

ACCESS TO JUSTICE FOR MIGRANTS IN MEXICO

A Right that Exists Only on the Books

JULY 2017

SUMMARY



AP Photo/Felix Marquez



IN MEMORY OF



This report is dedicated to the life and work of Alberto Donis, migrants' rights defender and coordinator of the shelter Hermanos en el Camino in Oaxaca, who died in June 2017. Beto always demanded justice for crimes and abuses committed against migrants in Mexico.

We will never forget you, Beto.

FINDINGS

- **ACCORDING TO ALL OF THE MIGRANT SHELTERS THAT COLLABORATED IN THIS REPORT, THE NUMBER OF KIDNAPPINGS, FORCED DISAPPEARANCES, AND OTHER TYPES OF FALSE IMPRISONMENT OF MIGRANTS REMAINS HIGH IN MEXICO.** The data and testimonies collected show that organized criminal groups are involved in these cases and are often in collusion with authorities from different levels of government.
- **BETWEEN 2014 AND 2016, THERE WAS A 575 PERCENT INCREASE IN THE NUMBER OF MIGRANTS WHO REGULARIZED THEIR MIGRATION STATUS IN MEXICO BECAUSE THEY WERE VICTIMS OR WITNESSES OF GRAVE CRIMES IN THE COUNTRY. THIS CONFIRMS THAT CRIMES AGAINST MIGRANTS ARE ON THE RISE.**
- **IMPUNITY FOR CRIMES AGAINST MIGRANTS IN MEXICO IS AT ALARMING LEVELS.** According to official figures for the 2014-2016 period, of 5,824 crimes against migrants reported in Chiapas, Oaxaca, Tabasco, Sonora, Coahuila and at the federal level, there is evidence of only 49 sentences, leaving 99 percent of the cases in impunity.
- **MEXICO HAS DRASTICALLY INCREASED ITS CAPACITY TO DETAIN AND DEPORT MIGRANTS, BUT IT HAS NOT GIVEN THE SAME PRIORITY TO, NOR TREATED WITH THE SAME URGENCY, THE NEED TO DEVELOP MECHANISMS FOR INVESTIGATING CRIMES AGAINST THEM.** The creation of specialized local prosecutor's offices and a federal unit within the federal Attorney General's Office (*Procuraduría General de la República, PGR*) is important, but not enough to ensure justice. In practice, reporting crimes is difficult and the offices in charge of investigations do not have sufficient human and financial resources, nor do they have comprehensive and clear strategies for investigating the crimes. Effective procedures to allow migrants to denounce crimes and abuses while held at migrant detention centers are also lacking.
- **MANY STATE OFFICIALS IN MEXICO SHOW A CLEAR LACK OF WILL TO INVESTIGATE CRIMES COMMITTED AGAINST MIGRANTS.** Mexican authorities commonly justify the lack of results saying that if victims do not stay in the country, investigations cannot move forward. However, we found that authorities do not adequately use the two main resources available for investigating these cases: the production of evidence before a trial ("*pruebas anticipadas*") and the regularization of the migration status of migrants who are victims of or witnesses to crimes.

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- **THE MECHANISM FOR FOREIGN SUPPORT (MECANISMO DE APOYO EXTERIOR, MAE) THAT PERMITS CRIMES COMMITTED AGAINST MIGRANTS IN MEXICO TO BE DENOUNCED FROM ABROAD, WORKS THANKS TO THE EFFORTS OF CENTRAL AMERICAN GROUPS WHOSE FAMILY MEMBERS HAVE BEEN VICTIMS OF THESE CRIMES, HUMAN RIGHTS ORGANIZATIONS ACCOMPANYING MIGRANTS, AND SPECIFIC ACTIONS OF SOME GOVERNMENT OFFICIALS.** However, Mexico's Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores, SRE*) and Attorney General's Office have not yet shown the will to make the Mechanism work adequately, facilitate case intake, and educate Mexico's consular network about it. Significant challenges exist to keep families in their country of origin or residency informed about their cases and to facilitate family travel to Mexico when they have to participate directly in the investigation.
- **THE CENTRAL AMERICAN CONSULATES IN MEXICO DO NOT MAKE THE NECESSARY EFFORTS TO ASSIST THEIR CITIZENS WHEN THEY FALL VICTIM TO CRIME IN MEXICO, SUCH AS THROUGH ACTIVELY PARTICIPATING IN THE INVESTIGATION OF ABUSES AGAINST MIGRANTS OR BY FACILITATING INFORMATION THAT IS NEEDED FROM THE VICTIMS DURING INVESTIGATIONS.** In Coahuila, for instance, the Honduran consul has been recognized for the strong support he provides to migrants who are crime victims. In other states, such as Oaxaca, consular support to Central American migrants is insufficient.
- **ALTHOUGH THE NATIONAL HUMAN RIGHTS COMMISSION (COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, CNDH) REGULARLY VISITS MIGRANT DETENTION CENTERS TO DOCUMENT THE CONDITIONS AND TREATMENT OF MIGRANTS, IT HAS MADE FEW RECOMMENDATIONS TO THE NATIONAL MIGRATION INSTITUTE (INSTITUTO NACIONAL DE MIGRACIÓN, INM) ON HOW TO IMPROVE THE SITUATION.** The number of recommendations issued by the CNDH on abuses in the detention centers and against migrants is surprisingly low compared to the accounts of migrants, who identify migration enforcement operations and their stay in detention centers as sources of abuse and human rights violations, and INM agents as perpetrators.
- **OFFICIAL STATISTICS SHOW AN INCOMPLETE STORY –FAR LESS VIOLENT AND HARMFUL– THAN MIGRANTS' TESTIMONIES ON THE CRIMES AND ABUSES THEY SUFFER IN MEXICO.** In some cases, there is not disaggregated data on crimes against migrants. In others, the attorney general or specialized prosecutor's offices do not have information on how many of their investigations resulted in sentences. Statistics on violence against migrants are not gathered at the national level even though many federal and local cases may be related, making it difficult to

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obtain information on criminal networks that target migrants and operate throughout the country. Shelters and organizations supporting migrants who have been victims of crimes are an essential source of information and have better statistics than the government.

- **MIGRANTS' RIGHTS DEFENDERS ARE VICTIMS OF THREATS AND INTIMIDATION FOR THEIR WORK.** Similar to crimes against migrants, attacks on migrants' rights defenders go unpunished. Furthermore, there have been attempts to discredit, limit, and halt the work of defenders supporting the identification of victims' remains in the San Fernando and Cadereyta massacres.

CONCLUSIONS AND RECOMMENDATIONS

The creation of special prosecutors or units for investigating crimes against migrants and the Mechanism for Foreign Support (MAE) to denounce crimes from abroad are an official acknowledgment of the need for concrete measures to guarantee access to justice for migrants who are victims of crime in Mexico. However, fundamental obstacles remain –most of them due to authorities' lack of

will or negligence– that impede these bodies from fulfilling their duty. Currently, an overwhelming number of crimes against migrants in the country go uninvestigated or unpunished.

To address this situation, Mexican authorities must take bold measures to produce measurable and public results, including:

ELIMINATE OBSTACLES SO THAT MIGRANTS CAN REPORT CRIMES COMMITTED AGAINST THEM IN MEXICO

- The specialized prosecutors or offices to investigate crimes against migrants and the Unit for the Investigation of Crimes Involving Migrants (*Unidad de Investigación de Delitos para Personas Migrantes, UIDPM*) of the federal Attorney General's Office (*Procuraduría General de la República, PGR*) should facilitate the reporting of crimes against migrants. Measures to do so could include conducting regular visits to migrant shelters or human rights organizations to receive crime reports and creating new specialized prosecutor's offices in other states where there is a high number of crimes against migrants, such as Sonora and Tamaulipas. Public officials should have presence in well-known transit points and migration detention centers to receive crime reports from migrants. Implementing mobile Public Prosecutor's units to be able to receive complaints where they are needed could contribute to addressing this situation.
- Reform Article 133 of the Migration Law, and Article 144, section 2 and Article 180, section 1, paragraph b) of the Regulations to the Migration Law that only permits the regularization of migrants that have been victims of "grave crimes". This requirement is an obstacle to justice and due process during regularization procedures, and opens the door to arbitrary decisions by authorities on who is or is not a victim of a grave crime. Keeping this requirement may also prevent officials from the Public Prosecutor's Office from gathering information from crime victims and witnesses that may be relevant to other investigations.
- Hold regular meetings with the INM's Beta Groups, federal and state-level prosecutors that investigate crimes against migrants, the CNDH, public human rights bodies, migrant shelters, and organizations that accompany cases, to discuss statistics and crime reports and ways to increase their capacity to receive crime reports from migrants, instead of

waiting for them to go to the authorities. The Ministry of the Interior (*Secretaría de Gobernación, Segob*) should produce and publicize annual statistics that concentrate data on crimes against migrants as a way to comply with the fifth objective of the Special Migration Program on security and access to justice for migrants and migrants' rights defenders.

- Because the Mechanism for Foreign Support permits reporting crimes committed against migrants in Mexico from abroad, Mexico's Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores, SRE*) and the PGR must officially clarify - for instance, by issuing guidelines - the role of each institution in receiving complaints and evidence. The Mexican government must have a sufficient number of trained and permanent staff in Central America and the United States - either legal attachés or officials from the public prosecutor's office - to receive crime reports, channel them to authorities in Mexico, and to keep families informed in real time of progress in their cases in the countries where they reside, including a mechanism to consult relevant documents remotely. Furthermore, they must facilitate the visa process so that families and victims who are in Central America can travel to Mexico when their participation in investigations is required.

CONDUCT SERIOUS INVESTIGATIONS INTO CRIMES AND HUMAN RIGHTS VIOLATIONS AGAINST MIGRANTS IN MEXICO AND DELIVER CONCRETE RESULTS

- Provide the UIDPM and the specialized state-level prosecutor's offices with the financial and human resources they need to carry out their work. To this end, federal and state congresses must allocate sufficient resources to the prosecutor's offices and units that investigate these cases. The attorney general and public prosecutor's offices must have autonomy to conduct investigations and to appoint or hire personnel with the necessary professional and technical capacities, including agents of the Public Prosecutor's Office, experts, and investigative police.
- The UIDPM and specialized prosecutor's offices should establish a policy to investigate and prosecute crimes against migrants. The plan should be made public, specify investigative priorities for each prosecutor's office, the cases under investigation, and the results, which should also be made public. The plan should also explicitly promote producing evidence before trial ("*pruebas anticipadas*") and the regularization of the migration status of migrants who have been victims of or witnesses to crimes so that criminal investigations can be pursued. These public policy documents will facilitate communication among prosecutors and among PGR offices that investigate crimes against migrants.
- The federal and state congresses should establish procedures with clear criteria for appointing and removing the heads of the prosecutor's offices specialized in investigating

crimes against migrants. The nomination process should be public and transparent, with participation from civil society. The head of these prosecutors' offices should have a background relevant to the position, with experience in providing adequate assistance to migrants who are victims of crime, and the appropriate professional experience for the position.

- The PGR should establish transparent and accessible procedures for keeping the families, or the migrants who are crime victims and who live abroad, up-to-date on the progress of their case in their country of residence. For example, authorities could take advantage of already existing working groups (such as the Forensic Commission created in 2013 to identify the remains of victims from the San Fernando and Cadereyta massacres) to report on progress made in investigating crimes reported through the Foreign Support Mechanism.
- In addition to its important work to document the situation in migrant detention centers, the CNDH should make recommendations to the INM, the Federal Police and other federal authorities based on migrants' complaints, including specific recommendations on crimes and irregular conduct that should be investigated. We also urge the CNDH to produce reports or general recommendations on the human rights of migrants in Mexico, such as on migration enforcement operations carried out by the INM together with other security forces and on access to justice for migrants who have been victims of crime. Furthermore, the Commission should publish reports on a regular basis with recommendations to the INM based on the CNDH's work in migrant detention centers.

INCREASE REGIONAL COOPERATION

- Through their consular services, the Central American governments should increase their presence in places where crimes against their citizens are common, as well as the protection of their citizens when they are victims of crimes or human rights violations in Mexico. They should also strengthen dialogue with their Mexican counterparts on the transnational investigation of crimes against migrants.
- This may include enhancing communication with attorney general offices and other bodies of the Mexican government, validating and issuing identity papers for victims of crimes, and providing legal advice. It is fundamental that they request information from the Mexican government on the progress of investigations or submit letters supporting migrants' complaints or reports on abuses, as the Honduran consul has done in Coahuila. The consulates must also provide information to migrants who live abroad on how to access and use the MAE to report crimes they suffered in Mexico from their countries of origin and the United States.

- The prosecutors from Mexico, Central America, and the United States as a destination country, should hold regular meetings to address from a regional perspective the crimes and human rights violations committed against migrants. They should also agree on efficient ways of collaborating and reducing impunity in these cases.

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ABOUT THE ORGANIZATIONS

CASA DEL MIGRANTE DE SALTILLO “FRONTERA CON JUSTICIA”, AC, in Saltillo, Coahuila, provides comprehensive humanitarian assistance as well as case documentation and legal services to migrants.

LA RED MIGRANTE SONORA is a network of five organizations based in the state of Sonora dedicated to defending and providing humanitarian assistance to migrants in Mexico.

- **Kino Border Initiative** is an organization based in Nogales, Sonora and Nogales, Arizona that works in support of migrants and refugees in the United States and Mexico.
- **Centro de Recursos para Migrantes (CRM)**, in Agua Prieta, works to provide humanitarian assistance to migrants and document abuses.
- **Centro de Atención al Migrante Exodus (CAME)** provides shelter to traveling or deported migrants in Agua Prieta.
- **Centro Comunitario de Atención al Migrante y Necesitado (CCAMYN)** is a migrant shelter in Altar directed by the Church of Nuestra Señora de Guadalupe.
- **Centro Comunitario de Ayuda a Migrantes (C-CAM)** is a group of volunteers organized to help migrants crossing through the city of Caborca; they give out food along the train tracks and belong to the local parish of Nuestra Señora de Guadalupe.

ALBERGUE DE MIGRANTES “HERMANOS EN EL CAMINO”, in Ixtepec, Oaxaca, provides comprehensive humanitarian assistance to migrants in transit in Mexico.

LA 72, HOGAR-REFUGIO PARA PERSONAS MIGRANTES is a Franciscan project dedicated to providing comprehensive assistance to migrants and refugees traveling through Tenosique, Tabasco.

FUNDACIÓN PARA LA JUSTICIA Y EL ESTADO DEMOCRÁTICO DE DERECHO is an organization based in Mexico City with offices in Honduras, El Salvador, and Guatemala, dedicated to promoting access to justice and truth for victims of crimes and human rights violations as a way of strengthening the rule of law and combating impunity.

FUNDAR, CENTRO DE ANÁLISIS E INVESTIGACIÓN, AC is civil society organization based in Mexico City that works toward a substantive democracy.

WASHINGTON OFFICE ON LATIN AMERICA (WOLA) is a research and advocacy organization based in Washington, DC that promotes human rights in the Americas.