than what they are wearing. When they arrive, migrants do not know the language, customs or local geography, which increases their vulnerability.

5. The Special Rapporteur was informed that dangerous and powerful drug trafficking cartels have established themselves in border towns, and crime and violence in the area is said to have risen. Many migrants are deceived and used for transporting drugs into the United States.

6. At the border, the Special Rapporteur observed, as a background to the migration phenomenon, the glaring contrasts that reflect the economic disparities between the two countries. The Special Rapporteur noted that migrants were convinced that they would find work and a better quality of life in the United States, which they felt they would never have in their country of origin. The Special Rapporteur noted that the prospect of finding employment in the United States obscured the risk involved in the irregular crossing of the border. The Special Rapporteur was also informed of the tricks played on many migrants who come to the United States attracted by the false promises of unscrupulous employers.

7. On the Mexican side of the border, the Special Rapporteur visited two *maquiladoras* (in-bond factories) where she met with various workers from other regions of Mexico who told her that they had benefited from their employment in such enterprises. The Special Rapporteur considers the creation of sources of employment in Mexico to be a positive development as part of the strategy to prevent irregular migration, provided that workers' rights are also strengthened. With regard to the North American Free Trade Agreement (NAFTA), the Special Rapporteur considers that an agreement of such broad scope should also ensure the safe and equitable movement of migrant workers between their States parties.

8. The Special Rapporteur received information about bilateral programmes for temporary migrant workers. Through the H2A visa system, some 70,000 Mexican migrants would travel to the United States every year to work, mainly in agricultural activities. The Special Rapporteur considers such programmes, which make it possible to emigrate in safe conditions, to be a positive step. She also observed the need to guarantee the employment rights of migrants hired through such arrangements, and to create effective monitoring mechanisms for that purpose.

9. In her meetings with migration authorities, the Special Rapporteur was informed of the various means used by people living in border areas to travel regularly to the United States. People who are employed, or who have family members, in the border areas on the United States side have the possibility of obtaining visas that allow them to enter United States territory to a distance of 25 miles from the border for up to three days. Such visas take the form of a high-tech identity document that makes possible the precise identification of the holder of the visa thanks to a database containing the fingerprints of the holders of such documents. In view of the size of the regular flows of persons at border control points, the United States authorities should make an effort to speed up migration formalities.

10. Various sources indicated that undocumented migrants prefer to settle permanently in the United States in order to avoid having to cross the border again. Consequently, migrants try to bring their family members to the United States, increasing the number of minors and women in the border area. This report pays special attention to the situation of women and children in that area.

11. The Special Rapporteur also noted with concern the deportation or expulsion of fathers or mothers of children born in the United States, resulting in the separation of children from their parents.

12. On the Mexican side of the border, the Special Rapporteur observed the presence of thousands of impoverished migrants hoping to enter the United States. Many of them have already tried to enter and are ready to try again. In most of the municipalities that the Special Rapporteur visited, the local authorities drew her attention to the problem caused by the presence of this marginalized population for the provision of basic services. The authorities assured her that migration determines population growth in the area and results in the general decline in living conditions in their municipalities.

13. The Special Rapporteur considers the existence of a network of homes for migrants to be a very positive development. She commends, in particular, the Scalabrinians, and other churches and NGOs that assist migrants. The results of the valuable work carried out by such groups demonstrate the need to provide additional support for their efforts. The statements gathered in such homes, where migrants felt confident enough to talk, were indispensable for the preparation of this report.

II. LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS ON THE BORDER

14. Both countries have demonstrated their support for the protection of the human rights of migrants through their many international commitments. In her report on her visit to Mexico (E/CN.4/2003/85/Add.2), the Special Rapporteur commented on Mexico's legal framework for protecting the human rights of migrants. In that report, the Special Rapporteur also referred to the international instruments that the Government of Mexico had ratified, as well as Mexico's support for international mechanisms involved in the protection of the human rights of migrants.

15. The United States has ratified international agreements that protect the human rights of migrants, in particular the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Protocol relating to the Status of Refugees, and the Vienna Convention on Consular Relations. The Special Rapporteur invites the United States to withdraw its reservations to those agreements that affect the human rights of migrants. The United States has signed the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child as well as the United Nations Convention against Transnational Organized Crime and its two Protocols. The Special Rapporteur encourages the United States to ratify those instruments.

16. Other international agreements establish the legal frame of reference for the full promotion and protection of the human rights of migrants, in particular the International Convention on the Rights of All Migrant Workers and Members of Their Families. The Special Rapporteur draws attention to the importance of that Convention for overcoming the vulnerability faced by migrants, and recommends that the United States consider ratifying it.

17. The United States Constitution and the Immigration and Nationality Act are the principal instruments for regulating migration. In 1996, Congress adopted other acts relating to immigration: the Antiterrorist and Effective Death Penalty Act and the Illegal Immigration

Reform and Immigrant Responsibility Act. In addition to increasing staff and equipment at the borders and strengthening the means for combating the smuggling of persons, the 1996 reforms also restricted the rights of foreigners, particularly the rights of undocumented migrants, and increased the list of offences for which foreigners could be deported. This new act provides for the deportation of persons who in the past were sentenced to a minimum of one year in prison. The Illegal Immigration Reform and Immigrant Responsibility Act also provides for accelerated expulsion with the objective of prosecuting and deporting, as quickly as possible, persons who enter the United States without valid documents. In accordance with this process, immigration officials would have the authority to take important decisions, while migrants would have limited access to a judicial review of such decisions.

III. THE HUMAN RIGHTS OF MIGRANTS ON THE BORDER: OBSERVATIONS BY THE SPECIAL RAPPORTEUR, AND GROUNDS FOR CONCERN

Migrants' lack of protection from smugglers in the irregular crossing of the border

18. The Special Rapporteur was able to observe the alarming vulnerability of migrants when they fall prey to transnational organized crime networks. A source of concern is the expansion of trafficking and smuggling networks that unscrupulously exploit migrants' need to cross the border into the United States, in spite of increasing efforts on the part of the two countries to combat such crimes. The Special Rapporteur welcomed the information that she received concerning the exchange of information about smuggling networks that operate at the border, and bilateral programmes for their criminal prosecution.

19. Statements received by the Special Rapporteur indicate that the type of abuse to which migrants who are in the hands of smugglers are susceptible include extortion, death by abandonment, kidnapping, rape of women and murder. On 23 May 2001, 14 bodies of migrants were found in the Yuma desert in Arizona; the migrants had died of exhaustion, heat and dehydration after having been deceived and abandoned by smugglers. In Sasabe, the Special Rapporteur received information that indicate that smugglers kidnap migrants and demand that their family members in the United States pay more money than what was agreed.

20. Also in Sasabe, the Special Rapporteur directly observed how men and women (with babies) were kept by smugglers in the desert and how migrants, including entire families and unaccompanied minors, travelled in overloaded vans in spite of the warnings of the Beta Groups* about the risks of the crossing, particularly about the danger of being abused by the smugglers. The Special Rapporteur invites the Beta Groups and the border patrols of the two countries to continue their efforts to save migrants from the violence committed by smugglers and to assist them when necessary. The Special Rapporteur observed the presence of the Mexican army, the Mexican customs authority, the Federal Preventive Police and the Judicial Police, all situated on the route taken by smugglers to cross the border.

* Law enforcement authorities who are part of the National Immigration Institute (INM), whose primary task is to provide protection and guidance for migrants. See document E/CN.4/2003/85/Add.2.

21. The Special Rapporteur was also informed that, in urban areas, smugglers take migrants across the border by hiding them in vehicles without any regard for their safety. Travelling in this way, many migrants have reportedly died or run the risk of dying from asphyxiation. In order to prevent this type of irregular crossing, dogs have been trained to detect human adrenalin in vehicles.

22. The Special Rapporteur shared with officers of the Beta Groups operating in this area of the desert and with Mexican and United States consuls in Nogales her concern at migrants' complete lack of protection against their smugglers, and at allegations of corrupt practices by some officials. In this regard, the Special Rapporteur considers that it is essential to strengthen the presence and capacity for action of the Beta Groups, the Ministry of Administrative and Expenditure Development, the human rights and trafficking units of the Federal Preventive Police, the border patrols of the two countries, the National Immigration Institute (INM) in the critical smuggling corridors. The Special Rapporteur considers that Governments must take concerted action to protect migrants in these areas of irregular crossing, through more resolute efforts to combat smuggling and corruption.

23. The Special Rapporteur is concerned at the possible criminalization of victims of smuggling. She has been informed that, on some occasions, in Mexico the migrants themselves have been accused of being smugglers, while the smugglers have been released. The Special Rapporteur gathered statements according to which smugglers reach an agreement with the detained group to identify one of the migrants as a smuggler, in exchange for taking the rest of the group across the border.

Migrants and the problem of trafficking in persons

24. The Special Rapporteur was informed that trafficking in migrants is reaching serious proportions on the border between Mexico and the United States. Many of the victims are women who come from the poorest parts of Mexico and who have been promised work as a nanny or a housemaid in the United States. The Special Rapporteur received information about trafficking networks that recruit migrants on false pretences to work in conditions approaching slave labour on farms or in factories in the United States.

25. The Special Rapporteur considers that programmes to treat victims of trafficking should be strengthened, and welcomes the new category of visas created for that purpose (T visas) in the United States. Nevertheless, as the Special Rapporteur has been informed, only 5,000 visas are granted each year, and anyone who wishes to request one must first have escaped from his or her exploiters and cooperated with the Government in the investigation, and demonstrate that his or her life would be in danger if her or she was deported. The Special Rapporteur was informed that migrants who claim to be victims of trafficking in persons are kept in preventive detention. Because of the difficulty of escaping from smugglers, the low level of police protection, the risk of being detained and subsequently deported, and their unfamiliarity with the English language, many women decide not to report such abuse.

Excessive use of force against migrants

26. The Special Rapporteur has received various allegations that migrants have been subjected to ill-treatment by certain members of the border patrols or the INS. In the light of such allegations, the Special Rapporteur wishes to stress the importance of investigating and criminalizing the excessive use of force against migrants.

27. The Special Rapporteur is disturbed by information that she has received about the case of Serafin Olvera, a Mexican citizen, who was allegedly beaten by INS officials on 24 March 2001, when they searched his home in San Antonio, Texas. Serafin Olvera died on 24 February 2002, presumably from the wounds caused by the blows that he received 11 months earlier. In its reply to the Special Rapporteur's request for information about the case, the United States Government stated that the incident was the subject of a criminal investigation. The Special Rapporteur has also been informed of the case of Roberto Chávez Reséndiz, a 22-year-old Mexican, who was allegedly shot in the head by a border guard and who died from the bullet wound. The incident occurred on 5 March 2001 in Prima County, near Tucson, Arizona. After a temporary suspension from his duties in the Border Patrol, the officer is said to have returned to his post.

28. The Special Rapporteur also received reports that border patrols have used hollow-point and dum dum bullets, the use of which is prohibited under the 1899 Hague Convention, against migrants. In Washington, D.C., the Border Patrol assured the Special Rapporteur that, in accordance with the bilateral negotiations between the two countries, the use of alternative and non-lethal weapons is being encouraged.

29. The Special Rapporteur was informed of the case of Roberto Flores, a 26-year-old Mexican agricultural worker, also known as Ramiro Ramírez. A border officer is said to have shot and seriously wounded him with a dum dum bullet on 22 August 2000 in San Diego, California, as he was attempting to cross the border illegally. According to information received, the young man was unarmed when the officer shot at him. It is claimed that, following the incident, Roberto Flores has been operated on 15 times. Following the Special Rapporteur's request for additional information, the Government of the United States informed her that the officer who fired the shots had been attacked with stones. Although the Federal Bureau of Investigation (FBI) has conducted an investigation, the border officer has not been prosecuted owing to a lack of evidence of his intention or of excessive use of force. The INS concluded that the circumstances justified the officer's use of force.

Crossing of the border through dangerous areas

30. According to information received, in 1993 the INS began strengthening the border through its implementation of Operation Hold the Line in El Paso, Texas. The following year, the commencement of Operation Guardian in the Tijuana-San Diego corridor was announced. The Operation was begun in the sector extending from the Pacific Ocean to Otay Mesa. In its second phase, the Operation was extended to Tecate and, in the third, to Yuma, Arizona. Operation Guardian included the increased use of high-tech monitoring equipment, the construction of new border barriers, the illumination of crossing places and an increase in

border patrol personnel. Subsequently, Operation Safeguard was begun with the aim of improving monitoring activities on the border between Arizona and Mexico. In 1997, Operation Rio Grande was implemented for the purpose of strengthening the border in the southern part of the Rio Grande valley in Texas and New Mexico. The Special Rapporteur visited the walls built at the border between Tijuana and San Diego, in Douglas and Agua Prieta and other border areas that have been equipped with cameras and powerful lighting to detect irregular crossing.

31. These operations have gradually diverted migrant flows to inhospitable areas where migrants believe that they are less likely to be intercepted by border patrols. While the Special Rapporteur acknowledges the right of the United States to protect its borders, she would like to receive the guarantee that all measures taken to this end respect the right to life.

32. The Special Rapporteur is concerned at the condition of migrants who cross the border through inhospitable areas in which many migrants have lost their lives. According to information that she has received, the most common causes of death are dehydration and exposure to high temperatures in the deserts of California and Arizona, hypothermia in the mountains and drowning in the Rio Grande and the irrigation channels around Mexicali. It is difficult to ascertain the exact number of deaths at the border because the migrant flows are irregular and take place in remote areas. The figures that the Special Rapporteur has received vary according to the source. It is estimated that at least 1,870 migrants have died during their attempt to cross the border into the United States between the implementation of the above-mentioned programmes and October 2001.¹ In her meetings with surviving migrants, the Special Rapporteur also noted the terrible physical and psychological consequences of the crossing of the border.

33. Various church groups and NGOs in Tucson and Douglas presented the Special Rapporteur with their projects for installing antennas with water tanks in the desert in order to help migrants who become dehydrated during their journey. They reported that their initiatives had been opposed in certain sectors of the Border Patrol and the INS, which considered that such initiatives could encourage greater migration. In this regard, the Special Rapporteur considers that any initiative that can save the life of a migrant should be supported, and that this requires a joint effort on the part of civil society and the Border Patrol to provide for the needs of migrants in areas of risk.

34. At the same time, the Special Rapporteur noted the work carried out by the Border Patrol in all the places that she visited. Their efforts also became apparent during a meeting held with senior officials of that institution in Washington, D.C. The Special Rapporteur noted that the Border Patrol is capable of dealing with difficult border management issues and of seeking solutions to existing problems. The Special Rapporteur received the Border Patrol's concern about the need to strengthen the presence and capacity of the INS and the Federal Preventive Police in their role as interlocutors in the bilateral dialogue at the local level.

Vulnerability of children on the border

35. The Special Rapporteur welcomes the local bilateral agreements that regulate the timetables for deporting women and unaccompanied minors in order to avoid the deportation of such persons during the night, which would expose both groups to violence and abuse. In the light of continuing reports that minors are being deported late at night and in the early hours of the morning, the Special Rapporteur would like to emphasize the importance of adhering to these agreements.

36. The Special Rapporteur was informed that minors deported from the United States through Mexican consulates are handed over to INM officials, who in turn contact the closest offices of the National System for the Integral Development of the Family (DIF). With the cooperation of the United Nations Children's Fund (UNICEF), DIF began implementing, in 1996, the Inter-Agency Programme for Assistance to Minors at the Border with a view to ensuring that the movement of minors is monitored through all the bodies involved in their delivery to Mexico and their return to their place of origin. The Special Rapporteur visited DIF programmes and their transit shelters, which provide accommodation, food, social assistance and medical and psychological care. The Special Rapporteur observed that most unaccompanied boys and girls suffered from anxiety and were in desperate need of contacting their families. NGOs informed the Special Rapporteur of the difficulties experienced by the parents of children picked up by DIF in regaining custody of their children, since the procedure is the same as in cases of domestic abuse. The Special Rapporteur considers that the mechanisms applicable to migrant children in this situation should be reviewed in order to prevent their prolonged suffering and resolve their cases in accordance with their status as migrants and not as abused boys or girls if such abuse has not taken place.

37. The Special Rapporteur is concerned at allegations that there are networks engaged in the sexual exploitation of children that take advantage of unaccompanied minors on the border. The Special Rapporteur considers that DIF and the migrant homes provide an indispensable service for minors, which should be strengthened in order to broaden their coverage and prevent the exploitation of boys and girls. The Special Rapporteur received with dismay the case of a 12-year-old girl who was smuggled to Laredo, Texas, believing that she was going to work as a housemaid. When the minor was found by the police, she was chained to the patio of a house and had been subjected to cruel, inhuman and degrading treatment.

38. The Special Rapporteur observed that many undocumented mothers give their babies and children to smugglers with documents who offer to take them across the border at official crossing points as if they were their own children, while the mothers must take inhospitable routes for an irregular crossing.

39. The Special Rapporteur was also concerned at information received in the United States concerning the alleged separation of families in the deportation process. This would expose minors and women to risks when they are at the border, seeking their spouses, parents or family members. The Special Rapporteur would like to receive assurances that, contrary to some of the allegations that she has heard, families are not being separated intentionally in the deportation process as a means of discouraging any future attempt at irregular entry. On the other hand, the

Special Rapporteur recommends that priority be given to the preservation of family unity in the detention of migrants. Family disruption is a problem of particular concern to the Special Rapporteur. In this regard, she recommends that in any migration process the human context in which families develop should be considered. According to the Special Rapporteur, family disruption can be caused by domestic violence, depression or drug addiction and have consequences that can prevent the full personal development of the child.

40. The Special Rapporteur was also concerned that under-age children of migrants who were born in the United States cannot request legal residence for their parents in that country. The Special Rapporteur met with many parents who had been separated from their children and deported to Mexico because they were undocumented. The parents are confronted with the dilemma of returning to the United States illegally or disrupting the lives of their children as United States citizens by taking them out of the country.

Racism, xenophobia and discrimination

41. During her visit, the Special Rapporteur noted a certain tendency on the part of some segments of the United States population to consider undocumented migrants as criminals and drug traffickers who pose a threat to national security. Moreover, the Special Rapporteur was informed that, since 11 September 2001, these segments view undocumented migrants as potential terrorists. The Special Rapporteur is concerned at reports about groups of ranchers along the border who make xenophobic and racist comments about migrants on the Internet.

42. These groups detain undocumented persons who cross through their lands and hand them over to the migration authorities. The alleged cases of intimidation and shots from firearms to which migrants are often subjected when they are intercepted by such individuals are a source of concern. The Special Rapporteur was informed of the case of Eusebio Haro Espinosa, a 23-year-old Mexican migrant, who died on 23 May 2000 after being shot by a Texas rancher. Eusebio de Haro and another migrant had knocked at the door of the rancher's house to ask for water. The rancher ordered them to go away and, after calling the Border Patrol, pursued them and shot at them, wounding Eusebio de Haro in the groin. The police took about 40 minutes to arrive and the young man had bled to death. The rancher was accused of homicide but was released on \$10,000 bail. In Tucson, the Special Rapporteur was also informed that racist and xenophobic groups had tried to poison the water that some organizations store in the desert to save the lives of migrants who travel through such areas.

43. The Special Rapporteur was informed of the case of Benjamín Prado, a United States citizen and member of the Raza Rights Coalition, who had been beaten and detained by members of the Border Patrol on 25 February 2002 in San Diego for having filmed members of the Patrol carrying out identity checks in trolleys in that city. According to the information received, the checks were made on the basis of the physical appearance of the person intercepted. His photographic equipment was confiscated for 10 days. In its reply to the Special Rapporteur's request for information, the United States Government informed her that, before he was arrested, Benjamín Prado had struck a border officer with his camera. The INS Office of Internal Audit has begun an investigation into the incident.

44. In Mexico, the Special Rapporteur was also concerned at the stigmatization of the migrant population (by some municipal authorities and public security officers). She noted that the abuses committed against migrants had undertones of xenophobia and discrimination. A mayor with whom the Special Rapporteur met asserted that, when they arrived at the border, migrants became beggars, prostitutes, criminals or drug addicts and posed a threat to public safety. The mayor insisted that Central Americans were particularly dangerous, remarking that “they’re that way because they come from a culture of war”.

Detention of undocumented migrants at the United States border

45. In the United States, the Special Rapporteur visited centres where intercepted irregular migrants are temporarily held until they are deported or sent to migrant detention centres. In Laredo, the Special Rapporteur visited a detention centre administered by a private security agency, where migrants subject to deportation or whose migration status is being decided, are held. She also visited an INS detention centre in El Centro, California. The Special Rapporteur was informed that in California women and minors are held in Casa San Juan, which has a capacity for 120 persons and is administered by the Catholic Church. In the detention centres, the Special Rapporteur noted that many migrants showed signs of depression and anxiety.

46. The Special Rapporteur expressed her concern to the authorities with whom she met in the United States concerning the detention of migrants in centres run by private security companies that have not received special training in the administrative detention of migrants. The Special Rapporteur noted differences between the information provided to migrants in the facility privately administered by the Correctional Corporation of America (CCA) in Laredo, Texas, and in the INS migrant detention centre in El Centro, California. The migrants detained in INS facilities showed that they had more information about the status of their cases, and greater opportunity to talk with the migration authorities about their doubts or needs during their detention. In the facilities in El Centro, the Special Rapporteur observed that judicial proceedings are held in courts established within the installations and that immigration judges are often present every day in the detention centre, which speeds up the process.

47. The migration authorities informed the Special Rapporteur that, except in cases of recidivism, migrants intercepted in irregular migration can request their voluntary expulsion. In this way, they would not be detained. On the other hand, those who request that their cases be reviewed are subject to proceedings that can last for months. Several detained migrants expressed their concern to the Special Rapporteur about the repeated cancellation of the dates of their hearings, which prolonged the detention process. The Special Rapporteur was concerned that non-Mexican migrants have no contact with their consulates, since their countries do not have consular representatives in these border areas. The Special Rapporteur is also concerned at the isolation of detained migrants who do not speak English or Spanish. While the INS demonstrated an effective procedure for providing interpretation by teleconferencing for languages such as Chinese, Hindi and Arabic, once the interviews and hearings are over, the migrant remains marginalized in an environment in which he cannot communicate.

48. The Special Rapporteur has been informed that there is no system of free legal assistance for detained migrants. In this regard, the Special Rapporteur observed the valuable work of

lawyers from NGOs, who represent migrants on a voluntary basis. The Special Rapporteur was also informed of allegations that migrants are frequently transferred from one detention centre to another without prior notification or without their being given a reason for their transfer. In many cases, family members or lawyers are not informed of such transfers.

49. The Special Rapporteur has also been informed that, when the countries of origin do not provide them with travel documents, migrants who have already served their sentence in the United States continue to be detained. The Special Rapporteur is seriously concerned at the indefinite restriction of liberty of such migrants, and invites the United States to review this practice.

50. Migrants who report that their rights were violated during their interception or detention are detained as witnesses. It is feared that that may discourage victims of abuses to report violations of their rights and promote impunity for violations of migrants' human rights. One of the migrants detained by the INS and with whom the Special Rapporteur met, José Orea Gómez, said that he had been arrested on 12 March 2002 in Calexico and had been beaten by the officers who detained him, without being able to identify with any certainty the institution to which they belonged. The Special Rapporteur observed that José Orea Gómez had visible contusions on his face and wrists. When he was told that he could be detained during the investigation, he withdrew his complaint and requested his voluntary expulsion.

IV. ACTION TAKEN BY THE GOVERNMENTS OF MEXICO AND THE UNITED STATES OF AMERICA TO ADDRESS THE PROBLEM OF MIGRANTS' VULNERABILITY

51. In the border situation that has just been described, the Special Rapporteur found that local bilateral agreements between consulates contribute to the better management of migrant flows in the area. The Special Rapporteur considers that various points on the border would benefit from the model of consular cooperation between Laredo and Nuevo Laredo, and she commends the two consulates on the efforts that they have made in this regard.

52. The Special Rapporteur noted that Mexico has a coordinated and vigorous consular policy in the entire border area. Mexico's consular presence is a genuine commitment to provide protections for migrants in the area of the United States border. Along the border, Mexican consulates keep a record of incidents in which Mexican migrants have suffered, and seek reparation for the rights that have been violated. The Special Rapporteur took note of other initiatives to improve the situation of the Mexican migrant community.

53. In the context of high-level bilateral negotiations, the Presidents of the two countries instructed the Mexican Minister of the Interior and Minister for Foreign Affairs and the United States Attorney-General and Secretary of State to hold formal negotiations on the future direction of migration policies in order to "create a process of orderly migration that guarantees humane treatment of migrants, provides protection of their legal rights, ensures acceptable work conditions for migrants and also recognizes the right of nations to control the flow of people across their borders".²

54. The two countries agreed to increase their efforts to ensure safety on the border and to review their respective border policies in order to reduce risks and eliminate deaths of migrants along the border. Specifically, they agreed to strengthen public safety campaigns to alert potential migrants of the dangers of crossing the border in high-risk areas, reinforce operational plans for the protection, search and rescue of migrants (aerial surveillance programme on the United States side and increased presence of Beta Group on the Mexican side), cooperate bilaterally in order to combat human smuggling and trafficking organizations, and initiate a programme on the use of non-lethal weapons by Border Patrol agents.

55. In March 2002, the Presidents of Mexico and the United States made a joint statement known as the "Monterrey commitments", in which they reaffirmed their determination to ensure a safe, legal, orderly and dignified migration flow. The two countries adopted an action plan that provides for measures to improve the safe flow of goods and persons. The Presidents also reiterated their aim of fostering economic development so that no Mexican felt compelled to leave his or her country owing to a lack of opportunities.

56. The two States have also signed other, more specific agreements for the protection of the human rights of migrants. In 1996, they signed the Memorandum of Understanding on Consular Protection of United States and Mexican Nationals with a view to preventing situations that affect the physical integrity, dignity and human rights of Mexican and United States citizens who cross the common border. After the Memorandum was adopted, other agreements were reached, such as the Procedures for the Safe Return and Orderly Repatriation of Mexican Nationals, in 1997.

V. CONCLUSIONS AND RECOMMENDATIONS

57. The meetings that the Special Rapporteur held during her visit confirmed the situation of vulnerability of migrants who attempt to cross the border illegally. Many are prepared to take any risk in the final stage of a journey that, they believe, will bring them a more dignified future. In this regard, the Special Rapporteur considers that the dissemination of information to potential irregular migrants concerning the dangers of crossing the border in certain areas and in the hands of smugglers is one way of effectively protecting the human rights of such migrants. The Special Rapporteur invites the authorities and civil society of the two countries to increase their efforts in this area.

58. The Special Rapporteur appreciates the rescue work carried out by the police and border patrols of the two countries when migrants are in high-risk situations. The Special Rapporteur considers that these emergency operations should be combined with preventive measures, such as the placing of water tanks in deserts. Moreover, the Special Rapporteur invites the Mexican and United States migration authorities to carry out a rigorous programme for identifying and registering corpses.

59. In view of the expansion of migrant smuggling and trafficking networks and the abuse of migrants by such networks, the Special Rapporteur welcomes the recent bilateral negotiations in which the two States pledged to combat such crimes, and invites them to take specific measures to that end, particularly by strengthening legislation that deals with such crimes and their

punishment. The Special Rapporteur would like to recall that efforts to combat the smuggling and trafficking of persons must be made with respect for the human rights of the victims. The Special Rapporteur requests the relevant authorities of the two countries to increase their efforts to combat such crimes and investigate and punish alleged illicit practices by some public officials. In this context, the Special Rapporteur invites the Government of Mexico and the Government of the United States of America to ratify the Protocol against the Smuggling of Migrants by Land, Air and Sea and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

60. During her visit, the Special Rapporteur visited, or was informed of the existence of, many migrant centres administered by civil society on both sides of the border. However, in spite of their valuable efforts, NGOs lack the necessary means to provide care for most migrants. The Special Rapporteur requests local, State and federal authorities to support those centres in order to provide migrants with better protection. The Special Rapporteur also requests that DIF be strengthened so that it can provide adequate care for deported minors and ensure that the accompanied return of minors to their places of origin and their reunification with their families take place as soon as possible.

61. The Special Rapporteur encourages the authorities of the two countries to carry out impartial and exhaustive investigations into reports made by migrants concerning alleged violations of their rights by public officials. Administrative or even punitive measures should be taken against officials who engage in physical or psychological violence against migrants. The Special Rapporteur requests the relevant authorities of the two States to take all necessary measures to ensure that migrants who claim to have been abused have access to reporting mechanisms.

62. In order to avoid this kind of abuse, the Special Rapporteur emphasizes the need to train migration management officials. Such training should go beyond information about the rights and freedoms of migrants and the standards in that area. The Special Rapporteur wishes to stress that the abuse and humiliation of migrants has serious psychological consequences. This is why the training of migration officials should include mental health issues and the consequences of psychological traumas caused by physical and psychological ill-treatment.

63. The Special Rapporteur recommends that NGOs coordinate their efforts with the migration authorities in order to make regular visits to migrants in detention. The Special Rapporteur is of the opinion that the access of NGOs to places of detention is essential in order to prevent and report possible abuses. The Special Rapporteur invites NGOs that work at the border to continue to provide legal and psychological support to migrants who have been deprived of their liberty.

64. The Special Rapporteur requests the United States authorities to take all the necessary measures to ensure that all migrants in administrative detention, including those in the custody of private agencies, have access to a minimum of guarantees. Such guarantees include information about the processing of their cases, legal assistance (free for migrants who cannot afford to pay for it), interpretation services, medical, social and psychological assistance, access to family

members, lawyers and organizations that provide assistance to migrants, and recreational and/or educational activities. Detention conditions for migrants should respect the family unity of the detainees and take account of the particular vulnerability of women and minors, especially unaccompanied women and minors.

65. In view of the demand for labour in many parts of the United States, the Special Rapporteur invites the United States Government to strengthen migration agreements and implement new measures to regularize migrant workers and their families. This would give migrants more dignified access to the United States labour market and without the risks that an irregular crossing of the border entails. The Special Rapporteur also recommends that more decisive action be taken against employers that hire migrants under false pretences and subject them to conditions of slavery.

66. The Special Rapporteur considers that campaigns to prevent discrimination and xenophobia against migrants are required both in the United States and in Mexico. She suggests that NGOs keep detailed records of alleged incidents of racism in order to make the problem more visible. The two countries also need to provide specific courses for migration officials and border patrol agents on such problems. Xenophobic acts or speech within public institutions must be punished. In her report on her visit to Mexico (E/CN.4/2003/85/Add.2), the Special Rapporteur recommends other measures to combat this problem within institutions involved in migration management.

67. Finally, the Special Rapporteur invites the Governments of the United States and Mexico to ratify the international human rights agreements to which they are not yet parties. In particular, the Special Rapporteur encourages the United States to consider the possibility of ratifying the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families.

68. The Special Rapporteur welcomes the international initiatives that have been carried out by Mexico to protect Mexican migrants abroad through its consulates. The Special Rapporteur encourages government authorities to pursue negotiations so that the human rights of migrants becomes a priority in their relations with the United States, including their trade relations with that country. The Special Rapporteur encourages the consular authorities to continue their programmes for migrants.

Notes

¹ Information provided to the Special Rapporteur by a non-governmental organization based on statistics received by that organization from the Mexican Ministry of Foreign Affairs.

² See United States-Mexico Joint Communiqué on Migration Talks, June 2001, www.state.gov/r/pa/prs/ps/2001/3733.htm (consulted on 12 July 2002).