



Kino Border Initiative
Iniciativa Kino para la Frontera

AN UNCERTAIN PATH Justice for Crimes and Human Rights Violations against Migrants and Refugees in Mexico

EXECUTIVE SUMMARY

This report is the result of a close collaboration between the Washington Office on Latin América (WOLA), *Fundar*, *Centro de Análisis e Investigación*, and seven shelters and organizations that work to defend migrant rights in five areas of Mexico: *Casa del Migrante "Frontera con Justicia,"* AC in Saltillo, Coahuila; the "Red Sonora" (a network composed of three organizations in Sonora: Kino Border Initiative in Nogales, *Centro de Recursos para Migrantes* in Agua Prieta, and *Centro Comunitario de Atención al Migrante y Necesitado*, or CCAMYN, in Altar); *Albergue de Migrantes "Hermanos en el Camino"* in Ixtepec, Oaxaca; *La 72, Hogar – Refugio para Personas Migrantes* in Tenosique, Tabasco; *Un Mundo, Una Nación* en Apizaco, Tlaxcala; and the migrant rights defender Irazú Gómez.

The report is based on a series of visits to migrant shelters and organizations, interviews with staff and migrants, interviews with local authorities, and a thorough review of the migrant shelters' case documentation. In total, thirty interviews were conducted during the research for this report. We also analyzed official documents, including data published regularly by the Ministry of the Interior (SEGOB) regarding immigration policy, and a series of information requests to the federal and state governments made via the Infomex system.

Documentation by migrant shelters and the government data obtained for this report demonstrate the persistence of patterns of crimes against migrants, including kidnappings, human trafficking, robbery, assault, and extortion, along with human rights violations against migrants, especially during apprehension and deportation processes.

Although the government of Mexico has repeatedly stated—including during the launch of the "Southern Border Program"—the need to protect the physical integrity and human rights of migrants in transit through the country, there is still no conclusive information showing that the authorities have made significant progress in investigating and sanctioning the criminal groups or the police, soldiers, and migration agents that take advantage of vulnerable migrants.

Unfortunately, despite the creation of some specialized prosecutors' offices for migrants, whose primary duty is to investigate and prosecute crimes against migrants, penalties for crimes against migrants remain extremely rare. In the state of Oaxaca, the state from which we received the most detailed data on this matter, there has only been four sentences for crimes against migrants in four years, out of a total of 383 reported crimes and 96 preliminary investigations opened.

Additionally, the presence of the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH) and state human rights commissions in the various states where migrants transit has produced few results in those cases in which migrants dare to denounce human rights violations. One of the main functions of these commissions is to issue recommendations to the institutions that are involved in human rights violations, in order to prevent recurrence of the events. However, of the 1,617 complaints of human rights violations against migrants that the CNDH received between December 1, 2012 and June 15, 2015, only four resulted in a formal recommendation issued to the institution implicated in the complaint.

While there has been little progress in combating impunity, enforcement activities have intensified; migrants are being detained and deported so quickly that the civil society organizations, human rights defenders, and asylum attorneys have few opportunities to hear their stories about what they experience in Mexico or the reasons why they leave their home countries. Between July 2014 and June 2015, migrant apprehensions rose 73 percent compared to the same period for the previous year; from July 2013 to June 2014, 97,245 migrants were detained, while between July 2014 and June 2015, 168,280 migrants were detained.

This increased migration enforcement has been carried out not through the institutional strengthening Mexico's National Migration Institute (*Instituto Nacional de Migración*, INM), but rather by transferring INM agents to the southern border states, and through the greater involvement of agencies not specialized in migration in enforcement operations. In this sense, there are clear indicators that the enforcement operations conducted by the INM with support from other authorities have increased very rapidly since the start of the Southern Border Program. During the year 2013 until July 2014—the month in which the Southern Border Program was announced—the average number of operations in which an authority other than the INM participated was 125.8 per month. But from July 2014 to April 2015, this number rose to an average of 429 per month. From a human rights perspective, this multiplication of actors involved in enforcement activities has worrying implications, given the many reports of human rights violations committed during the course of the operations and the documentation of several incidents in which migrants have been injured or killed as a result of these operations. It is evident that without clear guidelines to regulate and limit the use of force and outline the role of the various authorities involved, it is difficult to ensure that migration enforcement operations are conducted properly.

Moreover, the increase in enforcement operations near the railway and roads has caused changes in traditional migration routes, especially for the most vulnerable migrants that travel without a guide and depended more heavily on the train to travel north. Migrants and smugglers have returned to clandestine routes that have now become more dangerous, including travel on foot and by sea. Therefore, a growing number of migrants crossing through Mexico are largely invisible. If the government of Mexico continues to carry out migration enforcement with the same methods, policies, and corrupt authorities, it is likely that we will know less and less about what happens to migrants during their journey.

However, the Mexican government has opportunities to change the design and implementation of its migration policy. In the long term, if Mexico really aims to implement a migration policy that respects human rights, it is essential to effectively investigate crimes and human rights violations against migrants, regardless of whether they have been committed by individuals, gangs, organized crime networks, or public servants. Doing so will not only help to protect one of the most vulnerable populations within Mexico's borders, but it will also lead to the strengthening of the institutions responsible for implementing migration policy in Mexico.

It is worth noting that the issue of migration management, as well as justice for migrants who are victims of crimes and human rights violations, has become an important focus of the U.S.-Mexico bilateral relationship.

To promote justice for migrants and refugees in Mexico, the report's authors and the migrant shelters that collaborated in its production, offer the following recommendations.

To the National Migration Institute (INM):

Strengthen internal oversight and accountability to prevent human rights violations against migrants from occurring within the framework of migration enforcement activities, specifically through the establishment of an Internal Affairs Unit equipped with the necessary financial and human resources and the political will to investigate allegations of crimes and human rights violations perpetrated by INM agents.¹

To the Ministry of the Interior (SEGOB):

Promote a national strategy for implementing and monitoring the 2014-2018 Special Migration Program (*Programa Especial de Migración*, PEM) that includes, as a core element, sufficient funding. Rather than creating new programs that further duplicate responsibilities, such as the Southern Border Program, the 2014-2018 PEM should be held up as the primary public policy document regarding migration by all federal government agencies and should be implemented as such. To this end, there must be a transparent allocation of sufficient funding for the PEM.

Create an asylum and international protection policy that is worthy of the Mexican state. The budget of the Mexican Commission for Refugee Assistance (*Comisión Mexicana de Ayuda a Refugiados*, COMAR) must be increased so that it is proportional to the increased needs of the migrant population and so that each individual who so desires may have the opportunity to tell his or her story to an official specialized in asylum. Specifically, there is an urgent need to hire and train more protection officers in COMAR who can conduct eligibility interviews, as well as to evaluate the possibility of opening new COMAR offices at key points along the migration route, such as on the border between the state of Tabasco and Guatemala.

It is also necessary to build institutional capacity and enhance mechanisms for coordination between the INM and COMAR in order to inform all migrants in Mexican territory about their right to asylum and international protection, as well as facilitate cooperation with civil society organizations that provide legal assistance in order to increase the number of requests and reduce the rate of desisted or abandoned cases.

In addition, cooperation agreements should be reached with university law schools nationwide in order to encourage attorneys to provide pro bono assistance to migrants eligible for refugee status in Mexico.

Develop clear regulations for migration enforcement operations, specifically regarding appropriate places and circumstances in which to conduct them, cooperation between the INM and other authorities, the responsibilities of each of these authorities, and clear limits on the use of force. Such regulations should include a protocol that regulates and limits the use of force during migration enforcement operations, ensures the training of all agents on such guidelines, and establishes oversight and sanctions. The

Migration Policy Unit (*Unidad de Política Migratoria*, UPM) should post up-to-date information on its website regarding the number of migration enforcement operations, broken down by month and state.

It is also necessary to develop a clear protocol on the procedure for granting humanitarian visas, including explicit and consistent definitions of eligibility requirements in order to eliminate discretion, and mechanisms for coordination between the federal Attorney General's Office (*Procuraduría General de la República*, PGR), the state attorneys general offices, the INM, and civil society organizations.

To the Federal Attorney General's Office (PGR):

Implement the Specialized Unit of the Transnational Mechanism and Investigation of Crimes against Migrants (*Unidad Especializada del Mecanismo Transnacional e Investigación de Delitos contra Migrantes*). Create a protocol for investigating crimes against migrants that facilitates cooperation between the PGR and state attorneys general offices. Such a protocol should include travel provisions for prosecutors and agents, so they can receive reports in places such as consulates, migration detention centers, and shelters.

Work with the states to standardize and systematize data collection on investigations and prosecutions in connection with crimes against migrants, including case outcomes, and make such data available on a monthly basis on the PGR's website.

To the government of the United States:

Promote the investigation of crimes and human rights violations against migrants in Mexico. Provide technical assistance to the Mexican government and to the countries of Central America on the investigation and prosecution of crimes against migrants that are transnational in nature. Through the Department of Justice, broaden technical assistance to Mexico's specialized prosecutors' offices, including training staff on investigative techniques.

Through the Merida Initiative, the Department of State should work with the Mexican government to determine ways to support the INM in strengthening oversight mechanisms, such as through the establishment of an Internal Affairs Unit.

The Department of State's Bureau of Population, Refugees, and Migration must continue to support efforts to strengthen the Mexican government's capacity to identify, protect, and assist vulnerable migrants in Mexico.

To the governments of Mexico and the United States:

Explore the creation of prosecutor exchange programs regarding the strategic use of humanitarian visas as an incentive for reporting crimes committed against migrants, as well as to share successful practices in investigating crimes against migrants.

¹ The Interior Ministry's internal regulations provide for an Internal Affairs Unit within the INM, however, the INM has yet to establish one. The functions, objectives, and goals of the unit should be consistent with best practices on this matter and should be approved by the Citizens Council of the INM.