

## Submission by the United Nations High Commissioner for Refugees

### For the Office of the High Commissioner for Human Rights' Compilation Report -

#### Universal Periodic Review:

## MEXICO

### I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Mexico ratified, with reservations, the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 2000.

In 2011 Mexico enacted a Law on Refugees and Complementary Protection, as well as a Migration Law, which, among other positive aspects: (a) guarantee full respect for the human rights of migrants; (b) provide access to education, health services, and regularization of status for undocumented migrants; (c) enshrine the distinction between migrants and refugees, the principle of *non-refoulement* and the right to seek asylum; (d) incorporate the *1954 Convention* definition of a stateless person; (e) grant complementary protection to victims of torture or other cruel, inhuman or degrading treatment or punishment; (f) provide for documentation of asylum-seekers and victims or witnesses of crimes (including trafficking); and (g) grant permanent residency to refugees, stateless persons and beneficiaries of complementary protection.

Mexico acceded to the *1954 Convention relating to the Status of Stateless Persons* in 2000, but has not yet acceded to the *1961 Convention on the Reduction of Statelessness*. Mexico established a procedure through the Migration Law and its implementing regulations for determining whether individuals are stateless under the Convention. UNHCR is monitoring the implementation of the 1954 Convention through the stateless determination procedures on the basis of UNHCR's Guidelines on Statelessness No.2 "Procedures for Determining whether an individual is a stateless person."<sup>1</sup> The access of applicants to the statelessness determination procedures, aspects of due process and the right to appeal will be assessed in particular.

As of 31 December 2012, a total of 1,879 refugees and 813 asylum-seekers were living in Mexico. The increase in asylum applications, in particular from Central America, is expected to continue due to the level of violence in some Central American countries. In addition to Central America, the majority of refugees recognized by the Government originate from Colombia and Haiti, but there are also refugees from other regions, such as the Middle East,

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<sup>1</sup> UN High Commissioner for Refugees, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html>

East and South Asia, and Africa. Asylum-seekers from the Caribbean and from regions outside the Americas are often part of the complex mixed migration phenomenon affecting Mexico.

The number of unaccompanied children and separated children (UASC) is very high. The registered number of UASC especially of Central Americans in transit has increased in 2012, when a total of 3,946 unaccompanied Central American children were registered, of whom 3,267 boys (83%) and 679 girls (17%). These children are among the most vulnerable migrants and are at particular risk of abuse and human trafficking. Some are refugees, but it is unlikely that they are aware of their right to seek asylum.

Due to its geographic location, Mexico is at the epicenter of one of the world's largest, most complicated mixed migration movements. Large numbers of irregular migrants move through the country towards the United States or Canada. Organized crime takes advantage of migration routes to exploit, extort and abuse migrants, including refugees and asylum-seekers. Caught up in this massive migratory flow are people escaping poverty and violence, people being forcibly transported for the purpose of slavery and exploitation, and still others who are fleeing persecution or threats to their life, liberty or security.

In the context of the growing number of persons seeking asylum in Mexico, case identification within the massive migration flows is highly complex. It is likely that significant numbers of persons in need of international protection are never even identified, either because identification and referral systems are inadequate or because individuals choose not to identify themselves. In the CERD Committee's concluding observations regarding Mexico, issued following its 80<sup>th</sup> session in March 2012, concern was expressed about the situation of *"migrants in transit, especially with regard to women who are the victims of abuse. The Committee expresses its deep concern at the vulnerability of these communities to kidnapping, torture and murder, and is also extremely concerned that their fear of being subjected to discrimination and xenophobia prevents them from seeking assistance and protection when needed."*<sup>2</sup> Moreover, the majority of persons seeking asylum do so only after being detained for irregular entry or presence.

It is important to note that asylum-seekers, including women, children, and persons with specific protection needs, are often detained for long periods in immigration detention centres that may not conform to international standards. Asylum-seekers who are not detained receive limited or no support in obtaining food and shelter while their cases are being processed. This exposes women and children with limited resources to higher risks of SGBV and other abuse and exploitation, since they must look for alternative ways to obtain shelter and food.

Moreover, once recognized, refugees and other persons in need of international protection are subject to manifestations of racism, xenophobia, and discrimination from members of society and the authorities. Almost four in every ten refugees (40.9%) recognized between 2000 and 2008 reported having experienced some sort of verbal aggression in their workplace.<sup>3</sup> These

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<sup>2</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Consideration of reports submitted by States parties under article 9 of the Convention : concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*, 4 April 2012, CERD/C/MEX/CO/16-17, available at: <http://www.unhcr.org/refworld/docid/50619e132.html>

<sup>3</sup> Cobo, Salvador & Pilar Fuerte, "Refugiados en México. Perfiles sociodemográficos e integración social," SEGOB/ACNUR, México, 2012, p. 45.

negative attitudes limit their ability to integrate into Mexican society. Also, refugee women are affected by the lack of adequate response mechanisms to SGBV. There is a shortage of women's shelters, ineffective implementation of preventative measures, and a prevalent culture of impunity.

## II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

### **Constitutional reform, including the right to seek asylum**

The constitutional reform in 2011 recognized international treaties on human rights as being on the level of the Mexican Constitution; lower-ranking laws from both the federal and state level must comply with them. The right to seek asylum is recognized in the Constitution.

### **Adoption of *Law on Refugees and Complementary Protection (LRPC)* and *Migration Law***

In 2011, Mexico enacted the Law on Refugees and Complementary Protection (LRPC), which complies with standards of international protection and integrates good practices. The new law highlights gender as a motive for persecution, incorporates the 1984 Cartagena Declaration refugee definition and the possibility to become a refugee *sur place*. It also provides for complementary protection for foreigners who are not recognized as refugees, but cannot return to their country as their lives would be in danger or they could suffer torture or cruel, inhuman or degrading treatment. In addition, the *Migration Law* was also approved in 2011 and includes many measures relating to refugees, asylum-seekers and beneficiaries of complementary protection in the migration context.

### **Adoption of a new law on human trafficking**

The constitutional reform of July 2011 empowered the Congress to issue a General Law on trafficking, which was adopted in June 2012.<sup>4</sup> The new law standardizes the definition of human trafficking, provides for the right to seek asylum and codifies the principle of *non-refoulement*.

### **Access to education**

The Mexican Refugee Commission (COMAR)<sup>5</sup> has signed agreements with the pertinent Ministries to facilitate refugees' access to education services. In 2012, the education agreement was expanded to enable beneficiaries of complementary protection to access schools. This complemented a previous agreement to ensure school-age refugee children immediate access to the national education system.

### **Unaccompanied and separated children (UASC)**

UASC issues have more visibility in the political agenda due to three important initiatives: the creation of the Inter-institutional Roundtable on Unaccompanied Children and Women Migrants (2007); the creation of a corps of migration officials known as OPIs<sup>6</sup> who are specially trained and tasked with providing holistic assistance to UASC (2007); and the

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<sup>4</sup> Ley general para prevenir, sancionar y erradicar los delitos en material de trata de personas y para la protección y asistencia a las víctimas de estos delitos [Law to prevent, punish and eradicate crimes on human trafficking and to protect and assist the victims of these crimes]

<sup>5</sup> COMAR stands for the *Comisión Mexicana de Ayuda a Refugiados*.

<sup>6</sup> *Oficial de Protección a la infancia*.

enactment of the new Migration Law, which includes provisions related to child protection and Best Interest Determination (2011).

### **Pledges made during the December 2011 Ministerial Event**

Mexico made several pledges during the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011, vowing to continue working to guarantee rights to refugees, asylum-seekers, stateless individuals, and other persons of concern to UNHCR.<sup>7</sup>

## **III. KEY ISSUES, CHALLENGES AND RECOMMENDATIONS**

### **Issue 1: Constitutional and law reform**

While UNHCR welcomes the inclusion of the right of asylum in Article 11 of the Constitution, its definition<sup>8</sup> accords with neither international standards nor Mexican obligations. The term “*refugio*,” which does not exist in international law, creates confusion and is inconsistent with international and regional instruments to which Mexico is party, including the *1951 Refugee Convention*, the 1948 American Declaration of the Rights and Duties of Man and the 1969 American Convention on Human Rights.

In addition, Article 33<sup>9</sup> may undermine the principle of *non-refoulement*, as it does not establish any safeguard in case of the expulsion of a person to a country where he/she could be persecuted or his/her life could be at risk.

#### **Recommendations:**

- Bring Article 11 into compliance with international and regional standards, by referring to “Refugee Status” (*condición de refugiado*) instead of “*refugio*” and “diplomatic and territorial asylum” (*asilo diplomático y territorial*) instead of “asylum”;
- Modify the Constitution to demonstrate respect for the principle of *non-refoulement*;
- Avoid the terminology “*refugio*” which is often confused with refugee status.

### **Issue 2: Reservations to the 1951 Convention and the 1954 Convention**

Mexico made reservations to Article 17 (wage-earning employment), Articles 26 and 31.2 (freedom of movement), and Article 32 (expulsion) of the 1951 Convention. In addition, at the time of accession to the 1954 Convention the government lodged reservations to Article 17 (wage-earning employment), Article 31 (expulsion), and Article 32 (naturalization). During the Ministerial Event in December 2011 Mexico pledged to review the reservations made to the 1951 Convention, but to date there has been no change. In this context UNHCR welcomes the concluding observations made by the Committee on Torture, recommending

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<sup>7</sup> UN High Commissioner for Refugees, Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011, October 2012, available at: <http://www.unhcr.org/refworld/docid/50aca6112.html>

<sup>8</sup> Article 11: En caso de persecución, por motivos de orden político, toda persona tiene derecho de solicitar asilo; por causas de carácter humanitario se recibirá refugio. La ley regulará su procedencia y excepciones.

<sup>9</sup> Article 33: El Ejecutivo de la Unión, previa audiencia, podrá expulsar del territorio nacional a personas extranjeras con fundamento en la ley, la cual regulará el procedimiento administrativo, así como el lugar y tiempo que dure la detención.

the Government of Mexico to (...) “consider the possibility of withdrawing its reservations to articles 17, 26, 31, paragraph 2, and 32 of the Convention relating to the Status of Refugees and to articles 17, 31 and 32 of the Convention relating to the Status of Stateless Persons.”<sup>10</sup>

**Recommendation:**

- Lift the reservations to the *1951 Convention* and the *1954 Convention*.

**Issue 3: Detention of asylum-seekers**

Persons who enter the Mexican territory in an irregular manner are automatically detained. There are very limited specific reception mechanisms to accommodate children, women at risk or persons with disabilities. Many immigration detention centers provide only limited privacy, restricted access to natural light and fresh air, and few public phones and washing facilities. In remote locations, including custody facilities at the border, there is an insufficient number of female police or immigration staff.

Article 112 of the Migration Law establishes that unaccompanied children can be detained in migratory centers only on an exceptional basis and for the shortest time possible, and that they should be channeled to specialized shelters during the determination of their migratory status in the country. In practice however, most of the unaccompanied and separated children remain in migratory detention, as public and private shelters represent a limited alternative, particularly for boys over 13 who generally are not admitted in these shelters. A significant number of asylum claims are presented in the centres, and asylum-seekers, including children and vulnerable people, are often detained for long periods waiting for their claims to be resolved.

In view of the hardship which it entails, and consistent with international refugee and human rights law and standards, detention of asylum-seekers should normally be avoided and be a measure of last resort. As seeking asylum is not an unlawful act, any restrictions on liberty imposed on persons exercising this right need to be provided for in law, carefully circumscribed and subject to prompt review. Detention can only be applied where it pursues a legitimate purpose and has been determined to be both necessary and proportionate in each individual case. Respecting the right to seek asylum entails instituting open and humane reception arrangements for asylum-seekers, including safe, dignified and human rights-compatible treatment.”<sup>11</sup> Alternatives to detention should be sought and given preference, in particular for persons with specific protection needs. In connection with this issue, we would also like to make particular reference to Guideline 9 of UNHCR’s Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention entitled “*The special circumstances and needs of particular asylum-seekers must be taken into account.*”

The Government of Mexico should also be encouraged to implement its pledge made at the Ministerial Intergovernmental Event on Refugees and Stateless Persons in December 2011

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<sup>10</sup> Concluding observations of the Committee against Torture, 49<sup>th</sup> session, December 2012, available at: [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MEX.CO.5-6\\_en.doc](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MEX.CO.5-6_en.doc)

<sup>11</sup> UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.unhcr.org/refworld/docid/50348953b8.html>

“to guarantee that asylum-seekers in a vulnerable situation, particularly unaccompanied or separated children, have access to alternatives to detention while the procedure for status determination takes place.”

**Recommendations:**

- Ensure that asylum-seekers are not penalized merely on account of their irregular entry and/or stay in the country;
- Consider alternatives to detention and guarantee that the detention of asylum-seekers is only used as a last resort, and where necessary, for as short a period as possible.

**Issue 4: Unaccompanied and separated children (UASC)**

The arrival of a high number of UASC continues. INM reported that 4,172 children were detected and detained in 2011. Although 80 % of them are between 12 and 17 years old, there is also a significant number of younger children. Among the 606 children 12 years or younger detained by INM in 2011, 13% were UASC. No best interest determination (BID) was undertaken for any of them.

**Recommendations:**

- Building on the positive legislative and institutional initiatives, continue to strengthen the involvement of the authorities responsible for ensuring the protection of and special arrangements for foreign children;
- Provide training to ensure implementation of BID and clearly define a BID procedure;
- Improve training for Child Protection Officers responsible for UASC within the INM to strengthen their skills and sensitivity;
- Provide tutors and/or a person legally responsible and in charge of care for UASCs.

**Issue 5: Establishment of effective referral mechanisms**

The general law on trafficking - adopted in June 2012- incorporated, in its Article 75, the possibility that victims of trafficking can be in need of international protection and may qualify as refugees. The regulations to the Migration Law also establish the trafficking/asylum nexus and include provisions that guarantee the protection and assistance of victims. Despite these positive steps regarding the legal framework, UNHCR stresses the need for mechanisms to ensure the identification of victims of trafficking, as well as referral mechanisms to the appropriate authority responsible for assessing possible needs for international protection in an age- and gender-sensitive procedure, in order to respond to their specific needs and to prevent *refoulement*. In this connection, it is important to ensure that “individuals who have been trafficked and who fear being subjected to persecution upon a return to their country of origin, or individuals who fear being trafficked, whose claim to international protection falls within [the 1951 Convention and/or its 1967 Protocol] are recognized as refugees and afforded the corresponding international protection.”<sup>12</sup>

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<sup>12</sup> UN High Commissioner for Refugees, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, available at: <http://www.unhcr.org/refworld/docid/443679fa4.html>

The Government of Mexico should also be encouraged to implement its pledge made at the Ministerial Intergovernmental Event on Refugees and Stateless Persons in December 2012 “to ensure that, within the context of migration flows, asylum-seekers are adequately identified and that the protection-sensitive entry systems are reinforced with differentiated procedures and processes (particularly regarding victims of trafficking and unaccompanied girls, boys and adolescents).”

**Recommendations:**

- Establish appropriate mechanisms aimed at early identification, referral, assistance and support for victims of trafficking;
- Establish an effective referral system to ensure that the victim’s right to seek and be granted asylum is fully and duly respected; and enhance coordination among all relevant institutions.

**Issue 6: Accession to the 1961 Convention on the Reduction of Statelessness**

The 1961 Convention provides an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties to the 1961 Statelessness Convention is essential to strengthening international efforts to prevent and reduce statelessness.

Overall, the nationality legislation of Mexico adopts a careful, yet generous approach to the acquisition, renunciation, loss and deprivation of nationality, such that it is highly unlikely that statelessness will arise where the law is correctly applied. Nonetheless, the Constitution allows for naturalized citizens to lose their nationality, even if this renders them stateless, after a period of five years abroad. This is less time than the seven years of residence abroad that is the accepted standard under the 1961 Convention on the Reduction of Statelessness. In addition, there is currently no explicit provision in Mexico’s nationality law addressing the situation of foundlings within the territory.

The Government of Mexico is therefore encouraged to accede to the *1961 Convention on the Reduction of Statelessness*, and to amend the minor issues, which arise under its legislation or to apply existing legal provisions in a manner which is compatible with the Convention.

**Recommendations:**

- Accede to the 1961 Convention on the Reduction of Statelessness;
- Amend its legislation or to apply it in a manner, which is compatible with the 1961 Convention.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
March 2013**

## ANNEX

### Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies Universal Periodic Review:

## Mexico

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Mexico, as well as excerpts from the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right to education, and the Special Rapporteur on the human rights of migrants on their visits to Mexico.

### 1. Treaty Body Reports

#### Committee against Torture

CAT/C/MEX/CO/5-6, 49<sup>th</sup> session

11 December 2012

6. The Committee takes note of the steps taken by the State party to modify its legislation, in particular:

- (c) The promulgation of the Refugees and Supplementary Protection Act and the Migration Act in 2011;
- (d) The constitutional reform dealing with human rights of 10 June 2011, which accords the status of a constitutional right to all human rights guaranteed under international treaties ratified by the State party;
- (e) The promulgation of the General Act for the Protection, Punishment and Eradication of Human Trafficking Offences and for Victim Protection and Assistance in 2012;

7. The Committee also applauds the steps taken by the State party to modify its policies and procedures in order to afford greater protection for human rights and to apply the Convention. In that respect, it takes note, in particular, of the following measures:

- (a) The adoption of the National Human Rights Programme for 2008–2012;
- (b) The adoption of the Prison Administration Strategy for 2008–2012;
- (c) The approval of the National Programme for the Prevention and Punishment of Human Trafficking for 2010–2012.

#### Fundamental legal safeguards

9. While taking note of the publication in April 2012 of protocols on the use of force, the preservation of evidence and the appearance before a judge of persons brought into custody, the Committee is concerned by reports that, in practice, the State party does not make sure that all persons who are being held in custody have the benefit of all fundamental legal safeguards from the outset of their detention. The Committee is concerned by reports that

detainees are often denied prompt access to a lawyer and an independent medical examination, the right to notify a family member of their arrest and the right to be brought before a judge without delay. The Committee regrets that it has not been furnished with official information regarding any disciplinary action or criminal proceedings relating to cases of unjustified delays in handing persons over to the Prosecution Service following their arrest (art. 2).

**The State party should adopt effective measures without delay to ensure that, from the moment that any person is deprived of his or her liberty, he or she has the benefit, in practice, of all fundamental legal safeguards, including those mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2 on the implementation of article 2 by States parties (2008).**

### **Enforced disappearance**

12. The Committee is concerned by the increasing number of enforced disappearances that are apparently being committed by public authorities or by criminal or private groups acting with the direct or indirect support of Government officials in such states as Coahuila, Guerrero, Chihuahua, Nuevo León and Tamaulipas, as reported by the Working Group on Enforced or Involuntary Disappearances (A/HRC/19/58/Add.2, paras. 16 to 31), (art. 2).

**The Committee urges the State party to continue to act upon the recommendations made by the Working Group and, in particular, to:**

- (a) Adopt a general law on enforced disappearance;**
- (b) Ensure that the states and the Federal District establish legal definitions of the offence of enforced disappearance and set penalties for that offence which are in line with the corresponding international standards;**
- (c) Ensure that enforced disappearances are investigated promptly, thoroughly and effectively, that suspected perpetrators are tried and that the penalties imposed upon the guilty parties are commensurate with the gravity of the offence;**
- (d) Ensure that all victims who have suffered harm as the result of an enforced disappearance have access to information on the fate of the disappeared person and to reparation, which includes the right to just and appropriate compensation;**
- (e) Adopt the necessary measures to resolve the cases pending before the Working Group on Enforced or Involuntary Disappearances.**

### **Impunity and violence against women**

13. The Committee is concerned by reports that women continue to be the victims of gender-based murders and disappearances, especially in the States of Chihuahua, Jalisco, México and Nuevo León. While noting that major strides have been made in terms of the establishment of legal and institutional means of combating this phenomenon and other forms of violence against women, including femicide, the Committee is concerned by indications that the new legal framework is not being fully applied by many states. The Committee also takes note with regret of the persistence of impunity for serious acts of violence against women, including those committed in 2006 in San Salvador Atenco, as recently pointed out

by the Committee on the Elimination of Discrimination against Women (CEDAW/C/MEX/CO/7-8, paras. 18 and 19) (arts. 2, 12, 13 and 16).

**The Committee urges the State party to redouble its efforts to prevent and combat violence against women, including gender-based murders and disappearances, to punish the perpetrators of such violence and to adopt all necessary measures to give full effect to the decisions of the Inter-American Court of Human Rights in this connection, including its judgement of 16 November 2009 in the case of *González et al. ("Cotton Field") v. Mexico*.**

#### **Human rights defenders and journalists**

14. While taking note of the recent promulgation of the Human Rights Defenders and Journalists Protection Act, the Committee remains seriously concerned at the large number of murders, disappearances and acts of intimidation and harassment committed against such persons. It is also concerned by reports of widespread impunity for these crimes and notes that, while most of them are attributed to criminal organizations, in some cases there have been indications that members of security forces may be implicated. In light of this situation, the Committee regrets that the State party has not provided it with specific information on the outcomes of investigations and criminal proceedings that are now under way (arts. 2, 12, 13 and 16).

**The Committee urges the State party to:**

- (a) Take the necessary steps to guarantee the safety and physical integrity of human rights defenders and journalists by protecting them against any acts of intimidation or violence that they may face in the course of their activities;**
- (b) Expedite the establishment of the protective mechanism provided for in the Human Rights Defenders and Journalists Protection Act;**
- (c) Take steps to carry out prompt, thorough and effective investigations into any and all acts of intimidation or violence directed at human rights defenders and journalists and to prosecute those responsible and punish them in a manner that is commensurate with the gravity of their acts.**

#### **Administrative detention of asylum seekers and undocumented migrants**

21. The Committee is concerned by reports of torture and disappearances of migrants present in the territory of the State party. It is also concerned by reports of ill-treatment, overcrowding and substandard conditions of detention in many of the State party's migrant holding centres, where there is a lack of hygiene and insufficient medical care and where men and women are not always held in separate facilities at all times. The Committee notes that effective mechanisms are not in place for the identification and referral of trafficking victims who may be held in these centres. While it applauds the recent promulgation of the Refugees and Supplementary Protection Act and the Migration Act, the Committee regrets that it has not been furnished with detailed statistics on the number of refugees, asylum seekers and other non-citizens in the State party. It also regrets that the data that have been provided on applications for asylum do not correspond to the reporting period and do not include information on the number of persons who have been returned, extradited or expelled (arts. 2, 3, 11 and 16).

**The State party should:**

- (a) **Ensure that thorough investigations are carried out into cases involving acts of torture, including disappearances and ill-treatment of refugees, asylum seekers and other foreigners housed in the territory of the State party;**
- (b) **Improve conditions of detention in migrant holding centres.**

**The Committee also recommends that, in order to fulfil its obligations under article 3 of the Convention, the State party should:**

- (a) **Adopt, without delay, effective measures to ensure that all foreigners within its jurisdiction are treated fairly and have genuine access to legal assistance at all stages of the corresponding procedures;**
- (b) **Expand upon existing identification and referral mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), in order to provide the requisite protection and assistance and to optimize inter-agency coordination;**
- (c) **Set up an effective system for the compilation of data on the status of refugees, asylum seekers and stateless persons present in its territory;**
- (d) **Ratify the Convention on the Reduction of Statelessness and consider the possibility of withdrawing its reservations to articles 17, 26, 31, paragraph 2, and 32 of the Convention relating to the Status of Refugees and to articles 17, 31 and 32 of the Convention relating to the Status of Stateless Persons.**

### **Universal jurisdiction**

23. While taking note of article 6 of the Federal Criminal Code, the Committee observes that there is no provision in any of the State party's laws that expressly establishes its universal jurisdiction over acts of torture (arts. 5, 6, 7 and 8).

**The State party should introduce provisions into its criminal legislation that establish its jurisdiction over acts of torture in accordance with article 5 of the Convention, including provisions under which the State party may prosecute, in accordance with article 7, foreign nationals who have committed acts of torture outside the State party's territory but who are present in its territory and have not been extradited.**

### **Training**

25. The Committee takes note of the information furnished by the State party on the training provided to civil servants on the use of the Medical/Psychological Certificate of Possible Torture or Ill-Treatment, which is based on the Istanbul Protocol. It regrets, however, that little information has been supplied on the content of the training programmes on human rights and the prohibition of torture that are administered by the Ministry of Public Security, Ministry of Defence and Ministry of the Navy. It also notes that the State party has not submitted information on how much of an impact these training activities and programmes have had in terms of a reduction in the number of acts of torture or ill-treatment (art. 10).

**The State party should:**

- (a) **Continue to provide mandatory training programmes to ensure that all public servants are well versed in the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted;**
- (b) **Develop and apply a methodology for assessing how effective its training programmes are in reducing the number of cases of torture and ill-treatment.**

### **Committee on the Elimination of Racial Discrimination**

CERD/C/MEX/CO/16-17, 80<sup>th</sup> session

4 April 2012

9. The Committee is greatly concerned that racial discrimination remains so deeply rooted in the State party despite the highly developed institutional framework for combating it. The Committee also notes with concern the lack of information on the real impact and outcomes of that framework and the related programmes, plans and strategies in the State party (art. 2).

**The Committee invites the State party to devise methods for measuring the outcomes of public policies so as to enable it to assess the scope of the institutional framework and the measures taken, including the use of human rights indicators. The Committee requests the State party to provide information on the subject in its next periodic report, which should be more substantive and shorter, with tables, data and information to clarify the progress made in implementing the Committee's recommendations. The Committee recommends that the State party take into account the results of the second national survey on discrimination in designing and mounting effective campaigns against discriminatory and xenophobic behaviour. The Committee recommends that the State party take into account the results of the second national survey on discrimination to design and mount effective campaigns against discriminatory and xenophobic attitudes, and to strengthen the role and capacities of the National Council for the Prevention of Discrimination, so that it will be better equipped to combat racism, xenophobia and related intolerance.**

10. The Committee notes with concern that, notwithstanding its repeated recommendations and requests, little light has been shed on the situation of people of African descent. The Committee regrets that the State party provided no detailed information on people of African descent in its periodic report, despite the Committee's request to that effect in 2006 (art. 1).

**In light of its general recommendation No. 34 on racial discrimination against people of African descent, the Committee reiterates its request that the State party provide information on people of African descent, a vulnerable and small minority that needs all the protections established in the Convention. The Committee invites the State party to consider recognizing people of African descent as an ethnic group and adopting programmes to promote their rights.**

19. The Committee acknowledges the efforts made by the State party to provide health care for indigenous people that takes account of their cultural characteristics. However, it is concerned that the highest figures for maternal and infant mortality are found among the indigenous population. The Committee expresses its concern at the lack of adequate and

accessible services for such communities and at the shortage of data on health indicators and on the steps taken to improve those services (art. 5 (e)).

**The Committee recommends that the State party draw up, in close cooperation with the communities concerned, a comprehensive and culturally sensitive strategy to ensure that indigenous peoples receive quality health care. The implementation of the strategy should be guaranteed by an adequate allocation of resources, the collection of indicators and transparent monitoring of progress. Particular attention should be paid to improving access to health care for indigenous women and children. The Committee underlines the need for interpreters in this area too, in order to ensure that indigenous people have full access to health services. It is important that the health system recognize, coordinate, support and strengthen indigenous health systems and use them as the basis for achieving more effective and culturally sensitive coverage. The Committee requests the State party to provide clear data on maternal mortality and life expectancy in indigenous communities and among people of African descent. Lastly, the Committee recommends that the State party step up its efforts to improve the sexual and reproductive health of indigenous women and women of African descent.**

20. The Committee remains concerned about the situation of migrant workers, most of whom come from indigenous communities in Guatemala, Honduras and Nicaragua, and migrants in transit, especially with regard to women who are the victims of abuse. The Committee expresses its deep concern at the vulnerability of these communities to kidnapping, torture and murder, and is also extremely concerned that their fear of being subjected to discrimination and xenophobia prevents them from seeking assistance and protection when needed (art. 5 (e) (i)).

**Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee again recommends that the State party ensure that programmes and measures to protect migrants and their rights are properly implemented in practice. The Committee invites the State party to include in its next periodic report information on the progress made with regard to the situation of migrant workers in Mexico.**

### **Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families**

CMW/C/MEX/CO/2, 14<sup>th</sup> Session

3 May 2011

39. The Committee notes that article 30 of the Mexican Constitution establishes that all individuals born in the State party are Mexican by birth, regardless of their parents' nationality. The Committee notes with concern that many Civil Registry officials refuse to register the births of children of undocumented migrant workers in the State party.

**40. The Committee recommends that the State party adopt effective measures, including amendments to article 68 of the Population Act, to ensure that Civil Registry officials and other relevant authorities register all births of children of migrant workers in the State party on an entirely non-discriminatory basis, regardless of those workers' migration status.**

41. The Committee notes the efforts made by the State party to inform undocumented migrant workers who are in migrant holding centres about their rights, how to obtain a

humanitarian visa if they are victims or witnesses of trafficking in persons or migrant-smuggling, the right to consular assistance and the possibility of requesting asylum. However, the Committee is concerned about allegations that such information is not provided to migrant workers in some migrant holding centres, or not provided systematically, especially in the case of persons in such centres who opt for voluntary repatriation.

**42. The Committee recommends that effective measures be taken to ensure that all migrant workers held in migrant holding centres, including those who opt for voluntary repatriation, are properly informed of their rights in a language they understand, especially with regard to their rights to consular assistance, to seek remedies concerning their migration status, to request asylum and to receive information about the possibility of obtaining a humanitarian visa if they have been victims or witnesses of trafficking in persons.**

**Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)**

49. The Committee is concerned that only a small proportion of the victims of trafficking who have been identified as such have received temporary visas and that many victims have been repatriated. It notes that convictions for trafficking in persons have been handed down in only a limited number of cases. The Committee also notes that the Office of the Special Prosecutor for Crimes of Violence against Women and Trafficking in Persons is not competent to follow up on complaints of trafficking in persons when the offence is committed by members of organized criminal groups and that there have been cases where judges have not recognized the competence of the Office of the Special Prosecutor to handle certain complaints. The Committee is concerned by allegations that public officials have been involved in some of those cases. It is further concerned that the State party does not systematically record disaggregated data with a view to combating the phenomenon of trafficking. The Committee regrets that there have been reports of cases of insufficient assistance, in particular medical and psychological care, being provided in migrant holding centres to victims of human trafficking and rape.

**50. The Committee reiterates its recommendation that the State party:**

- (a) Step up its efforts to combat migrant-smuggling and trafficking in persons, especially women and children;**
- (b) Take measures to detect and combat the illegal or clandestine movement of migrant workers and members of their families;**
- (c) Investigate and punish the individuals, groups or organizations, including public officials, found responsible;**
- (d) Ensure that victims receive proper care and appropriate redress;**
- (e) Systematically collect disaggregated data in order to better combat trafficking in persons;**
- (f) Promote regular, safe migration under decent conditions as part of a strategy to combat trafficking in persons and migrant-smuggling.**

**Committee on the Rights of the Child (OPSC)**

CRC/C/OPSC/MEX/CO/1, 56<sup>th</sup> Session

4 February 2011

**Measures adopted to prevent offences referred to in the Optional Protocol**

23. While welcoming that the State party has introduced several initiatives to prevent sexual exploitation and trafficking of children, including the programme with children “difusores de derechos”, the Committee regrets:
- a) That measures to prevent the offences referred to in the Optional Protocol are still inadequate, as evidenced by the massive quantity of child pornography produced in the State party, the large number of child sex tourists, as well as the high number of children involved in prostitution;
  - b) The large number of unaccompanied children entering the State party from neighbouring countries, at risk of trafficking for purposes of sexual or labour exploitation; and
  - c) The high number of kidnapping of migrants, including children.

**24. The Committee recommends that the State party:**

- a) **Carry out research on the nature and extent of the sale of children and the use of children for prostitution and pornography, in order to identify the root causes, the extent of the problems, and the existence of protection and prevention measures, giving special attention to indigenous children, and to adopt targeted measures;**
- b) **Undertake measures to identify children who are especially vulnerable to becoming victims of the crimes covered by the Optional Protocol, such as unaccompanied immigrant children, children affected by poverty and children in street situations, and link these measures to existing programmes like “Oportunidades”;** and
- c) **Ensure that the perpetrators of these crimes are properly prosecuted and punished.**

**Recovery and reintegration**

45. The Committee recognizes efforts of the State party, but is concerned that the measures for social reintegration, physical and psychosocial recovery measures and compensation for child victims are insufficient. The Committee is particularly concerned at the vulnerability of asylum seeking and refugee children.

**46. The Committee recommends that the State party:**

- a) **Ensure that resources be earmarked in order to strengthen social reintegration and physical and psychosocial recovery measures, in accordance with article 9, paragraph 3, of the Optional Protocol, in particular by providing interdisciplinary assistance for child victims;**
- b) **Guarantee that all child victims have access to adequate procedures and to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol, and establish a fund for compensation for victims, for those cases where they cannot obtain compensation from the perpetrator; and**
- c) **Include specific measures for the protection of asylum-seeking and refugee children in the implementing regulations of the 2010 Law on Refugees and Complementary Protection, in order to ensure adequate protection and effective access to Refugee Status Determination to foreign children who may have been victims of trafficking, prostitution and child pornography and have a well-founded fear of persecution in their country of origin. In this regard, the State party should take into account the Committee’s general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, and seek technical assistance from UNHCR.**

**Committee on the Rights of the Child (OPAC)**

CRC/C/OPAC/MEX/CO/1, 56<sup>th</sup> Session

4 February 2011

**Assistance for physical and psychological recovery**

31. While welcoming efforts to protect the rights of unaccompanied children, such as the “Mesa de Diálogo Interinstitucional sobre Niñas, Niños y Adolescentes no Acompañados y Mujeres Migrantes”, the Committee regrets the lack of information on measures taken to identify children who may have been used in conflict in Mexico, as well as refugee and asylum-seeking children who may have been recruited or used in hostilities abroad. The Committee further regrets the lack of information on measures taken for the physical and psychological recovery and social reintegration of these children.

**32. The Committee encourages the State party to establish an identification mechanism for children who may have been recruited or used in hostilities, and take the necessary measures for their physical and psychological recovery and social reintegration. Such measures should include careful assessment of the situation of these children, reinforcement of the legal advisory services available for them and the provision of immediate, culturally responsive, child sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with the Optional Protocol.**

**Committee on the Elimination of Discrimination Against Women**

CEDAW/C/MEX/CO/6, 36<sup>th</sup> Session

25 August 2006

24. While welcoming the programmatic and legal measures taken by the State party to combat trafficking, including the drafting of the proposed Act on the Prevention and Punishment of Trafficking, the establishment of binational and regional cooperation agreements and the creation of a sub-group on human trafficking among federal agencies, the Committee is concerned about the lack of uniformity in criminalizing trafficking at the level of the states, the absence of comprehensive protection and rehabilitation programmes for victims and the insufficiency of data and statistics on the incidence of trafficking and information on the impact of measures taken. The Committee is also concerned about the State party’s lack of attention and efforts to address the incidence of internal trafficking.

**25. The Committee urges the State party to intensify its efforts to combat trafficking in women and girls, including through the speedy adoption of the bill to prevent and punish human trafficking and the establishment of a concrete timetable for the harmonization of laws at the State level to criminalize trafficking in line with relevant international instruments. It urges the State party to study the phenomenon of internal trafficking, including its scope, causes, consequences and purposes, and systematically compile information with a view to formulating a comprehensive strategy that includes measures of prevention, prosecution and punishment of offenders, as well as measures to rehabilitate victims and reintegrate them into society. It also recommends that the State party conduct nationwide awareness-raising campaigns on the risks and consequences of trafficking targeted at women and girls, and train law enforcement, migration and border police officials on the causes, consequences and incidence of trafficking in women and girls and different forms of exploitation. It urges the State**

party to carefully monitor the impact of measures taken and provide information on the results achieved in its next periodic report.

## **2. Special Procedures Reports**

### **Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Frank La Rue**

Adición: Misión a México

A/HRC/17/27/Add.3

19 de mayo de 2011

**71. Aunque el actual problema de la violencia en México afecta a todos los sectores de la población, las agresiones contra periodistas y comunicadores sociales tienen efectos multiplicadores que impactan a los demás miembros de la profesión; generan zozobra y autocensura; privan al conjunto de la sociedad de su derecho fundamental a la información, y desalientan la denuncia, todo lo cual incrementa la impunidad.**

**72. La impunidad que caracteriza los crímenes contra periodistas y comunicadores sociales en México alienta de manera perversa la reproducción de este tipo de crímenes.**

**73. La libertad de expresión en México enfrenta graves obstáculos, principalmente por los actos de intimidación y violencia que sufren las y los periodistas. En los últimos 10 años, 66 periodistas han sido asesinados y 12 han sido desaparecidos. México ha devenido así en el lugar más peligroso para ejercer el periodismo en las Américas.**

### **Informe del Relator Especial sobre el derecho a la educación, Sr. Vernor Muñoz\***

Adición: Misión a México

A/HRC/14/25/Add.4

2 de junio de 2010

## **V. Recomendaciones**

**108. En virtud de lo expuesto, el Relator Especial recomienda:**

...

**c) Garantizar un presupuesto creciente para los programas y departamentos encargados de la educación indígena y educación intercultural. En el caso de esta última, es necesario, además, promover una reforma del marco legal de la educación pública en la que se hagan explícitos los principios para alcanzar una sociedad incluyente y hacer realidad una educación que reconozca la importancia de la diversidad lingüística y cultural del país;**

...

**e) Garantizar la inclusión y el fortalecimiento de las humanidades en todos los niveles y modalidades educativas y poner en marcha el programa mundial de educación en derechos humanos, con énfasis en la igualdad de género y en atención de la diversidad lingüística y cultural del país;**

...

**h) Fortalecer la atención de las familias migrantes internas, conocidas como jornaleras, de modo que se les garantice oportunidades educativas de calidad, adaptando la oferta educativa a los períodos agrícolas y ampliando la cobertura a la educación secundaria.**

**Resulta indispensable, además, adecuar el servicio educativo de conformidad con las obligaciones laborales de las madres, padres y jóvenes trabajadores;**

...

**j) Es necesario que la Comisión Nacional de Derechos Humanos desarrolle programas urgentes, consistentes y sistemáticos, en defensa del derecho a la educación, principalmente con tres fines concretos: la exigibilidad y justiciabilidad del derecho, el estímulo a la participación y el control de legalidad en torno al desarrollo de políticas educativas basadas en los derechos humanos;**

...

**o) Tomar medidas inmediatas para garantizar que todos los procedimientos y servicios a cargo del registro civil sean completamente gratuitos.**

#### **Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante**

Addendum: Mission to Mexico

A/HRC/11/7/Add.2

24 March 2009

**82. Regarding the expulsion of migrants from its territory, the Special Rapporteur recommends that the Government of Mexico review its laws regarding expulsion (article 33 of the Constitution and corresponding practices stipulated in the General Population Act) and formulate policies according to international human rights law standards, that migrants are expelled only pursuant to a decision taken by the competent authority pursuant to the law. In addition, the Special Rapporteur, following up on recommendations by the Committee on Migrant Workers, recommends that Mexico should consider taking measures to withdraw its reservation to article 22, paragraph 4, of the Convention on Migrant Workers.**

**83. Regarding the criminalization of irregular migration, the Special Rapporteur welcomes the reform of the General Population Act and urges its harmonization with international law and reflection of attendant protections in practice. He is concerned with the punitive measures given to irregular migrants, including migrants involved in smuggling and trafficking. Now that irregular migration has been decriminalized by the reforms, and following up on recommendations by the Committee on Migrant Workers, the Special Rapporteur recommends that the law should, inter alia, implement the classification of illegal entry into the country as an administrative rather than criminal offence.**

**85. The Special Rapporteur received inconsistent information about at what age the federal Government and the state agencies considered migrant children as being legally “minors” and therefore deserving of additional protection. He also noted that there seemed to be differences according to sex, with girls eligible for protection longer than boys, which illustrates gaps in protection and lack of coherence in policy. The Special Rapporteur therefore recommends the revision of what is legally considered a “minor” at both the federal and state levels, and suggests that “minors” be inclusive, regardless of sex, of all children under the age of 18.**