

Commissioner Felipe González
Rapporteur on the Rights of Migrant Workers and Their Families
Inter American Commission of Human Rights
Organization of American States
1889 F Street N.W., Washington, D.C. 20006

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Dear Commissioner:

Amnesty International welcomes the visit of the Inter American Commission on Human Rights' Special Rapporteur on Migrant Workers and their Families to Mexico from 25 July to 2 August 2011.

Since 2009 Amnesty International (AI) has documented the alarming pattern of abuses against irregular migrants in transit through Mexico, particularly Central Americans, attempting to cross Mexico in order to reach the border with the US. In April 2010 Amnesty International published a report, "Invisible victims. Migrants on the move in Mexico" documenting systematic abuses against migrants and impunity.¹ The report demonstrated the particular vulnerability of migrants, especially women and children, to abuses and their lack of access to justice, remedy or protection. The abuses include abduction, rape, murder, extortion, torture and ill-treatment. The majority of perpetrators are criminal gangs, but public officials are often implicated of acting in complicity with these gangs or of committing abuses during migration control operations. However, perpetrators are rarely held to account and the cycle of violence against vulnerable migrants continues to deteriorate.² In 2010 AI produced a short documentary, "The Invisibles", in partnership with Mexican actor, Gael García Bernal to highlight these issues.³ The update report by the National Human Rights Commission in February 2011 demonstrates that the scale of kidnapping has if anything deteriorated with more than 11,000 individuals abducted over a six month

¹ <http://www.amnesty.org/es/library/info/AMR41/014/2010/es>

² For example there are increasing reports that Mexican migrants returned from the US over the border to Mexico are at increased risk of being targeted for abduction and extortion by criminal gangs.

³ <http://www.youtube.com/user/invisiblesfilms>

period.⁴

Human rights defenders, particularly priests and lay workers who run a network of migrant shelters providing humanitarian aid, are the backbone of humanitarian support extended to migrants en route through Mexico. However those who stand up for irregular migrants are themselves often targeted for attack. Some have been subjected to smear campaigns and threats of false charges of people smuggling. Others have received death threats. In some cases shelters have been physically attacked. A brief document is attached containing links to the urgent actions issued by Amnesty International on behalf of migrants' rights defenders since the end of 2009. The failure of measure to prevent and investigate intimidation and threats against human rights defenders is making the work of migrants' rights defenders even more dangerous.

The Inter American Commission on Human Rights is aware of these issues due to the hearings held on the kidnapping of migrants and threats to migrants' rights defenders. Despite government commitments to prioritise both issues and the announcement of various initiatives, there have been very few tangible advances in improving the protection of the rights of irregular migrants or human rights defenders.

In August 2010, the bodies of 72 irregular migrants were discovered in San Fernando municipality in Tamaulipas state. They were apparently killed by a criminal gang. The case brought to international attention the scale and brutality of abuses against migrants and the failure of the authorities to prevent and punish abuses. In this case, the pressure on the Mexican authorities has resulted in several arrests, including of municipal police, in connection with the crimes. In 2011 a new series of mass graves were discovered in the same municipality and other states across northern Mexico. To date at least 430 bodies have been found, but the identities of most remain to be established. It is not clear how many of the dead are irregular migrants from Central America or Mexican migrants returned from the US or other Mexicans abducted and murdered in the ongoing violence affecting several regions of Mexico. The continuing failure of the Mexican government to establish a nationwide database for persons reported disappeared or missing, including irregular migrants, has resulted in long delay and confusing procedures for relatives to establish the identify of the remains.

On 31 August 2010, in response to the mass grave discovered in San Fernando, Tamaulipas state, the government announced a government strategy to combat the kidnapping of migrants. The plan committed the government to improved inter agency coordination, establish an operational plan of action, dissemination of information to migrants and the Mexican populace, legal changes to improve the justice rates for victims and integral attention for migrants victims of abuses, including those returned to their own country.

Amnesty International believes the objectives of this plan address some important areas of weakness in the government procedures and laws, particularly with regards to the apparent absence of leadership or coordination of federal government initiatives in concert with State and municipal authorities. However, besides a number of formal agreements signed with several state governments, there is no clear evidence that these measures have been implemented or have substantially improved the situation facing migrants in transit. Coordination between agencies responsible for public

⁴ http://www.cndh.org.mx/InfEspecialSecuestroMigrantes_8.pdf

security, migration, procuration of justice and attention to victims at federal and state level continues to be unreliable and confusing.

The absence of reliable data gathered and published on investigations, prosecutions and sentences of those responsible for abuses against migrants, whether state or non-state actors, continues to prevent substantive analysis of government measures with regard to access to justice and remedy. Data published by the National Institute for Migration does not address the issue of access to justice for victims of abuses and this Institution has informed Amnesty International that it does not have authority to gather data on suspected criminal justice matters.

The Federal Attorney General's Office (PGR) and state Attorney General's Office are responsible for the investigation and prosecution of those responsible for abuses, but there is no clear methodology or framework for gathering and collating information that particularly relates to abuses against migrants. In the case of the PGR, Amnesty International has repeatedly noted the tendency of the PGR to investigate cases of kidnapping of migrants as cases of people smuggling. In such instances, the victims are treated as willing participants and potential witnesses, but not as victims of serious human rights violations. As a result they are denied access to justice and remedy and the cases are treated purely as a criminal matter not related to the protection of human rights of migrants.

As the majority of mass kidnappings are committed by organized criminal networks, which rely on a high degree of organization as well as logistical and financial support, these cases fall within the federal jurisdiction on organized crime. However, the information made public by the PGR on cases under investigation or resulting in prosecution of those responsible for the kidnapping, ill-treatment, rape or murder of irregular migrants is extremely scarce and does not appear to match the scale of the crimes taking place indicated by the report of the CNDH and migrants shelters. The lack of clear prioritization and strategy developed by the PGR has led local non-governmental human rights organization to call for the establishment of a dedicated Special Prosecutor's Office within the PGR to investigate and prosecute serious abuses against migrants such as kidnapping.

In states such as Veracruz, Oaxaca, Tabasco and others traversed by irregular migrants travelling north, the local authorities routinely fail to meet their responsibilities with regard to the investigation and prosecution of crimes of abduction, rape and murder of irregular migrants on the basis that these fall within federal jurisdiction. In such cases, federal and state authorities have tended to attribute responsibility for investigation to each other creating confusion and distrust amongst victims, witnesses and human rights defenders.

According to some reports, women victims of kidnapping may be subject to trafficking. Amnesty International welcomes some advances in recent years in the legal framework to combat people trafficking and the apparent prioritization of this issue by a range of institutions. However, there appears to be a clear lack of coordination between these different institutional initiatives between the PGR, Federal Police, CNDH, Instituto Nacional de Mujer and the National Migration Institute. Despite media reports that trafficking of women is widespread, the PGR and INM efforts to detect and investigate cases have produced very few results.

The availability of special visas from INM for victims and witnesses of crime has improved but to a large extent still relies on the direct support of a local human rights organization. This special visa is also not sufficient to guarantee the safety of victims and witnesses cooperating with criminal investigations. The PGR continues to only make available its witness protection programme on very rare occasions high profile organized crime cases. The lack of clear measures to ensure the safety and social integration of migrants who cooperate with criminal investigations continues to be a major deterrent to migrants coming forward to file complaints and remain available for criminal investigations which proceed at an extremely slow pace.

Chiapas is one of the few states that has created a Special Prosecutor's Office for crimes against migrants in the State Attorney General's Office to investigate and prosecute cases which fall within the state's jurisdiction. Amnesty International believes this has proven to be a positive measure for investigating small scale criminal groups or individuals targeting migrants and building trust with migrants and human rights defenders. However, this agency does not have the capacity or jurisdiction to address large scale criminal organizations moving across state lines.

Another area where the government has failed to take clear steps is establishing a database in which relatives of missing migrants, principally from El Salvador, Honduras and Guatemala can register the details of their loved ones in order to ensure cross checking against the remains of bodies found in Mexico. The lack of such a mechanism means that the procedures for identifying bodies and locating relatives remain ad hoc and unreliable. Many relatives complain about lack of available means for obtaining information regarding their loved ones or difficulties of filing missing persons' reports with the Mexican authorities.

Amnesty International believes that the new migration law recently approved by Congress and signed into law by President Calderón is broadly an advance on its predecessor, the General Population Law. It more clearly establishes the rights of migrants and limits the scope of public security agencies in migration operations as well as strengthens obligations to equal access to justice and emergency healthcare for migrants. Nevertheless, the law does not address improvements in the detection and prosecution of abuses against migrants, nor does it strengthen accountability and supervision mechanisms for the National Migration Institute officials for public security forces, such as the Federal Police, who have frequently been accused of committing abuses against migrants. The regulatory law needed to clearly identify and limit the scope of these powers and responsibilities remains to be drawn up. This will be crucial for ensuring that the law is implemented to improve respect for human rights in migration control procedures and ensure migrants in detention are treated with dignity, have access to due process as well as advice and support from non-governmental human rights organizations. As a result, there is still much to be done to ensure the law has a positive impact and prevent potentially negative aspects occurring during implementation.

Amnesty International is aware that the Special Rapporteur is planning his visit in consultation with a range of civil society actors in Mexico who are also submitting a range of materials to assist the mission. Colleagues from Amnesty International Mexico will also participate in joint events with civil society in Mexico City.

We particularly recommend contact with these organizations:

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MEXICO

Please also find attached a document containing summaries and links to all Amnesty International publications and actions on the issue of abuses against irregular migrants in transit in Mexico. Do not hesitate to contact us at mexteam@amnesty.org, if you require any further information or clarification.

Yours sincerely,

Rupert Knox

Research on Mexico

Amnesty International