



Alternative report on the Mexico
observance of the International
Convention on the Protection of the
Rights of All Migrant Workers and
Members of Their Families to the United
Nations Committee on the Protection of
the Rights of All Migrant Workers and
Members of Their Families (CMW)

Executive Summary

August 2017



Alternative report on the Mexico observance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

Executive Summary

This report is the result of a participatory work of various organizations, networks and human rights defenders working in Mexico, North and Central America, on the topic of the integral defence of people involved in the human mobility in the Mexican corridor, and of people in need of international protection.

The document aims at communicating to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) updated information on the Mexican migration context, including main challenges and issues of concern that civil society identifies through its work, and in response to the questions that the Committee elaborated for Mexico to submit during its Third Periodic Report.

Ultimately, this document also presents a series of recommendations on the actions we consider that Mexico should implement in the short-, medium- and long-term.

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Alternative report on the Mexico observance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

Executive Summary

1. General information (Reply to par. 1). The search for better job conditions is no longer the main cause for people to migrate. (MSF, 2017). The number of people who irregularly cross Mexico before reaching the USA has been lowering, often as a result of the increasing number of individuals detained and returned to their countries of origin, despite many of them may be in need of international protection. As a consequence, the region is living an intense humanitarian crisis.

The so called “Mexican drug war” affects people in transit through the strengthening of various security measures. The balance of expenditure of the National Migration Institute¹ has been growing through the years, reaching the amount of 4.1 billion of Mexican pesos in 2015. Notably, most of the expense is allocated to the control and detention of foreigners, as shown by the Integral Programme for the Southern Border².

Due process and material conditions during detention, return and expulsion. Detention in Mexico is the general measure that applies to all people in the context of human mobility, especially those not showing a regular permit to stay in the country. These measures openly violate the principles of necessity, proportionality and exceptionality of detention. At the same time, a structural lack in the principle of due process can be demonstrated through the absence of an effective legal defence to people who cross the country without a valid stay permit. Authorities are neither impartial nor independent, both speaking of judicial authorities and administrative ones with semi-judicial faculties, showing no revision procedures of detention measures (neither immediate nor through the time). As a corollary, situations of inhuman treatments in detention centres have been documented by NGOs and international organizations.

Migration Special Programme.³ In the practice, the PEM has been surpassed by parallel and contradictory measures (i.e. the PIFS), thus creating a securitized border all along the southern Mexican border. In addition, these measures do not fulfil with minimum obligations of transparency and accountability, such as in the case of the PIFS.

Recommendations: see full report.

2. Reform to art. 33 and the related Regulatory Law (Reply to par. 2). It is still resulting pending the legislative procedure and therefore, the publication of the Regulatory Law to art. 33 in the Official Diary of the Federation.⁴

Recommendations: see full report.

3. Ratification of the ILO Conventions n. 97, 143 and 189 (Reply to par. 3). Mexico did not start any ratifications procedures in relationship with ILO Conventions n. 97, 143 and 189. It is important to mention that from 2015 Mexico did not ratify any other Convention or Treaty.

Recommendations: see full report.

¹ *Instituto Nacional de Migración, INM, Translator’s note.*

² *Programa Integral Frontera Sur, PIFS, Translator’s note.*

³ *Programa Especial de Migración, PEM, Translator’s note.*

⁴ *Diario Oficial de la Federació, DOF, Translator’s note.*

5. Coordination among Federation, Federal States and Local Governments (Reply to par. 5). Practices at local level are ambiguous and jeopardized, showing a mixture between omission and impunity, without any implementation of the political discourse “pro rights” or “pro protection”. Some of the Federal States establish their own laws without considering neither international regulations (among which, the Convention under examination) nor Federal Laws (such as Migration Law).⁵ Since Migration Law does not include some categories in the migration context, such as Mexican nationals outside the country or returnees, this causes relevant misbehaviour in the implementation of effective measures, above all because local legislations only partially include measures to address these topics, more than often contrary to international human rights law and international refugee law.

Recommendations: see full report.

6. Training of public officials at all levels, and diffusion of the Convention (Reply to par. 6). There is a relevant lack in campaigns to spread the knowledge about migrants’ rights and about all the opportunities available for them in terms of public services. State authorities only implemented few measures to accomplish with their duty to inform, measures that shown no impact on the solutions of the problems they are supposed to address, especially about discrimination against asylum seekers, refugees, migrants and their families. Despite migration officers are offered a full range of training courses, including from external realities such as the National Commission of Human Rights,⁶ these courses mostly address security-related topics, only lingering on relevant human rights standards to be applied to asylum seekers, refugees and their families. In addition, there is a general lack of adequate trainings to public officials of the national civil register, to the public attorney’s office and to civil servants, as well.

Recommendations: see full report.

7. Civil society participation (Reply to par. 7). In an initial phase, State authorities seemed interested in opening a dialogue with NGOs, therefore establishing certain grounds of collaboration. However, the subsequent execution of politics in open contrast with national plans and the legislative background established, moved NGOs to a mere symbolic ground or, at best, to a consultative one. With a special reference to the presentation of the National Report to this Committee, the Mexican State asked for the support of NGOs to realize forums and meetings in order to receive contributions. However, authorities did not provide any financial resource to allow a concrete participation of NGOs to such events, neither guaranteed that the results of such consultations would have been taken into consideration. As a consequence, neither NGOs or important networks of the civil society decided to participate.

Recommendations: see full report.

8. Compliance to the Convention (ICRMW) (Reply to par. 1, 7 and 10). Mexico has shown advances in the formal compliance with the Convention examined by this Commission, such as the withdrawal of the reservation expressed on art. 22 par. 4 of the ICRMW. However, the Convention is far from being fully implemented, both concerning the development of public policies and concrete measures applied at a federal and local level.

Recommendations: see full report.

⁵ *Ley de Migración*, Translator’s note.

⁶ *Comisión Nacional de Derechos Humanos*, CNDH, Translator’s note.

9. Principle of non-discrimination (Reply to par. 8). This principle is recognized by art. 1(5) of the Mexican Federal Constitution. The National Council to Prevent Discrimination⁷ is the recognized body in charge of preventing and eradicating discrimination. To the date, the Council has not generated any campaign aimed at facing the situation of discrimination registered all over the country. The lack of actions against xenophobia favour policies of criminalization of migrants and their demonization in the public media, where they are often accused of being the main cause of insecurity in many regions of the country, such as in the southern states. This public discourse builds a dangerous environment for people in transit, that often see the communities where they arrive looking for a safe shelter, repelling their presence because of their alleged “danger”.

Recommendations: see full report.

10. Access to justice (Reply to par. 9 and 10). Mexico is facing a situation of institutional weakness and grave violations of human rights, above all concerning torture, assassinations, extrajudicial killings and forced disappearances. Unfortunately, there are no official statistics able to show in which percentage these crimes directly affect migrants and their families, directly challenging the recollection of information about crimes directly related with migrants on the route. A great challenge to a fair access to justice is related to the criminalization and judicialization of migrants in Mexico, together with various forms of persecution and intimidation against human rights activists. The creation of special attorney’s offices at a local level⁸, and the creation of a federal special section of the Attorney general’s office,⁹ represent an important but insufficient advancement to guarantee the access to justice for migrants: denouncing still represents a challenging task, with the attorney’s office at a local level (that are supposed to take care of the investigations processes) that neither have at its disposal enough human and financial resources, nor the capability to operate according to clear and well-planned strategies to investigate felonies, above all those concerning structural crimes such as corruption and human rights violations directly imputed to public officers and enforcement units.

The External Support Mechanism,¹⁰ aimed at guaranteeing the right to denounce crimes committed against migrants from the abroad, only works thanks to the collective efforts of central American independent groups, composed by families who want to help their beloveds who have been victims of crimes in Mexico. Despite the creation of special units to investigate crimes against migrants and the MAE may represent a significative improvement, it is to be noted that such units do not have any operative regulation to function appropriately. Considering that the activities of the Forensic Commission¹¹ reflect public politics at a global level, both according to its mandate and the actors involved in its actions, it is important to strengthen its labour and expand its mandate.

Highway checkpoints. The identification and detention of migrants lacking a regular staying permit represents a common practice among enforcement units, especially because it fosters extortion practices. Migration Law does not allow Federal Police to operate in mobile checkpoints aimed at the migratory verification (art. 97), while they have this faculty in transit places different from the highroads, only and if the INM openly requests their support (art. 81). The Law is deliberately ambiguous, opening spaces for local authorities to realize operations in combination,

⁷ Consejo Nacional para Prevenir la Discriminación, CONAPRED, Translator’s note.

⁸ Dirección General de Delitos de Alto Impacto Cometidos en Agravio de Migrantes de la PGJE, Translator’s note.

⁹ Procuraduría General de la República, PGR, Translator’s note.

¹⁰ Mecanismo de Apoyo Exterior, MAE, Translator’s note.

¹¹ Comisión Forense, Translator’s note.

also taking into consideration that detentions are often operated before a “technical profile”, above all in the southern region, which caused the illegal detention of Mexican indigenous people as well.

Recommendations: see full report.

12. Stalking, corruption and abuse of authority by INM agents, and other authorities (Reply to par. 13 and 14). As above mentioned, the implementation of the PIFS fostered human rights violations, instead of guaranteeing their full respect. It is alarming that the authorities in charge of the promotion, respect and guarantee of human rights, are those who often commit these violations, showing a constant participation in crimes such as theft, extortion, abuse of authority and various other injuries. In 2013 the INM released more than one thousand officers for acts of corruption. In 2016, it was the INM Commissioner himself who informed the Senate about the releasing of three thousand agents and others civil servants for acts of corruption. What just mentioned not only shows profound deficiencies in the selection and training of federal officials in charge of the tasks of the INM, but also an endemic plague largely documented throughout the time by the authorities themselves.

Recommendations: see full report.

13. Protection measures addressing detained migrants, above all concerning those in situation of vulnerability (Reply to par. 15 and 16). In Mexico, there are 35 detention centres for migrants¹² (Consejo Ciudadano INM, 2016) and 23 provisional detention centres¹³ located in 26 States, able to allocate 4,300 people simultaneously. Throughout 2016, there has been a total of 188,595 detentions operated by the INM.

The INM does not have any established programme to promote economic, social and cultural rights such as education or health care, and even less programmes that approach to gender equality, or to the peculiar necessities of women, children and adolescents. The 2014 General Law for Children and Adolescents,¹⁴ represents a great improvement towards the full guarantee of a rightful application of the best interest of the child. However, it is an unfortunate common practice to apply different standards to those provided for by the law. There is no articulation with NGOs or other actors of the civil society and international organizations to guarantee that the best interest of the child is fully respected. Children in transit and refugees’ children who are victims of sexual violations and gender based violence (GBV) in Mexico, rarely denounce these crimes to the authorities because of the fear of being deported and their lack of credibility.

Recommendations: see full report.

14. Protection measures related to migrants and asylum seekers in detention (Reply to par. 16, 17 and 18). Migrants often spend their detention totally uninformed about their rights, above all those concerning voluntary repatriation, refugee status determination and humanitarian visa. Overpopulation is a common feature in detention centres, together with many other different violations of human rights, with a special attention to those concerning childhood (see the amount of recommendations addressed to the INM from the CNDH). It has been registered the wrongful detention of Mexican nationals in some occasions.

Detention centres do not offer infrastructure standards coherent with the amount of people detained. Among others, cases of separation of families have been detected, which cumulate with

¹² *Estaciones Migratorias*, Translator’s note.

¹³ *Estancias Provisionales*, Translator’s note.

¹⁴ *Ley General de Niñas, Niños y Adolescentes*, LGDNNA, Translator’s note.

a general lack of space for family visits, prohibition of any contact with the outside, and a lack of gender politics related to a correct management of LGBTI people. In addition, families have often been reportedly separated throughout their process of deportation or assisted return, despite the Migration Law establishes otherwise (art. 120).

Recommendations: see full report.

16. Consular protection in the USA (Reply to par. 1, 20, 21 and 23). Cases have been documented concerning Mexican nationals deported from the USA who ignore their migratory status, and see themselves in need of legal assistance in Mexico, while there is no governmental institution capable of providing it. Legal assistance to returnees is still a necessary tool once Mexican nationals come back to the country. For what concerns the protection of rights of migrant workers, the Mexican government does not implement sufficient measures to guarantee that returnees have a full access to their salaries or to other benefits denied in the USA.

It is of paramount importance that the government acts proactively in the identification of these cases, especially via direct questions about such benefits the person may be willing to enjoy once back in Mexico. At the same time, to protect and guarantee all the rights concerning returnees, the government must consider cooperating with NGOs and other actors of the civil society that already promote coherent mechanisms to the restitutions of working rights in the USA from Mexico.

Recommendations: see full report.

17. Programs of migratory regulation (Reply par. 24, 25, 26, 27 and 29). The INM releases the permission as “border worker”¹⁵ without any agreement with the Secretary of Employment and Social Care¹⁶ (AAVV, 2017). It is important to understand that obtaining a working permit is conditioned to the access to a regular permit in the country, and at the same time a regularization in the country is often conditioned to a legal working opportunity. In this framework, STPS does not generate any strategy relevant to be mentioned (*bolsas de trabajo*). Furthermore, it does not offer any training, neither safeguards the security of the workers, nor offers alternatives for their retirement.

At the same time, the Attorney’s Office for Labour Conditions and the Tribunal for Reconciliation and Arbitration does not offer any protection to the rights of migrants’ workers, while art. 123 of the Mexican Federal Constitution and the Federal Labour Law do not make any difference among workers, and guarantee the full enjoyment of all rights without any distinction of the migratory status. These provisions have been confirmed in 2008 by a decision of the Second Courtroom of the Supreme Court.¹⁷

Common practices in every regulation process concern the inhomogeneity application of requirements and costs among INM offices throughout the country, including delays in the resolution of regularization processes that discourage migrants and make them doubtful about the proceeding. For what concerns asylum seekers, their right to work throughout the proceeding is bound to the concession of a humanitarian visa by migration authority, which is an inconstant practice through the different Federal entities. All the difficulties migrants face to access the *Clave Única de Registro de de Población* (CURP) complicate their access to different economic, social and cultural rights as mentioned by the Pact, violating at the same time the principle of non-discrimination as established by art. 1 of the Mexican Federal Constitution.

¹⁵ *Tarjeta de Trabajador Fronterizo*, Translator’s Note.

¹⁶ *Secretaría de Trabajo y Previsión Social*, STPS, Translator’s Note.

¹⁷ *Suprema Corte de la Nación*, SCJN, Translator’s Note.

Access to health care: NGOs have detected that migrants do not ask for medical attention for fear of being deported, considering that there had been cases registered when medical personnel or nurses have denounced them to the INM. Accordingly, migrants who find a safe shelter in places managed by NGOs, and see themselves in need of medical assistance, prefer to be accompanied to hospital and medical centers by personnel of the NGO.

The whole system of access to health care is obstructed by the fact that migrants have to register themselves to the Popular Health Service,¹⁸ which is only valid for 90 days, in contradiction to what established by the Mexican Federal Constitution and the General Health Law.¹⁹ A similar pattern is followed by refugees, who see their right to access to health care bound to their process of integration.

As last, mental care is often less considered: few people can access to an appropriate diagnosis, and even less have access to a proper treatment according to their needs (MSF, 2017).

Women migrant workers. Job offers for migrant women are mainly based on home-caring activities (domestic workers, babysitting and senior companions), agricultural works (day labourer), informal economy and service sector (peddlers, receptionists, waiters, etc.), border-works (that involves passing the border to go to work, and going back to rest) and sexual activities (in bars, in the so called “table dance”, or in brothels). General Recommendation n. 26 (CEDAW) asks all governments to attend all necessities specifically linked to women migrant workers, or in places where their life and security is in danger, or they can be discriminated or excluded. These recommendations rest unattended by the Mexican State.

Sexual workers case implies, more than stigma and a triple discrimination (to be women, migrants and sexual workers), an exposure to special vulnerabilities and risks of health diseases, including HIV and STD. However, the implementation in 2012 of the Anti-Traffic Law activated police operations in bars and taverns, forced many of them to close and putting in jail many sexual workers. From the implementation of the PIFS, these operations are conducted from the INM as well.

18. Family reunification of transnational communities (Reply to par. 28). Transnational families (above all for what concerns women) face enormous problems in obtaining US birth certificates, the apostille and the official translation realized by a certificated translator authorized to operate the inscription in the Mexican local registers. This challenge complicates the access to some children rights, such as the alimony. Despite the implementation of the programme *Soy México* by the RENAPO and local civil registers in August 2016, it is still complicated to obtain birth certificates for children born in the United States from Mexican nationals subsequently deported, including the fact that it still involves a payed service in contravention of art. 4 of the Mexican Federal Constitution.

Some effective measure could include the training of local civil servants about the cultural and legal context in the USA, together with the responsibilities that lawyers have in the United States. As a matter of fact, sometimes people are frauded by fake-lawyers, or by lawyers that could lay before the vigilance of their respective bar of lawyers: the access to this information may grant an effective help to the families who are returned from the USA and need documents from the US Government.

Recommendations: see full report.

¹⁸ *Seguro Popular*, Translator’s Note.

¹⁹ *Ley General de Salud*, Translator’s Note.

19. Right to equality for migrants' workers and their family (Reply to par. 30 and 31). The Seasonal Agricultural Working Programme between Mexico and Canada has been working for 42 years as a model of legal, secure and organized migration, and included the participation of 21,000 Mexican nationals. If we consider the visa system H-2A and H-2B respectively addressed to agricultural and non-agricultural workers, 83,000 Mexican nationals had the possibility to work in Canada. However, all of them were exposed to violations of their working rights, despite the existence of a Memorandum of Understanding between the two countries. Migrants are affected by gender based discrimination by companies in Canada, and the Mexican government limits the access to temporal visas to women who want to work in the USA and Canada.

Mexican temporary workers. Transnational companies have been favoured in their access to Mexico. According to state authorities these companies have generated thousands of working opportunities who gave benefits to a great number of families. These declarations do not see any confirmation in official data, that show instead one of the worst moment to formal employment in the country. For what concerns Mexican migrants who want to cross the border to the USA, they are often forced to work as agricultural workers to pay their journey.

Recommendations: see full report.

20. Cooperation (Reply to par. 1, 22 and 30). It is more than evident that most of the cooperation agreements with the USA has been directed towards the border between Mexico, and Guatemala and Belize, with a special to the assistance to the Mexican government to secure the border and implement a capillary migratory control through the Initiative Merida. Mexico signed a Cooperation Agreement on labour matters with Guatemala the 7th of August 2014, that entered into force on the 24th of November of the same year, and concluded its mandate two years later. This agreement did not see any concrete application and, in real terms, no Guatemalan entered in Mexico before its terms, neither there was any development on the planned creation of a labour monitoring system.

Recommendations: see full report.

21. Return (Reply to par. 32). The Federal government and the various local entities implemented solid and effective policies to address Mexican nationals who have been deported or repatriated from the USA. One of the most important challenges that transnational families show once back in Mexico is their inscription to the national register, and the access to education. According to the regulations in force, any children can attend the school, even without identification document: it should be sufficient he/she presents an inscription form. However, these regulations are scarcely applied, and are conditioned to the delivery of a birth certificate with apostille, both for ignorance and because the SEP system²⁰ forces to introduce the CURP, which by itself only has statistical purposes and should not represent any obstacle to the access to education.

Return of indigenous migrants. Indigenous populations are often denied their passport, and are forced to present more requirements than mestizos. When an indigenous person wants to get back to his/her community, often local governments do not have any established plan addressing returnees, so that they see themselves forced to internally displace themselves again, for example as agricultural workers in the North-Eastern part of the country. Authorities show a complete passivity, discriminating or openly denying rights despite the peculiar necessities indigenous returnees have.

Recommendations: see full report.

²⁰ Sistema Nacional de Información Estadística, Translator's note.

22. Smuggling and trafficking in migrants (Reply to par. 33). Entering in Mexico irregularly place migrants in vulnerable conditions. Among them, women (above all when they have children) and unaccompanied children see themselves mostly affected by this situation. Women often end up as sexual workers in bars and taverns (it is important to mention however, that sexual workers are not always victims of traffic), because they need it or because they are forced into it. Children are forced into the peddle or into daily labours, or worst they may be kidnapped to serve as sexual slaves, without any real protection from the authorities as established by the Convention on the Rights of the Child, the Mexican Federal Constitution and the General Law on the Right of the Children and Adolescents.

Recommendations: see full report.

23. Data and figures (Reply to par. 36 and 37). There is no disaggregated information about crimes against migrants, both at a federal and local level, since attorney's offices show no clue about the investigations that are supposed to end up in judgements, despite many of the alleged crimes could be related to criminal organizations that operates throughout the country. Once again, migrants shelters organizations and human rights centres that works helping migrants denouncing their crimes, represent an essential source and show statistics more detailed than those presented by the governments.